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Memo

To: Mayor, Members of Board of Commissioners
Cc: Bryan Gruesbeck, Manager
From: Paul S. Messick, Jr.
Date: May 30, 2014
Re: Board of Adjustment

The 2013 General Assembly enacted legislation, House Bill 276 (Session Law 2013-126), to modernize the statutes pertaining to zoning boards of adjustment and to clarify some of the issues that have arisen through the years. These changes became effective October 1, 2013, and apply to actions taken on or after that date by the board of adjustment.

The legislation amends the primary board of adjustment statute (G.S. 160A-388), including provisions regarding voting, decisions, hearing notices, appeals, and variances. Among other things, the long-standing body of case law regarding the need to follow quasi-judicial procedures is now codified in G.S. 160A-388(a1), which provides, "The zoning or unified development ordinance may provide that the board of adjustment hear and decide special and conditional use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term 'decision' includes any final and binding order, requirement, or determination. The board of adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits"

The attached draft Ordinance incorporates the statutory changes into the Town's existing BOA provisions in the zoning ordinance. Like any text amendment, the Ordinance will need to be reviewed by the Planning Board and considered by the Board of Commissioners after a public hearing. If there are questions, please let me know.

Besides the need to comply with statutory changes, there are some issues that may require the attention of the Board of Adjustment. Therefore it is incumbent that this issue be considered as soon as possible. Since the terms of any previous Board of Adjustment members have long since expired, it is important for the Board to begin the selection process for new appointments. ETJ representation is required on the Board of Adjustment and the draft ordinance provides a formula for calculating the number of ETJ members. Current population estimates will need to be consulted before you actually make the appointments.