

**RULES OF PROCEDURE
ZONING BOARD OF ADJUSTMENT
BRUNSWICK COUNTY
NORTH CAROLINA**

I. GENERAL RULES

- A. The Brunswick County Board of Adjustment shall be governed by the terms of Section 153A-345.1, of the General Statutes of North Carolina and by the terms of the Brunswick County Zoning Ordinance and Partial Development Code. All members of the Board shall thoroughly familiarize themselves with these laws.

II. OFFICERS AND DUTIES

- A. Chair - A Chair shall be elected by majority vote of the membership of the Board from among its voting members. The term of office shall be for one year, and until a successor is elected, beginning on August first, and the Chair shall be eligible for re-election. Subject to these rules, the Chair shall decide upon all points of order and procedure, unless directed otherwise by a majority of the Board in session at the time. The Chair shall appoint any committee found necessary to investigate any matter before the Board. The Chair or any member acting as Chair is authorized to administer oaths to witnesses in any matter coming before the Board. Additionally, 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. The Chair shall issue requested subpoenas he/she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to question or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full Board of Adjustment.
- B. Vice-Chair - A Vice-Chair shall be elected by the Board from among its members in the same manner and for the same term as the Chair. The Vice-Chair shall serve as Acting Chair in the absence of the Chair, and at such times shall have the same powers and duties as the Chair.
- C. Clerk - The County Zoning Administrator shall serve as Clerk to the Board. In the absence of the Zoning Administrator, the Planning Director or his/her designee shall serve. The Clerk shall keep all records and see that there are minutes of each Board meeting, and shall keep them, and shall keep a record of all important facts pertaining to each meeting and hearing, every action by the Board, and the votes of all members upon any matter, indicating the names of absentees or those failing to vote. All minutes shall be filed in the Office of

the Zoning Administrator and are public record. The Clerk also is authorized to administer oaths to witnesses in any matter coming before the Board.

III. ALTERNATE MEMBERS

Alternate members of the Board shall be called on to attend only those meetings and hearings at which one or more regular members are absent or are unable to participate in hearing a case because of financial or other interest. Regular members, on receiving notice of a special meeting that they cannot attend or on learning that they will be unable to participate in a particular case, shall give prompt notice to the Zoning Administrator that they are unable to attend or to participate.

On receiving such notice, the Zoning Administrator shall, by the most expeditious means, notify an alternate member to attend. Assignments shall be rotated among the alternate members. At any meeting that they are called on to attend, alternate members shall have the same powers and duties as regular members.

Except at the election of officers, at no time shall more than [five] members participate officially in any hearing.

IV. RULES OF CONDUCT FOR MEMBERS

- A. Members of the Board may be removed for cause, including violation of the rules stated below.
- B. Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board. Three consecutive unexcused absences as determined by the Board constitute unfaithful attendance.
- C. No Board member shall take part in the hearing, consideration, or determination of any case in which he or she is personally or financially interested. Members may be excused only by majority vote of the Board.
- D. No Board member shall vote on any matter deciding an application or appeal unless he or she has attended the public hearing on that application or has been afforded access to the minutes and evidence of that Hearing.
- E. No Board member shall discuss any case with any parties thereto before the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from any other member of the Board, or the Zoning Administrator prior to the hearing.

- F. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto before that case is determined. Violation of this rule shall be cause for dismissal from the Board.
- G. Each Board member shall endeavor to avoid a conflict (or perception) of interest in any matter brought before the Board. He or she shall remove themselves from deliberation or voting in matters in which they may have a real or perceived financial or personal interest, or in which they or their relatives or business associates may stand to gain financially.

V. MEETINGS

- A. Regular Meetings. Regular meetings of the Board shall be held on the second Thursday of the month at 6:00 P.M. in the Commissioners' Chamber, if available. As required by the Open Meetings Law, a copy of the schedule of regular meetings will be kept on file by the Clerk to the Board of County Commissioners.
- B. Special Meetings. The Chair may call special meetings of the Board at any time. At least forty-eight (48) hours' written notice of the time and place of special meetings shall be given, by either the Clerk or the Chair, to each member of the Board. The Open Meetings Law also requires this notice be given to both the public and the media.
- C. Cancellation of Meetings. If applications for Special Exceptions, or requests for interpretation, or if so many regular and alternate members notify the Clerk that they cannot attend so that a quorum will not be available, the Chair or Vice-Chair may dispense with a regular meeting by giving written or oral notice to all members not less than twenty-four (24) hours before the time set for the meeting.
- D. Quorum. A quorum shall consist of four (4) members of the Board.
- E. Voting. All regular members may vote on any issue unless disqualified for one or more of the reasons listed in Section IV. The required vote to decide appeals and applications shall not be reduced by any disqualification. Four members are needed for a vote on any matter.
- F. Conduct of Meetings. All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) roll call; (b) approval of minutes of the previous meeting; (c) hearings of cases; (d) unfinished/old business; (e) new business; (f) consideration and determination of cases heard; (g) staff report.

VI. APPEALS AND APPLICATIONS

- A. Types of Appeals - The Board of Adjustment shall hear and decide appeals from decisions of administrative officials charged with enforcement of the Unified Development Ordinance and may hear appeals arising out of any other ordinance that regulates land use or development. The Board of Adjustment may hear both those based upon an allegedly improper or erroneous interpretation of an ordinance and those based upon alleged hardship resulting from strict interpretation of the ordinance. Any person aggrieved of such officer, department, Board or bureau of the County may appeal. The Board shall also hear and decide all applications for Special Exceptions stipulated as being under their jurisdiction. The Board of Adjustment does not have appellant jurisdiction on matters relating to the enforcement of the International Building Code with the North Carolina Amendments.

In deciding appeals from and review of any order, requirement, decision, or determination made by any County official acting under the authority of an ordinance for which the Board is the designated appellant forum, all appeals are pursuant to all of the following:

- (1) Any person who has standing under G.S. 153A-349 may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Clerk to the Board. The notice of appeal shall state the grounds for the appeal.
- (2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (3) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

- B. Procedure for Filing Appeals - No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the interested party or parties receive notice of the order, requirement, decision, or determination by a County official. For appeals of building permits, constructive receipt of notice is deemed to have occurred the day following its issuance. All applications for hearings shall be filed with the Zoning Administrator. All applications shall be made upon a form furnished for that purpose, and all required information shall be provided thereon before an appeal or an application shall be considered as having been filed. Any person who has standing per N.C.G.S. 153A-349 may appeal a decision to the Board of Adjustment. Any public or private, profit or non-profit corporation, shall append to the appeal the corporate resolution which authorizes the appeal. This resolution

shall state the name of the person authorized to act for the corporation, shall be signed by the President, attested by the Secretary, and shall bear the corporate seal.

- C. Fees - No application or notice of appeal shall be considered as having been completed until there has been the required filing fee.
- D. Conduct of Hearing - Any party may appear in person or by agent or by attorney at the hearing. The order of business for each hearing shall be as follows:
- (a) The Chair, or such person as the Chair shall direct, shall give a preliminary state of the case;
 - (b) The applicant may present arguments and relevant evidence in support of his or her case or application;
 - (c) Persons opposed to granting the application may present argument and relevant evidence against the application;
 - (d) The County Official from whom the appeal is taken, may present relevant evidence in support of the appealed order, requirement, decision or determination;
 - (e) The Zoning Administrator shall submit into evidence the required Findings of Fact;
 - (f) All parties to the proceeding shall be permitted to present rebuttals to opposing testimony; and
 - (g) The Chair may summarize the evidence which has been presented, giving the parties an opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a Court of law. The Board may, in its discretion, view the premises and call and examine witnesses to obtain additional facts in the matter before arriving at a determination of the case. All witnesses before the Board shall be placed under oath and the opposing party may cross examine them.
- E. Rehearings - An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board to determine whether there has been substantial change in the facts, evidence or conditions in the case. A rehearing shall be denied by the Board if in its judgment there has been no substantial change in the facts, evidence, or conditions in the case. If the Board finds that there has been such a change, it shall thereupon treat the request in the same manner as any other application.

F. Decisions

- (1) Time - Decision by the Board shall be made within thirty (30) days of the hearing.
- (2) Quasi-Judicial Decisions and Judicial Review – The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision (e.g., variance) 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 their application to the applicable standards. The written decision of the Board of Adjustment 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 or such other office or official as the ordinance specifies. 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.

Every quasi-judicial decision shall be subject to review by the Superior Court by proceedings in the nature of certiorari pursuant to G.S. 153A-349. A petition for review shall be filed with the Clerk of Superior Court by the later of 30 days after the decision is effective crafter a written copy thereof is given in accordance with the above subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

- (a) Variances – Where a variance is granted with the required four-fifths (4/5) vote for approval, the record shall state in detail the Findings of Fact of the exceptional difficulty or unnecessary hardship upon which the variance was based and which the Board finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination made by the Zoning Administrator. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a variance.
- (b) Special Exceptions – Special Exception permits shall require only a simple majority for approval. Special Exceptions within zoning districts are considered to be uses which are appropriate in a particular zoning district but because of their potential for incompatibility with neighboring uses may require individual review. Where a Special Exception permit is granted, the record shall state in detail the general findings per Section 3.3 Special Exception of the

Brunswick County Unified Development Ordinance (UDO) on which the Special Exception permit is granted. The Special Exception permit also shall state the condition(s) of approval to assure that adequate mitigation measures are associated with the use. The general findings and condition(s) shall become a part of the Special Exception permit approval.

(c) Ordinance Interpretations – Ordinance Interpretations also shall require only a simple majority for approval. Appeal of all written interpretations shall be in accordance with Section 3.10 Written Interpretations of the Brunswick County Unified Development Ordinance (UDO).

(3) Public Record of Decision - The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

G. Notice of Hearing - Upon receipt of an appeal or application, the Zoning Administrator or designee shall adequately post the particular property as soon as reasonably possible. Notice of hearings shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the County tax listing determines owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the zoning administrator shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

VII. ORIENTATION AND TRAINING

A. Orientation of New Members

The Planning Director shall ensure that a meeting with new Board members is scheduled as soon as possible after their appointment to prepare them for effectively serving on the Zoning Board of Adjustment. Prior to or at that meeting, the Planning Director shall ensure that each new member is provided a copy of the most recent publication of The Zoning Board of Adjustment in North Carolina and any other handbook(s), all ordinances the Board typically deals with, and the comprehensive plan and other major statements of the County's growth management and land development policies. The County's growth management

and land development policies, the relationship between the Board and County Planning Staff, and the organization, duties and responsibilities, procedural rules, and legal constraints under which the Board operates also shall be explained.

B. General

Board members are encouraged to expand their knowledge and understanding of planning issues by reading planning related literature and attending planning conferences, courses, seminars, and workshops.