



## Board of Adjustments

To: Davidson Board of Commissioners  
From: Cindy Reid  
Date: Sep. 4, 2018  
Re: Discussion of Board of Commissioners assuming duties of the Board of Adjustment

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### 1. OVERVIEW

The Board has asked staff for a short critique of why it should or shouldn't assume the duties of the Board of Adjustment (BOA). Per our planning ordinance, the BOA is the Planning Board. Text amendments to Chapter 13 of the Planning Ordinance can reassign the BOA duties to the BOC. Land use decisions can be grouped into four categories: legislative, quasi-judicial, advisory, and administrative. Governing boards usually make legislative decisions but can make quasi-judicial decisions. Planning boards usually make advisory decisions but can make quasi-judicial decisions. In NC, quasi-judicial decisions are most often assigned to boards of adjustment, appointed by the governing board. It really doesn't matter which board is making quasi-judicial decisions so long as rules for that type of decision are followed.

The main reason for the governing board not to make quasi-judicial decisions is because it places board members in a lose-lose predicament. As an elected official, a board member wants to be responsive to the desires of constituents. Elected officials involved in a quasi-judicial hearing may not engage in "ex parte" discussions with community members (not just the parties) about the pros and cons of the case. This can be frustrating to citizens who feel as if it is the elected official's job to listen to their concerns. It can also be exasperating to an elected official to have to respond to a citizen that an issue cannot be discussed. Unfortunately, doing the right thing by the legal criteria may cost votes at the next election. On the other hand, failure to follow the strict legal criteria in order to satisfy constituents runs the risk of a potentially bad lawsuit.

An added reason to delegate the quasi-judicial role to another board (planning or separately appointed) is time. In the past, the town has had few quasi-judicial hearings; however, we have seen an increase in the last two years. Depending upon what is being appealed or sought, the record and written and oral arguments can consume many hours of time to be sufficiently reviewed, debated, and discussed. Only the town board can adopt the budget, ordinances and provide overall policy direction. These duties cannot be delegated, but the quasi-judicial role can.

Of course, the governing board may want to make all final decisions. Keep in mind that decisions made by the BOC and BOA are appealable to the superior court, so no decision is actually final. Nonetheless, if the BOC wants to be the final decision maker at the local level for both legislative and quasi-judicial decisions, this is the only way to do so.

## 2. RELATED TOWN GOALS

Legislative policy decisions involves the entire community.

Quasi- judicial decisions only involve the parties before the board, and those with standing to challenge.

## 3. OPTIONS/PROS & CONS

- Board of Adjustment remains with Planning Board
- Board of Adjustment is a separate board appointed by the Board of Commissioners
- Board of Commissioners assumes role of Board of Adjustment

Pros:

All decisions, except administrative, are made by the BOC.

Cons:

Difficult for a legislative policy making body to conduct quasi- judicial hearings, no ex parte communications allowed, no pre-determined opinion allowed, failure to follow strict quasi-judicial rules could lead to a damaging lawsuit, takes focus away from what the BOC does best which is to give direction, set policies, and engage with constituents, time consuming and more meetings.

## 4. FYI or RECOMMENDED ACTION

Discussion only.

## 5. NEXT STEPS

Next steps depend on the direction of the BOC. Options 2 or 3 will require text amendments to the Planning Ordinance.