

ARTICLE 4

BOARDS AND COMMISSIONS

(amended June 30, 2021 to comply with NCGS 160D)

4.1 Boards and Commissions Established

The following boards and commissions are hereby established to carry out the duties and responsibilities set forth in this ordinance and in fulfillment of the goals and purposes of this ordinance:

- *Planning and Zoning Commission*
- *Board of Adjustment*
- *Technical Review Committee*

These boards and commissions may establish and adopt their own bylaws and rules of procedure, provided they are not inconsistent with the rules of procedure outlined in the Suggested Rules of Procedure for Small Local Government Boards, published by the Institute of Government or the rules adopted by the Town Council.

4.2 Planning and Zoning Commission

4.2-1 Authority. There is hereby created a planning agency, pursuant to NCGS 160D-301 to be known as the Town of Midland *Planning and Zoning Commission*.

4.2-2 Membership.

- (A) Number of Members – The *Planning and Zoning Commission* shall consist of seven regular members. The seven regular members shall be appointed by the Midland Town Council until extraterritorial jurisdiction is granted. Members residing in the Town’s extraterritorial area shall be appointed by the Cabarrus County Board of Commissioners. The extraterritorial representative(s) shall deliberate and vote only on those matters affecting policy and land in the extraterritorial jurisdiction.
- (B) Alternates - The Town Council may, in its discretion, appoint alternate members to serve on the *Planning and Zoning Commission* in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the commission and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.
- (C) Officers – A Chair and Vice-Chair of the *Planning and Zoning Commission* shall be elected by the *Planning and Zoning Commission* in accordance

with the rules and procedures set forth in the Commission's rules of procedure. The Chair and Vice-Chair shall serve two year terms and may be elected to successive terms.

- (D) Attendance Policy – Any member who attends less than 75% of the regular and special meetings held by the *Planning and Zoning Commission* during any one year period or who misses three or more meetings in a row may be removed from the Commission. Vacancies resulting from a member's failure to attend the required number of meetings shall be filled as provided herein.

4.2-3 Terms.

- (A) Length of Terms. Members and alternate members, if any, of the *Planning and Zoning Commission* shall serve a term of three (3) years, provided that upon initial appointment the terms of office may be staggered. The terms of all Commission members shall not expire at the same time. Members may be reappointed to subsequent terms, but shall not be appointed for more than five (5) consecutive terms. Members who have served five (5) consecutive terms may be appointed to another board or commission or may be appointed to another term on the *Planning and Zoning Commission* after a one term (3 year) hiatus from the Commission.
- (B) Filling of Vacancies. A new member or an alternate member may be appointed by the Midland Town Council to fill the unexpired term of a *Planning and Zoning Commission* member whose term is vacated. Members filling vacancies shall serve for the remainder of the unexpired term.

4.2-4 Powers and Duties. The *Planning and Zoning Commission* shall have the following powers and duties:

- (A) To provide recommendations to the Town Council with regard to map amendments (rezoning), text amendments, watershed waivers, and other matters on which the Council seeks advice;
- (B) To develop and update a Land Use Plan and/or Comprehensive Master Plan for the territory under its Jurisdiction, subject to specific direction from the Town Council;
- (C) To approve subdivision plans and/or plats prepared in accordance with Article 16 (subdivisions);
- (D) To render opinions and make recommendations on all issues, requests, and petitions related to the Midland Development Ordinance and Land Use Plan that may be adopted from time to time and that require approval by

the Town Council;

- (E) To review compliance with the mandatory design guidelines as set forth in this Ordinance; and
- (F) To make such other studies and plans and review such other related matters as directed by the Town Council.

4.3 Board of Adjustment

4.3-1 Authority. Pursuant to NCGS160D-302, there is hereby created a *Board of Adjustment*.

4.3-2 Membership.

- (A) Number of Members. The *Board of Adjustment* shall consist of seven members appointed by the Midland Town Council. Residents of Midland's extraterritorial area, when granted, shall be appointed by the Cabarrus County Board Commissioners. The extraterritorial representatives shall deliberate and vote on those matters affecting policy and land in the extraterritorial jurisdiction.
- (B) Alternates. The Town Council may, in its discretion, appoint alternate members to serve on the *Board of Adjustment* in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member. (G.S. 160D-302).
- (C) Officers – A Chair and Vice-Chair of the *Board of Adjustment* shall be elected by the Board of Adjustment in accordance with the rules and procedures set forth in the Board's rules of procedure. The Chair and Vice-Chair shall serve two year terms and may be elected to successive terms.
- (D) Attendance Policy . Any member who attends less than 75% of the regular and special meetings held by the *Board of Adjustment* during any one year period or who misses three or more meetings in a row may be removed from the Board. Vacancies resulting from a member's failure to attend the required number of meetings shall be filled as provided herein.

4.3-3 Terms.

- (A) Length of Terms . Members and alternate members, if any, of the *Board of Adjustment* shall serve a term of three (3) years, provided that upon initial appointment the terms of office may be staggered. The terms of all Board members shall not expire at the same time. Members may be reappointed to subsequent terms, but shall not be appointed for more than five (5) consecutive terms. Members who have served five (5) consecutive terms may be appointed to another board or commission or may be appointed to another term on the *Board of Adjustment* after a one term (3 year) hiatus from the Board.
- (B) Filling of Vacancies . A new member or an alternate member may be appointed by the Midland Town Council to fill the unexpired term of a member of the *Board of Adjustment* whose term is vacated. Members filling vacancies shall serve for the remainder of the unexpired term.

4.3-4 Powers and Duties. The *Board of Adjustment* shall have the following powers and duties:

- (A) To hear and decide appeals from an order, denial of a permit or other written decision made by an administrative official charged with enforcing this Ordinance;
- (B) To hear and decide requests for variances from the zoning provisions of this Ordinance in cases where special conditions would make strict and literal interpretation result in a loss of privileges shared by other properties within the same zoning district;
- (C) Upon receiving authority from the Midland Town Council, to act as the Watershed Review Board in hearing and deciding appeals from any decision or determination made by the Enforcement Officer in the enforcement of the Watershed Protection Ordinance as set forth in Article 19 of this Ordinance;
- (D) To hear and decide appeals and requests for variances from the requirements of the flood control provisions of this Ordinance, as set forth in Article 18; and
- (E) To hear and decide all matters referred to it or upon which it is required to pass under this Ordinance

4.3-5 Voting.

- (A) A four-fifths vote of the members shall be required to grant a variance; otherwise, a simple majority of the Board membership shall be required to affirm, reverse or modify any written order, decision, or interpretation of the Enforcement Officer charged with enforcing this Ordinance; to decide

in favor of the applicant on a matter [other than variances] upon which the Board is required to pass; Vacant positions on the *Board of Adjustment* and members who are disqualified from voting on a matter before the *Board of Adjustment* 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.

- (B) Conflicts . A member of the *Board of Adjustment* or any other body exercising the functions of a *Board of Adjustment* 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 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 rescue himself or herself, the remaining members shall by majority vote rule on the objection. (G. S. 160D-302)

- 4.3-6 Proceedings. All meetings of the *Board of Adjustment* shall be open to the public. The Board shall keep minutes showing the vote of each member on each question and the absence or failure of any member to vote.

The final disposition of each matter decided by the *Board of Adjustment* shall be by recorded resolution indicating the reasons for the decision, based on findings of fact and conclusions of law which shall be public record.

On all appeals, applications and other matters brought before the *Board of Adjustment*, the Board shall inform in writing all the parties involved of its decision and the reasons for that decision.

4.4 (Reserved)

4.5 Technical Review Committee

- 4.5-1 Authority. An agency known as the Technical Review Committee (TRC) is hereby established pursuant to NCGS 160D-306.

- 4.5-2 Membership
(A) Composition . The TRC shall be composed of the following members or their designee/alternate:

- (1) *Planning, Zoning and Subdivision Administrator*
- (2) *Public Works Administrator*
- (3) *Town Administrator*

- (4) One (1) member of the *Planning and Zoning Commission* (Vice-chair or his/her designee)
- (5) Other agencies/individuals as appropriate
- (B) Officers. The *Planning, Zoning and Subdivision Administrator* shall serve as TRC Chair. The committee shall appoint a secretary to record minutes of each meeting.

4.5-3 Powers and Duties. The Technical Review Committee shall have the following powers and duties as required herein:

- (A) To provide for continuing, coordinated and comprehensive review of certain technical aspects of development proposals and of the Ordinance in general;
- (B) To review technical aspects of development occurring within the Town and the areas within its extraterritorial jurisdiction as specified by this Ordinance;
- (C) To review and approve new or revised plans including: subdivisions, clustered or attached developments; planned unit developments; office, commercial and industrial developments; and any other proposals for development by this Ordinance;
- (D) To approve modifications where authorized by this Ordinance;
- (E) To recommend to the *Planning and Zoning Commission* the closing of streets, *alleys*, easements, and others rights-of-way;
- (F) To serve as the Watershed Review Board, exercising the powers and duties as set forth for this Board in Article 19 of this ordinance;
- (G) To perform any other related duties that the Town Council may direct; and
- (H) To exercise other powers and authority provided to it by the Town Council, this Ordinance, or state law.

4.6. Meetings, Hearings, and Procedures of all Boards and Commissions

All meetings and hearings shall be open to the public and shall be conducted in accordance with the procedures set forth in these regulations and with the rules of procedure adopted by the *Planning and Zoning Commission, Board of Adjustment*, and Technical Review Committee. Such rules of procedure may be amended by the respective board or commission membership. The rules of procedure adopted by any board or commission shall be kept on file at the office of the *Planning, Zoning and Subdivision Administrator* and shall be made available to the public at any meeting or hearing. No rules or procedures shall conflict with this Ordinance; if conflicts occur this Ordinance shall take precedence.

4.7. Staff

The *Planning, Zoning and Subdivision Administrator* shall serve as staff to the *Planning and Zoning Commission*, and *Board of Adjustment*, and shall provide technical assistance to the *Planning and Zoning Commission, Board of Adjustment*, as requested.