



**Virtual Regular Council Meeting &
Public Hearings Minutes on Amending the Code
of Ordinances, Town of Archer Lodge, NC, in
accordance with State Law as referenced below:**

1. *Chapter 2, Article II - Boards and Commissions, pertaining to Board of Adjustment*
2. *Chapter 2, Article II - Boards and Commissions, pertaining to Planning Board*
3. *Chapter 30, Article II - Zoning, pertaining to amendments procedures*

Monday, May 4, 2020

COUNCIL PRESENT:

Mayor Mulhollem
Mayor Pro Tem Castleberry (Remotely)
Council Member Bruton (Remotely)
Council Member Jackson (Remotely)
Council Member Purvis (Remotely)
Council Member Wilson (Remotely)

STAFF PRESENT:

Mike Gordon, Town Administrator
Chip Hewett, Town Attorney (Remotely)
Kim P. Batten, Finance Officer/Town Clerk
Julie Maybee, Town Planner
Joyce Lawhorn, Deputy Clerk

COUNCIL ABSENT:

MEDIA PRESENT:

None

1. WELCOME/CALL TO ORDER:

a) Invocation

Mayor Mulhollem called the meeting to order at 6:36 p.m. in the C. L. Gobble Conference Room located at 14094 Buffalo Road, Archer Lodge, NC and declared a quorum present via Webex Video Conferencing. Council Member Jackson offered the invocation.

Due to the State of Emergency, State of NC Guidelines and to limit the spread of Coronavirus (COVID-19), Mayor Pro Tem Castleberry, Council Member Bruton, Council Member Jackson, Council Member Purvis, Council Member Wilson and Attorney Hewett attended remotely via Webex Video Conferencing.

b) Pledge of Allegiance

Mayor Mulhollem led in the Pledge of Allegiance to the US Flag.

2. APPROVAL OF AGENDA:

a) No changes or additions noted.

Moved by: Council Member Wilson
Seconded by: Council Member Jackson

Approved Agenda.

CARRIED UNANIMOUSLY

3. OPEN FORUM/PUBLIC COMMENTS:

(Maximum of 30 minutes allowed, 3 minutes per person)

a) No Public Comments.

4. PUBLIC HEARINGS, DISCUSSION AND CONSIDERATION:

(Maximum of 30 minutes allowed, 3 minutes per person)

- a) **PUBLIC HEARING - Text Amendments - Code of Ordinances, Town of Archer Lodge, NC, Chapter 2 - Administration, Article II - Boards and Commissions - Board of Adjustment (BOA)**
1. **Open Public Hearing**
 2. **Staff Report and Planning Board Recommendations**
 3. **Public Comments**
 4. **Close Public Hearing**
 5. **Governing Body**
 - **Discussion and Consideration of Consistency Statement**
 - **Discussion and Consideration of Adopting Ordinance# AL2020-05-1 Amending Chapter 2, Article II, BOA**

1. Mayor Mulhollem asked for a motion to **Open the Public Hearing.**

2. Staff Report and Planning Board Recommendations

Ms. Maybee read the Staff Report and Planning Board Recommendations for the Proposed Text Amendments - Code of Ordinances, Town of Archer Lodge, NC, Chapter 2 - Administration, Article II - Boards and Commissions, Provisions Pertaining to the Board of Adjustment (BOA) and appears as follows:

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TOWN OF ARCHER LODGE
14094 Buffalo Road
Archer Lodge, NC 27527
Main: 919-359-9727
Fax: 919-359-3333

Mayor:
Matthew B. Mulhollem

Council Members:
Clyde B. Castleberry
Mayor Pro Tem
Teresa M. Bruton
J. Mark Jackson
James (Jim) Purvis, III
Mark B. Wilson

Town Council Agenda Item: 4.a.

To: Town Council
From: Julie Maybee, Town Planner
Date: April 29, 2020
Cc: Town Administrator, Finance Officer/Town Clerk, Deputy Clerk, Town Attorney and Brough Law Firm
Re: Proposed Revision of Chapter 2 - Administration, Article II. - Boards and Commissions, provisions pertaining to the Board of Adjustment

Background Information:

North Carolina laws have changed, or in the process of changing, that affect the Board of Adjustment. Revisions to the Code of Ordinances, Town of Archer Lodge, NC, Chapter 2, Article II. - Boards and Commissions, are proposed to comply with the state laws, streamline and clarify provisions pertaining to the Board of Adjustment.

Changes in laws are referenced in the revised text footnotes.

Planning Board Recommendations:

On March 25, 2020, the Planning Board, upon making consistency statement findings (see page 11 of staff report) in accordance with NC General Statutes, unanimously recommended approval of the ordinance revisions (excluding text in blue font) as stated below:

CHAPTER 2. BOARDS AND COMMISSIONS, ARTICLE II:

DIVISION 2. Board of Adjustment Established; Rules

Sec. 2-40. - Appointment and Terms.

- (a) The Town has five members that serve on the Planning Board. Until the ordinance from which this division is amended, the Planning Board shall also serve as the Board of Adjustment. Two appointed members of the Town Council shall serve on the Board of Adjustment as alternate members. Said alternate members shall have all the powers as regular members and may fill in for regular members as needed in meetings.
- (b) Members of the Board of Adjustment shall be appointed for three-year terms.
- (c) Members may be appointed to successive terms without limitation.
- (d) The Board shall consist of five regular members and two alternate members, each to be appointed for three years. In appointing the original members of such Board, or in the filling of vacancies caused by the expiration of the terms of existing members, the Council may appoint certain members for less than three years to the end; that thereafter the terms of all members shall not expire at the same time. 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. All regular members and alternate members shall be citizens and residents of the Town of Archer Lodge.

Sec. 2-41. - Board Officers. (Was Sec. 2-44. - Board Officers.)

- (a) At its first regular meeting of each calendar year, the Board of Adjustment shall, by majority vote of its membership (excluding vacant seats), elect one of its members to serve as Chairperson and preside over the Board's meetings and one member to serve as Vice-Chairperson. A Secretary shall be appointed by the Town Council. Any elected person shall serve in these capacities for terms of one year. Any appointed Secretary shall serve at the pleasure of the Town Council. Vacancies among the appointed or elected officials may be filled for the unexpired terms only by majority vote of the Town Council.
- (b) The Chairperson or any member temporarily acting as Chairperson may administer oaths to witnesses coming before the board.
- (c) The Chairperson and Vice-Chairperson may take part in all deliberations and vote on all issues.
- (d) The Board of Adjustment shall draw up and adopt rules of procedure under which it will operate. The Town Council will approve the rules of procedure and any amendments.

Sec. 2-42. - Powers and Duties of Board. (Was Sec. 2-45. - Powers and Duties of Board.)

- (a) The Board of Adjustment shall hear and decide:
 - (1) Appeals from any order, decision, requirement, or interpretation made by the Town, inclusive of the flood prevention ordinance;
 - (2) Applications for variances;

- (3) Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines;
- (4) Applications for conditional use permits; and
- (5) Any other matter the Board is required to act upon by any other ordinance.

Sec. 2-43. - Meetings and Quorum. (Was Sec. 2-41. – Meetings and Sec. 2-42 - Quorum.)

- (a) The Board of Adjustment shall meet frequently enough so that it can act as expeditiously as possible consistent with the need of to follow regularly established procedures and obtain the necessary information to make sound decisions. In the alternative, the Board may adopt an annual schedule of regular meetings.
- (b) All meetings of the Board of Adjustment shall be open to the public, and the agenda for each Board of Adjustment meeting shall be made available in advance of the meeting.
- (c) 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 of Adjustment to take official action.
- (d) A member who has withdrawn from the meeting without being excused, as provided in section 2-56 - Voting (c), shall be counted as present for purposes of determining whether a quorum is present.

Division 3. Decisions Made by the Board of Adjustment

Sec. 2-46. - Appeals.

- (a) An appeal from any final administrative order or decision of the Town staff charged with enforcement of the Zoning Ordinance may be taken to the Board of Adjustment by any person with standing. Standing is defined in section 2-53 - Standing below. An appeal is taken by filing with the Town Clerk and the Board of Adjustment a written notice of appeal specifying the grounds. A notice of appeal shall be considered filed with the town and the Board of Adjustment when delivered to the Town Clerk. A fee shall be paid to the Town of Archer Lodge for each appeal to cover advertising and administrative costs. ¹
- (b) The Town staff who made the decision shall give written notice to the owner of the property and the applicant by personal delivery, e-mail or first-class mail. ²
- (c) The property owner, applicant or other party with standing shall have thirty days from the receipt of written notice to file an appeal. If delivery of the decision is by first class mail, the time to appeal shall be 33 days³ unless the appellant provides evidence of the date of delivery. ⁴
- (d) The Town staff who made the decision shall send all documents and exhibits constituting the record of the decision being appealed to the Board of Adjustment, the person who made the appeal and the owner of the property. ⁵
- (e) An appeal stays all actions by the Town enforcing the requirements of the Zoning Ordinance unless the Town staff who made the decision files an affidavit with the Board stating the facts of the case and how a stay of enforcement will cause imminent peril to life or property or that a stay would interfere with ordinance enforcement because the violation is transitory. If the enforcement action is

¹ Amended to comply with G.S. 160A-388 (b1) last amended in July 2019 and before that in 2013 (Not including S.L. 2019-111 adopting Chapter 160D and other statutes. This parenthetical is not repeated in the following footnotes, but it also applies to the following footnotes.)

² Amended to comply with G.S. 160A-388 (b1)(2)

³ Amended to comply with G.S. 160A-388 (e2)(2)

⁴ Amended to comply with G.S. 160A-388 (b1)(3)

- not stayed by Johnston County Superior Court, the person appealing may file a request that the Board hear the matter in 15 calendar days. The 15 day deadline is mandatory.⁶
- (f) After receipt of notice of an appeal, the Board of Adjustment clerk shall schedule the time for a hearing which shall be at the next regular or special meeting, but in no case later than 60 days from the filing of notice of appeal.
 - (g) Written notice of the appeal shall be sent to the Appellant, property owner, applicant and all abutting property owners by the Town staff following the procedures in Section 2-52.- Notice of Hearings.⁷
 - (h) Upon request the Chair may issue subpoenas to persons or for the production of documents as provided in Section 2- 51(e).⁸
 - (i) The staff who made the decision, or the current incumbent in that position shall appear as a witness at the hearing.⁹
 - (j) The Board shall hear the appeal following the procedural rules in Division 2 below, beginning at Section 2-51. Before witness testimony the Board shall hear and rule on any objections to documents in the record, or any staff report provided to the Board.¹⁰
 - (k) The Board shall determine contested facts. The decision of the board shall be based on competent, material and substantial evidence in the record. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed from and shall issue a written decision containing the Boards decisions as to contested facts and the application of the facts to the standards of the Zoning Ordinance. To this end, the Board of Adjustment shall have all the powers of the staff from whom the appeal is taken.¹¹
 - (l) The Board shall make its decision in a reasonable time following the requirements of Section 2- 57(c).¹²
 - (m) When an appeal is taken to the Board of Adjustment, the designated Town staff shall have the initial burden of presenting to the board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

Sec. 2-47. – Variances.

- (a) A complete application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Town Clerk or designee.
- (b) When presented to the Board of Adjustment at the hearing, the application for a variance shall be accompanied by a report setting forth the planning staff's proposed findings concerning the application's compliance with section 2-47 and the other requirements of this chapter. If the staff proposes a finding or conclusion that the application fails to comply with section 2-47, the report shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.
- (c) The staff shall advertise the hearing in accord with the requirements of Section 2-52 - Notice of Hearings below.
- (d) The Board shall hold a hearing following the requirements of Division 4 below.
- (e) A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the ordinance would result in unnecessary hardships for the applicant upon a showing of all of the following:

⁶ Amended to comply with G.S. 160A-388 (b1)(6)

⁷ Amended to comply with G.S. 160A-388 (a2)

⁸ Amended to comply with G.S. 160A-388 (g)

⁹ Amended to comply with G.S. 160A-388 (b1)(8)

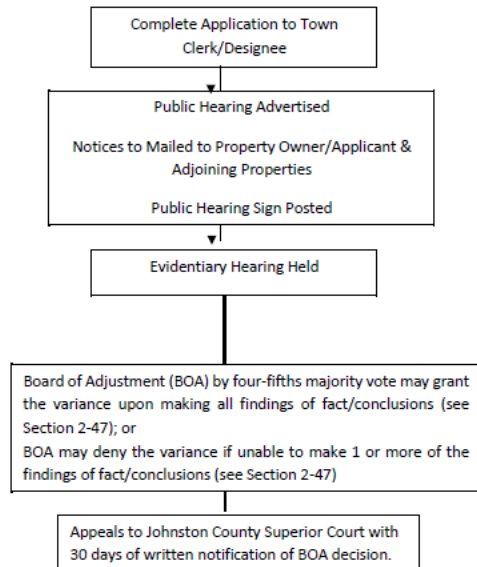
¹⁰ Amended to comply with common law. Also, a requirement of new Chapter 160D.

¹¹ Amended to comply with G.S. 160A-388 (e2) (1) and G.S. 160A-393 (Amended July 2019, and 2013)

¹² Amended to comply with G.S. 160A-388 (b1)(7); GS 160A-388(e2)(1)

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; and
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance; and
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
- (f) In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.
- (g) A variance shall run with the land.
- (h) The nature of the variance and any conditions attached to it shall be entered on the face of the certificate of zoning compliance, or the certificate of zoning compliance may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this ordinance. No change in permitted uses may be authorized by variance.
- (i) A fee shall be paid to the Town of Archer Lodge for a variance as set forth in the Town of Archer Lodge, NC annual fee schedule adopted by the Town Council.
- (j) The Board will first consider whether the application is complete. A motion to deny a variance may be made on the basis that the application is incomplete. Such a motion shall include a statement of the specific reasons or findings of fact that support it.
- (k) If a motion to grant a variance is not made or fails to receive the four-fifths vote necessary for adoption, then a motion to deny the variance shall be in order. If Board finds that any one or more of the four criteria set forth in section 2-47 "Variances," are not satisfied the variance cannot be granted. A motion to deny may be adopted as the Board's decision if supported by more than one-fifth of the Board's membership.
- (l) Before granting a variance, the Board must take a separate vote and vote affirmatively (by a four-fifths majority) on each of the four required findings stated in section 2-47. Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in section 2-47 shall include a statement of the specific reasons or findings of fact supporting such motion.

Flow Chart Variances



Sec. 2-48. - Interpretations of Zoning Map. (Was Sec. 2-48. - Interpretations.)

- (a) The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the town, they shall be handled as provided in Division 4 below.
- (b) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the clerk. The application shall contain sufficient information to enable the board to make the necessary interpretation.
- (c) Where uncertainty exists as to the boundaries as shown on the Town of Archer Lodge official zoning map, the following rules shall apply:
 - (1) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerlines;
 - (2) Boundaries indicated as approximately following lot lines, Town limits, shall be construed as following such lines, limits or boundaries;
 - (3) Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following such shorelines; and

- (4) Where a district boundary divides a lot or where distances are not specifically indicated, the boundary shall be determined by measurements from the official Town of Archer Lodge.

Sec. 2-49. - Conditional Use Permits - See Chapter 30.

Division 4. Quasi-Judicial (QJ) Hearing Procedures

Sec. 2-51. - Hearing Required on BOA Decisions (QJ).

- (a) Before deciding on an appeal or an application for a variance, the Board of Adjustment shall hold a hearing on the appeal, on a conditional-use permit, or petition from the Town to revoke a conditional-use permit.
- (b) The hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence. Only persons with standing as defined in section 2-53. Standing may cross-examine adverse witnesses, present witnesses and arguments to the Board, make motions and objections and generally act as an advocate for their matter.¹³
- (c) The Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross examination of witnesses so that the matter at issue may be heard and decided without undue delay, including the presentation of repetitive or irrelevant testimony.
- (d) The hearing Board may continue the hearing until a subsequent meeting to take additional information. No further notice of a continued hearing need be published unless a period of sixty (60) days or more elapses between hearing dates.
- (e) Subpoenas.--The Board of Adjustment through the Chair, or in the Chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under section 2-53 -Standing, may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties¹⁴
- (f) Objections: Before witness testimony the Board shall hear and rule on any objections to documents in the record, or any staff report provided to the Board.¹⁵

Sec. 2-52 - Notice of Hearing. (Was Sec. 2-52. - Notice of Hearing on Appeals and Applications.)

- (a) Written Notices shall be given to the appellant or applicant, the property owner if different from the applicant, any other person who makes a written request for such notice by mailing to such persons a written notice not earlier than 25 days before or later than ten days before the hearing.
- (b) In all cases notice shall be given to abutting property owners by mailing via first class mail a written notice not earlier than 25 days or later than ten days before the hearing to those persons and addresses shown on the most current Johnston County tax listing.

¹³ Amended to comply with G.S. 160A-388 (b1)(1),(3),(4),(6), (g) and 160A-393(d)

¹⁴ Amended to comply with G.S. 160A-388(g)

¹⁵ Amended to comply with common law. Also, a requirement of new Chapter 160D.

- (c) Within the same period of time given in (a), a notice shall be published in a newspaper circulated in the area stating the date, time, and place of the hearing, reasonably identify the property that is the subject of the application or appeal, and give a brief description of the action requested or proposed
- (d) Within the same time period the Town will post a prominent notice on the property that is the subject of the hearing, or on an adjacent street or highway right-of-way.
- (e) Within the same time period, the notice shall be published on the Town's website.

Sec. 2-53. - Standing. (New Section)¹⁶

The following persons shall have standing to file an appeal, request a variance or participate as a party in an action before the Board.

- (a) Any person meeting any of the following criteria:
 - (1) Has an ownership interest in the property that is the subject of the action, a leasehold interest in the property that is the subject of the action, or an interest created by easement, restriction, or covenant in the property that is the subject of the action.
 - (2) Has an option or contract to purchase the property that is the subject of the action.
 - (3) Was an applicant for an administrative decision or map interpretation by the staff.
- (b) Any other person who will suffer special damages as the result of the action before the Board.
- (c) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to bring or challenge action and the association was not created in response to the particular development or issue that is the before the Board.
- (d) The Town of Archer Lodge by action of the Town Council.

Sec. 2-54. - Evidence and Burden of Proof. (Was Sec. 2-53. – Evidence and Sec. 2-49. - Burden of Proof)

- (a) The provisions of this section apply to all hearings before the Board of Adjustment.
- (b) All persons who intend to present evidence to the Board shall be sworn by the Chair or acting chair.¹⁷
- (c) All findings and conclusions necessary to the decision shall be based upon reliable, competent and material evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available.¹⁸
- (d) The term "competent evidence,"¹⁹ as used in this Ordinance, shall not preclude reliance by the board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the N.C. Courts (i) except for the items noted in sub-subdivisions 1, 2 and 3 of this section below that are conclusively incompetent, the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the board to rely upon it. The term "competent evidence," as used in this subsection, shall, regardless of the lack of a timely objection, not be deemed to include the opinion testimony of lay witnesses as to any of the following:

¹⁶ *Id.*

¹⁷ Amended to comply with G.S. 160A-388 (f)

¹⁸ Amended to comply with G.S. 160A-388 (e2)(1)

¹⁹ Amended to comply with G.S. 160A-393 (k)(3)

- (1) The use of property in a particular way would affect the value of other property.
- (2) The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
- (3) Matters about which only expert testimony would generally be admissible under the rules of evidence.
- (e) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions of law required for variances and conditional use permits, as well as the burden of persuasion on those issues remains with the applicant or proponent, except as noted in Division 3 above.

Sec. 2-55. - Modification of Application at Hearing. (Was Sec. 2-54. - Modification of Application at Hearing.)

- (a) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Adjustment, the applicant may agree to modify his application in writing, including the plans and specifications submitted. In the alternative, the Board may continue the hearing so that the application and/or plans may be revised and submitted to the Town.
- (b) Unless such modifications are so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the clerk.

Sec. 2-56. - Voting. (Was Sec. 2-43 - Voting.)

- (a) All actions of the Board of Adjustment shall be taken by majority vote, except decisions on granting or denying a variance which requires the concurring vote of four-fifths of the regular membership of the Board (excluding vacant seats or members who are disqualified from voting).²⁰
- (b) 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 (c) of this section or has been allowed to withdraw from the meeting in accordance with subsection (d) of this section.
- (c) A member may be excused from participation and voting on a particular issue by majority vote of the remaining members if the members participation or voting would violate any party's constitutional right to an impartial decision maker. Impermissible violations of due process include, but are not limited to, the following²¹:
 - (1) If the member has a direct financial interest in the outcome of the matter at issue;
 - (2) If the matter at issue involves the member's own official conduct;
 - (3) If a member has a close personal, family, business or other associational ties to a party that the member cannot reasonably be expected to exercise sound judgment. (A close familial relationship means a spouse, parent, child, brother, sister, grandparent or grandchild, including the step, half and in-law relationships.)²²; or
 - (4) If the member has a fixed opinion about the subject of a hearing that is not susceptible to change by the evidence presented, or
 - (5) The member has had an undisclosed ex parte communication with a party to the hearing.
- (d) A motion to allow a member to be excused from voting or excused from the remainder of the meeting may be by any Board member. If an objection is raised to a member's participation and that member

²⁰ Amended to comply with G.S. 160A-388 (e)(1)

²¹ Amended to comply with G.S. 160A-388 (e)(2)

²² 160D-109(d), eff. 1/1/2021.

does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

- (e) All hearings of the Board shall be open to the public. The clerk shall keep minutes of its proceedings, showing the vote of each member upon each question, and the absence or failure of any member to vote, and a copy of the minutes shall be maintained on file for public record in the office of the Town Clerk.

Sec. 2-57. - Board Action. (Was Sec. 2-50. - Board Action on Appeals and Variances and Sec. 2-56. - Written Decisions)

- (a) Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and conclusions of law and their application to the applicable ordinance standards.
- (b) The written decision shall be signed by the chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.
- (c) The Board shall make its decision in a reasonable time. The Board may continue a hearing to another time. The Board may conduct the public testimony phase of the hearing at one meeting and make findings of fact and conclusions of law at another meeting. The parties may agree to continuances, subject to Board approval.²³

Sec. 2-58.- Record on Appeals. (Was Sec. 2-55. - Record.)

- (a) A recording should be made of all hearings required by sections 2-42 and 2-51 and such recordings shall be kept until the minutes are adopted or any appeal is concluded, but in no case for no less than 30 days. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.
- (b) Whenever practical, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept for at least two years, or until any appeal is concluded.

Sec. 2-59. - Appeals to Johnston County Superior Court.

Every quasi-judicial decision shall be subject to review by the Johnston County Superior Court by proceedings in the nature of certiorari. A petition for review shall be filed with the Clerk of Superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with section 2-57. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

Planning Board Consistency Statement:

The Planning Board finds that the proposed amendments to Chapter 2, Boards and Commissions, Article II pertaining to Board of Adjustment, are reasonable and in the public interest. The proposed revisions clarify/streamline the process/procedures for the Board of Adjustment in accordance with NC State laws.

Furthermore, the proposed amendments are in compliance with the *Town of Archer Lodge 2030 Comprehensive Land Use Plan*, aka "*Comprehensive Plan*", and other adopted Town plans having bearing on the matter. The proposed revisions will aid in the implementation of the *Comprehensive Plan - Action Plan* that ensures that new development is consistent with the policies of the Town, and direct and concentrate new development to areas where adequate public infrastructure is available or can be extended without placing excessive burden on the Town's physical or financial resources.

Staff Recommendations:

Staff concurs with the Planning Board's recommendations.

Requested Town Council Action:

Staff respectfully requests that the Town Council: (1) conduct a public hearing; (2) consider the Planning Board's recommendations; (3) deliberate and make consistency statement findings (draft Town Council Consistency Statement included on page 12 of staff report; and (4) approve the ordinance revisions (see draft Town Council #AL2020-05-1 Ordinance).

DRAFT TOWN COUNCIL CONSISTENCY STATEMENT:

The Town Council finds that the proposed amendments to Chapter 2, Boards and Commissions, Article II pertaining to Board of Adjustment, are reasonable and in the public interest. The proposed revisions clarify/streamline the process/procedures for the Board of Adjustment in accordance with NC State laws.

Furthermore, the proposed amendments are in compliance with the *Town of Archer Lodge 2030 Comprehensive Land Use Plan*, aka "*Comprehensive Plan*", and other adopted Town plans having bearing on the matter. The proposed revisions will aid in the implementation of the *Comprehensive Plan - Action Plan* that ensures that new development is consistent with the policies of the Town, and direct and concentrate new development to areas where adequate public infrastructure is available or can be extended without placing excessive burden on the Town's physical or financial resources.

In addition, Ms. Maybee noted the following:

- Updating ordinances to comply with NC General Statutes was mentioned at the February 29, 2020 Budget Planning Retreat and would become priority especially with Chapter 160D, a new chapter of the General Statutes, must be completed by January 2021.
- The existing BOA ordinance was revised to outline and clarify their rules and procedures making it easier for citizens and the BOA to comply with the NC General Statutes.

3. Mayor Mulhollem asked if there were any Public Comments.

There were no public comments submitted to the Town Clerk at this time.

4. Mayor Mulhollem asked for a motion to Close the Public Hearing.

5. Mayor Mulhollem opened the floor for the Governing Body Discussion session:

Consistency Statement

- No discussion regarding the Consistency Statement.

Ordinance# AL2020-05-1

- Mentioned Section 2-43 (a) typo error ...need of to follow...
- Discussed Section 2-46 (f) and Section 2-56 (e) change "Clerk" to "Secretary" for consistency.
- Discussed Section 2-48 (c) (4) remove official and add the words "Zoning Map" to the end of the sentence.
- Discussed Section 2-54 (d) (2) "increase in vehicular traffic" was "too subjective." Ms. Maybee shared that a decision would be ruled if it was competent evidence at the meeting and would seek NCDOT's opinion as well.
- Mentioned Section 2-56 (d) add - ...the remainder of the meeting may be made by any Board...

In closing, Ms. Maybee mentioned that she will make the corrections as noted above, but with regards to voting, this amendment is only referencing the Board of Adjustment.

Having no further discussion, Mayor Mulhollem asked for a motion to adopt the Consistency Statement as written and presented by Staff.

The Adopted Archer Lodge Town Council Consistency Statement appears as follows:

The Town Council finds that the proposed amendments to Chapter 2, Boards and Commissions, Article II pertaining to Board of Adjustment, are reasonable and in the public interest. The proposed revisions clarify/streamline the process/procedures for the Board of Adjustment in accordance with NC State laws.

Furthermore, the proposed amendments are in compliance with the *Town of Archer Lodge 2030 Comprehensive Land Use Plan*, aka "*Comprehensive Plan*", and other adopted Town plans having bearing on the matter. The proposed revisions will aid in the implementation of the *Comprehensive Plan - Action Plan* that ensures that new development is consistent with the policies of the Town, and direct and concentrate new development to areas where adequate public infrastructure is available or can be extended without placing excessive burden on the Town's physical or financial resources.

Having adopted the Consistency Statement, Mayor Mulhollem asked for a motion to Adopt Ordinance# AL2020-05-1 Amending Code of Ordinances, Town of Archer Lodge, NC, Chapter 2 - Administration, Article II - Boards and Commissions - Board of Adjustment with the changes as discussed by Town Council and Town Attorney Hewett.

The Adopted Ordinance# AL2020-05-1 with changes discussed appears as follows:

ORDINANCE# AL2020-05-1

AN ORDINANCE AMENDING THE CODE OF ORDINANCES,
TOWN OF ARCHER LODGE, NORTH CAROLINA,
CHAPTER 2 - ADMINISTRATION, ARTICLE II, BOARD AND COMMISSIONS

Section 1. Pursuant to authority granted by N.C. Gen. Stat. § 160A – 381, the Town of Archer Lodge hereby amends the Code of Ordinances, Town of Archer Lodge, North Carolina, Chapter 2 - Administration, Article II - Board and Commissions, as follows:

Delete ordinance text in its entirety in Division 2 and Division 3, and replace with the following:

DIVISION 2. Board of Adjustment Established; Rules

Sec. 2-40. - Appointment and Terms.

(a) The Town has five members that serve on the Planning Board. Until the ordinance from which this division is amended, the Planning Board shall also serve as the Board of Adjustment. Two appointed members of the Town Council shall serve on the Board of Adjustment as alternate members. Said alternate members shall have all the powers as regular members and may fill in for regular members as needed in meetings.

(b) Members may be appointed to successive terms without limitation.

(c) The Board of Adjustment shall consist of five regular members and two alternate members, each to be appointed for three-year terms, except as allowed otherwise below. In appointing the original members of such Board, or in the filling of vacancies caused by the expiration of the terms of existing members, the Council may appoint certain members for less than three years to the end; that thereafter the terms of all members shall not expire at the same time. 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 board meeting and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member. All regular members and alternate members shall be citizens and residents of the Town of Archer Lodge.

Sec. 2-41. - Board Officers.

(a) At its first regular meeting of each calendar year, the Board of Adjustment shall, by majority vote of its membership (excluding vacant seats), elect one of its members to serve as Chairperson and preside over the Board's meetings and one member to serve as Vice-Chairperson. All elected person shall serve in these capacities for terms of one year. The Town Council shall appoint a certified municipal clerk to serve as Secretary to the Board of Adjustment. Any appointed Secretary shall serve at the pleasure of the Town Council. Vacancies among the appointed or elected officials may be filled for the unexpired terms only by majority vote of the Town Council.

(b) The Chairperson or any member temporarily acting as Chairperson may administer oaths to witnesses coming before the Board.

(c) The Chairperson and Vice-Chairperson may take part in all deliberations and vote on all issues.

(d) The Board of Adjustment shall draw up and adopt rules of procedure under which it will operate. The Town Council will approve the rules of procedure and any amendments.

MAY 4, 2020

VIRTUAL REGULAR COUNCIL MEETING

Page 9 of 28

Sec. 2-42. - Powers and Duties of Board.

- (a) The Board of Adjustment shall hear and decide:
- (1) Appeals from any order, decision, requirement, or interpretation made by the Town, inclusive of the flood prevention ordinance;
 - (2) Applications for variances;
 - (3) Questions involving interpretations of the Zoning Map, including disputed district boundary lines and lot lines;
 - (4) Applications for conditional use permits; and
 - (5) Any other matter the Board is required to act upon by any other ordinance.

Sec. 2-43. - Meetings and Quorum.

- (a) The Board of Adjustment shall meet frequently enough so that it can act as expeditiously as possible consistent with the need to follow regularly established procedures and obtain the necessary information to make sound decisions. In the alternative, the Board may adopt an annual schedule of regular meetings.
- (b) All meetings of the Board of Adjustment shall be open to the public, and the agenda for each Board of Adjustment meeting shall be made available in advance of the meeting.
- (c) 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 of Adjustment to take official action.
- (d) A member who has withdrawn from the meeting without being excused, as provided in section 2-56 – Voting (c), shall be counted as present for purposes of determining whether a quorum is present.

Division 3. Decisions Made by the Board of Adjustment**Sec. 2-46. - Appeals.**

- (a) An appeal from any final administrative order or decision of the Town staff charged with enforcement of the Zoning Ordinance may be taken to the Board of Adjustment by any person with standing, as defined in section 2-53.- Standing below. An appeal is taken by filing a written notice of appeal specifying the grounds with the Board of Adjustment Secretary. A notice of appeal shall be considered filed with the Town and the Board of Adjustment when delivered to the Board of Adjustment Secretary. For each appeal, a fee shall be paid to the Town of Archer Lodge to cover advertising and administrative costs. ¹
- (b) The Town staff who made the decision shall give written notice to the owner of the property and the applicant by personal delivery, e-mail or first-class mail. ²

¹ Amended to comply with G.S. 160A-388 (b1) last amended in July 2019 and before that in 2013 (Not including S.L. 2019-111 adopting Chapter 160D and other statutes. This parenthetical is not repeated in the following footnotes, but it also applies to the following footnotes.)

² Amended to comply with G.S. 160A-388 (b1)(2)

- (c) The property owner, applicant or other party with standing shall have thirty days from the receipt of written notice to file an appeal. If delivery of the decision is by first class mail, the time to appeal shall be 33 days³ unless the appellant provides evidence of the date of delivery. ⁴
- (d) The Town staff who made the decision shall send all documents and exhibits constituting the record of the decision being appealed to the Board of Adjustment, the person who made the appeal and the owner of the property. ⁵
- (e) An appeal stays all actions by the Town enforcing the requirements of the Zoning Ordinance unless the Town staff who made the decision files an affidavit with the Board stating the facts of the case and how a stay of enforcement will cause imminent peril to life or property or that a stay would interfere with ordinance enforcement because the violation is transitory. If the enforcement action is not stayed by Johnston County Superior Court, the person appealing may file a request that the Board hear the matter in 15 calendar days. The 15 day deadline is mandatory. ⁶
- (f) After receipt of notice of an appeal, the Board of Adjustment Secretary shall schedule the time for a hearing which shall be at the next regular or special meeting, but in no case later than 60 days from the filing of notice of appeal.
- (g) Written notice of the appeal shall be sent to the appellant, property owner, applicant and all abutting property owners by the Town staff following the procedures in section 2-52.- Notice of Hearings. ⁷
- (h) Upon request, the Chair may issue subpoenas to persons or for the production of documents as provided in section 2- 51(e). ⁸
- (i) The staff who made the decision, or the current incumbent in that position, shall appear as a witness at the hearing. ⁹
- (j) The Board shall hear the appeal following the procedural rules in division 2 below, beginning at section 2-51. Before witness testimony the Board shall hear and rule on any objections to documents in the record, or any staff report provided to the Board. ¹⁰
- (k) The Board shall determine contested facts. The decision of the Board shall be based on competent, material and substantial evidence in the record. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed from and shall issue a written decision containing the Boards decisions as to contested facts and the application of the facts to the standards of the Zoning Ordinance. To this end, the Board of Adjustment shall have all the powers of the Town staff from whom the appeal is taken. ¹¹
- (l) The Board shall make its decision in a reasonable time following the requirements of Section 2-57(c). ¹²
- (m) When an appeal is taken to the Board of Adjustment, the designated Town staff shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

Sec. 2-47. - Variances.

³ Amended to comply with G.S. 160A-388 (e2)(2)

⁴ Amended to comply with G.S. 160A-388 (b1)(3)

⁵ Amended to comply with G.S. 160A-388 (b1)(5)

⁶ Amended to comply with G.S. 160A-388 (b1)(6)

⁷ Amended to comply with G.S. 160A-388 (a2)

⁸ Amended to comply with G.S. 160A-388 (g)

⁹ Amended to comply with G.S. 160A-388 (b1)(8)

¹⁰ Amended to comply with common law. Also, a requirement of new Chapter 160D.

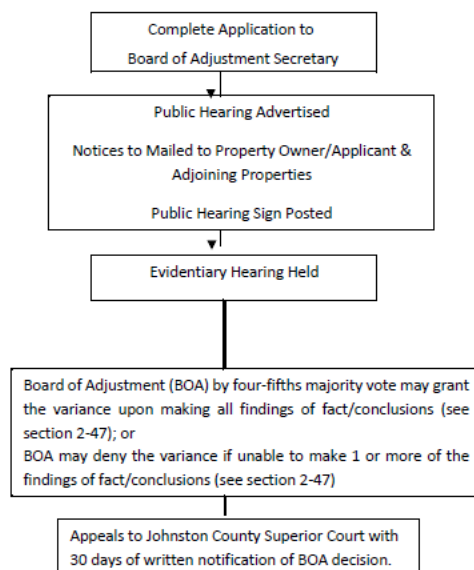
¹¹ Amended to comply with G.S. 160A-388 (e2) (1) and G.S. 160A-393 (Amended July 2019, and 2013)

¹² Amended to comply with G.S. 160A-388 (b1)(7); GS 160A-388(e2)(1)

- (a) A complete application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Board of Adjustment Secretary.
- (b) When presented to the Board of Adjustment at the hearing, the application for a variance shall be accompanied by a report setting forth the planning staff's proposed findings concerning the application's compliance with section 2-47 and the other requirements of this chapter. If the staff proposes a finding or conclusion that the application fails to comply with section 2-47, the report shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.
- (c) The Town staff shall advertise the hearing in accordance with the requirements of section 2-52 - Notice of Hearings below.
- (d) The Board shall hold a hearing following the requirements of division 4 below.
- (e) A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the ordinance would result in unnecessary hardships for the applicant upon a showing of all of the following:
 - (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; and
 - (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance; and
 - (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and
 - (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
- (f) In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.
- (g) A variance shall run with the land.
- (h) The nature of the variance and any conditions attached to it, shall be entered on the face of the certificate of zoning compliance, or the certificate of zoning compliance may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this ordinance. No change in permitted uses may be authorized by variance.
- (i) A fee shall be paid to the Town of Archer Lodge for a variance as set forth in the Town of Archer Lodge, NC annual fee schedule adopted by the Town Council.
- (j) The Board will first consider whether the application is complete. A motion to deny a variance may be made on the basis that the application is incomplete. Such a motion shall include a statement of the specific reasons or findings of fact that support it.
- (k) If a motion to grant a variance is not made or fails to receive the four-fifths vote necessary for adoption, then a motion to deny the variance shall be in order. If the Board finds that any one or more of the four criteria set forth in section 2-47 - "Variances," are not satisfied, the variance cannot be granted. A motion to deny may be adopted as the Board's decision if supported by more than one-fifth of the Board's membership.
- (l) Before granting a variance, the Board must take a separate vote and vote affirmatively (by a four-

fifths majority) on each of the four required findings stated in section 2-47. Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in section 2-47 shall include a statement of the specific reasons or findings of fact supporting such motion.

Flow Chart Variances



Sec. 2-48. - Interpretations of Zoning Map.

- (a) The Board of Adjustment is authorized to interpret the Zoning Map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Town, they shall be handled as provided in division 4 below.
- (b) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Board of Adjustment Secretary. The application shall contain sufficient information to enable the Board to make the necessary interpretation.

- (c) Where uncertainty exists as to the boundaries shown on the Town of Archer Lodge official Zoning Map, the following rules shall apply:
- (1) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerlines;
 - (2) Boundaries indicated as approximately following lot lines, Town limits, shall be construed as following such lines, limits or boundaries;
 - (3) Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following such shorelines; and
 - (4) Where a district boundary divides a lot or where distances are not specifically indicated, the boundary shall be determined by measurements from the Town of Archer Lodge Zoning Map.

Sec. 2-49. - Conditional Use Permits - See Chapter 30

Division 4. Quasi-Judicial (QJ) Hearing Procedures

Sec. 2-51. - Hearing Required on BOA Decisions (QJ).

- (a) Before deciding on an appeal or an application for a variance, the Board of Adjustment shall hold a hearing on the appeal, on a conditional-use permit, or petition from the Town to revoke a conditional-use permit.
- (b) The hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence. Only persons with standing, as defined in section 2-53 – Standing, may cross-examine adverse witnesses, present witnesses and arguments to the Board, make motions and objections and generally act as an advocate for their matter.¹³
- (c) The Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross examination of witnesses so that the matter at issue may be heard and decided without undue delay, including the presentation of repetitive or irrelevant testimony.
- (d) The Board may continue the hearing until a subsequent meeting to take additional information. No further notice of a continued hearing need be published unless a period of sixty (60) days or more elapses between hearing dates.
- (e) Subpoenas.–The Board of Adjustment through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing, as defined under section - 2-53-Standing, may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties¹⁴
- (f) Objections: Before witness testimony, the Board shall hear and rule on any objections to documents

¹³ Amended to comply with G.S. 160A-388 (b1)(1),(3),(4),(6), (g) and 160A-393(d)

¹⁴ Amended to comply with G.S. 160A-388(g)

in the record, or any Town staff report provided to the Board.¹⁵

Sec. 2-52. - Notice of Hearing.

- (a) Written notices shall be given to the appellant or applicant, the property owner, if different from the applicant, any other person who makes a written request for such notice, by mailing to such persons a written notice not earlier than 25 days before or later than ten days before the hearing.
- (b) In all cases, notice shall be given to abutting property owners by mailing, via first class mail, a written notice not earlier than 25 days or later than ten days before the hearing to those persons and addresses shown on the most current Johnston County tax listing.
- (c) Within the same period of time given in (a), a notice shall be published in a newspaper circulated in the area stating the date, time, and place of the hearing, reasonably identify the property that is the subject of the application or appeal, and give a brief description of the action requested or proposed.
- (d) Within the same time period, the Town will post a prominent notice on the property that is the subject of the hearing, or on an adjacent street or highway right-of-way.
- (e) Within the same time period, the notice shall be published on the Town's website.

Sec. 2-53. - Standing.¹⁶

The following persons shall have standing to file an appeal, request a variance, or participate as a party in an action before the Board.

- (a) Any person meeting any of the following criteria:
 - (1) Has an ownership interest in the property that is the subject of the action, a leasehold interest in the property that is the subject of the action, or an interest created by easement, restriction, or covenant in the property that is the subject of the action.
 - (2) Has an option or contract to purchase the property that is the subject of the action.
 - (3) Was an applicant for an administrative decision or map interpretation by the Town staff.
- (b) Any other person who will suffer special damages as the result of the action before the Board.
- (c) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to bring or challenge action and the association was not created in response to the particular development or issue that is the before the Board.
- (d) The Town of Archer Lodge by action of the Town Council.

Sec. 2-54. - Evidence and Burden of Proof.

- (a) The provisions of this section apply to all hearings before the Board of Adjustment.
- (b) All persons who intend to present evidence to the Board shall be sworn by the Chair or Acting Chair.¹⁷

¹⁵ Amended to comply with common law. Also, a requirement of new Chapter 160D.

¹⁶ *Id.*

¹⁷ Amended to comply with G.S. 160A-388 (f)

- (c) All findings and conclusions necessary to the decision shall be based upon reliable, competent and material evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available.¹⁸
- (d) The term "competent evidence,"¹⁹ as used in this Ordinance, shall not preclude reliance by the Board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the N.C. Courts (i) except for items noted in sub-subdivisions 1, 2 and 3 of this section below that are conclusively incompetent, the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the board to rely upon it. The term "competent evidence," as used in this subsection, shall, regardless of the lack of a timely objection, not be deemed to include the opinion testimony of lay witnesses as to any of the following:
 - (1) The use of property in a particular way would affect the value of other property;
 - (2) The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
 - (3) Matters about which only expert testimony would generally be admissible under the rules of evidence.
- (e) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions of law required for variances and conditional use permits, as well as the burden of persuasion on those issues remains with the applicant or proponent, except as noted in division 3 above.

Sec. 2-55. - Modification of Application at Hearing.

- (a) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Adjustment, the applicant may agree to modify his application in writing, including the plans and specifications submitted. In the alternative, the Board may continue the hearing so that the application and/or plans may be revised and submitted to the Town.
- (b) Unless such modifications are so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the Board of Adjustment Secretary.

Sec. 2-56. - Voting.

- (a) All actions of the Board of Adjustment shall be taken by majority vote, except decisions on granting or denying a variance which requires the concurring vote of four-fifths of the Board membership (excluding vacant seats or members who are disqualified from voting).²⁰
- (b) 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 (c) of this section or has been allowed to withdraw from the meeting in accordance with subsection (d) of this section.
- (c) A member may be excused from participation and voting on a particular issue by majority vote of the remaining members if the members participation or voting would violate any party's constitutional right to be an impartial decision maker. Impermissible violations of due process include, but are not limited to, the following²¹:
 - (1) If the member has a direct financial interest in the outcome of the matter at issue;

¹⁸ Amended to comply with G.S. 160A-388 (e2)(1)

¹⁹ Amended to comply with G.S. 160A-393 (k)(3)

²⁰ Amended to comply with G.S. 160A-388 (e)(1)

²¹ Amended to comply with G.S. 160A-388 (e)(2)

- (2) If the matter at issue involves the member's own official conduct;
- (3) If a member has a close personal, family, business or other associational tie to a party that the member cannot reasonably be expected to exercise sound judgment. (A close familial relationship means a spouse, parent, child, brother, sister, grandparent or grandchild, including the step, half and in-law relationships.)²²; or
- (4) If the member has a fixed opinion about the subject of a hearing that is not susceptible to change by the evidence presented, or
- (5) The member has had an undisclosed ex parte communication with a party to the hearing.
- (d) A motion to allow a member to be excused from voting or excused from the remainder of the meeting may be made by any Board member. 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.
- (e) All hearings of the Board shall be open to the public. The Board of Adjustment Secretary shall keep minutes of its proceedings, showing the vote of each member upon each question, and the absence or failure of any member to vote, and a copy of the minutes shall be maintained on file for public record in the office of the Town Clerk.

Sec. 2-57. - Board Action.

- (a) Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and conclusions of law and their application to the applicable ordinance standards.
- (b) The written decision shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Board of Adjustment Secretary. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.
- (c) The Board shall make its decision in a reasonable time. The Board may continue a hearing to another time. The Board may conduct the public testimony phase of the hearing at one meeting and make findings of fact and conclusions of law at another meeting. The parties may agree to continuances, subject to Board approval.²³

Sec. 2-58. - Record on Appeals.

- (a) A recording should be made of all hearings required by sections 2-42 and 2-51 and such recordings shall be kept until the minutes are adopted or any appeal is concluded, but in no case for less than 30 days. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.
- (b) Whenever practical, all documentary evidence presented at a hearing, as well as all other types of physical evidence, shall be made a part of the record of the proceedings and shall be kept for at least two years, or until any appeal is concluded.

Sec. 2-59. - Appeals to Johnston County Superior Court.

Every quasi-judicial decision shall be subject to review by the Johnston County Superior Court by

²² 160D-109(d), eff. 1/1/2021.

²³ Amended to comply with G.S. 160A-388 (b1)(7); GS 160A-388(e2)(1)

proceedings in the nature of certiorari. A petition for review shall be filed with the Clerk of Superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with section 2-57. When first-class mail is used to deliver a notice, three (3) days shall be added to the time to file the petition.

Section 2. This ordinance shall become effective upon adoption.

DULY ADOPTED, THIS 4TH DAY OF MAY 2020.

TOWN OF ARCHER LODGE

(SEAL)


Matthew B. Mulhollem, Mayor



ATTEST:


Kim D. Batten, Town Clerk

Moved by: Council Member Wilson

Seconded by: Council Member Jackson

Approved to Open the Public Hearing at 6:42 p.m.

CARRIED UNANIMOUSLY

Moved by: Council Member Jackson

Seconded by: Council Member Bruton

Approved to Close the Public Hearing at 6:54 p.m.

CARRIED UNANIMOUSLY

Moved by: Council Member Jackson

Seconded by: Council Member Purvis

Adopted the Consistency Statement as presented.

CARRIED UNANIMOUSLY

Moved by: Council Member Jackson

Seconded by: Council Member Wilson

Adopted Ordinance# AL2020-05-1 Amending Code of Ordinances, Town of Archer Lodge, NC, Chapter 2 - Administration, Article II - Boards and Commissions - Board of Adjustment with the changes as discussed by Town Council and Town Attorney Hewett.

CARRIED UNANIMOUSLY

b) PUBLIC HEARING - Text Amendments - Code of Ordinances, Town of Archer Lodge, NC, Chapter 2 - Administration, Article II - Boards and Commissions - Planning Board (PB)

1. **Open Public Hearing**
2. **Staff Report and Planning Board Recommendations**
3. **Public Comments**
4. **Close Public Hearing**
5. **Governing Body**
 - **Discussion and Consideration of Consistency Statement**
 - **Discussion and Consideration of Adopting Ordinance# AL2020-05-2 Amending Chapter 2, Article II, PB**

1. Mayor Mulhollem asked for a motion to Open the Public Hearing.

2. Staff Report and Planning Board Recommendations

Ms. Maybee read the Staff Report and Planning Board Recommendations for the Proposed Text Amendments - Code of Ordinances, Town of Archer Lodge, NC, Chapter 2 - Administration, Article II - Boards and Commissions, Provisions Pertaining to the Planning Board (PB) and appears as follows:

Staff Report Page | 1



TOWN OF ARCHER LODGE
14094 Buffalo Road
Archer Lodge, NC 27527
Main: 919-359-9727
Fax: 919-359-3333

Mayor:
Matthew B. Mulhollen

Council Members:
Clyde B. Castleberry
Mayor Pro Tem
Teresa M. Bruton
J. Mark Jackson
James (Jim) Purvis, III
Mark B. Wilson

Town Council Agenda Item: 4.b.

To: Town Council
From: Julie Maybee, Town Planner
Date: April 29, 2020
Cc: Town Administrator, Finance Officer/Town Clerk, Deputy Clerk, Town Attorney, Brough Law Firm
Re: Proposed Revision of Chapter 2. Article II. - Boards and Commissions, provisions pertaining to the Planning Board

Background Information:

North Carolina laws have changed, or in the process of changing, that affect the Planning Board. Revisions to the Code of Ordinances, Town of Archer Lodge, Chapter 2, Article II. - Boards and Commissions, are proposed to comply with the state laws, streamline and clarify provisions pertaining to the Planning Board.

Changes in laws are referenced in the revised text footnotes.

Planning Board Recommendations:

On March 25, 2020, the Planning Board, upon making consistency statement findings (see page 4 of staff report) in accordance with NC General Statutes, unanimously recommended approval of the ordinance revisions as stated below:

DIVISION 1. Planning Board.

Sec. 2-30. - Appointment and Terms.

- (a) The Planning Board has five members. Until the ordinance from which this division is amended, the Planning Board shall also serve as the Board of Adjustment.
- (b) Members of the Planning Board shall be appointed for three-year terms.
- (c) Members may be appointed to successive terms without limitation.
- (d) The Board shall consist of five regular members, each to be appointed for three years. In appointing the original members of such board, or in the filling of vacancies caused by the expiration of the terms of existing members, the Council may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. All regular members shall be citizens and residents of the Town of Archer Lodge.

Sec. 2-31. - Board Officers.

- (a) At its first regular meeting of each calendar year, the Planning Board shall, by majority vote of its membership (excluding vacant seats), elect one of its members to serve as Chairperson and preside over the Board's meetings and one member to serve as Vice-Chairperson. A Secretary shall be appointed by the Town Council. Any elected person shall serve in these capacities for terms of one year. Any appointed secretary shall serve at the pleasure of the Town Council. Vacancies among the appointed or elected officials may be filled for the unexpired terms only by majority vote of the Town Council.
- (b) The Chairperson and Vice-Chairperson may take part in all deliberations and vote on all issues.
- (c) The Board shall draw up and adopt rules of procedure under which it will operate. The Town Council will approve the rules of procedure and any amendments.

Sec. 2-32. - Powers and Duties of Board.

- (a) The Planning Board shall hear and decide:
 - (1) Subdivisions (See Section 30-345 and following),
 - (2) Review and make a recommendation to the Town Council on any changes to the zoning and subdivision ordinance or zoning map, per sections 30-36 and 30-132. Every recommendation shall be accompanied by a written, adopted statement explaining how the recommendation of the Board is: (i) Reasonable and in the public interest, and (ii) In compliance with the Comprehensive Pam and any other adopted Town plans bearing on the matter¹,
 - (3) Review and make a recommendation to the Town Council on any proposed Comprehensive Plan, or amendment to the Plan, or other Town Plan as requested by the Town Council. The recommendation shall be accompanied by a written, adopted statement explaining how the recommendation of the Board is: (i) Reasonable and in the public interest, and (ii) In compliance with the Comprehensive Plan and any other adopted Town plans bearing on the matter².
 - (4) Any other matter the Board is required to act upon by any other ordinance or as requested by Town Council.
- (b) The Planning Board shall propose rules and regulations governing its procedures and operations not inconsistent with the provisions of this division. The Town Council will approve the rules and any amendments.

Sec. 2-33 – Meetings and Quorum.

¹ Required by N.C. Gen. Stat. 160A-383, Purposes in View (2016)

² Required by N.C. Gen. Stat. Chap. 160D, Art. 5 Planning Sections 160D-501 through 160D-503 (2019, eff. 1/1/2020)

- (a) The Planning Board shall meet every other month unless meetings are cancelled for lack of business, emergency, or other valid reason. Special meetings may be called as provide in Gen. Stat. §160A-71, Regular and special meetings; recessed and adjourned meetings; procedure.
- (b) All meetings of the Board shall be open to the public, and the agenda for each Board meeting shall be made available in advance of the meeting. A notice of the meeting shall be published in a local newspaper and be posted at town hall as provided in N.C. Gen. Stat. section 160A-71.
- (c) A quorum for the Planning Board shall consist of three or more members. A quorum is necessary for the Board to take official action.
- (d) A member who has withdrawn from the meeting without being excused, as provided in section in N.C. Gen. Stat. section 160A-75 shall be counted as present for purposes of determining whether a quorum is present.

Sec. 2-34. - Voting.

- (a) The concurring vote of a majority of the regular membership (excluding vacant seats) shall be necessary to make any decision,
- (b) 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 (c) of this section or has been allowed to withdraw from the meeting in accordance with subsection (d) of this section.
- (c) A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances: ³
 - (1) If the member has a direct, substantial and readily identifiable financial interest in the outcome of the matter at issue;
 - (2) If the matter at issue involves the member's own official conduct;
 - (3) If a member has such close personal family, business or other associational ties to an applicant or issue.
- (d) A motion to allow a member to be excused from voting or excused from the remainder of the meeting may be made by any member of the Board.
- (e) All meetings of the Board shall be open to the public. The clerk shall keep minutes of its proceedings, showing the vote of each member upon each question, and the absence or failure of any member to vote, and a copy of the minutes shall be maintained on file for public record in the office of the Town Clerk. For the purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a 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.

Planning Board Consistency Statement:

The Planning Board finds that the proposed amendments to Chapter 2, Boards and Commissions, Article II pertaining to Planning Board, are reasonable and in the public interest. The proposed revisions clarify/streamline the process/procedures for the Planning Board in accordance with NC State laws.

Furthermore, the proposed amendments are in compliance with the *Town of Archer Lodge 2030 Comprehensive Land Use Plan*, aka "*Comprehensive Plan*", and other adopted Town plans having bearing on the matter. The proposed revisions will aid in the implementation of the *Comprehensive Plan - Action Plan* that ensures that new development is consistent with the policies of the Town, and direct and concentrate new development to areas where adequate public infrastructure is available or can be extended without placing excessive burden on the Town's physical or financial resources.

Staff Recommendations:

Staff concurs with the Planning Board's recommendations.

Requested Town Council Action:

Staff respectfully requests that the Town Council: (1) conduct a public hearing; (2) consider the Planning Board's recommendations; (3) deliberate and make consistency statement findings (draft Town Council Consistency Statement included on page 5 of staff report); and (4) approve the ordinance revisions (see draft Town Council #AL2020-05-2 Ordinance).

DRAFT TOWN COUNCIL CONSISTENCY STATEMENT:

The Town Council finds that the proposed amendments to Chapter 2, Boards and Commissions, Article II pertaining to Planning Board, are reasonable and in the public interest. The proposed revisions clarify/streamline the process/procedures for the Planning Board in accordance with NC State laws.

Furthermore, the proposed amendments are in compliance with the *Town of Archer Lodge 2030 Comprehensive Land Use Plan*, aka "*Comprehensive Plan*", and other adopted Town plans having bearing on the matter. The proposed revisions will aid in the implementation of the *Comprehensive Plan - Action Plan* that ensures that new development is consistent with the policies of the Town, and direct and concentrate new development to areas where adequate public infrastructure is available or can be extended without placing excessive burden on the Town's physical or financial resources.

3. Mayor Mulhollem asked if there were any Public Comments.
There were no public comments submitted to the Town Clerk at this time.

4. Mayor Mulhollem asked for a motion to **Close the Public Hearing.**

5. Mayor Mulhollem opened the floor for the **Governing Body Discussion** session:

Consistency Statement

- No discussion regarding the Consistency Statement

Ordinance# AL2020-05-2

- Mentioned Section 2-32 (a) (2) typo error ...with the Comprehensive Plan and any...
- Recommended striking first sentence in Section 2-34 (e) "All meetings of the Board shall be open to the public." since it appears in Section 2-33 (b). Attorney Hewett agreed to strike because of the redundancy.
- Further discussed changing "Clerk" to "Secretary" as was mentioned in Agenda item 4.a. Attorney Hewett mentioned that when the Planning Board adopts their rules and procedures, then the title may be addressed. (ex: Secretary, also known as Clerk to the Board)

In closing, Ms. Maybee mentioned that she will make the corrections as noted above.

Having no further discussion, Mayor Mulhollem asked for a motion to adopt the Consistency Statement as written and presented by Staff.

The Adopted Archer Lodge Town Council Consistency Statement appears as follows:

The Town Council finds that the proposed amendments to Chapter 2, Boards and Commissions, Article II pertaining to Planning Board, are reasonable and in the public interest. The proposed revisions clarify/streamline the process/procedures for the Planning Board in accordance with NC State laws.

Furthermore, the proposed amendments are in compliance with the *Town of Archer Lodge 2030 Comprehensive Land Use Plan*, aka "*Comprehensive Plan*", and other adopted Town plans having bearing on the matter. The proposed revisions will aid in the implementation of the *Comprehensive Plan - Action Plan* that ensures that new development is consistent with the policies of the Town, and direct and concentrate new development to areas where adequate public infrastructure is available or can be extended without placing excessive burden on the Town's physical or financial resources.

Having adopted the Consistency Statement, Mayor Mulhollem asked for a motion to Adopt Ordinance# AL2020-05-2 Amending Code of Ordinances, Town of Archer Lodge, NC, Chapter 2 - Administration, Article II - Boards and Commissions - Planning Board with the changes as discussed by Town Council and Town Attorney Hewett.

The Adopted Ordinance# AL2020-05-2 with changes discussed appears as follows:

ORDINANCE# AL2020-05-2

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES,
TOWN OF ARCHER LODGE, NORTH CAROLINA,
CHAPTER 2 - ADMINISTRATION, ARTICLE II, BOARD AND COMMISSIONS**

Section 1. Pursuant to authority granted to by N.C. Gen. Stat. § 160A – 381, the Town of Archer Lodge hereby amends the Code of Ordinances, Town of Archer Lodge, North Carolina, Chapter 2 - Administration, Article II - Board and Commissions, as follows:

Delete ordinance text in its entirety in Division 1, and replace with the following:

DIVISION 1. Planning Board.

Sec. 2-30. - Appointment and Terms.

- (a) The Planning Board has five members. Until the ordinance from which this division is amended, the Planning Board shall also serve as the Board of Adjustment.
- (b) Members may be appointed to successive terms without limitation.
- (c) The Planning Board shall consist of five regular members, each to be appointed for three-year terms, except as allowed otherwise below. In appointing the original members of such Board, or in the filling of vacancies caused by the expiration of the terms of existing members, the Town Council may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. All regular members shall be citizens and residents of the Town of Archer Lodge.

Sec. 2-31. - Board Officers.

- (a) At its first regular meeting of each calendar year, the Planning Board shall, by majority vote of its membership (excluding vacant seats), elect one of its members to serve as Chairperson and preside over the Board's meetings and one member to serve as Vice-Chairperson. All elected person shall serve in these capacities for terms of one year. A certified municipal clerk shall be appointed by the Town Council as Secretary to the Planning Board. Any appointed secretary shall serve at the pleasure of the Town Council. Vacancies among the appointed or elected officials may be filled for the unexpired terms only by majority vote of the Town Council.
- (b) The Chairperson and Vice-Chairperson may take part in all deliberations and vote on all issues.
- (c) The Board shall draw up and adopt rules of procedure under which it will operate. The Town Council will approve the rules of procedure and any amendments.

Sec. 2-32. - Powers and Duties of Board.

- (a) The Planning Board shall hear and decide:
 - (1) Subdivisions (See section 30-345 and following),
 - (2) Review and make a recommendation to the Town Council on any changes to the Zoning and Subdivision Ordinance or Zoning Map, per sections 30-36 and 30-132. Every recommendation shall be accompanied by a written, adopted statement explaining how the recommendation of the Board is: (i) Reasonable and in the public interest, and (ii) In compliance with the Comprehensive Plan and any other adopted Town plans bearing on the matter¹.

¹ Required by N.C. Gen. Stat. 160A-383, Purposes in View (2016)

ORDINANCE# AL2020-05-2

- (3) Review and make a recommendation to the Town Council on any proposed Comprehensive Plan, or amendment to the Plan, or other Town Plan as requested by the Town Council. The recommendation shall be accompanied by a written, adopted statement explaining how the recommendation of the Board is: (i) Reasonable and in the public interest, and (ii) In compliance with the Comprehensive Plan and any other adopted Town plans bearing on the matter².
- (4) Any other matter the Board is required to act upon by any other ordinance or as requested by Town Council.
- (b) The Planning Board shall propose rules and regulations governing its procedures and operations not inconsistent with the provisions of this division. The Town Council will approve the rules and all amendments.

Sec. 2-33 – Meetings and Quorum.

- (a) The Planning Board shall meet every other month, unless meetings are cancelled for lack of business, emergency, or other valid reason. Special meetings may be called in accordance with N. C. Gen. Stat. §160A-71, regular and special meetings; recessed and adjourned meetings; procedure.
- (b) All meetings of the Board shall be open to the public, and the agenda for each Board meeting shall be made available in advance of the meeting. A notice of the meeting shall be published in a local newspaper and be posted at Town Hall in accordance with N.C. Gen. Stat. §160A-71.
- (c) A quorum for the Planning Board shall consist of three or more members. A quorum is necessary for the Board to take official action.
- (d) A member who has withdrawn from the meeting without being excused, as provided in N.C. Gen. Stat. §160A-75 shall be counted as present for purposes of determining whether a quorum is present.

Sec. 2-34. - Voting.

- (a) The concurring vote of a majority of the regular membership (excluding vacant seats) shall be necessary to make any decision.
- (b) 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 (c) of this section or has been allowed to withdraw from the meeting in accordance with subsection (d) of this section.
- (c) A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances: ³
 - (1) If the member has a direct, substantial and readily identifiable financial interest in the outcome of the matter at issue;
 - (2) If the matter at issue involves the member's own official conduct;
 - (3) If a member has such close personal family, business or other associational ties to an applicant or issue.
- (d) A motion to allow a member to be excused from voting or excused from the remainder of the meeting may be made by any member of the Board.
- (e) The Planning Board Secretary shall keep minutes of its proceedings, showing the vote of each member upon each question, and the absence or failure of any member to vote, and a copy of the minutes shall be maintained on file for public record in the office of the Town Clerk. For the purposes

² Required by N.C. Gen. Stat. Chap. 160D, Art. 5 Planning Sections 160D-501 through 160D-503 (2019, eff. 1/1/2020)

³ Required by G. S. 160D-109

of this subsection, vacant positions on the Board and members who are disqualified from voting on a 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.

Section 2. This ordinance shall become effective upon adoption.

DULY ADOPTED, THIS 4TH DAY OF MAY 2020.

TOWN OF ARCHER LODGE

(SEAL)


Matthew B. Mulhollem, Mayor

ATTEST:


Kim P. Batten, Town Clerk



Moved by: Council Member Jackson

Seconded by: Council Member Wilson

Approved to Open the Public Hearing at 7:22 p.m.

CARRIED UNANIMOUSLY

Moved by: Council Member Wilson

Seconded by: Mayor Pro Tem Castleberry

Approved to Close the Public Hearing at 7:25 p.m.

CARRIED UNANIMOUSLY

Moved by: Council Member Jackson

Seconded by: Council Member Wilson

Adopted the Consistency Statement as presented.

CARRIED UNANIMOUSLY

Moved by: Council Member Jackson

Seconded by: Council Member Wilson

Adopted Ordinance# AL2020-05-2 Amending Code of Ordinances, Town of Archer Lodge, NC, Chapter 2 - Administration, Article II - Boards and Commissions - Planning Board with the changes as discussed by Town Council and Town Attorney Hewett.

CARRIED UNANIMOUSLY

- c) **PUBLIC HEARING - Text Amendments - Code of Ordinances, Town of Archer Lodge, NC, Chapter 30 - Zoning and Subdivisions, Article II, Pertaining to Amendments**
1. **Open Public Hearing**
 2. **Staff Report and Planning Board Recommendations**
 3. **Public Comments**
 4. **Close Public Hearing**
 5. **Governing Body**
 - **Discussion and Consideration of Consistency Statement**
 - **Discussion and Consideration of Adopting Ordinance# AL2020-05-3 Amending Chapter 30, Article II, Pertaining to Amendments**

1. Mayor Mulhollem asked for a motion to **Open the Public Hearing.**

2. Staff Report and Planning Board Recommendations

Ms. Maybee read the Staff Report and Planning Board Recommendations for the Proposed Text Amendments - Code of Ordinances, Town of Archer Lodge, NC, Chapter 30 - Zoning and Subdivisions, Article II, Pertaining to Amendments and appears as follows:

Staff Report Page | 1



TOWN OF ARCHER LODGE
14094 Buffalo Road
Archer Lodge, NC 27527
Main: 919-359-9727
Fax: 919-359-3333

Mayor:
Matthew B. Mulhollem

Council Members:
Clyde B. Castleberry
Mayor Pro Tem
Teresa M. Bruton
J. Mark Jackson
James (Jim) Purvis, III
Mark B. Wilson

Town Council Agenda Item: 4.c.

To: Town Council

From: Julie Maybee, Town Planner

Date: April 29, 2020

Cc: Town Administrator, Finance Officer/Town Clerk, Deputy Clerk, Town Attorney, Brough Law Firm

Re: Proposed Revision of Chapter 30. Article II. - Zoning, provisions pertaining to amendment procedures

Background Information:

North Carolina laws have changed, or in the process of changing, that affect text and map amendments. In accordance with State Laws, revisions to the Code of Ordinances, Town of Archer Lodge, Chapter 30, Article II. - Zoning, are proposed to clarify/streamline and update amendment provisions.

Changes in laws are referenced in the revised text footnotes.

Planning Board Recommendations:

On March 25, 2020, the Planning Board, upon making consistency statement findings (see page 4 of staff report) in accordance with NC General Statutes, unanimously recommended approval of the ordinance revisions as stated below:

DIVISION 1. Generally.

Sec. 30-36. - Amendments.

- (a) *Who may propose an amendment; Fee.* This article, including the zoning map, may be amended only by the Town Council, according to the procedures of this section. Proposed amendments may be initiated by the property owners or their agents, Town Council, Planning Board, Zoning Administrator or Mayor of the Town. Proposed amendments to the text of this article may also be initiated by any resident or property owner within the jurisdiction covered by this article. A fee in accordance with the adopted fee schedule shall be paid to the Town for each application not initiated by an officer or agency of the Town to cover the costs of advertising and other administrative expenses involved. No application shall be deemed complete and no amendment shall be advertised until such fee is paid.
- (b) *Procedures.*
- (1) *Map amendments.* Except for amendments initiated by the Town Council, Planning Board, staff or Mayor, no proposed amendment to the zoning map shall be considered by the Town Council, nor a public hearing held until an application containing the following information is submitted by the applicant:
- A statement of the present zoning regulations or district boundary.
 - The name and signature of the applicant.
 - The tax parcel number of the lot proposed to be rezoned.
 - The names and addresses of the owners of the lot in question.
 - The names of the owners and use of each abutting property.
 - A completed application form with fee paid.
 - The applicant shall provide any additional information related to the proposed amendment requested in writing by the Zoning Administrator, Planning Board or Town Council. The Zoning Administrator shall transmit the original application to the Town Council and the original application shall be filed in the office of the Town Clerk after consideration by the Town Council.
- (2) *Text amendments.* A petition for amendment to the text of this article shall consist of:
- A completed application form.
 - A written justification for the requested amendment including consistency of the proposal with Town planning policies.
 - Any other information deemed necessary by the Zoning Administrator or Planning Board.
- (c) *Planning Board review.* After a complete application is submitted, the Planning Board shall have 65 days to make a written recommendation concerning the amendment.
- (d) *Statement of Consistency* with adopted plans. In accordance with G.S. § 160A-383, the Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan is applicable. The Planning Board shall provide a written recommendation to the governing board that addresses plan consistency and other matters deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval by the governing board.
- (e) *Public hearing procedures.*
- (1) *Notifications*
- Published Notices: Notice of the public hearing shall be published in a newspaper of general circulation in the Town area at least once a week for two successive calendar weeks prior to the hearing. The initial notice shall appear not more than 25 nor less than ten days prior to the hearing date. In computing such period, the day of publication is not to be included, but the day of the hearing shall be included.

- (2) *Mailed Notices*
- Whenever there is a zoning classification action involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of the proposed classification by first class mail at the last addresses listed for such owners on the county tax abstracts. The person or persons mailing such notices shall certify to the Town Council that fact, and such certificate shall be deemed conclusive in the absence of fraud.
 - If a zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, the Town may, as an alternative method of notification, elect to publish notice of the hearing as required by G.S. § 160A-364. Such notification shall not be less than one-half of a newspaper page in size. The advertisement shall be effective only for owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside the newspaper circulation area, according to the address listed on the most recent tax listing for the affected property, shall be notified according to the first class mail provisions listed above.
- (3) *Posting of hearing notices.* When a zoning map amendment is proposed the Town shall post a notice of the public hearing on the site proposed for the rezoning or on an adjacent right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Town shall post sufficient notices to provide reasonable notice of interested persons.
- (4) No amendment shall be adopted by the Town Council until they have held a public hearing on the amendment. The public hearing may be held after the Council receives a recommendation from the Planning Board, or if no recommendation is forthcoming, the public hearing may be held after the Planning Board's 65 day deadline has elapsed.
- (5) *Town Council statement.* After the public hearing and prior to adopting or rejecting any zoning amendment, the Town Council shall adopt a written statement describing whether its action is consistent with an adopted comprehensive plan. Such statement shall explain why the council considers the action taken to be reasonable and in the public interest.
- (6) *Limitation on Down-Zoning.*¹ No amendment to zoning text or map that down-zones property shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the Town. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:
- By decreasing the development density of the land to be less dense than was allowed under its previous usage.
 - By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.
- (7) No denied zoning application can be resubmitted within one year.
- (f) *Citizen Comments:*
- If any resident or property owner in the Town submits a written statement regarding a proposed zoning map or text amendment to the Town Clerk at least two business days prior to the proposed vote on such change, the Town clerk shall deliver the written statement(s) to the Town Council with the meeting agenda or, if received later, to the Council before the meeting.
- Protest petitions.*²

¹ Required by G.S. 160A-384 (a) (2009)² Repealed by S.L. 2015-160 see G.S. §160A-385. Replace by a requirement to allow citizen comments.

DIVISION 3. Overlaying Zoning Districts.

Sec. 30-132. - Amendments to Overlay District Boundaries.

Amendments to the boundary of an overlay district shall be made consistent with section 30-36. Requests to expand an existing overlay district boundary shall only be considered where such request abuts, adjoins, or is contiguous to, the established overlay district boundary.

Planning Board Consistency Statement:

The Planning Board finds that the proposed amendments to Chapter 30, Zoning & Subdivisions, Article II, Division 1, Section 30-36 and Division 3, Section 30-132, are reasonable and in the public interest. The proposed revisions clarify/streamline the process/procedures for amendments to the text and map amendments in accordance with NC State laws.

Furthermore, the proposed amendments are in compliance with the *Town of Archer Lodge 2030 Comprehensive Land Use Plan*, aka "*Comprehensive Plan*", and other adopted Town plans having bearing on the matter. The proposed revisions will aid in the implementation of the *Comprehensive Plan - Action Plan* that ensures that new development is consistent with the policies of the Town, and direct and concentrate new development to areas where adequate public infrastructure is available or can be extended without placing excessive burden on the Town's physical or financial resources.

Staff Recommendations:

Staff concurs with the Planning Board's recommendations.

Requested Town Council Action:

Staff respectfully requests that the Town Council: (1) conduct a public hearing; (2) consider the Planning Board's recommendations; (3) deliberate and make consistency statement findings (draft Town Council Consistency Statement included on page 5 of staff report); and (4) approve the ordinance revisions (see draft Town Council #AL2020-05-3 Ordinance).

DRAFT TOWN COUNCIL CONSISTENCY STATEMENT:

The Town Council finds that the proposed amendments to Chapter 30, Zoning and Subdivisions, Article II, Division 1, Section 30-36, and Division 3, Section 30-132, are reasonable and in the public interest. The proposed revisions clarify/streamline the process/procedures for text and map amendments in accordance with NC State laws.

Furthermore, the proposed amendments are in compliance with the *Town of Archer Lodge 2030 Comprehensive Land Use Plan*, aka "*Comprehensive Plan*", and other adopted Town plans having bearing on the matter. The proposed revisions will aid in the implementation of the *Comprehensive Plan - Action Plan* that ensures that new development is consistent with the policies of the Town, and direct and concentrate new development to areas where adequate public infrastructure is available or can be extended without placing excessive burden on the Town's physical or financial resources.

3. Mayor Mulhollem asked if there were any Public Comments.
There were no public comments submitted to the Town Clerk at this time.

4. Mayor Mulhollem asked for a motion to **Close the Public Hearing.**

5. Mayor Mulhollem opened the floor for the **Governing Body Discussion** session:

Consistency Statement

- No discussion regarding the Consistency Statement.

Ordinance# AL2020-05-3

- Questioned if the Town has a Zoning Administrator and Ms. Maybee explained that it is an employee who is designated to serve in that capacity and is normally the Town Planner. She noted that this position would be clarified under Chapter 160D amendments.
- Questioned Section 30-36 (c) After a complete application is submitted, the Planning Board shall have 65 days to make a written recommendation...

Much discussion followed regarding the 65 day period as it pertained to the Town having a part-time Town Planner with limited hours; the adopted meeting schedule of the Planning Board; and the possibility of organizing meetings for groups such as the Archer Lodge Technical Review Committee or Johnston County's Environmental Health Department, if their review is needed. Following the discussion, Council agreed to change Section 30-36 (c) to read: "Planning Board shall issue a decision as quickly as possible but no later than 65 days from the date of filing unless otherwise extended by the Town Council."

- Mentioned Section 30-36 (e) (3) typo error last sentence ...the Town shall post sufficient notices to provide reasonable notice of to interested persons.

In closing, Ms. Maybee reminded everyone that these text amendments only pertain to text and map amendments and she will make corrections as noted above.

Having no further discussion, Mayor Mulhollem asked for a motion to adopt the Consistency Statement as written and presented by Staff.

The Adopted Archer Lodge Town Council Consistency Statement appears as follows:

The Town Council finds that the proposed amendments to Chapter 30, Zoning and Subdivisions, Article II, Division 1, Section 30-36, and Division 3, Section 30-132, are reasonable and in the public interest. The proposed revisions clarify/streamline the process/procedures for text and map amendments in accordance with NC State laws.

Furthermore, the proposed amendments are in compliance with the *Town of Archer Lodge 2030 Comprehensive Land Use Plan*, aka "*Comprehensive Plan*", and other adopted Town plans having bearing on the matter. The proposed revisions will aid in the implementation of the *Comprehensive Plan - Action Plan* that ensures that new development is consistent with the policies of the Town, and direct and concentrate new development to areas where adequate public infrastructure is available or can be extended without placing excessive burden on the Town's physical or financial resources.

Having adopted the Consistency Statement, Mayor Mulhollem asked for a motion to Adopt Ordinance# AL2020-05-3 - Amending Code of Ordinances, Town of Archer Lodge, NC, Chapter 30, Article II, Pertaining to Amendments with the changes as discussed by the Town Council and Town Attorney Hewett.

The Adopted Ordinance# AL2020-05-3 with changes discussed appears as follows:

ORDINANCE# AL2020-05-3 AN ORDINANCE AMENDING THE CODE OF ORDINANCES, TOWN OF ARCHER LODGE, NORTH CAROLINA, CHAPTER 30 – ZONING & SUBDIVISIONS, ARTICLE II - ZONING <u>Section 1.</u> Pursuant to authority granted to by N.C. Gen. Stat. § 160A – 381, the Town of Archer Lodge hereby amends the Code of Ordinances, Town of Archer Lodge, North Carolina, Chapter 30 - Zoning & Subdivisions, Article II – Zoning, as follows: Delete ordinance text in its entirety in Division 1, Sec. 30-36, and Division 3, Section 30-132 and replace with the following: DIVISION 1. Generally. Sec. 30-36. - Amendments. (a) <i>Who may propose an amendment; Fee.</i> This article, including the Zoning Map, may be amended only by the Town Council, according to the procedures of this section. Proposed amendments may be initiated by the property owners or their agents, Town Council, Planning Board, Zoning Administrator or Mayor of the Town. Proposed amendments to the text of this article may also be initiated by any resident or property owner within the jurisdiction covered by this article. A fee in accordance with the adopted fee schedule shall be paid to the Town for each application not initiated by an officer or agency of the Town to cover the costs of advertising and other administrative expenses involved. No application shall be deemed complete and no amendment shall be advertised until such fee is paid. (b) <i>Procedures.</i> (1) <i>Map amendments.</i> Except for amendments initiated by the Town Council, Planning Board, staff or Mayor, no proposed amendment to the zoning map shall be considered by the Town Council, nor a public hearing held until an application containing the following information is submitted by the applicant: a. A statement of the present zoning regulations or district boundary. b. The name and signature of the applicant. c. The tax parcel number of the lot proposed to be rezoned. d. The names and addresses of the owners of the lot in question. e. The names of the owners and use of each abutting property. f. A completed application form with fee paid. g. The applicant shall provide any additional information related to the proposed amendment requested in writing by the Zoning Administrator, Planning Board or Town Council. The Zoning Administrator shall transmit the original application to the Town Council and the original application shall be filed in the office of the Town Clerk after consideration by the Town Council. (2) <i>Text amendments.</i> A petition for amendment to the text of this article shall consist of: a. A completed application form. b. A written justification for the requested amendment including consistency of the proposal with Town planning policies. c. Any other information deemed necessary by the Zoning Administrator or Planning Board.
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ORDINANCE# AL2020-05-3 (c) <i>Planning Board review.</i> After a complete application is submitted, the Planning Board shall issue a decision as quickly as possible but no later than 65 days from the date of filing unless otherwise extended by the Town Council. (d) <i>Statement of consistency with adopted plans.</i> In accordance with G.S. § 160A-383, the Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan, as applicable. The Planning Board shall provide a written recommendation to the Town Council that addresses plan consistency and other matters deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with a comprehensive plan or any other officially adopted plan, as applicable, shall not preclude consideration or approval by the Town Council. (e) <i>Public hearing procedures.</i> (1) <i>Notifications</i> a. <i>Published Notices:</i> Notice of the public hearing shall be published in a newspaper of general circulation in the Town area at least once a week for two successive calendar weeks prior to the hearing. The initial notice shall appear not more than 25 nor less than ten days prior to the public hearing date. In computing such period, the day of publication is not to be included, but the day of the public hearing shall be included. (2) <i>Mailed Notices</i> a. Whenever there is a zoning classification action involving a parcel of land, the owner of that parcel of land, as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land, as shown on the county tax listing, shall be mailed a notice of the proposed classification by first class mail at the last addresses listed for such owners on the county tax abstracts. The person or persons mailing such notices shall certify to the Town Council that fact, and such certificate shall be deemed conclusive in the absence of fraud. b. If a zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, the Town may, as an alternative method of notification, elect to publish notice of the public hearing as required by G.S. § 160A-364. Such notification shall not be less than one-half of a newspaper page in size. The advertisement shall be effective only for owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside the newspaper circulation area, according to the address listed on the most recent tax listing for the affected property, shall be notified in accordance with the first class mail provisions listed above. (3) <i>Posting of hearing notices.</i> When a Zoning Map amendment is proposed, the Town shall post a notice of the public hearing on the site proposed for the rezoning or on an adjacent right-of-way. When multiple parcels are included within a proposed Zoning map amendment, a posting on each individual parcel is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons. (4) No amendment shall be adopted by the Town Council until they have held a public hearing on the amendment. The public hearing may be held after the Town Council receives a recommendation from the Planning Board, or if no recommendation is forthcoming, the public hearing may be held after the Planning Board's 65 day deadline or the Town Council's extension, if provided, has elapsed. (5) <i>Town Council statement.</i> After the public hearing, and prior to adopting or rejecting any zoning amendment, the Town Council shall adopt a written statement describing whether its action is consistent with an adopted Comprehensive Plan. Such statement shall explain why the Town

Council considers the action taken to be reasonable and in the public interest.

- (6) *Limitation on Down-Zoning.*¹ No amendment to zoning text or map that down-zones property shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the Town. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:

- a. By decreasing the development density of the land to be less dense than was allowed under its previous usage.
- b. By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

- (7) No denied zoning application can be resubmitted within one year.

(f) *Citizen Comments:*

If any resident or property owner in the Town submits a written statement regarding a proposed zoning map or text amendment to the Town Clerk at least two business days prior to the proposed vote on such change, the Town Clerk shall deliver the written statement(s) to the Town Council with the meeting agenda or, if received later, to the Town Council before the meeting.

*Protest petitions.*²

DIVISION 3. Overlaying Zoning Districts.

Sec. 30-132. - Amendments to Overlay District Boundaries.

Amendments to the boundary of an overlay district shall be made consistent with section 30-36. Requests to expand an existing overlay district boundary shall only be considered where such request abuts, adjoins, or is contiguous to, the established overlay district boundary.

Section 2. This ordinance shall become effective upon adoption.

DULY ADOPTED, THIS 4TH DAY OF MAY 2020.

TOWN OF ARCHER LODGE

(SEAL)


Matthew B. Mulhollem, Mayor

ATTEST:

Kim P. Batten, Town Clerk



¹ Required by G.S. 160A-384 (a) (2009)

² Repealed by S.L. 2015-160 see G.S. §160A-385. Replace by a requirement to allow citizen comments.

Moved by: Council Member Wilson

Seconded by: Council Member Jackson

Approved to Open the Public Hearing at 8:00 p.m.

CARRIED UNANIMOUSLY

Moved by: Council Member Jackson

Seconded by: Council Member Wilson

Approved to Close the Public Hearing at 8:04 p.m.

CARRIED UNANIMOUSLY

Moved by: Council Member Bruton

Seconded by: Council Member Jackson

Adopted the Consistency Statement as presented.

CARRIED UNANIMOUSLY

Moved by: Council Member Wilson

Seconded by: Council Member Jim Purvis

Adopted Ordinance# AL2020-05-3 Amending Code of Ordinances, Town of Archer Lodge, NC, Chapter 30, Article II, Pertaining to Amendments with the changes as discussed by Town Council and Town Attorney Hewett.

CARRIED UNANIMOUSLY

5. TOWN ATTORNEY'S REPORT:

a) Attorney Hewett reported the following:

- Commended Ms. Maybee for the fantastic job on preparing the materials for the meeting.
- Commended the Town Council for their use of the virtual meeting technology.
- Mentioned that the General Assembly will be enacting new legislation that modifies the rules and specific guidance regarding remote meetings during a State of Emergency and will advise when the new law passes.

6. MAYOR'S REPORT:

a) Mayor Mulhollem reported the following:

- Thanked Ms. Maybee and Staff for providing all materials needed for the Public Hearings.
- Thanked Council for their patience in remote participation for the virtual Regular Town Council meeting and remaining productive.

Mayor Mulhollem read a Proclamation and proclaimed the week of May 3 - 9, 2020 as the 51st Annual Professional Municipal Clerks Week and extended his appreciation to Ms. Batten, Ms. Lawhorn, and all Professional Municipal Clerks for the vital services they perform. Everyone applauded.

The Professional Municipal Clerks Week Proclamation appears as follows:



7. COUNCIL MEMBERS' REMARKS:

(non-agenda items)

- a) Council Member Wilson commended Ms. Batten and Ms. Lawhorn for their work and Ms. Maybee for all the work she put into getting the materials together for the meeting.**
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- b) Council Member Jackson echoed the prior remarks and thanked Staff for having patience with him in completing town matters in a timely manner.**
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- c) Council Member Purvis also echoed the sentiments for Staff and their preparation for the meetings.**
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d) Mayor Pro Tem Castleberry also echoed sentiments for Staff.

e) Council Member Bruton echoed sentiments for Staff and that she appreciated them. She hoped that all stay safe.

8. ADJOURNMENT:

a) **Having no further business.**

Moved by: Council Member Wilson

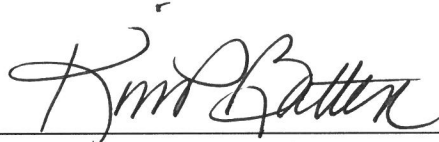
Seconded by: Council Member Jackson

Adjourned meeting at 8:42 p.m.

CARRIED UNANIMOUSLY



Matthew B. Mulhollem, Mayor



Kim P. Batten, Town Clerk

