

Alamance County

PLANNING DEPARTMENT
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MEMORANDUM

TO: Brian Baker, Assistant County Manager
FROM: Matthew Hoagland, Planning Director
DATE: November 6, 2023
SUBJECT: Board of Adjustment and Planning Board Composition

Board of Adjustment:

Quasi-judicial decisions, as outlined in N.C. General Statute 160D-406, are special requests that are made when there is need for some adjustment to the rules of a development ordinance. These decisions typically include variances, appeals, special use permits or even certificates of appropriateness. These hearings procedures are also guided by this statute and involve very specific public notice, presentation of materials and evidence, and decision-making processes.

Additionally, N.C.G.S. 160D-705 outlines the types of quasi-judicial decisions that can be made and the standards which must be met in order to grant a variance, for example.

State law does allow for a governing board (a County Commission) to serve as a quasi-judicial body (a Board of Adjustment). However, it is common practice and is often recommended that an independent Board of Adjustment be constituted to make these quasi-judicial decisions. The authority to do so comes from N.C.G.S 160D-302.

In an August 2021 Coates' Cannon article entitled "Types of Development Decisions", UNC School of Government Professor Adam Lovelady writes: *"While governing boards may handle quasi-judicial decisions, the board must be careful to distinguish its political role...from its quasi-judicial role in evidentiary hearings."*

Mr. Lovelady goes on to note that appeals of quasi-judicial decisions are made directly to Superior Court. The full text of that article can be found here: <https://canons.sog.unc.edu/2021/08/types-of-development-decisions/>.

Planning Board:

Below is a sampling of planning boards from other North Carolina counties which are similar in nature to Alamance County. The following counties are either comparable in population, geographically proximate, or do not have county-wide zoning.

<u>County</u>	<u>Characteristic</u>	<u>Planning Board Composition</u>
Iredell	Population 195,000 (appx.)	9 members, 2 alternates
Caswell	Geographically proximate / Partial Zoning	8 members, 5 ex-officio
Pitt	Population 173,000 (appx.)	11 members, 1 ex-officio
Rockingham	Geographically Proximate	7 members, 3 alternates
Rutherford	No Zoning	8 members, 2 ex-officio

N.C.G.S. 160D-601 requires a legislative hearing in order to amend the Unified Development Ordinance and change the construction of the Planning Board. However, N.C.G.S. 160D-605 does not require that a Planning Board review, comment, or make a recommendation prior to such change.

Staff Recommendations:

- 1) Create a new five (5) member Board of Adjustment. Additionally, appoint alternate B.O.A. members in cases of absence or conflict of interest. Initially, three B.O.A. members should be appointed for three-year terms, the other two appointed for two-year terms so that terms will not all expire simultaneously.
- 2) Reduce the size of the Planning Board from thirteen (13) to seven (7) members while retaining one (1) ex-officio, non-voting member who shall be chosen from among the County Commissioners.
- 3) Encourage applications from current Planning Board members to serve on the new Board of Adjustment.