

ARTICLE 3. ADMINISTRATIVE MECHANISMS

PART I. PLANNING AND ZONING BOARD

Section 3-1: Membership and Vacancies

The planning board shall consist of seven (7) members. Five (5) members shall be citizens and residents of the town and shall be appointed by the Town Council. Two (2) members shall be citizens and residents of the extraterritorial jurisdiction of the town as described pursuant to GS § 160D-307 et seq. and shall be appointed by the county Board of Commissioners. The county representation must be proportional based on the population for residents of the ETJ area. The population estimates for this calculation must be updated following each decennial census. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term. Faithful attendance at the meetings of the board is considered a prerequisite for the maintenance of membership on the board. A vacancy shall exist on the board if a member is absent from twenty-five (25) percent or more of the board's meetings within a twelve (12) month period of time and said vacancy may be declared and filled by the Town Council. All appointed members shall, before entering their duties, qualify by taking an oath of office. *(Amended 9/2/2014, 8/2/2021)*

Section 3-2: Rules of Conduct

Members of the Board may be removed for cause, including violation of any rule stated below:

- (A) Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite of continuing membership on the Board. Absence from four (4) regularly scheduled Board meetings during any one calendar year shall be considered cause for a recommendation to the Town Council of dismissal from the Board.
- (B) No Board member shall discuss any case with any parties thereto prior to the meeting on that case; provided however, that members may receive and/or seek information pertaining to the case from any other member of the Board, or staff prior to the meeting. Board members shall disclose publicly any contact made by any party to a matter before the Board.
- (C) Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto prior to the Board's determination of that case. Violation of this rule shall be cause for dismissal from the Board.
- (D) Members shall serve at the pleasure of the Town Council. *(Amended 8/2/2021)*

Section 3-3: Meetings

- (A) Meetings of the Planning and Zoning Board will normally occur on an as-needed basis, at a date and place designated by the Board and shall be open to the public. A quorum shall consist of four (4) members of the Board. *(Amended 8/2/2021)*
- (B) All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section 3-2. A vote of a majority of the members present and voting shall decide issues before the Board.
- (C) Special meetings may be called by the Chairperson. It shall be the duty of the Chairperson to call such a meeting upon a recommendation of the Board. During a special meeting, no other business may be considered except that which was specified by advanced notice. The Clerk shall notify all members of the Board in writing not less than five (5) days in advance of such special meeting. Notice of time, place, and subject of such meeting shall be published in a newspaper having general circulation in the Town of Pembroke when possible in accordance with NCGS 160D. *(Amended 8/2/2021)*
- (D) The order of business at regular meetings shall be as follows:
 - (1) Call to Order;
 - (2) Approval of Minutes of Previous Meetings;
 - (3) Approval of the Agenda;
 - (4) Public Input;
 - (5) Unfinished Business;
 - (6) New Business;
 - (7) Announcements;
 - (8) Adjournment.
- (E) The petitioner or applicant who is on the agenda may withdraw the petition or application at anytime; but if a motion is pending to make a recommendation to grant or deny, such motion shall have precedence.
- (F) The Board shall render its decisions in the form of a recommendation on any properly filed petition or application within sixty (60) days after its first planning board meeting following submittal and shall transmit a signed copy of the decision to the Administrator to submit to the Town Council for consideration. The sixty (60) day time period will not begin until the petitioner has furnished the Administrator with all required permits. The decision shall be in the form of a letter signed by the Chairperson and Clerk and attached to the minutes. Such letter shall indicate the reasons for the Board's determination and its findings.

Section 3-4: General Powers and Duties (Amended 4/4/2022)

It shall be the duty of the Planning Board, in general, to:

- (A) Acquire and maintain in current form such basic information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions.
- (B) Prepare, review, maintain, monitor, and periodically update and recommend to the Town Council a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis. *(Amended 8/2/2021)*
- (C) Facilitate and coordinate citizen engagement and participation in the planning process. *(Amended 8/2/2021)*
- (D) Develop and recommend to the Town Council policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner. *(Amended 8/2/2021)*
- (E) Determine whether specific proposed developments conform to the principles and requirements of the comprehensive plan for the growth and improvement of the area.
- (F) Keep the Town Council and the general public informed and advised as to these matters.
- (G) Make recommendations for the timely implementation of programs to meet the goals and policies as adopted in the comprehensive plan.
- (H) Perform any other duties which may be lawfully assigned to it.
- (I) Advise the Town Council concerning the implementation of plans, including, but not limited to, review and comment on proposed zoning text and/or map amendments as required by Article. *(Amended 8/2/2021)*
- (K) Exercise any functions in the administration and enforcement of various means for carrying out plans that the Town Council may direct. *(Amended 8/2/2021)*

Section 3-5: Basic Studies

As background for its comprehensive plan and any ordinances it may prepare, the Planning Board may gather maps and aerial photographs of manmade and natural physical features of the area, statistics on past trends and present conditions with respect to population, property values, the economic base of the community, land use, and such other information as is important or likely to be important in determining the amount, direction, and kind of development to be expected in the area and its various parts. The Planning Board may make studies as to the community's social, economic, as well as its physical needs. In addition, the Planning Board may make, cause to be made, or obtain special studies on the location, condition, and adequacy of specific facilities, which may include but

are not limited to studies of housing; commercial and industrial facilities; parks, playgrounds, and recreational facilities; public and private utilities; and traffic, transportation, and parking facilities. All town officials shall, upon request, furnish to the Planning Board such available records or information as it may require in its work. The board or its agents may, in the performance of its official duties, enter upon lands and make examinations or surveys and maintain necessary monuments thereon.

Section 3-6: Comprehensive Plan

- (A) The comprehensive plan, with the accompanying maps, charts, and descriptive matter, shall be and show the Planning Board's recommendations to the Town Council for the development of such territory, including, among other things, the general location, character, and extent of streets, bridges, boulevards, parkways, playgrounds, squares, parks, aviation fields, and other public ways, grounds, and open spaces; 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; the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of any of the foregoing ways, buildings, grounds, open spaces, property, utilities, or terminals; and the most desirable patters of land use within the area.
- (B) The plan and any ordinances or other measures to effectuate it shall be made with the 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, morals, and the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provisions for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the 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, services, and other public requirements and the improvement of the community social and economic attributes.

Section 3-7: Zoning Ordinance

- (A) The Planning Board shall prepare and submit to the Town Council for its consideration and possible adoption a zoning ordinance for the control of the height, area, bulk, location, and use of buildings and premises in the area, in accordance with the provisions of GS 160D-702 et seq. *(Amended 8/2/2021)*
- (B) The Planning Board may initiate, from time to time, proposals for amendment of the zoning ordinance, based upon its studies and comprehensive plan. In addition, it shall review and make recommendations to the Town Council concerning all proposed amendments to the zoning ordinance.

Section 3-8: Subdivision Regulations

- (A) The Planning Board shall review, from time to time, the need for regulations for the control of land subdivision in the area and submit to the Town Council its recommendations, if any, for adoption or revision of such regulations.
- (B) In accordance with such regulations, the Planning Board shall review and make recommendations to the Town Council concerning all proposed plats of land subdivision.

Section 3-9: Urban Renewal

The Planning Board shall make findings and recommendations concerning urban renewal projects in the area, as provided by GS 160A-500 et seq.

Section 3-10: Public Facilities

The Planning Board shall review with the Town Manager and other town officials and report as recommendations to the Town Council upon the extent, location, and design of all public structures and facilities, on the acquisition and disposal of public properties, and on the establishment of building lines, mapped street lines, and proposals to change existing street lines. However, in the absence of a recommendation from the Planning Board, the Town Council may, if it deems wise, after the expiration of thirty (30) days from the date on which the questions has been submitted in writing to the Planning Board for review and recommendation, take final action.

Section 3-11: Miscellaneous Powers and Duties

- (A) The Planning Board may conduct such public hearings as may be required to gather information necessary for the drafting, establishment, and maintenance of the comprehensive plan. Before adopting any such plan, it shall hold at least one (1) public hearing thereon.
- (B) 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) 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 incident to such attendance.

Section 3-12: Annual Report of Activities and Analysis of Expenditures and Budget Request for Ensuing Fiscal Year

- (A) The Planning Board shall, in May of each year, submit in writing to the Town Council a written report of its activities, and analysis of the expenditures to date for the current fiscal year, and for review and approval, its requested budget of funds needed for operation during the ensuing fiscal year.
- (B) The Planning Board is authorized to receive contributions from private agencies and organizations or from individuals, in addition to any sums which may be appropriated for its use by the Town Council. It may accept and disburse such contributions for special purposes or projects, subject to any specified conditions which it deems acceptable, whether or not such projects are included in the approved budget.
- (C) The Planning Board is authorized to appoint such committees and employees, and to authorize such expenditures as it may see fit, subject to limitations of funds provided for the Planning Board by the Town Council in the town's annual budget.

Section 3-13: Advisory Council and Special Committees

- (A) The Planning Board may seek the establishment of an unofficial advisory council and may cooperate with this council to the end that its investigations and plans may receive fullest consideration, but the board may not delegate to such advisory council any of its official prerogatives.
- (B) The Planning Board may set up special committees to assist in the study of specific questions and problems.

PART II. BOARD OF ADJUSTMENT

Section 3-14: Creating the Zoning Board of Adjustment *(Amended 11/4/2013, 8/12/2021)*

Under the authority of the NCGS Section 160D-302, the Pembroke Town Council (five members who are citizens and residents of the Town) serves as and performs any and all duties of the Board of Adjustment in addition to its other duties. In addition, two additional members who are citizens and residents of the ETJ shall be appointed by the county Board of Commissioners. The county representation must be proportional based on the population for residents of the ETJ area. The population estimates for this calculation must be updated following each decennial census. All appointed members shall, before entering their duties, qualify by taking an oath of office.

Section 3-15: Meetings/Officers *(Amended 11/4/2013, 8/2/2021)*

The Board shall elect one of its members as Chairman and another as Vice-Chairman who shall serve for one (1) year, with eligibility for re-election. The Town Clerk shall serve as secretary to the Board of Adjustment. The Board shall draw up and adopt the rules of procedures under which it will

operate. All meetings of the Board shall be held at a regular place and time and shall be open to the public. The Chairman shall have the authority to call a special meeting if he deems such a meeting to be necessary. The Chairman, or in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses (see Section 6-3). All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or his absence or failure to vote, indicating such fact, and also keep records of its examination and any other official action.

Section 3-16: Power and Duties *(Amended 11/4/2013, 8/2/2021)*

The Board of Adjustment shall have the following powers and duties:

- (A) To hear and decide requests for variances and appeals of decisions of administrative officials charged with enforcement of this Ordinance. As used in this section, the term “decision” includes any final and binding order, requirement, or determination. The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances. The Board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development. If any board other than the Board of Adjustment is assigned decision-making authority for any quasi-judicial matter, that board shall comply with all of the procedures and the process applicable to a Board of Adjustment in making quasi-judicial decisions.
- (B) To make interpretations of the Official Zoning Map and to pass upon disputed questions of lot lines or district boundary lines and similar questions as arise in the administration of the Unified Development Ordinance.
- (C) To enter, at reasonable times, upon private lands and make examinations or surveys as necessary for the performance of its official duties.
- (D) To request the Town Council to consider matters within the purview of the Council.
- (E) To hear and decide any other matter as required by the provisions of this Ordinance.
- (F) To adopt rules consistent with this Ordinance or the North Carolina General Statutes governing the organization of the Board and proceedings before the Board.

Section 3-17: Quorum and Voting

- (A) Quorum. A quorum for the Board of Adjustment shall consist of the number of members equal to four-fifths of the regular Board membership (excluding vacant seats). A quorum is necessary for the board to take official action. A member who has withdrawn from the meeting without being excused as provided in subsection (B)(3) shall be counted as present for purposes of determining whether a quorum is present. *(Amended 11/4/2013, 8/2/2021)*

(B) Voting.

- (1) The concurring vote of four-fifths of the Board (excluding vacant seats) shall be necessary to grant a variance. 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. For the purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter 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.
- (2) 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 been excused in accordance with subsection (3) or has been allowed to withdraw from the meeting in accordance with subsection (4).
- (3) A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances.
 - (a) If the member has a direct financial interest in the outcome of the matter at issue; or
 - (b) If the matter at issue involves the member's own official conduct; or
 - (c) If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
 - (d) If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.
- (4) 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.
- (5) 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.
- (6) A roll call vote shall be taken upon the request of any member. *(Amended 8/2/2021)*

PART III. ADMINISTRATIVE STAFF

Section 3-18: Authorization

In accordance with NCGS Section 160D-402, the Town may appoint administrators, inspectors, enforcement officers, planners, technicians, and other staff to develop, administer, and enforce this Ordinance. The person or persons to whom these functions are assigned shall be referred to in this Ordinance as the Administrator. *(Amended 8/2/2021)*

Section 3-19: Duties

Duties assigned to staff may include, but are not limited to, drafting and implementing plans and development regulations to be adopted pursuant to NCGS Chapter 160D; determining whether applications for development approvals are complete; receipt and processing applications for development approvals; providing notices of applications and hearings; making decisions and determinations regarding development regulation implementation; determining whether applications for development approvals meet applicable standards as established by law and local ordinance; conducting inspections; issuing or denying certificates of compliance or occupancy; enforcing development regulations, including issuing notices of violation, orders to correct violations, and recommending bringing judicial actions against actual or threatened violations; keeping adequate records; and any other actions that may be required in order to adequately enforce the laws and development regulations under the Town's jurisdiction. A development regulation may require that designated staff members take an oath of office. The Town of Pembroke shall have the authority to enact ordinances, procedures, and fee schedules relating to the administration and the enforcement of this UDO. The administrative and enforcement provisions related to building permits set forth in Article 11 of NCGS Chapter 160D shall be followed for those permits. *(Amended 8/2/2021)*

Section 3-20: Alternative Staff Arrangements

The Town may enter into contracts with another city, county, or combination thereof under which the parties agree to create a joint staff for the enforcement of State and local laws specified in the agreement. The governing boards of the contracting parties may make any necessary appropriations for this purchase.

In lieu of joint staff, the Town Council may designate staff from any other city or county to serve as a member of its staff with the approval of the Board of the other city or county. A staff member, if designated from another city or county under this section, shall, while exercising the duties of the position, be considered an agent of the Town. The Town Council may request the governing board of the second local government to direct one or more of the second local government's staff members to exercise their powers within part or all of the Town's jurisdiction, and they shall thereupon be empowered to do so until the Town officially withdraws its request in the manner provided in NCGS 160D-202.

The Town may contract with an individual, company, council of governments, regional planning agency, metropolitan planning organization, or rural planning agency to designate an individual who

is not a city or county employee to work under the supervision of the local government to exercise the functions authorized by this section. The Town shall have the same potential liability, if any, for inspections conducted by an individual who is not an employee of the Town as it does for an individual who is an employee of the Town. The company or individual with whom the Town contracts shall have errors and omissions and other insurance coverage acceptable to the Town. *(Amended 8/2/2021)*

Section 3-21: Financial Support

The Town may appropriate for the support of the staff for any funds that it deems necessary. It shall have the power to fix reasonable fees for support, administration, and implementation of programs authorized by this Ordinance and all such fees shall be used for no other purposes. When an inspection, for which the permit holder has paid a fee to the Town, is performed by a marketplace pool Code-enforcement official upon request of the Insurance Commissioner under NCGS 143-151.12(9)a, the Town shall promptly return to the permit holder the fee collected by the Town for such inspection. This applies to the following inspections: plumbing, electrical systems, general building restrictions and regulations, heating and air-conditioning, and the general construction of buildings. *(Amended 8/2/2021)*

PART IV. TOWN COUNCIL

Section 3-22: Powers and Duties

- (A) The Town Council, in considering special use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Article 12 of this Ordinance. *(Amended 8/2/2021)*
- (B) In considering proposed changes in the text of this Ordinance or in the zoning map, the Town Council acts in its legislative capacity and must proceed in accordance with the requirements of Article 5.
- (C) Unless otherwise specifically provided in this Ordinance, in acting upon special use permit requests or in considering amendments to this Ordinance or the zoning map, the Town Council shall follow the regular voting and other requirements as set forth in other provisions of the town code. *(Amended 8/2/2021)*
- (D) The Town Council, in considering the approval of a site-specific development plan (as defined in Article 4, Part II, Vested Rights and Permit Choice), shall follow the procedural requirements set forth in Article 12 for the issuance of a special use permit. *(Amended 8/2/2021)*
- (E) To adopt temporary moratoria on any Town development approval required by law (see Article 4, Part IV). *(Amended 8/2/2021)*

PART V. CONFLICTS OF INTEREST (Amended 8/2/2021)

Section 3-23: Governing Board

A Town of Pembroke Town Council member shall not vote on any legislative decision regarding a development regulation adopted pursuant to NCGS 160D where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Town Council 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.

Section 3-24: Appointed Boards

Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to NCGS 160D 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.

Section 3-25: Administrative Staff

- (A) No staff member shall make a final decision on an administrative decision required by this Ordinance 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. 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 this Ordinance.
- (B) 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. 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.

Section 3-26: 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 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.

Section 3-27: 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.

Section 3-28: Familial Relationship

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