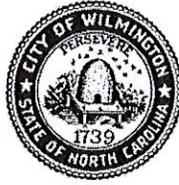


Resolution



City Council
City of Wilmington
North Carolina

Introduced By: Sterling B. Cheatham, City Manager

Date: 10/17/2017

Resolution Amending the Rules of Procedure for the Wilmington Planning Commission

LEGISLATIVE INTENT/PURPOSE:

The Wilmington Planning Commission was established pursuant to Chapter 160A, Art. 19 of the North Carolina General Statutes to provide for municipal planning and the regulation of development.

Section 18-37 of the Land Development Code requires the Planning Commission to adopt rules of procedure, subject to City Council approval, for the purpose of transacting its duties assigned by state law and city code.

The Planning Commission Rules of Procedure were adopted on August 12, 1980 by City Council. Subsequent amendments were adopted by City Council in 1990, 1999, 2000, and 2002.

The Planning Commission, when hearing applications for a Special Use Permit, or appeals from the Subdivision Review Board, sits in a quasi-judicial capacity. Every quasi-judicial decision must be based upon competent, material, and substantial evidence in the case record.

It is the current practice of the Planning Commission to base all of its quasi-judicial decisions upon competent, material, and substantial evidence. The proposed amendments to the Planning Commission Rules of Procedure are to set forth and clarify those practices and procedures.

THEREFORE, BE IT RESOLVED:

THAT, the Rules of Procedure for the Wilmington Planning Commission are amended as shown in Exhibit "A" to this Resolution, which is incorporated herein as if fully set forth.

Adopted at a regular meeting
on October 17, 2017

Bill Saffo

Saffo, Mayor

ATTEST:

Penelope Spicer-Sidbury

Penelope Spicer-Sidbury, City Clerk



CITY CLERK
Penelope Spicer-Sidbury
CERTIFIED TO BE A TRUE COPY

**RULES OF PROCEDURE
WILMINGTON PLANNING COMMISSION**

SECTION I. GENERAL RULES

The Wilmington Planning Commission, hereinafter referred to as the Commission shall be governed by the applicable terms of Chapter 160A, Article 19 of the General Statutes of North Carolina, by the terms of the Ordinance adopted on August 12, 1980 by the City Council, establishing said Commission, and these rules. Commission members shall thoroughly familiarize themselves with set of Rules of Procedure and said Ordinance.

In accordance with the Ordinance creating the Wilmington Planning Commission adopted on August 12, 1980, designating the Commission as a planning agency, the Commission shall discharge the duties set forth in said Ordinance.

All Commission members are subject to City policy regarding boards and commissions then in effect.

The Commission members shall thoroughly familiarize themselves with these Rules of Procedure.

No Commission member shall vote at a hearing unless he/she has attended the hearing(s) on that matter.

Members of the Commission will not express individual opinions on the proper outcome of any hearing prior to the Commission's determination of that matter. The applicant shall have the right to an unbiased and non-partisan panel. Commission members shall not participate in or vote on any matter in which they have an impermissible conflict.

All meetings of the Commission are subject to the N.C. Open Meetings Law.

In cases where the powers of the Commission are not clearly defined, the City Attorney shall be consulted for an interpretation.

The City Attorney is the legal advisor to the Commission and is responsible for retaining outside legal counsel, when necessary.

Any applicant may appear for himself/herself in a proceeding before the Commission or may appoint an agent in writing.

All hearings before the Commission shall follow the specific rules herein, and if a matter is not addressed, shall follow the provisions of Robert's Rules of Order.

These Rules shall apply to all hearings of the Commission.

SECTION II. OFFICERS AND DUTIES

- A. **CHAIRMAN**. A Chairman shall be elected by a majority of the Commission members present. His/Her term shall be for one year, beginning August 1, and he/she shall be eligible for re-election. The Chairman shall call the meeting to order, announce the business before the Commission in the order in which it is to be acted upon, state and put to vote all questions which are regularly moved or necessarily arise in the course of the meeting, and announce the result of the vote.

The Chairman shall also decide upon all points of Order and Procedure, subject to these rules, and can limit repetitive comments.

The Chairman's signature authenticates the acts, orders and procedures of the Commission in its entirety when such signature is required.

The Chairman shall vote on all matters before the Commission and shall have no extraordinary voting powers in the case of a tie vote.

The Chairman shall appoint any committees found necessary to investigate any matters before the Commission.

- B. **VICE-CHAIRMAN**. A Vice-Chairman shall be elected by the Commission from among its members in the same manner and for the same terms as the Chairman. He/She shall serve as acting Chairman in the absence of the Chairman and, at such time, he/she shall have the same powers and duties as the Chairman.
- C. **SECRETARY**. The Planning Department Director or his/her designee, shall serve as Secretary to the Commission. The Secretary, subject to the direction of the Chairman and the Commission, shall be responsible for keeping all records, shall be responsible for the conduct of all correspondence of the Commission, shall be responsible for the professional planning work of the Commission, and shall generally supervise the clerical work of the Commission. The Secretary shall be responsible for keeping, in a permanent volume, the minutes of every meeting of the Commission. These shall show the record of all important facts pertaining to each meeting, every resolution acted upon by the Commission and all votes of members of the Commission upon any resolution or upon the final determination of any question, indicating the names of the members absent or failing to vote. The Secretary shall not be eligible to vote upon any matter. (10/6/99)
- D. **ATTENDANCE**: Should a member fail to attend three (3) consecutive regular meetings of the Commission, and should there be no adequate excuse for such absences, the Chairman, with the concurrence of a majority of the entire Commission, shall recommend

to the appropriate authority that a vacancy be declared and that the vacant position be filled. (11/24/87)

SECTION III. PROCEDURES FOR FILING APPLICATIONS

In consideration of applications of all matters to be forwarded with a recommendation to the City Council, the Commission shall be governed by the following rules:

- A. **Amendments and Special Use Permit Applications:** All applications for amendments to the Land Development Code text and/or map and for Special Use Permits must be filed in proper form with the Planning Division. An application shall be accompanied by a fee in accordance with the City's adopted fee schedule.
- B. **Other Matters Requiring a Public Hearing:** All other applications concerning matters for which the General Statutes of North Carolina require the City Council to hold public hearings, shall be submitted to the Planning Department at least thirty (30) working days prior to the date at which the meeting is to be held.

SECTION IV. MEETINGS

- A. **REGULAR MEETINGS:** Regular meetings of the Commission shall be held in the City Hall Council Chambers at 6:00 p.m. on the first Wednesday of each month.
- B. **SPECIAL MEETINGS:** Special meetings of the Commission may be called at any time by the Chairman on his/her own motion, or upon written or oral request from at least three (3) members or the Commission; provided notice is given in accordance with G.S. 143, Article 33C.
- C. **CANCELLATION OF MEETINGS:** Whenever there is no pending business before the Commission, whenever the Chairman is notified by the Secretary that a quorum will not be present, the Secretary may dispense with a regular meeting by giving written or oral notice to all members not less than twenty-four (24) hours prior to the time set for the meeting and having a notice of cancellation posted at the meeting place declaring such.
- D. **QUORUM:** A quorum shall consist of four (4) members. Once a quorum has been established for a meeting, it shall not be lost if a member cannot consider an item due to a conflict of interest, provided the member remains present at the meeting. An applicant may request a continuance to the next regular meeting should the voting members be three (3) or less, and the Commission shall grant the continuance. No action shall be taken by the Commission without a quorum present. (11/24/87) (5/5/99)

E. CONDUCT OF MEETINGS: All meetings shall be open to the general public and no executive or secret sessions shall be permitted at any time. The order of business at regular meetings shall be as follows:

- (a) Call to order.
- (b) Approval of minutes of previous meeting.
- (c) Unfinished business.
- (d) New business.
- (e) Items brought by the Chairman.
- (f) Items brought by the Secretary.
- (g) Adjournment.

Every person before the rostrum shall abide by the order and direction of the Chairman. Discourteous or disorderly or contemptuous conduct shall be cause for the immediate continuance of the matter at hand until the next regular meeting of the Commission.

All matters, requiring Commission action, shall be presented to the Commission by the Planning Staff and the person(s) seeking such action and/or his/her agent or representative.

The applicant shall be heard following the presentation of staff. For matters requiring public hearing, the Chairman shall open the public hearing and then those in favor of the action shall be heard first, followed by those in objection. To maintain an orderly meeting, all presentations shall proceed without interruption, unless the Commission desires to intervene with questions, or comments.

All groups, organizations, neighborhoods or similar associations shall appoint one spokesperson to present their concern or point of view to the Commission on each agenda item.

Any relevant presentation shall be limited to ten (10) minutes, whether for or against a request. Five (5) minutes shall be allowed for rebuttal to all initial presenters. The Chairman may rule on the relevancy of any presentation to the agenda item being reviewed.

The Commission will only hear a motion for continuance if the applicant is present and may only grant a continuance upon a showing of good cause.

The Planning Commission, by majority vote of those present, may suspend the time limitations specified herein.

For matters requiring a public hearing, once all individuals both for and against the action have been heard, the Chairman will close the public hearing and the Commission will discuss the action, including any questions by Commission members for staff or the applicant, and then the Commission will take action on the matter.

F. **COMMISSION ACTION**: The Commission shall take one of the following actions on all agenda items except those informational items presented by the Chairman and/or Secretary:

- Approval - A favorable recommendation rendered by the Commission to a request. The petitioner will be informed of the date City Council will address the request and the Commission shall forward its favorable recommendations to City Council on or before the date of the applicable Council meeting.
- Special Use Permit – may be approved conditionally by the Commission, meaning the Commission favors the request subject to specified conditions attached to the request.
- Denial - An unfavorable recommendation rendered by the Commission to a request. The Commission must state the reason(s) for said denial and inform the petitioner of his/her right to appeal that recommendation.
- Continuance - A specified period for delay of action on a request adopted by the Commission. The Commission must state the reason(s) for said continuance and by its action charge the Planning Staff with placing the request on the agenda for the specified meeting.
- Tabling - Action on a request delayed by the Commission for an unspecified period of time. The Commission must state the reason(s) for tabling the request and shall indicate formal proceedings for having said request placed on the agenda of a meeting.
- Withdrawal - Acceptance of the petitioner's request to withdraw consideration of a request prior to Commission review.
- Advancement - Hearing an agenda item earlier or later in the meeting than it is originally scheduled if good cause is shown by either petitioner, Planning Staff or other interested parties for such an advancement. Action on an advanced item shall be in the form of the above mentioned actions.

A simple majority vote of those members present shall be sufficient to decide matters before the Commission. A tie vote of those members present shall cause the motion in question to fail.

Decisions of the Commission shall take the form of a written Order, prepared by the Secretary of the Commission, and reviewed and approved by the City Attorney.

SECTION V. APPEALS FROM SUBDIVISION REVIEW BOARD

All General Rules governing the Commission shall apply to hearings on appeal from the Subdivision Review Board.

Nothing herein shall be construed to give or grant the Commission the power or authority to alter or change the Subdivision Regulations, except as explicitly provided for in the Subdivision Ordinance.

The Commission will only hear a motion for continuance if the applicant is present and may only grant a continuance upon a showing of good cause.

When the Commission hears an appeal of a decision from the Subdivision Review Board, it is sitting in a quasi-judicial capacity, and during such hearings neither the North Carolina Rules of Evidence nor the North Carolina Rules of Civil Procedure shall apply.

No Commission member shall discuss any case prior to the hearing on that matter.

The order for consideration of each plat for approval shall be as follows:

- (1) Parties and all people wishing to speak shall be sworn.
- (2) The City of Wilmington shall introduce the proposed project and the Commission may ask questions of City staff.
- (3) The parties appearing before the Commission must be given a full and fair opportunity to present their case. The applicant may present his/her information after the conclusion of the City's presentation and the Commission may ask the applicant questions.
- (4) Cross-examination and rebuttals may be permitted.
- (5) A ten (10) minute public comment period will follow and may be extended at the discretion of the Chairman.
- (6) The Chairman may limit repetitive and argumentative statements.

Actions on all matters shall be governed by the provisions of Section 18-72 of the Subdivision Regulations.

The Commission may receive all documents and information presented by the parties, and has the authority to determine what weight, if any, to be given to presented materials. The Commission's final determination shall be based on substantial, competent, and material evidence.

If final action is not taken at the meeting at which initial discussion is heard, the Chairman shall at that meeting set the time at which such final action is to be taken. In any event, the Chairman shall ensure that final action is taken no later than at the next regular meeting of the Commission.

Decisions of the Commission shall take the form of a written Order, prepared by the Secretary of the Commission and reviewed and approved by the City Attorney, and shall include the substantial, competent, and material facts relied upon in making its determination.

SECTION VI. PUBLIC NOTICE

Public notice shall be given for all Commission meetings in accordance with Article 33C, Chapter 143 of the North Carolina General Statutes. All regular meetings of the Planning Commission shall be advertised in a newspaper having general circulation in New Hanover County at least three (3) days, but not more than ten (10) days preceding the meeting.

SECTION VII. AMENDMENTS

Within the limits allowed by law, these rules may be amended at any time by the affirmative vote of not less than four (4) members of the Commission, provided that all members are provided a copy of the proposed amendment at least three (3) days prior to the date of the meeting at which such action is to be taken. Incorporation of any amendment to these rules must be approved by the City Council.

By a majority votes on June 7, 2017 and September 6, 2017, the City of Wilmington Planning Commission hereby recommends the foregoing rules and regulations be adopted by the Wilmington City Council.

The foregoing rules and regulations are hereby adopted by the Wilmington City Council on _____, 2017. The original copy of said rules shall be filed with the City Clerk, with copies provided to the Secretary for the Wilmington Planning Commission and to the City Attorney.

City Clerk

Adopted October 1, 1980

Wilmington Planning Commission Rules of Procedure

Revised and updated through 5/22/90

Revised and updated through 5/5/99

Revised and updated through 10/6/99

Revised and updated through 6/6/00

Revised and updated through 6/18/02