



# Item Overview

Public Hearing – 11/15/2017

Agenda # 6

**Subject:** Call a Public Hearing to Adjust the Voting Requirements for when the Planning Commission, the Community Design Commission and the Historic District Commission Makes Decisions

**Staff:**

Ralph D. Karpinos, Town Attorney

**Department:**

Town Attorney's Office

**Overview:** On November 2, 2017, the Town Council received the attached report outlining the quorum and voting requirements for Town Boards making decisions on development applications.

The Council has an opportunity to call a public hearing to consider changes to the Land Use Management Ordinance to increase the vote now required for such decisions from a majority of a quorum to a majority of each Board's membership, or to establish some other standard for Boards taking action on development applications.



## Recommendations

That the Council consider the attached report and take such action on the proposed resolution as it deems appropriate.

## Decision Points

- Does the Council wish to call a public hearing to consider amending the Land Use Management Ordinance to change the voting requirements for these three boards?

## Key Issues:

- Should final decisions of the Planning Commission, Community Design Commission and Historic District Commission on development applications require more than a majority vote of a quorum?
- Should such decisions require a majority vote of the membership of each board?



## Attachments:

- Resolution
- November 2, 2017 report from Town Attorney

**A RESOLUTION CALLING A PUBLIC HEARING TO AMEND THE LAND USE  
MANAGEMENT ORDINANCE TO CHANGE THE VOTE REQUIRED FOR THE  
PLANNING COMMISSION, COMMUNITY DESIGN COMMISSION AND HISTORIC  
DISTRICT COMMISSION TO MAKE DECISIONS ON APPLICATIONS (2017-11-15/R-  
3)**

WHEREAS, the Chapel Hill Land Use Management Ordinance presently provides that an affirmative vote of majority of a quorum of the Planning Commission, Community Design Commission and Historic District Commission is sufficient for each of these boards to make a decision on a development application; and

WHEREAS, this circumstance can lead to an application for development being approved or denied, depending on meeting attendance, by as few as three members of each of these boards; and

WHEREAS, the Council believes that it is in the best interest of the Town for the Council to consider amending the Land Use Management Ordinance to provide that a majority of the membership of each of these boards be required to make decisions.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council calls a public hearing to amend the Land Use Management Ordinance to adjust the voting requirements of each of these boards to make a final decision on an application.

BE IT FURTHER RESOLVED that the Council refers this to the Town Manager to schedule a public hearing and to each of these boards for their recommendations and input on the proposed changes.

This the 15<sup>th</sup> day of November, 2017.

## **MEMORANDUM**

TO: Mayor and Town Council  
FROM: Ralph D. Karpinos, Town Attorney  
COPY: Roger L. Stancil, Town Manager  
DATE: November 2, 2017  
SUBJECT: Voting and Quorum Issues

### **Introduction**

During the closed session on November 1, Council Members indicated an interest in considering an adjustment to the Community Design Commission voting requirements.

This memorandum provides information on those voting requirements, as well as requirements applicable to the three other Town Boards which make development-related decisions.

After reviewing this memorandum, the Council may wish, at an upcoming meeting, to initiate the process to adjust the Land Use Management Ordinance.

### **Membership on Boards**

Article 8 of the LUMO, entitled “Administrative Mechanisms” includes the rules for voting for the four Council-appointed Boards which make decisions under the LUMO:

The Planning Commission	(10 Members)
The Historic District Commission	(10 Members)
The Board of Adjustment	(10 Members, plus alternates)
The Community Design Commission	(9 members)

### **Types of Decisions**

The primary duties of these boards include the following:

1. The Planning Commission makes decisions on Site Plan Applications (subject to being appealed to the Board of Adjustment). The Planning Commission also makes recommendations on applications and ordinances ultimately decided by the Town Council.
2. The Historic District Commission makes decisions on Certificates of Appropriateness (subject to being appealed to the Board of Adjustment). The HDC also makes

recommendations on applications and ordinances ultimately decided by the Town Council and exercises the powers and duties of the CDC in the historic districts.

3. The Board of Adjustment makes decisions on variance applications and on appeals from decisions of the staff, the Planning Commission, the Historic District Commission, and the CDC.
4. The CDC makes decisions on Certificates of Appropriateness in the Ephesus-Fordham District, reviews final plans on other applications and makes recommendations on other applications ultimately decided by the Town Council, and reviews Concept Plan applications.

### **Quorum and Voting Requirements**

Current Quorum and Voting requirements for these Boards as set out in LUMO are as follows:

1. **Planning Commission:**

“8.2.7. *Quorum and voting.*

A quorum of the commission, necessary to take any official action, shall consist of five (5) members.

The concurring vote of a simple majority of those members present shall be necessary to take any official action.”

2. **Historic District Commission:**

“8.4.9. *Quorum and Voting.*

A quorum of the commission, necessary to take any official action, shall consist of five (5) members.

The concurring vote of a simple majority of those members present shall be necessary to take any official action.”

3. **Board of Adjustment:**

“8.3.7. *Quorum and Voting.*

A quorum of the board, necessary to take any official action, shall consist of six (6) members.

- (a) The concurring vote of four-fifths (4/5) of the membership of the board shall be necessary in order to grant a variance.
- (b) The concurring vote of a majority of the members shall decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.

(c) The concurring vote of a majority of those members present shall be necessary to conduct routine business of the board.”

4. Community Design Commission:

*“8.5.8. Quorum and voting.*

A quorum of the commission, necessary to take any official action, shall consist of five (5) members.

The concurring vote of a simple majority of those members present shall be necessary to take any official action.”

Thus, in the case of the Planning Commission, the HDC and the CDC, a decision to approve or deny a permit can be made by 3 affirmative votes, if attendance is low.

**Recommendation:**

The voting rules for the Board of Adjustment to act on variances and appeals are in accordance with the requirements of State Law. I do not recommend Council consider any change to those rules.

For the other three boards, the Council may wish to consider calling a public hearing and proposing adjustments to LUMO for the voting requirements.

Tracking the standards now applicable to the Board of Adjustment, an amendment might be considered that would require:

1. A majority vote of the membership (excluding vacant seats and persons excused from voting) to decide any application before the particular board.  
Alternative 1: a vote of half of the membership, excluding vacant seats and persons excused from voting.  
Alternative 2: a majority of those in attendance and at least 4 members.
2. A majority vote of the quorum to conduct other business of the particular board, including making a recommendation on an application to be considered by the Council. (The actual vote on any recommendation would be included in the board's report to the Council.)

## **Next Steps**

In accordance with Section 4.4.1 of the LUMO, a request to amend the LUMO may be initiated by the Town Council on its own motion.

If the Council chooses to adopt such a motion at an upcoming meeting, the matter would be referred to the staff and the Planning Commission for recommendation and the scheduling of a public hearing. Because these possible amendments could apply to the Historic District Commission and Community Design, these Boards should also be provided an opportunity to review and comment.