



**Town of Fairview
Planning Board Training
February 16, 2016**

**TOWN OF FAIRVIEW
PLANNING BOARD TRAINING
FEBRUARY 16, 2016**

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TOPICS TO BE DISCUSSED

- ✓ Roles/relationships of Governing Board/pb/staff
- ✓ Administrative and Legislative Decisions
- ✓ Conditional Use Permits
- ✓ Zoning Statements
- ✓ Spot Zoning
- ✓ Adopted Plans
- ✓ Imposing Conditions
- ✓ Factors used when making recommendations
- ✓ Conflicts of Interest

ISSUES TO CONSIDER

- ✓ Discussion based on NC General Statutes, applicable Case Law and Fairview's Land Use Ordinance
- ✓ If NC General Statutes do not work for Fairview, consider appropriate local legislation

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TOPICS TO BE DISCUSSED

✓ **Composition/ Roles/relationships of Governing Board/pb/staff**

- ✓ How Do You Get Appointed to the Planning Board? How Long Are You On?
- ✓ Types of Decisions: Administrative and Legislative
- ✓ Types of Zoning: General and Conditional
- ✓ Zoning Statements
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WHO HEARS ZONING AMENDMENT CASES

- **Planning Board** (makes recommendations)
- **Town Council** (always makes final decision)
- **Board of Adjustment**
(**NEVER**... the BOA never gets involved with zoning amendment cases)



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THE ROLE OF TOWN COUNCIL

- ✓ **ALWAYS... Adopts and Amends Land Use Ordinance and Land Use (and other) Plans**
- ✓ **ALWAYS... Appoints Members to the Planning Board and Board of Adjustment**
- ✓ **ALWAYS... Approves Conditional Use Permits**

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THE ROLE OF THE TOWN COUNCIL

NEVER ... Administers Land Use Ordinance

NEVER... Decides Appeals of the Administrator's Decisions

NEVER... Issues Variances

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THE ROLE OF THE PLANNING BOARD

GS 160A-361: must have "planning board" before a local government may exercise its zoning authority.



GS 160A-387: requires all formal Land Use Ordinance amendments be submitted to PB for review and recommendation. PB has 30 days to make recommendation. Case goes to governing board if no PB recommendation made during requisite time period.

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ROLE OF THE PLANNING BOARD

- ✓ Generally serves as advisor to the Town Council;
- ✓ Makes **RECOMMENDATIONS** to the Town Council on:

- ✓ **All Text Changes and Map Rezoning (MANDATED)...PB can initiate changes**
- ✓ **Conditional use permits**
- ✓ **Major development permits**

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COMPOSITION OF THE PLANNING BOARD

- ✓ Seven (7) regular members
- ✓ Two (2) alternate members
- ✓ All appointed by Town Council;
- ✓ Three (3) year staggered terms;
- ✓ PB member can be removed by TC if they miss 30%+ of all PB meetings w/in a 12-month period.

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THE ROLE OF STAFF

- ✓ Administers and Enforces LU Ordinance
- ✓ Informs Public/Answers Questions
- ✓ Issues Permits 
- ✓ Gives Staff Reports
- ✓ Gives Staff Recommendations
- ✓ Monitors Regulations on a day-to-day basis
- ✓ Approves minor subdivision plats

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TOPICS TO BE DISCUSSED

- ✓ Roles/relationships of Governing board/pb/staff
- ✓ How Do You Get Appointed to the Planning Board? How Long Are You On? Attendance
- ✓ **Types of Decisions: Administrative and Legislative**
- ✓ Types of Zoning: General and Conditional
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TYPES OF DECISIONS: ADMINISTRATIVE

- ✓ Made by Staff...normally based on written standards.



EXAMPLE: Signing off on a zoning permit; approval of minor subdivision plat.

- ✓ Occasionally, judgment calls may have to be made if standards are not precise or allow for discretion by staff ("insignificant or minor deviations")

EXAMPLE: Mandated Landscaping or screening regulations

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TYPES OF DECISIONS: LEGISLATIVE

- ✓ Made by the Town Council;
- ✓ Can include: rezoning property and text changes;
- ✓ PB must be given an opportunity to advise the Town Council on zoning changes;
- ✓ With the exception of Conditional Use Permits: no conditions can be attached to PB recommendation or TC approval.

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- ✓ Types of Decisions: Administrative and Legislative
- ✓ Rezoning Property
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WHAT IS STRAIGHT (GENERAL) ZONING?

- Oldest form of zoning in NC;
- Always been available to property owners;
- Property owner can request zoning change from one general district to another;
- If approved, any use allowed in the underlying district can be built according to the standards for that district and use;
- No conditions can be placed on such rezoning; it either is approved or disapproved...PERIOD!!!!



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WHAT IS STRAIGHT ZONING?

- Third party rezonings (i.e., request made by someone other than property owner) are allowed in Fairview
- Property owners, neighbors, and PB members can speak to anyone they want to prior to the PB meeting or Council public hearing; PB members (per Rules of Procedure) are not allowed to commit to an opinion on the case prior to PB meeting on the case.



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STRAIGHT ZONING: ADVANTAGES

-  PB members can talk with others prior to their meeting;
-  No findings of fact; No quasi-judicial proceedings;
-  Once rezoned, owner has full latitude to develop property per what is allowed in the underlying district.
-  Relatively inexpensive to apply for; no site plans needed.



STRAIGHT ZONING: DISADVANTAGES

-  No certainty for Town or neighbors as to what will be built;
-  Chair must enforce "Don't Ask, Don't Tell" on proposed future uses on subject property when considering rezoning;
-  Current property owner may sell property to another with totally different ideas for what is to be built;
-  May be embarrassing for Town if something awkward gets built on the property.



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CONDITIONAL USE PERMITS (CUP)

- Some uses are ONLY allowed through issuance of a CUP
- Examples: Manufactured home sales; mini-warehouses;
- Quasi-judicial hearing held by Town Council;
- TC makes decision based ONLY on testimony given at public hearing;
- TC must take votes on findings of fact for the proposed use;
- PB can recommend, TC can approve fair and reasonable conditions.

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CONDITIONAL USE PERMITS (CUP)

- Only property owner can request a CUP;
- CUP runs with the land, not the property owner;
- Town must be able to track CUP in future years. GOOD RECORD-KEEPING NECESSARY.

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✓ Zoning Statements

- ✓ Spot Zoning
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ZONING STATEMENTS

TWO THINGS TO REMEMBER WITH ALL ZONING CASES (map and text):

1. **Statement of consistency (with Land Use Plan and all other applicable/ADOPTED plans);**
2. **Statement of reasonableness (for Town Council only);**
3. **Neither statement (made by Town Council) is subject to judicial review; BUT...**
4. **Give some rationale as to why each statement was made**

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SPOT ZONING: Four Things You Must Consider

1. Size of tract;
2. Compatibility of zoning with adopted plans;
3. Benefits/detriments of rezoning re: applicant, surrounding properties and community; and,
4. Relationship of uses allowed under proposed zoning and uses currently allowed on adjacent tracts.



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LAND USE PLAN; LAND USE REGULATIONS



LUP... SERVES AS A GUIDE FOR HOW THE TOWN SHOULD DEVELOP



ZONING MAP & Land Use Ordinance text... THIS IS THE LAW THAT IMPLEMENTS THE LUP

All zoning decisions must reference consistency with the LUP and other officially adopted plans that are relevant.



OTHER RELEVANT PLANS

- ✓ Comprehensive Transportation Plan (CTP);
- ✓ Carolina Thread Trail ;

If the TOWN Council adopted it, you need to consider it when reviewing plans



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Imposing Conditions on Approval

- ✓ Always give applicant opportunity to discuss conditions that PB Might want to add...for conditional use permits;
- ✓ Substantial evidence in the record must support conditions imposed by Town Council;
- ✓ Conditions that impose an exaction must be reasonably related and proportionate to impact of development.

SOURCE: David Owens, UNC-CH School of Government, January 13, 2010 SOG Blog

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Imposing Conditions: One of these is likely ILLEGAL...which one is it?

- ✓ Hours of business operation?
- ✓ Square footage (Res/Non-res)?
- ✓ Limitations on ownership/rental?
- ✓ Exterior Building Appearance?
- ✓ Landscaping/ Screening/ Outdoor Lighting?
- ✓ Access Management/ Connectivity?
- ✓ Signage?

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What Factors Should PB Take Into Consideration When Making Recommendations?

- Staff Recommendations;
 - Current land use and Future Land Use Plan;
 - Availability of Utilities;
 - Thoroughfare Plans;
 - Citizen Concerns;
 - Statements of Consistency;
 - Zoning and Plans of Neighboring Jurisdictions;
- and...**

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What things Should You Consider When Making Recommendations?

WHAT MAKES THE MOST SENSE FOR FAIRVIEW IN THE LONG RUN!!!!

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**CONFLICTS OF INTEREST- ELECTED OFFICIALS/
PLANNING BOARDS**

NCGS 160A-381(d): "An {elected official/planning board member} shall not vote/make a recommendation on any zoning map or text amendments where the outcome of the matter ... is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member."

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CONFLICTS OF INTEREST- PLANNING BOARDS

- ✓ If you are present; and,
- ✓ Unless you are excused from voting (due to a conflict); and,
- ✓ You do not vote...you have abstained; THEREFORE,
- ✓ You will be counted as having voted in favor of the motion that is on the table (per PB Rules of Procedure)
- ✓ **WHEN IT COMES TO LAND USE MATTERS, THIS DOES NOT APPLY TO TOWN COUNCIL!**

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DID YOU KNOW...

- ✓ PB Chairman and Vice-Chairman each serve for one-year terms and can be re-appointed for successive terms;
- ✓ PB Chair can vote on all matters;
- ✓ **NO WRITTEN RULES ON WHAT PB MEMBER DOES ONCE HE/SHE ABSTAINS:** leave the dais? sit in the audience? not participate in the discussion? Leave the room?
- ✓ PB agenda items must be submitted to PB secretary 10+ days prior to PB meeting; otherwise, **UNANIMOUS** vote of PB needed to hear item.



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DID YOU KNOW...

- ✓ A copy of the PB Rules of Procedure should be available at all PB meetings;
- ✓ All PB members and staff should be familiar with them;
- ✓ Virtually any PB meeting or gathering at which a quorum is present and business is discussed is subject to the NC Open Meetings Law...same thing applies to the Town Council, although NC Law does allow for some exceptions.



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Questions? Comments?

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