

## ARTICLE 4

### PLANNING BOARD & BOARD OF ADJUSTMENT

#### 4.1 Boards Established

The following boards 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:

- (A.) Planning Board
- (B.) Board of Adjustment

#### 4.2 Planning Board

- 4.2-1 Authority. There is hereby created a planning agency, pursuant to G.S. 160D-301 to be known as the City of Lowell *Planning Board*.
- 4.2-2 Membership by Appointment. The *Planning Board* shall consist of seven (7) members, who shall reside within the City Limits. Members shall be appointed by the City Council in accordance with G.S.160D-310. All members shall have equal rights, privileges and duties; except as defined for officers by adopted Rules of Procedure. All members shall be appointed for three (3) year terms except in making the original appointments. In making the original appointment three (3) members shall be appointed for a three (3) year term, two (2) members shall be appointed for a two (2) year term, and two (2) members shall be appointed for a one (1) year term.
- 4.2-3 Oath of Office. Any person appointed to the board shall take and subscribe the oath of office prescribed in Article VI, § 7 of the Constitution as stipulated in G.S.160A-61.
- 4.2-4 Powers and Duties. The *Planning Board* shall have the following powers and duties:
  - (A.) To provide recommendations to the City Council with regard to map amendments (rezoning), text amendments, and other matters on which the City Council seeks advice;
  - (B.) To develop and update a Comprehensive Land Use & Master Plan for the planning and development regulation jurisdiction, subject to specific direction from the City Council;
  - (C.) To render opinions and make recommendations on all issues, requests, and petitions related to the Lowell Development Ordinance and the Comprehensive Land Use & Master Plan that may be adopted and/or amended from time to time and that require approval by the City Council; and

(D.) To make such other studies and plans and review such other related matters as directed by the City Council.

4.2-5 Voting. A simple majority of the Board membership shall be required to affirm any decision, recommendation or statement of the Board.

4.2-6 Conflicts & Violations of Due Process. 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. A member shall not vote on any advisory or 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 impact on the member. A 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 with an affected person. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. (G.S. 160D-109).

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### 4.3 Board of Adjustment

4.3-1 Authority. Pursuant to G.S. 160D-302, there is hereby created a *Board of Adjustment*.

4.3-2 Membership by Appointment. The Board of Adjustment shall consist of five (5) members, who shall reside within the City Limits. Members shall be appointed by the City Council in accordance with G.S.160D-310. All members shall have equal rights, privileges and duties; except as defined for officers by adopted Rules of Procedure. All members shall be appointed for three (3) year terms except in making the original appointments.

(A.) Seating Members. In making the original appointment two (2) members shall be appointed for a three (3) year term, two (2) members shall be appointed for a two (2) year term, and one (1) member shall be appointed for a one (1) year term.

(B.) Alternates. The City 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(a))

4.3-3 Oath of Office. Any person appointed to the board shall take and subscribe the oath of office prescribed in Article VI, § 7 of the Constitution as stipulated in G.S.160A-61.

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.) To hear and decide appeals from any decision or determination made by the *Watershed & Storm Water Administrator* in the administration and/or enforcement of Article 19 of this Ordinance;

(D.) To hear and decide appeals and requests for variances from the requirements of the *Flood Damage Prevention* 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 and/or any ordinance duly adopted wherein the Board of Adjustment is designated to hear appeals or other duties.

4.3-5 Voting. 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.

4.3-6 Conflicts & Violations of Due Process. A member of the *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 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. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. (G. S. 160D-109).

4.3-7 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 obtained by testimony under oath or affirmation 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 Meetings, Hearings, and Procedures of all Boards**

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 for the *Planning Board*, and *Board of Adjustment*. Rules of procedure may be amended by the respective board membership; however, such amendment shall be approved by the City Council to become effective.

The rules of procedure shall be kept on file at the office of the *Planning, Zoning & Subdivision Administrator* and shall be made available to the public both online at the City's website and at any meeting or hearing. No rules or procedures shall conflict with this Ordinance; if conflicts occur this Ordinance shall take precedence.

Members shall take the oath of office administered by the City Clerk prior to taking part in any agenda items before the board upon which a member is appointed in accordance with G.S.160D-309 and G.S.160A-61.

#### **4.5 Staff**

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