

**RULES OF PROCEDURE
BOARD OF ADJUSTMENT
Rowan County
North Carolina**

I. GENERAL RULES

The Board of Adjustment shall be governed by the terms of Chapter 160D, Article 3 of the General Statutes of North Carolina and by the Rowan County Code of Ordinances. All members of the Board shall thoroughly familiarize themselves with these laws.

II. OFFICERS AND DUTIES

A. Chair. A Board chair shall be elected by the full membership (including alternate members) of the Board of Adjustment beginning on January 1 or the first meeting of the calendar year. The elected chair's term of office shall be one (1) year expiring on December 31 of the election year and shall be eligible for re-election. The chair shall decide on 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 chair shall appoint any committees found necessary to investigate any matters before the Board.

B. Vice-Chair. A Board vice-chair shall be elected by the Board from among its full membership in the same manner and for the same term as the chair. The vice-chair shall serve as acting chair in the chair's absence, and at such times shall have the same powers and duties as the chair.

C. Clerk. A clerk shall be appointed by the chair of the Board, from **personnel of the Rowan County Planning and Development Department** ~~outside its membership, to hold office during the term of the chair and/or until a successor clerk has been appointed. The clerk shall be eligible for reappointment.~~ The clerk, subject to the direction of the chair and the Board, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all public notices required to be given, shall notify members of pending meetings and their agenda, shall notify parties to cases before the Board of its decision on such cases, and shall generally supervise the clerical work of the Board. The clerk shall keep the minutes of every Board meeting in a permanent volume. The minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted on by the Board, and all votes of members of the Board on any resolution or on the final determination of any question, indicating the names of members who are absent or fail to vote.

III. MEMBERSHIP APPOINTMENT AND TERM OF OFFICE

The Board of Adjustment shall consist of five [5] regular members and ~~two [2]~~ **four [4]** alternate members. ~~Three [3] regular members shall reside in the County outside the extraterritorial jurisdiction of a municipality, two [2] regular members may be from any location within the County, and two [2] alternates may reside at any location within the County. Alternate membership status typically will be determined by the four [4]~~

most recently appointed members unless otherwise determined by Board vote. Subsequent new member appointments by Board of Commissioners will transition alternates into regular members as necessary to fulfill five [5] regular members. Should more than four [4] members be appointed at any one time, alternate membership status may be determined voluntarily or by Board vote. Regular and alternate members shall be identified on the Board roster. A Rowan County Commissioner may serve as an ex officio non-voting member of the Board of Adjustment.

Appointed positions shall be for three-year terms. However, in original appointments, or in replacing positions vacated, some members may be appointed for less than three years so that terms of all members do not expire at the same time. **Members whose term have expired may be reappointed no more than two (2) consecutive terms. Vacancies occurring for reasons other than expiration shall be filled for the unexpired term.** Members with an expired term may serve until a replacement has been appointed by the Board of Commissioners **when there are not alternates available.**

Planning and Development Department staff shall have an orientation meeting with newly appointed Board members and present a copy of these Rules and Procedures, ordinances and other pertinent documents.

IV. ALTERNATE MEMBERS

Alternate members of the Board shall be called on to attend only those meetings and hearings at which one (1) or more regular members are absent or are unable to participate in the hearing. 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 Board clerk that they are unable to attend or to participate. On receiving such notice, the clerk shall, by the most expeditious means, notify an alternate member(s) to attend. Assignments shall be rotated among the alternate members. At any meeting 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 [5] members participate officially in any meeting or hearing.

V. RULES OF CONDUCT FOR MEMBERS

A. Prior to performing duties referenced in the Zoning Ordinance **or other development regulation**, new and reappointed members shall take an oath of office.

B. Members of the Board may be removed for cause, including violation of the rules stated below.

C. 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.

D. No Board member shall discuss any case with any parties thereto before the 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 its clerk before the hearing.

E. 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.

F. A member of the ~~Board or any other body exercising the functions of a board of adjustment~~ 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 violations of due process 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 relationship defined as immediate family by the Zoning Ordinance including spouse, or business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse themselves, the remaining members shall by majority vote rule on the objection.

VI. MEETINGS

A. Regular Meetings. Regular meetings of the Board shall be held ~~on the fourth (4th) Monday of each month at a time and place designated by the chair upon notification from the clerk that items requiring Board action have been submitted. date and location to be determined; meetings may be held at any convenient place in the county if the chair so directs before the meeting. The clerk shall notify regular and alternate Board members by electronic and first class mail when a meeting is necessary. Absent an agenda, the meeting is automatically cancelled.~~

B. Special Meetings. The chair may call special meetings of the Board at any time. At least 48 (forty-eight) 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.

C. Reserved. Cancellation of Meetings. ~~If there are no appeals, applications for variances, or other business for the Board, or if so many regular and alternate members notify the clerk that they cannot attend that a quorum will not be available, the chair may dispense with a regular meeting by giving written or oral notice to all members not less than 24 (twenty four) hours before the time set for the meeting.~~

D. Quorum. A quorum shall consist of three (3) members of the Board when considering an appeal from a decision, order, requirement, or determination of the Zoning Administrator ~~or other administrative decision from a development regulation.~~ However, a quorum consists of four (4) members of the Board when considering an application for a variance, but the chair should receive affirmative testimony from the applicant, expressing the applicant's willingness for consideration of the case with fewer than five (5) voting members.

E. Voting. All regular members must vote on any issue unless they have

disqualified themselves for one (1) or more of the reasons listed in Section V. The required vote to decide appeals and variance applications shall be as provided in Section VII, D, 3. In all other matters, the vote of a majority of the members present and voting shall decide issues before the Board.

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) hearing of cases; (d) consideration and determination of cases heard (e) reports of committees; (f) unfinished business; (g) new business.

G. Meeting Continuation. The **Board** may continue a hearing that has been convened without further advertisement. If the hearing is set for a given date and a quorum of the **Board** is not present, the hearing shall be continued until the next regular **Board** meeting without further advertisement.

H. Meeting Duration. **The meeting of the Board shall be limited to a two-hour duration unless extended by a majority vote for a specified period of time.**

VII. APPEALS AND VARIANCES

A. Application Types. The Board shall hear and decide all requests for variances and appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator or other administrator of a development regulation as defined in section 21-4 of the Zoning Ordinance. References made to Zoning Administrator in this document shall be construed to include any staff member of the Rowan County Planning and Development Department that administers a development regulation included in the Rowan County Code of Ordinances. It shall also hear and decide all matters referred to it or on which the Rowan County Code of Ordinances requires it to consider. In deciding cases, the Board may hear appeals based on an allegedly improper or erroneous interpretation of the ordinance and variances based on alleged hardship resulting from **strict interpretation of the ordinance.**

B. Procedure for Filing and Delivery of Materials.

1. *Filing.* No appeal shall be heard by the Board unless notice thereof is filed within 30 (thirty) days after the interested party or parties receive notice of the order, requirement, decision, or determination by the Zoning Administrator. Variance applications **and appeals** must be filed with the **Zoning Administrator while appeals must be filed with the** Planning and Development Department. All applications shall be made on the form furnished for that purpose, and all information required thereon shall be complete before an application may be considered as having been filed.

2. *Delivery of Administrative Materials.* The Zoning Administrator shall transmit to the **Board** all applications, reports, and written materials relevant to the matter being considered consistent with section 21-315 (3), which becomes part of the hearing record.

C. Hearings.

1. *Time.* After notice of appeal or request for a variance is received, the Board chair shall schedule the time for a hearing, which shall be at a regular or special meeting within a reasonable time in accordance with sections 21-331 (1) and (3) and section 21-332 (1).

2. *Notice.* The Zoning Administrator shall provide mailed notice to the owners and applicant of the subject property and all property owners within one hundred (100) feet of the subject property at least ten (10) days but not more than twenty-five (25) days before the hearing. Such notice shall state the location of the building or lot, the general nature of the request involved, and the time and place of the hearing. In addition, a sign stating the case number, ~~time date and place of the hearing~~ and **Planning and Development Department contact information** shall be posted on the property.

3. *Conduct of the Hearing.* Any party may appear in person, 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 recognized by the chair, shall give a preliminary statement of the case; (b) the Zoning Administrator, or such person recognized by the chair, shall present a report on the case; (c) the applicant shall present the evidence and arguments in support of the application; (d) persons opposed to granting the application shall present the evidence and arguments against the application; (e) both sides shall be permitted to present rebuttals to opposing evidence and arguments; (f) the chair shall summarize the evidence that has been presented, giving the parties 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 view the premises before the hearing, but the facts indicated by such inspection shall be disclosed at the hearing and made a part of the record. All witnesses before the Board shall be placed under oath, and the opposing party may cross-examine them.

4. *Oaths.* The ~~Chairman or Clerk~~ of the ~~Board of adjustment~~ or any member temporarily acting as ~~chairman~~ may in his official capacity administer oaths to witnesses in any matter coming before the ~~Board~~.

5. *Appearance of Administrator.* The staff member of the Rowan County **Planning and Development** Department who made the decision, or the person currently occupying that position if the decision-maker is no longer employed with the county, shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the county would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the ~~Board~~ shall continue the hearing.

6. *Subpoena.* The ~~Board of adjustment~~ through the chair may subpoena witnesses and compel the production of evidence. Subpoena requests shall be processed in accordance with section 21-315(6) of the Zoning Ordinance. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the ~~Board of adjustment~~ may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court

shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witnesses before the **Board of adjustment** pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the **Board of adjustment**, willfully swears falsely is guilty of a Class 1 misdemeanor.

7. Rehearings. An application for a rehearing may be made in the same manner as an application for an original hearing. Evidence in support of the application shall initially be limited to what 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 Board shall deny the application for rehearing if, from the record, it finds that there has been no substantial change in facts, evidence or conditions. If the Board finds that a change has occurred, it shall thereupon treat the request in the same manner as any other application.

D. Decisions

1. Time. Decisions by the Board shall be made within a reasonable time.

2. Form. The Board's final decision shall be shown in the record of the case as entered in the Board's minutes and signed by the clerk and the chair on approval of the minutes by the Board. Such record shall show the reasons for the determinations, with a summary of the evidence introduced and the findings of fact made by the Board. When a variance is granted, the record shall state in detail any unnecessary hardship upon which the Board finds to exist and what, if any, conditions and safeguards the Board imposed in connection with granting the variance. The Board may reverse or affirm, wholly or partly, or may modify the administrator's decision appealed from and shall make any order, requirement, decision, or determination that should be made. A separate record of the decision in each case shall be prepared, filed with the clerk to the Board of Adjustment and furnished to the parties as specified in Subsection 4.

3. Vote. The **Board of adjustment**, by a vote of four-fifths of its members, may grant a variance from the provisions of the ordinance. A majority of the members shall be required to reverse any order, requirement, decision, or determination of the administrator. For the purposes of this subsection, 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 supermajority if there are no qualified alternates available to take the place of such members.

4. Notices and Public Record of Decisions. The clerk shall give written notice of the decision on the case to the appellant and/or the applicant, property owner (if applicable), and to any person who has submitted a written request with the clerk or the chair of the Board prior to the date the decision becomes effective. Such notice may be delivered either by personal delivery, electronic mail, or by first-class mail as recognized by the Zoning Ordinance. The person required to provide notice shall certify that proper notice has been made. A copy of the decision shall also be filed in the Planning and Development Department as a public record, available for inspection at reasonable times.

5. *Judicial Review 30 days to appeal.* Each quasi-judicial decision of the **B**oard is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the **B**oard is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk or chair of the **B**oard at the time of its hearing of the case, whichever is later.

6. *Variance Revocation.* The Board may consider revocation of an approved variance through the same procedures as the original approval consistent with section 21-332 (6) of the Zoning Ordinance.

VIII. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than three (3) members of the Board, provided that such notice of amendment be given to members at least 48 (forty-eight) hours prior to the meeting and be presented in writing at a regular or special meeting before the meeting at which the vote is taken.

IX. EFFECTIVE DATE

Adopted by the Rowan County Board of Adjustment on the 19th day of March, 2001.

(Amended February 25, 2004)

(Amended May 11, 2010)

(Amended September 14, 2017)

(Amended December 6, 2023)