

RULES OF PROCEDURE

ZONING BOARD OF ADJUSTMENT

LINCOLN COUNTY

NORTH CAROLINA

I. GENERAL RULES

The Zoning Board of Adjustment (hereinafter referred to as the “Board”) shall be governed by the terms of G.S.153A-345.1 and G.S.160A-388 and by the Lincoln County Unified Development Ordinance. All members of the Board shall thoroughly familiarize themselves with these laws.

II. OFFICERS AND DUTIES

A. ELECTIONS

A Chairman and Vice-Chairman shall be elected by the full membership (including alternate) of the Board annually at the regular meeting of the Board held in the month of February or, if the February meeting is cancelled, at the next regular meeting. These officers shall be elected for a term of one (1) year and may be re-elected for successive terms to the same office. Members shall be notified of the date, time and place of the election of officers at least seven (7) days prior to the regular February meeting. Each officer shall serve until relieved of his or her duties as herein provided.

B. DUTIES

The Chairman shall decide upon all points of order and procedure, subject to these rules unless directed otherwise by a majority of the Board in session at the time. The Chairman shall appoint any committees found necessary to investigate any matters before the Board. The Vice-Chairman shall serve as acting Chairman in the absence of the Chairman, and at such times he or she shall have the same powers and duties as the chairman.

C. SECRETARY

A Secretary shall be appointed by the Chairman of the Board, either from within or outside its membership to hold office during the term of the Chairman and/or until a successor Secretary shall have been appointed. The Secretary shall be eligible for reappointment. The Secretary, subject to the direction of the

Chairman and the Board, shall keep all records and shall be responsible for delivery of all records and minutes of the Board to the County Manager's Office. The County Manager shall keep a permanent volume of the minutes of every meeting of the Board. These minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of members of the Board upon the final determination of any questions, indicating the names and members absent or failing to vote. If the Secretary is chosen from outside the membership of the Board, he or she shall not be eligible to vote upon any matter.

III. ALTERNATE MEMBERS

Alternate members of the Board shall be requested to attend all regular and special meetings and shall be able to cast a vote when a regular member of the Board is absent or if one of the Board members has a conflict of interest. At any meeting at which an alternate member votes, the alternate member shall have the same powers and duties as regular members. Except for the election of officers and the adoption of amendment to the Rules of Procedure, at no time shall there be more than five (5) members voting in any Board meeting or hearing. Alternate members not voting may otherwise participate in meetings.

IV. RULES OF CONDUCT FOR MEMBERS

- A. Members of the Board may be removed for cause, including violation of the rules stated below.
- B. In order for the Board to carry out its duties and responsibilities, it is necessary for all members to attend the meetings. If any member is absent for two (2) consecutive regular meetings, the Chairman may direct the Secretary to notify such member in writing of his or her absences and if such member fails to attend the next regular meeting, the Board of Adjustment, by a majority vote of the remaining members, may request that the position be vacated and also request that a replacement be made by the Board of Commissioners.
- C. Should any member of the Board be financially or otherwise closely associated with any issue that comes before the Board, said member shall disqualify himself from participating in considering the issue and shall not sit with the Board during such consideration. A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business or other associational relationship with an affected person, or a financial interest in the outcome of the matter. A member of the Board may raise

the question of conflict of interest of another member regarding a specific issue that is before the Board. A majority vote of those regular members without such conflict shall determine if such conflict does exist. In the event a regular member disqualifies himself or herself or is asked by a majority of the remaining regular members to disqualify himself or herself, he or she shall be replaced by an alternate member for that business associated with the conflict of interest.

- D. 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.
- E. No Board member shall vote on any matter deciding an application or appeal unless he or she shall have attended the public hearing on that application or appeal.
- F. No Board member shall discuss any case with any parties thereto prior to 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, Secretary, Zoning Administrator or County staff prior to the hearing.
- G. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto prior to its determination of that case. Violation of this rule shall be cause for dismissal from the Board.

V. MEETINGS

A. REGULAR MEETINGS

Regular monthly meetings of the Board shall be held on the 4th Monday of each month at 6:30 p.m. or as per the adopted meeting schedule. Each member (including the alternate members) shall be notified of each regular meeting by the Secretary to the Board.

B. SPECIAL MEETINGS

Special meetings of the Board may be called at any time by the Chairman. At least 48 hours prior written notice of the time and place of special meetings shall be given, by the Secretary or by the Chairman, to each member of the Board including the alternate members and posted on the bulletin board of the main floor of the James W. Warren Citizens Center.

C. CANCELLATION OF MEETINGS

Whenever there are no appeals, applications for variances, or other business for the Board, or whenever so many regular and alternate members notify the Secretary of inability to attend that a quorum will not be available, the Chairman may dispense with a regular meeting by giving written or oral notice to all members not less than twenty-four (24) hours prior to the time set for the meeting and posting same on the bulletin board on the main floor of the James W. Warren Citizens Center.

D. QUORUM

A quorum shall consist of three (3) members of the Board, but the Board shall not pass upon an application for a variance when there are less than four (4) voting members present.

E. VOTING

All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section IV. The required vote to decide appeals and variance applications shall be as provided in Section VI.G.4. In all other matters the vote of a majority of the members present and voting shall decide issues before the Board. The vote of any member who is qualified to vote on an issue but who has abstained from such voting shall be officially counted and shown in the record as a “yes” vote.

F. CONDUCT OF MEETINGS

All meetings shall open to the public. The order of business at regular meetings shall be as follows: (a) roll call; (b) approval of minutes of previous meetings; (c) hearing of cases, consideration and determination of cases heard; (d) reports of committees; (e) unfinished business; (f) new business.

VI. APPEALS, VARIANCES, PUBLIC HEARINGS

A. APPEALS

The Board shall hear and decide appeals of decisions of administrative officials charged with enforcement of the Unified Development Ordinance. The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

B. VARIANCES

When unnecessary hardships would result from carrying out the strict letter of the Unified Development Ordinance, the Board shall vary any of the provisions of the ordinance 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.
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.
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.
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.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

C. PUBLIC HEARING

A public hearing conducted by the Board shall be required to (1) decide all appeals of decisions of administrative officials charged with enforcement of the Unified Development Ordinance; (2) grant any variances to the terms of the ordinance; (3) hear and decide all other matters referred to it or upon which it is required to pass by the Unified Development Ordinance. A public hearing shall not be required to elect officers or to conduct similar administrative duties.

D. MIRROR ORDINANCE PUBLIC HEARING NOTICE

After receipt of notice of an appeal or variance request, a hearing shall be scheduled at a regular or special meeting within sixty (60) days from the filing of such notice. The County shall mail notices, first class, to all property owners within six hundred sixty feet (660') of the property(ies) in question. A conspicuous sign shall be conspicuously posted on the piece(s) of property in question stating the nature of the public hearing and its time, date and place at least ten (10) days prior to the public hearing. Said sign(s) shall remain until a final decision is made.

E. CONDUCT OF HEARING

A representative for the said party must attend the public hearing before the board votes on the case. If a representative fails to attend the meeting, the board may

hear the request, have the public hearing, and defer the case until the next meeting. The order of business for hearing shall be as follows:

1. The Chairman, or such person as he or she shall direct, shall give a preliminary statement of the case.
2. The Applicant, his or her agent or attorney shall present the argument in support of his or her application.
3. Persons opposed to granting the application shall present the argument against the application.
4. Both sides will be permitted to present rebuttals to opposing testimony.
5. The Chairman shall summarize the evidence which has been presented, giving the parties opportunity to make objections or corrections.

Witnesses may be called and factual evidence may be submitted. The Board may view the premises before arriving at a decision. All witnesses before the Board shall be placed under oath and the opposing party may cross-examine them.

F. REHEARINGS

An application for a rehearing may be made in the same manner as provided for an original hearing within fifteen (15) days after the date of denial of the original applications. 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 a substantial change in the facts, evidence, or conditions in the case. The application for rehearing shall be denied by the Board if from the record it finds that there has been no substantial change in the facts, evidence or conditions in the case. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as any other application except that the fees shall be waived.

G. DECISIONS

1. TIME

Decisions by the Board shall be made not more than thirty (30) days from the date the public hearing was concluded.

2. FORM

The Board of Adjustment shall determine contested facts and make its decision within a reasonable time. Every decision shall be based upon competent, material, and substantial evidence in the record. Each 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 shall be signed by the chair or other duly authorized member of the board.

3. EXPIRATION OF PERMITS

Unless otherwise specified, any order or decision of the Board granting a variance shall expire if a Building Permit or Certificate of Occupancy for such use is not obtained within twelve (12) months from the date of the decision.

4. VOTING AT HEARINGS

The concurring vote of a majority of the members of the Board shall be necessary to determine an appeal. The concurring vote of fourth-fifths of the board shall be necessary to grant a variance. Vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates to take the place of such members. Voting on all issues shall either be done by voice or hand. Secret ballots shall not be allowed.

5. PUBLIC RECORD OF DECISION

The decisions of the Board, as filed in its minutes shall be a public record, available for inspection at the County Manager's Office during normal business hours.

VII. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than five (5) members of the Board, provided that such amendment be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

Amended: February 24, 2003
 March 27, 2006
 February 28, 2011
 September 23, 2013
 April 28, 2014
 August 22, 2016, Section II.A, ELECTIONS