

## PLANNING AND REGULATION OF DEVELOPMENT

### Appointment and Organization of the Planning and Zoning Board and Board of Adjustment

- (a) A town Planning and Zoning Board for the Town of Midway is hereby created under the authority of N.C.G.S. § 160A-361.
- (b) The Planning and Zoning Board and Board of Adjustment shall each consist of five (5) members. These members shall consist of: five (5) members who reside within the town. Town residents shall be appointed by the town council. All members shall serve staggered terms of three (3) years so as to ensure that all seats do not come up for appointment or reappointment in the same year. The initial staggering of terms shall be set by the Town Council. All members shall have equal rights, privileges and duties. Members shall not hold any other official municipal government position or office. Members are eligible for reappointment.
- (c) Pursuant to the provisions of N.C.G.S. § 160A-388, those serving on the Planning and Zoning Board shall also serve as the Board of Adjustment (the "BOA").
- (d) A concurring vote of four-fifths (4/5) of the members of the BOA shall be necessary to reverse any order, requirement, decision or determination of the applicant on any matter which it is required to pass under the zoning ordinance or to affect any variation in such ordinance. Four fifths (4/5) of the members of the BOA shall constitute a quorum for a meeting.
- (e) Members of the boards may receive compensation for service as provided from time to time by town council policy. A member may be removed by from the boards by the member's respective appointing authority if the member fails to attend at least 70% of all required meetings, misses three (3) or more consecutive meetings or for other cause. Vacancies occurring other than through expiration of term shall be filled as soon as is reasonably possible after such vacancy occurs by the proper public body making the appointment and such appointment shall be for only the period of the unexpired term.

### Organization and Rules

- (a) Each board shall have a Chairman and Vice-Chairman. In *March* of every year, each boards shall elect a Chairman and Vice-Chairman from among the appointed members of each board and create and fill such other offices as they may determine and as may otherwise be required. The Chairman of the Planning and Zoning Board may vote only in the event of a tie. The Chairman of the Board of Adjustment shall have full voting privileges. The term of office for the Chairman and Vice Chairman shall be one (1) year. The Planning and Zoning Board/BOA shall meet at least once per month and be open to the public. Each Board shall adopt rules for the transaction of business and keep a permanent record of all resolutions, findings and determinations. The person acting as Chairman of a board is authorized to administer oaths to any witnesses as may be required in any matter coming before the Board.

### Powers and Duties of the Planning and Zoning Board

- (a) It shall be the function and duty of the Planning and Zoning Board to make and adopt a suggested master plan for the physical development of Midway or modify parts of such plan as the Planning and Zoning Board and town council may deem necessary and appropriate. Such plan, with the accompanying maps, plans, charts and descriptive matter may show the Planning and Zoning Board's recommendations for the development of said territory, including among other things, the general location, character, and extent of streets, bridges, parkways, playgrounds, parks, aviation fields and other public ways, grounds and open spaces, the general location of public buildings and other public property, and the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power and other purposes; also the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, utilities, or terminals, as well as a zoning plan for the control of the height, area, bulk, location and use of buildings and premises. The board may from time to time recommend amendments, extensions or additions to the plan.
- (b) In the preparation of such plan or modified plan or parts thereof, the Planning and Zoning Board shall make careful and comprehensive surveys and studies of present conditions and future growth of Midway and with due regard as its relation to neighboring territory. The plan shall be made with general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the town and its environs which will, in accordance with present and future needs, best promote health, safety, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development, including among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements.
- (c) Before the adoption by the Planning and Zoning Board of the plan or any such part, amendment, extension or addition of the board shall hold at least one public hearing thereon. The Planning and Zoning Board shall have power to

promote public interest in and understanding of the plan and to that end may hold public hearings, publish and distribute copies of the plan or of any report and may employ such other means of publicity and education as it may determine. Individual members of the Planning and Zoning Board, when duly authorized by the Planning and Zoning Board, may attend town planning conferences or meetings. The town may pay any reasonable traveling expenses incident to said attendance upon approval by the town council. All officers or employees of the town shall render such reasonable assistance and any such information to the board as may be requested by the board for its work.

### **Proceedings of the Board of Adjustment**

(a) An appeal to the Board of Adjustment may be taken by any person, firm, or corporation aggrieved, or by any town officer, department board or agency affected by any decision of the zoning enforcement officer based in whole or in part upon the provisions of the zoning ordinance. Such appeal shall be taken within such time as shall be prescribed by the board by general rule of appeal and specifying the grounds thereof. The zoning enforcement officer shall transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the zoning enforcement officer certifies to the board, after the notice of appeal shall have been filed with him, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril of life and property, in which case proceedings shall not be stayed.

### **Power and Duties of the Board of Adjustment**

- (a) The Board of Adjustment shall have the following powers and duties:
- (i) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the zoning enforcement officer in the enforcement of the zoning ordinance.
  - (ii) To grant in particular cases and subject to appropriate conditions and safeguards, permits for special uses as authorized by the zoning ordinance and set forth as special uses under the various districts.
  - (iii) To authorize upon appeal in specific cases such variances from the terms of the zoning ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the zoning ordinance would result in unnecessary hardship.
  - (iv) To pass upon, decide or determine such other matters as may be required by this ordinance.

### **Variances**

- (a) A variance from the terms of the zoning ordinance shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted demonstrating:
- (A) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures or buildings in the same district;
  - (B) That literal interpretation of the provisions of this ordinance would deprive the applicant of right commonly enjoyed by other properties the same district under the terms of the zoning ordinance;
  - (C) That said circumstances do not result from the actions of the applicant;
  - (D) That granting the variance requested will not confer upon the applicant any special privilege that is denied by the zoning ordinance to other lands; structures or buildings in the same district; and
  - (E) That no non-conforming use of neighborhood land, structures or buildings in the same district and no permitted use of lands, structures or buildings in other districts issuance of a variance.
- (b) Proper notice of public hearing regarding an application for a variance shall be given by the Board of Adjustment. At the public hearing which is held, any party may appear in person or by agent or by attorney.
- (c) All of the findings of fact required by Section \_\_\_\_ (a) shall be made in an order by the Board of Adjustment, which is not empowered to grant a variance without an affirmative finding of fact on all five categories above. Each finding of fact shall be supported by substantial evidence in the record of proceeding before the Board.
- (d) The Board of Adjustment shall make a finding that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum one that will make possible the reasonable use of the land, building or structure.
- (e) The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of the zoning ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

(f) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the zoning ordinance. Violation of such conditions and safeguards, when made part of the terms under which the variances granted, shall be deemed a violation of the zoning ordinance and punishable under of the zoning ordinance.

(g) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of the zoning ordinance in the district involved, or any use expressly or by implication prohibited by the terms of the zoning ordinance in said district.

(h) In exercising the above mentioned powers, the Board of Adjustment may reverse or affirm, wholly or in part, or may modify and order, requirements, decisions or determinations as ought to be made, and shall have the powers of the administrative official from whom the appeal is taken.