

ARTICLE 4 – AUTHORITY RELATED TO PLANNING AND ZONING
(BOARD OF COMMISSIONERS, PLANNING BOARD, BOARD OF ADJUSTMENT, TOWN CLERK AND ZONING ADMINISTRATOR)

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4.1 TYPES OF AUTHORITY.

4.1.1. Zoning and regulation of development are based upon three separate types of authority as described below. Depending upon the development decision before them, the various Boards and personnel responsible for zoning and regulation of development within Fairmont may utilize these authorities.

A. Administrative Authority. Means the authority to make decisions in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in NCGS Chapter 160D or local government development regulations. An administrative decision may include an administrative hearing to gather facts needed to make an administrative decision. These are sometimes referred to as ministerial decisions or administrative determinations. This authority is typically exercised by the planning staff of the jurisdiction.

Statutory Reference - § 160D-102. (102)

B. Legislative Authority. Means the authority to adopt, amend, or repeal a regulation under NCGS Chapter 160D or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of Chapter 160D. Legislative decisions often require a hearing to solicit public comment on a proposed legislative decision. This authority is typically exercised by the governing board of the jurisdiction.

Statutory Reference - § 160D-102. (19-20)

C. Quasi-Judicial Authority. Mean the authority to make decisions involving the finding of facts regarding a specific application of a development regulation and which requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of

administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board. This authority is typically exercised by the Board of Adjustment.

Statutory Reference - § 160D-102. (28) and N.C.G.S. § 160D-406

4.2 CONFLICTS OF INTEREST.

4.2.1. In order to promote public confidence in the integrity of the decision-making process, members of all boards, appointed and elected for the Town, shall conform to the following conflict of interest policy.

A. Town Board of Commissioners.

- 1) A member of the Town Board of Commissioners shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.
- 2) A member of the Town Board of Commissioners shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

B. Appointed Boards.

- 1) Members of appointed boards, such as but not limited to the planning board and board of adjustment, shall not vote on a legislative decision regarding a development regulation adopted pursuant to this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.
- 2) An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship. This shall apply even if no direct financial impact would result for the board/board member.

C. Administrative Staff. No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship.

- 1) If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.
- 2) No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Ordinance unless the staff member is the owner of the land or building involved.

- 3) No staff member or other individual or an employee of a company contracting with the Town to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the Town, as determined by the Town.

4.2.2. Quasi-judicial Decisions. A member of any board exercising quasi-judicial functions pursuant to this Ordinance shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

4.2.3. Resolution of Objection. If an objection is raised to a board member's participation at or prior to the hearing or vote on that matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

4.2.4. Familial Relationship. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Statutory Reference – N.C.G.S. § 160D-109.

4.3 BOARD OF COMMISSIONERS – GENERAL AUTHORITY AND DUTIES RELATED TO ZONING.

4.3.1. Types of Decisions: Depending on the type of decision before them, the Board of Commissioners may be called upon to act with legislative, quasi-judicial, or administrative authority. Refer to the ordinance sections noted below for further explanation of procedure and process. Understand that this Zoning Ordinance addresses only the authority and duties of the Board of Commissioners related to zoning and regulation of development.

A. Legislative: In considering the adoption, amendment or repeal of an ordinance, Board of Commissioners acts in its legislative capacity. The hearings that accompany these decisions are legislative hearings and seek public input on the proposed policy change. Legislative decisions must proceed in accordance with the requirements of N.C.G.S. Article 6 of Chapter 160D.

B. Quasi-Judicial: The Board of Commissioners, in considering special use permit applications and site-specific development plans, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth for the Board of Adjustment. An evidentiary hearing must be conducted to secure competent, material, and substantial evidence to establish the facts of the case. Testimony in an evidentiary hearing is under oath and subject to cross-examination. Quasi-judicial decisions must proceed in accordance with the requirements of N.C.G.S. Chapter 160D-406. A majority vote shall be required for the Board of Commissioners to issue a special use permit.

C. Administrative: Should the Board of Commissioners be assigned administrative approvals of any kind, the applicable procedure shall be N.C.G.S. Chapter 160D-403.

4.3.2. Voting: A majority vote, excluding vacant seats and disqualified members, shall be sufficient for the purpose of taking any official action except that variance requests require a four-fifths (4/5) vote of its members, excluding vacant seats and disqualified members. Vacant positions on the Board of

Commissioners and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

Statutory Authority – N.C.G.S. Chapter 160D-406(i).

4.3.3. Excuses from Voting.

- A. No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234 or G.S. 160D-109. In all other cases except votes taken under G.S. 160D-601, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.
- B. Notwithstanding subsection (a) of this section, a vote or failure to vote by any member present by means of simultaneous communication in accordance with G.S. 166A-19.24 shall be treated as if the member were physically present only during the period while simultaneous communication is maintained for that member.
- C. An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance, except an ordinance on which a public hearing must be held pursuant to G.S. 160D-601 before the ordinance may be adopted, may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council.

Statutory Authority – N.C.G.S. Chapter 160A-75.

4.3.4. Hiring and Maintaining Planning Staff.

The Town may appropriate for the support of the staff any funds that it deems necessary. It shall have power to fix reasonable fees for support, administration, and implementation of programs authorized by this Chapter and all such fees shall be used for no other purposes.

Statutory Authority – NCGS Chapter 160D-402(d)

4.4 TOWN CLERK – GENERAL AUTHORITY AND DUTIES.

- 4.4.1. In matters related to Planning and Regulation of Development, the Town Clerk shall have the authority and duties below:
 - A. Establish and publish application procedures for permits, appeals, and actions pursuant to this Ordinance and forms implementing the same.

- B. Maintain all records pertaining to the provisions of this Ordinance in his/her office(s) and make said records open for public inspection.
- C. Receive appeals and forward cases to the appropriate Board; and
- D. Perform other duties as may be assigned by the Board of Commissioners.

4.5 ADMINISTRATIVE STAFF/ZONING ADMINISTRATOR - GENERAL AUTHORITY AND DUTIES.

4.5.1. The Town shall have the authority to enact ordinances, procedures and fee schedules relating to the enforcement of this Ordinance and to retain staff. This shall include an adequate number of qualified staff to administer the Town’s zoning and related ordinances. A Zoning Administrator, to be designated by the Town Board of Commissioners, is hereby authorized and it shall be his/her duty to enforce the provisions of this Ordinance. This official shall have the right to enter upon any premises regulated by this Ordinance at any reasonable time necessary to carry out his/her duties. If the suspected violation involves areas which cannot be viewed from public areas, an administrative search warrant must be obtained from a magistrate or judge authorizing a reasonable inspection. It is the intention of this Ordinance that all questions arising in connection with enforcement and interpretation shall be presented first to the Zoning Administrator. Appeal from his/her decision may be made to the Board of Adjustment. The Zoning Administrator may be assisted by other Town staff in performing the duties herein.

Statutory Authority – NCGS Chapter 160D-402(a) and 402(b)

4.5.2. Financial Support. The Town may appropriate for the support of the staff any funds that it deems necessary. It shall have power to fix reasonable fees for support, administration, and implementation of programs authorized by this Chapter and all such fees shall be used for no other purposes.

Statutory Authority – NCGS Chapter 160D-402(d)

4.5.3. Duties. In administering the provisions of this Ordinance, the Zoning Administrator shall:

- A. Receive and process applications for development approvals; Make and maintain records of all applications for permits, special uses, and requests listed herein, and records of all permits issued or denied, with notations of all special conditions or modifications involved.
- B. File and safely keep copies of all plans submitted, and the same shall form a part of the records of his/her office and shall be available for inspection at reasonable times by any interested party.
- C. Provide notices of applications and hearings. Transmit to the Planning Board, Board of Commissioners, and/or the Board of Adjustment all applications and plans for which their review and approval is required along with a report of his/her recommendations as may be required.
- D. Make decisions and determinations regarding the implementation of the Town’s development regulations.
- E. Determine whether applications for development approvals meet the applicable standards as established by law and local ordinance.
- F. Provide administrative interpretations of the Zoning Ordinance.
- G. Issue or deny certificates of zoning compliance or occupancy.
- H. Provide nonconformity determinations, including expansions of nonconforming uses and structures.
- I. Conduct inspections of premises and, upon finding that any of the provisions of this Ordinance are being violated, notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The Zoning Administrator shall order discontinuance of illegal use of land, buildings or structures; inform the designated building inspections department of illegal buildings or of additions, alterations, or structural changes there to which are not compliant with the Zoning Ordinance; order discontinuance of

any illegal work being done; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.

- J. Recommend bringing judicial action against actual or threatened violations.
- K. Maintain the public records of the Planning Board and Board of Adjustment.
- L. Perform any other actions that may be required in order to adequately enforce the laws and development regulations under their jurisdiction.

Statutory Authority – NCGS Chapter 160D-402(b)

4.6 PLANNING BOARD - GENERAL AUTHORITY AND DUTIES.

4.6.1. **Authority.** The Planning Board of Fairmont is created pursuant to NCGS 160D-301.

Statutory Authority – N.C.G.S. Chapter 160D-301

4.6.2. **Duties.** The duties of the Planning Board are to:

- A. Prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.

1) The Comprehensive Plan (Land Use Plan) and any ordinances or other measures to effectuate the plans shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the Town and its environs. Reflecting both present and future needs, the Comprehensive Plan shall:

- a) promote health, safety, and the general welfare, as well as efficiency and economy in the process of development;
- b) support the transportation needs of the Town;
- c) promote in buildings and structures the necessary safety from fire and other dangers, adequate provision for light and air, and a healthful and convenient distribution of population;
- d) support the promotion of good civic design and arrangement, the wise and efficient expenditure of public funds, and the adequate provision of public utilities, services, and other public requirements.

2) **Comprehensive Plan Contents.** A comprehensive plan may, among other topics, address any of the following as determined by the local government:

- a) Issues and opportunities facing the local government, including consideration of trends, values expressed by citizens, community vision, and guiding principles for growth and development.
- b) The pattern of desired growth and development and civic design, including the location, distribution, and characteristics of future land uses, urban form, utilities, and transportation networks.
- c) Employment opportunities, economic development, and community development.
- d) Acceptable levels of public services and infrastructure to support development, including water, waste disposal, utilities, emergency services, transportation,

- education, recreation, community facilities, and other public services, including plans and policies for provision of and financing for public infrastructure.
- e) Housing with a range of types and affordability to accommodate persons and households of all types and income levels.
- f) Recreation and open spaces.
- g) Mitigation of natural hazards such as flooding, winds, wildfires, and unstable lands. Protection of the environment and natural resources, including agricultural resources, mineral resources, and water and air quality.
- h) Protection of significant architectural, scenic, cultural, historical, or archaeological resources.
- i) Analysis and evaluation of implementation measures, including regulations, public investments, and educational programs.

Statutory Reference – N.C.G.S. Chapter 160D-501.

- B. Facilitate and coordinate citizen engagement and participation in the planning process;
- C. Develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
- D. Advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.
- E. Exercise any functions in the administration and enforcement of various means for carrying out plans that the governing board may direct;
- F. Provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board;
- G. Perform any other related duties that the governing board may direct.

Statutory Reference – N.C.G.S. Chapter 160D-301(b)

4.6.3. Organization.

A. Appointment and terms of planning board members.

- 1) The Planning Board shall consist of 9 members appointed by the Board of Commissioners for terms of 3 years, with eligibility for reappointment.
- 2) One month prior to the expiration of appointed terms, notice shall be given to the Town Clerk by the Secretary of the Planning Board.
- 3) At least three of the members shall represent the Town's extraterritorial zoning jurisdiction (ETJ). The extraterritorial representative(s) shall be appointed by the Robeson County Board of County Commissioners and as directed in G.S. 160-A-362. All extraterritorial members shall be appointed by the board of county commissioners for Robeson County unless the county board fails to act and upon such failure extraterritorial members may be appointed by the town board of commissioners.
- 4) Future composition of the Planning Board may be amended to account for population changes within the town or it's ETJ and shall be considered at least after every census.
- 5) If member moves outside of the jurisdiction from which he has been appointed, that shall constitute a resignation from the planning board, effective upon the date a replacement is appointed.

- B. Vacancies. Vacancies may be filled by the Town Board of Commissioners for the unexpired terms. Vacancies which occur other than the expiration of term shall be filled by the Town Board of Commissioners for the remaining period of the term vacated.
- C. Attendance and Removal. Attendance is mandatory. If an appointee is habitually absent from meetings, and such absences are not caused by extraordinary events, the member is obligated to resign in writing. Planning and Zoning Board members may be removed by the Board of Commissioners at any time for failure to attend three consecutive meetings or for failure to attend thirty percent or more of the meetings within any twelve-month period or for any other reasonable cause related to performance of duties.
- D. Compensation. Compensation is at the discretion of the Town Board of Commissioners.

(Ord. 1988, Section 17-26; Ord. Chapter 32.01, 2019 Supplement)

4.6.4. Meetings, Elections and Voting.

- A. Organizational Meeting. The annual organizational meeting of the Planning Board shall be held in July of each year.
 - 1) Officers including the Chairman, Vice-Chairman and Secretary shall be elected from among the appointed members at the annual organizational meeting.
 - 2) The candidate for each office receiving a majority vote of the entire membership of the Planning Board shall be declared elected.
 - 3) All officers shall be elected for a term of one (1) years and all officers shall be able to succeed themselves.
 - 4) The Planning Board shall adopt bylaws for transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings and recommendations, which record shall be a public record.

(Ord. 1988, Section 17-28; Ord. Chapter 32.02, 2019 Supplement) and (Ord. 1988, Section 17-30; Ord. Chapter 32.03, 2019 Supplement)

- B. Regular Meetings. The Planning Board shall establish a regular meeting schedule and shall meet frequently enough so that it can take timely action in regard to all matters of Planning and Zoning. The Board shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas. The Town Clerk shall keep minutes of all proceedings.
- C. Special Meetings. The chairperson of the Planning Board shall have the authority to call a special meeting when requested to do so in writing by a majority of the members of the Planning Board, or at his or her discretion. The Chairman may designate, in advance, regular and special meetings. All of the requirements of N.C.G.S. 143-318.2 (b) *Public Notice of Official Meetings* shall be followed when calling and holding special meetings. Minutes shall be kept of all proceedings.
- D. All Meetings are Public Meetings. All regular and special meetings, hearings, records and accounts of the Planning Board and all committees thereof shall be open to the general public, and all meetings shall be advertised. Minutes shall be kept of all proceedings.

- E. Quorum. A quorum for the Planning Board shall consist of a majority of the board membership (excluding vacant seats). A quorum is necessary for the board to take official action. All actions of the Planning Board shall be taken by a majority vote, a quorum being present. A roll call vote shall be taken upon the request of any member. With a 9 member board, the quorum would be 5 members.
- F. Voting. Provided a quorum is present, the transaction of business, and the taking of official action by the Planning Board shall require a concurring vote of a majority of the voting members of the Planning Board.
- (1) Voice Vote. Voting shall be by voice vote and the minutes shall show the names of those voting on each issue. A proxy signed by the board member shall be allowed when the member known in advance that he/she will not be able to attend the regular meeting.
 - (2) Abstaining. No member shall be excused from voting except upon matters which stem from a Conflict of Interest described in above. Such cases shall be brought to the attention of the Chairman as soon as possible. The position of such member in the vote taken shall be recorded as “Abstained”. Members properly excused from voting shall not participate in the discussion on the matter which is subject to action. Members who abstain from voting without the consent of a majority of Board members present shall have their vote recorded in the affirmative.
 - (3) If the Planning Board should ever be called to vote on recommendations regarding quasi-judicial decisions, the following shall apply:
 - (i) Vacant positions on the Planning Board, and members who are disqualified from voting due to a conflict of interest, shall not be considered “members of the Board” for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

Statutory Reference – N.C.G.S. Chapter 160D-406.

- (ii) A member of the Planning Board shall not participate in, or vote on, any matter in a manner that would violate affected persons’ constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member’s participation, and that member does not recuse himself/herself, the remaining members shall by majority vote rule on the objection.

Statutory Reference – N.C.G.S. Chapter 160D-109(d).

- G. Order of Business. The Secretary shall consult with the Zoning Enforcement Officer and prepare an agenda for each meeting, and the order of business.

- H. Rules of Procedures and Records. The Planning Board shall keep a record of its member attendance and of its resolutions, discussions, findings and recommendations, which record shall be a public record. The minutes of meetings shall be public record.

Statutory Authority – NCGS Chapter 160D-308

- I. Cancellation of Meetings. Whenever there is no business for the Board, the Chair may dispense with a regular meeting by giving notice to all members not less than twenty-four (24) hours prior to the time set for the meeting.
- J. Reports. The Planning Board shall provide to the Town Board of Commissioners a quarterly report which details the business before the Planning Board and actions taken. Reports shall be in writing and provided by the last day of the following months: January, April, July, and October.

4.6.5. Offices and Duties.

- A. Chairman. The Chairman shall preside at all meetings, appoint members to committees, and perform other duties and perform other duties as may be ordered by the board. The Chairman may take part in all deliberations and may vote on all issues.
- B. Vice-Chairman. The Vice-Chair shall serve as acting chair in the absence of the Chair, and at such times he shall have the same powers and duties as the Chair. The Vice-Chairman may take part in all deliberations and may vote on all issues.
- C. Secretary. The Secretary shall execute such documents as authorized by the Board, in the name of the Board, perform the duties hereinafter listed, and such other duties as the Board shall determine. The Secretary shall keep all minutes and records; shall prepare all correspondence of the Board; receive and file all referrals, applications, papers, and records; and prepare, publish, and mail all notices as required.

4.6.6. Oath of Office.

All members appointed to boards under this Article shall, before entering their duties, qualify by taking an oath of office as required by N.C.G.S. 160D.

Statutory Authority – NCGS Chapter 160D-309

4.6.7. Advisory Committees.

- A. From time to time, Town Board of Commissioners may appoint one (1) or more individuals to assist the Planning Board to carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the Board of Commissioners may appoint advisory committees to consider thoroughfare plan(s), bikeway plan(s), housing plans, and economic development plans, etc.
- B. Members of such advisory committees shall sit as nonvoting members of the Planning Board when such issues are being considered and lend their talents, energies, and expertise to the Planning Board. However, all formal recommendations to the Town Board of Commissioners shall be made by the Planning Board.

- C. Nothing in this Article shall prevent the Town Board of Commissioners from establishing independent advisory groups, committees, or boards to make recommendations on any issue directly to the Council.

4.6.8. Supplemental Powers and Responsibilities.

- A. Hearings. In addition to public hearings required by law, the Planning Board may, at its discretion, hold public hearings when it decides that such hearings will be in the public interest.
- B. Publicity and Education. The Planning Board shall have power to promote public interest in and an understanding of its recommendations, and to that end, it may publish and distribute copies of its recommendations and may employ such other means of publicity and education as it may determine.
- C. Attendance at Conferences. Members or employees of the Planning Board, when duly authorized by the Planning Board, may attend planning conferences or meetings of planning institutes or hearings upon pending planning legislation, and the Planning Board may, by formal and affirmative vote pay, within the Planning Board's budget, the reasonable traveling expenses incidental to such attendance.
- D. Appropriations. The Fairmont Town Council may appropriate to the Planning Board such amount as they may deem necessary to carry out the purpose of its creation and for the improvement of the Town.
- E. Annual Report. The Planning Board shall, in May of each year, submit in writing to the Fairmont Town Manager, its requested budget of funds needed for operation during the ensuing fiscal year.

(Ord. 1988, Section 17-32; Ord. Chapter 32.05, 2019 Supplement)

4.6.9. Conflict of Interest. The Conflict of Interest Provisions outlined in **Section 4.2** apply to the Planning Board.

4.7 BOARD OF ADJUSTMENT - GENERAL AUTHORITY AND DUTIES.

4.7.1. Creation. There is hereby created a Board of Adjustment pursuant to N.C.G.S. Chapter 160D-302 to be known as the Town Board of Adjustment and referred to herein as the Board of Adjustment.

Statutory Authority - N.C.G.S. Chapter 160D-302.

(Ord. 05/31/1977, 154.080)

4.7.2. Powers and Duties.

- A. The Board of Adjustment shall hear and decide:
 - (1) Appeals from any final and binding order, decision, requirement, or interpretation made by the Zoning Officer or his authorized agent, in the enforcement of this Ordinance.
 - (2) Applications for variances concerning nonconforming uses, lots and structures.
In cases where, due to special conditions, a literal enforcement of the provisions of this Ordinance will result in undue hardship, a variance may be appropriate in order that the spirit of this Ordinance shall be observed and substantial justice done.
 - (3) Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines.
 - (4) Any other matter the Board is required to act upon by any other Town ordinance.

**Statutory Authority - N.C.G.S. Chapter 160D-302.
(Ord. 05/31/1977, 154.083)**

4.7.3. Membership.

- A. Regular Members. Board of Adjustment shall have initial terms of appointment as follows: 1 member for 3 years, 2 members for 2 years, and 2 members for 1 year.
(Ord. 05/31/1977, 154.080)
- B. Alternates. Not more than two alternate members may be appointed to serve in the absence of regular members.
- C. Appointment. Members shall be appointed by the Town Board of Commissioners and shall serve at the pleasure of the Board.
- D. Terms. All members and alternates shall be appointed by the Board of Town Commissioners for overlapping terms of three years.
(Ord. 05/31/1977, 154.080)
- E. Qualifications. Board of Adjustment members should have basic knowledge of the Town and its physical, social, and economic makeup. In addition, a basic understanding of the planning process and land-use planning in particular, are recommended.
- F. Service is Volunteer. All members of the Board of Adjustment shall serve without pay, but may be reimbursed for any expense incurred while representing the Board.
Statutory Authority – NCGS Chapter 160D-302(a)

4.7.4. Officers. At the first meeting of each year, the Board shall elect one of its members as Chairman, another as Vice-Chairman, and shall appoint a Secretary who may be a municipal officer, an employee of the county or a member of the Planning Board, and such other subordinates as may be authorized by the Board of Town Commissioners or as the Board of Adjustment deems necessary. The chairman and vice-chairman of the Board of Adjustment may take part in all deliberations and may vote on all issues.
(Ord. 05/31/1977, 154.081)

4.7.5. Meetings.

- A. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine.
- B. All meetings of the Board shall be open to the public and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.

(Ord. 05/31/1977, 154.081)

4.7.6. Rules of Procedure. Rules of procedure that are consistent with the provisions of this Ordinance may be adopted by the Board of Adjustment. In the absence of action by the Board of Commissioners, the Board of Adjustment is authorized to adopt its own rules of procedure that are consistent with the provisions of this Ordinance. A copy of any adopted rules of procedure shall be maintained by the Town Clerk. Each board shall keep minutes of its proceedings.

Statutory Reference – N.C.G.S. Chapter 160D-308

4.7.7. Minutes of Meetings. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and also keep records of its examination and other official action.

Statutory Reference – N.C.G.S. Chapter 160D-308

4.7.8. Conflicts of Interest. Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

Statutory Reference – N.C.G.S. Chapter 160D-10(b)

4.7.9. Quorum. A quorum is required for the Board of Adjustment to take official action. A member who has withdrawn from the meeting without being excused shall be counted as present for purposes of determining whether a quorum is present.

4.7.10. Voting.

A. The concurring vote of four-fifths of the board shall be necessary to grant a variance.

Statutory Reference – N.C.G.S. Chapter 160D-406(i)

B. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.

Statutory Reference – N.C.G.S. Chapter 160D-406(i)

C. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

Statutory Reference – N.C.G.S. Chapter 160D-406(i)

D. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has excused himself/herself or has been allowed to withdraw from the meeting.

E. If an objection is raised to a member's participation, and that member does not recuse himself/herself, the remaining members shall by majority vote, rule on the objection.

F. A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

G. A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.

H. A roll call vote shall be taken for each motion. The Board shall keep minutes of its proceedings showing the vote of each member, the Board's findings of fact, and the Board's decision.

4.7.11. Oath of Office. All members appointed to boards under this Article shall, before entering their duties, qualify by taking an oath of office as required by G.S. 153A-26 and G.S. 160A-61.
Statutory Reference – N.C.G.S. Chapter 160D-309

4.8 OTHER ADVISORY BOARDS.

The Town of Fairmont may establish by ordinance additional advisory boards as deemed appropriate. The ordinance establishing such boards shall specify the composition and duties of such board and shall make conflict of interest regulations applicable to members of such boards.

Statutory Reference – N.C.G.S. Chapter 160D-306.