

# Appeals of Administrative Zoning Decisions

Town of Waynesville

# Basic Principles

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“Zoning ordinances are in derogation of the right of private property, and where exemptions appear in favor of the property owner, they should be liberally construed in favor of such owner.”

*In re W. P. Rose Builders' Supply Co.*, 202 N.C. 496, 500, 163 S.E. 462, 464 (1932)

“This Court has long held that governmental restrictions on the use of land are construed strictly in favor of the free use of real property.”

*Morris Communs. Corp. v. City of Bessemer*, 365 N.C. 152, 157, 712 S.E.2d 868, 871 (2011)

# Basic Principles

“The General Assembly delegates express power to municipalities by adopting an enabling statute, which includes implied powers . . . essential to the exercise of those which are expressly conferred.”

*O'Neal v. Wake County*, 196 N.C. 184, 187, 145 S.E. 28, 29 (1928); see *Lanvale Props., LLC v. County of Cabarrus*, 366 N.C. 142, 150, 731 S.E.2d 800, 807 (2012); *Town of Saluda v. County of Polk*, 207 N.C. 180, 186, 176 S.E. 298, 301-02 (1934).

“All acts beyond the scope of the powers granted to a municipality are invalid.”

*Quality Built Homes, Inc. v. Town of Carthage*, 369 N.C. 15, 19, 789 S.E.2d 454, 457 (2016)

The Boards & the “Administrator”

# 160D: Duties of the Planning Board

Source: [Article 3 – Boards & Organizational Arrangements](#)

- (b) Duties. – A planning board may be assigned the following powers and duties:
- (1) To prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.
  - (2) To facilitate and coordinate citizen engagement and participation in the planning process.
  - (3) To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
  - (4) To advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.
  - (5) **To exercise any functions in the administration and enforcement of various means for carrying out plans that the governing board may direct.**
  - (6) To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.
  - (7) **To perform any other related duties that the governing board may direct.**  
(2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

# Waynesville Land Development Standards: Duties of the Planning Board

Source: Chapter 14 - Administrative Agencies

## 14.3.1 Powers and Duties.

The Town of Waynesville's Planning Board shall have the following powers and duties to be carried out in accordance with the terms of this ordinance.

- A. To perform studies and surveys of the present conditions and probable future development of the town and its environs, including but not limited to, studies and surveys of land uses, population, traffic, parking, expansions of extraterritorial jurisdiction, etc.
- B. To formulate and recommend to the Board of Aldermen the adoption and amendment of a Land Development Plan and other plans as necessary.
- C. To conduct annexation feasibility studies and recommend suitable areas of annexation to the Board of Aldermen.
- D. LDS Review: The Planning Board shall review and make recommendations regarding the following permits types (see also [Chapter 15](#)):
  1. Text Amendments (15.14)
  2. Map Amendments/Rezoning (15.14)
  3. Conditional District (15.15)
  4. Vested Right (15.16)
- E. LDS Decisions: The Planning [Board] shall render **final** decisions regarding the following permits types (see also [Chapter 15](#)):
  1. [Site Plans/Design Review \(Major\) \(15.8.2\)](#)
  2. Subdivision (Major) - Preliminary Plat (15.9.2)
  3. Special Use Permits (15.11.1)
- F. The Planning Board shall also have any additional powers and duties as may be set forth for in other laws and regulations or at the direction of the Board of Aldermen.

## 160D: Duties of the Zoning Board of Adjustment

Source: [Article 3 – Boards & Organizational Arrangements](#)

- (b) Duties. – The board shall hear and decide all matters upon which it is required to pass under any statute or development regulation adopted under this Chapter. The ordinance may designate a planning board or governing board to perform any of the duties of a board of adjustment in addition to its other duties and may create and designate specialized boards to hear technical appeals. 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.

(2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)



# Waynesville Land Development Standards: Duties of the Zoning Board of Adjustment

Source: Chapter 14—Administrative Agencies

## 14.4.1 Powers and Duties.

The Board of Adjustment of Waynesville shall have the following powers and duties to be carried out in accordance with the terms of this ordinance:

- A. To hear and decide appeals from any order, requirement, permit, decision or determination issued by an administrative officer of the town in enforcing any provision of the Town of Waynesville Minimum Housing Codes.
- B. LDS Decisions: The Board of Adjustment shall render **final decisions regarding the following permits types** (see also Chapter 15):
  1. **Appeal of any Administrative decisions (15.6-7, 15.8.1, 15.9.1,3, 15.12)**
  2. Appeals of Planning Board Decision regarding Subdivision (Major) - Preliminary Plats (15.11.1)
  3. Appeals of Historic Preservation Commission Decision regarding Certificate of Appropriateness (Major) (15.11.3)
  4. Variances (15.13)
- C. The Board of Adjustment shall also have any additional powers and duties as may be set forth for in other laws and regulations or at the direction of the Board of Aldermen.

## Waynesville Land Development Standards: Who is the Administrator?

Source: Chapter 14—Administrative Agencies

### 14.1 - The Administrator.

The various provisions of this ordinance shall be administered under the general direction of the Town Manager and under the specific direction of the Town of Waynesville Development Services, Public Services and Utility Departments.

For the purposes of this ordinance, the directors of these departments and their subordinate staffs are collectively referred to as the Administrator. The Development Services Department will serve as the "gatekeeper" for all development applications and will advise applicants on appropriate personnel to contact.

Major Site Plans: 160D + LDS

## 160D: What Does It Say about Review of Major Site Plans?

Article 8 – Subdivision Regulations

Article 9 – Regulation of Particular Uses and Areas



# Waynesville Land Development Standards: Major Site Plan Review

Source: Chapter 15 – [Administration](#)

## 15.8.2 Site Plan/Design Review (Major).

- A. **Applicability:**
- All Districts Except BD: Non-residential development or expansion 10,000 square feet or greater in gross floor area
  - BD District: All development 6,000 square feet or greater in gross floor area (not in a Historic Overlay District - already covered by [15.10](#))
  - All mixed-use or non-residential projects in the RL, RM, NR, or UR Districts
  - Multi-Family Development with 8 or more units
- B. **Process Types:** Administrative.
- C. **Pre-Application Procedure:** It is required that every applicant for a Major Site Plan meet with the Administrator in a conference prior to the submittal of an application. The purpose of this conference is to provide clarification and assistance in the preparation and submission of plats for approval. It is recommended that the applicant provide a sketch plan (15.4.2) to the Administrator prior to or at the pre-application conference. The provision of a sketch plan will allow the Administrator an opportunity to review the proposal before the applicant expends funds on the preparation of a detailed Site Plan.
- D. **Required Application Information:** Environmental Survey (15.4.1), Master Plan (15.4.3) and Building Elevations (15.4.7) (may be waived by Administrator as appropriate) - Construction Documents (15.4.4) shall be submitted after Planning Board approval.
- E. **Determination of Completeness:** The Administrator shall review the application to ensure that it is complete, prepare a report and recommendation on the application, and schedule the matter for a public hearing before the Planning Board.
- F. **Public Notification:** Level 1, 2 and 4.
- G. **Neighborhood Meeting (15.3.7):** See section 15.3.7.
- H. **Public Hearing:** The Planning Board shall hold a hearing on the proposal. The applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard.
- I. **Decisions/Findings of Fact:** Following the public hearing the Planning Board may approve, deny or approve with conditions the application for a Major Site Plan. No Major Site Plan shall be approved unless the Planning Board finds each of the following facts to be true:
- 1.The plan is consistent with the adopted plans and policies of the Town;
  - 2.The plan complies with all applicable requirements of this ordinance; and
  - 3.The plan has infrastructure as required by the ordinance to support the plan as proposed.
- J. **Review Period by Planning Board:** Applications for Major Site Plans shall be acted upon within ninety (90) days after filing, otherwise the application shall be deemed approved and a permit shall be issued. An extension of time may be granted by mutual consent of the Planning Board and the applicant.
- K. **Appeals:** An appeal from the decision of the Planning Board regarding a Major Site Plan request may be made by an aggrieved party and shall be made to the Superior Court of Haywood County in the nature of certiorari. Any such petition to the Superior Court shall be filed with the court no later than thirty (30) days after the applicant receives the written copy of the decision of the Planning Board.
- L. **Permit Validity:** Upon the approval of the Major Site Plan, the applicant shall have two (2) years to obtain a building permit. Failure to secure building permits for the permitted work within this time shall render the compliance void. Any change to the approved plans that has not been authorized by the Administrator shall invalidate the certificate of land development standards compliance and any subsequent building permits.
- M. **Permit Extension:** Pursuant to 160D-108.1(e)(2), the Administrator may provide an extension for a period exceeding two (2) years but not exceeding five (5) years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. These determinations are in the sound discretion of the Administrator and shall be made following the same application procedure as the initial approval. No further development activity shall be performed until the new approval is issued.  
( [Ord. No. O-11-21](#), §§ 16, 17, 6-22-2021; [Ord. No. O-06-22](#), § 25, 3-22-2022; [Ord. No. O-16-22](#), § 9, 5-10-2022)

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Source: [Chapter 15 – Administration](#)

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- B. **Process Types: Administrative.**
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- F. **Determination of Completeness:** The Administrator shall review the application to ensure that it is complete, prepare a report and recommendation on the application, and schedule the matter for a public hearing before the Planning Board.
- F. **Public Notification:** Level 1, 2 and 4.
- G. **Neighborhood Meeting (15.3.7):** See section 15.3.7.
- H. **Public Hearing:** The Planning Board shall hold a hearing on the proposal. The applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard.
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# 160D: Putting It All Together

Source: [Article 4 – Administration, Enforcement, and Appeals](#)

## **§ 160D-401. Application.**

- (a) The provisions of this Article shall apply to all development regulations adopted pursuant to this Chapter. Local governments may apply any of the definitions and procedures authorized by this Article to any ordinance adopted under the general police power of cities and counties, Article 8 of Chapter 160A of the General Statutes, and Article 6 of Chapter 153A of the General Statutes, respectively, and may employ any organizational structure, board, commission, or staffing arrangement authorized by this Article to any or all aspects of those ordinances. The provisions of this Article also apply to any other local ordinance that substantially affects land use and development.

## 160D: Putting It All Together

Source: [Article 4 – Administration, Enforcement, and Appeals](#)

### **§ 160D-402. Administrative staff.**

(a) Authorization. – Local governments may appoint administrators, inspectors, enforcement officers, planners, technicians, and other staff to develop, administer, and enforce development regulations authorized by this Chapter.



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Source: Chapter 14 – Administrative Agencies.

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## REMEMBER HOW WAYNESVILLE DEFINES THE ADMINISTRATOR?

### 14.1 - The Administrator.

The various provisions of this ordinance shall be administered under the general direction of the Town Manager and under the specific direction of the Town of Waynesville Development Services, Public Services and Utility Departments.

For the purposes of this ordinance, the directors of these departments and their subordinate staffs are collectively referred to as the Administrator. The Development Services Department will serve as the "gatekeeper" for all development applications and will advise applicants on appropriate personnel to contact.

## 160D: Putting It All Together

Source: [Article 4 – Administration, Enforcement, and Appeals](#)

### **§ 160D-405. Appeals of administrative decisions.**

(a) Appeals. – Except as provided in G.S. 160D-1403.1, appeals of administrative decisions *made by the staff* under this Chapter shall be made to the board of adjustment **unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter.**

# 160D: Putting It All Together

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**REMEMBER THE DUTIES OF THE ZONING BOARD UNDER 160D?**

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## **REMEMBER THE DUTIES OF THE ZONING BOARD UNDER 160D?**

Duties. – The board shall hear and decide all matters upon which it is required to pass under any statute or development regulation adopted under this Chapter. **The ordinance may designate a planning board or governing board to perform any of the duties of a board of adjustment in addition to its other duties and may create and designate specialized boards to hear technical appeals.** 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.

# 160D: Putting It All Together

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**REMEMBER THE DUTIES OF THE WAYNESVILLE ZONING BOARD?**

# 160D: Putting It All Together

Source: [Article 4 – Administration, Enforcement, and Appeals](#)

Source: [Chapter 14 – Administrative Agencies](#)

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(a) Appeals. – Except as provided in G.S. 160D-1403.1, appeals of administrative decisions made by the staff under this Chapter shall be made to the board of adjustment **unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter.**

## REMEMBER THE DUTIES OF THE WAYNESVILLE ZONING BOARD?

14.4.1.B. LDS Decisions: The Board of Adjustment shall render **final decisions regarding the following permits types** (see also [Chapter 15](#)):

1. **Appeal of any Administrative decisions (15.6-7, 15.8.1, 15.9.1,3, 15.12)**
2. Appeals of Planning Board Decision regarding Subdivision (Major) - Preliminary Plats (15.11.1)
3. Appeals of Historic Preservation Commission Decision regarding Certificate of Appropriateness (Major) (15.11.3)
4. Variances (15.13)

# 160D: Putting It All Together

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## **§ 160D-405. Appeals of administrative decisions.**

(a) Appeals. – Except as provided in G.S. 160D-1403.1, appeals of administrative decisions made by the staff under this Chapter shall be made to the board of adjustment **unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter.**

**REMEMBER THE DUTIES OF THE PLANNING BOARD UNDER 160D?**

# 160D: Putting It All Together

Source: [Article 4 – Administration, Enforcement, and Appeals](#)

Source: [Article 3 – Boards & Organizational Arrangements](#)

## § 160D-405. Appeals of administrative decisions.

- (a) Appeals. – Except as provided in G.S. 160D-1403.1, appeals of administrative decisions made by the staff under this Chapter shall be made to the board of adjustment **unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter.**

## REMEMBER THE DUTIES OF THE PLANNING BOARD UNDER 160D?

- (5) To exercise any functions in the administration and enforcement of various means for carrying out plans **that the governing board may direct.**
- (7) To perform any other related duties **that the governing board may direct.**



## 160D: Putting It All Together

Source: [Article 4 – Administration, Enforcement, and Appeals](#)

Source: [Chapter 14 – Administrative Agencies](#)

### § 160D-405. Appeals of administrative decisions.

(a) Appeals. – Except as provided in G.S. 160D-1403.1, appeals of administrative decisions made by the staff under this Chapter shall be made to the board of adjustment **unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter.**

## REMEMBER THE DUTIES OF THE WAYNESVILLE PLANNING BOARD?

14.3.1.E. LDS Decisions: The Planning [Board] shall render **final** decisions regarding the following permits types (see also [Chapter 15](#)):

1. **Site Plans/Design Review (Major) (15.8.2)**
2. Subdivision (Major) - Preliminary Plat (15.9.2)
3. Special Use Permits (15.11.1)

160D: Catch All

Source: [Article 14 – Judicial Review](#)

**§ 160D-1404. Other civil actions.**

Except as expressly stated, **this Article does not limit the availability of civil actions otherwise authorized by law or alter the times in which they may be brought.** (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

## 160D: What Does It Say about Review of Major Site Plans?

Article 8 – Subdivision Regulations

Article 9 – Regulation of Particular Uses and Areas



**THIS SAME QUESTION (ADMINISTRATIVE APPEALS TO ZBA OR SUPERIOR COURT) COMES UP IN SUBDIVISION REGULATIONS (ARTICLE 8).**

Solution: General Assembly passed Session Law 2022-62 in the recent short session.

# Solution for Subdivision Regulations

Source: S.L. 2022-62, sec. 59.

~~Strikethrough~~ = deletion from original text

Underline = addition to original text

## **§ 160D-1403. Appeals of decisions on subdivision plats.**

- (a) When a subdivision regulation adopted under this Chapter provides that the decision whether to approve or deny a preliminary or final subdivision plat is quasi-judicial, then that decision of the board ~~shall be~~ is subject to review by the superior court by proceedings a proceeding in the nature of certiorari. ~~The provisions of G.S. 160D-406 and this section shall apply to those appeals.~~
- (b) When a subdivision regulation adopted under this Chapter provides that the decision whether to approve or deny a preliminary or final subdivision plat is administrative, or for any other administrative decision implementing a subdivision regulation, the following applies:
- (1) ~~then that decision of the board shall be~~ If made by the governing board or planning board, the decision is subject to review by filing an action in superior court seeking appropriate declaratory or equitable relief within 30 days from receipt of the written notice of the decision, which shall be made as provided in G.S. 160D-403(b).
  - (2) If made by the staff or a staff committee, the decision is subject to appeal as provided in G.S. 160D-405.

# Conclusions

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The Zoning Board of Adjustment has only the duties and authority given to it by state law *as enacted* by local ordinance. *Why as enacted?* Because *its duties may be delegated to another board*.

Similarly, tasks which a statute authorizes staff to carry out *may be delegated by local ordinance to one of the appointed boards* or to the governing board.

# Conclusions

In Waynesville, although Development Services staff could undertake administrative reviews of Major Site Plans, that responsibility lies with the Planning Board.

The Zoning Board of Adjustment has no authority, under either local ordinance or state statute, to review and overturn decisions of the Planning Board.

The General Assembly answered this same procedural question consistent with my conclusion – that appeals of administrative decisions made by the Planning Board should go to Superior Court.