

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

I. GENERAL RULES

The Zoning Board of Adjustment shall be governed by the terms of Chapter 153A, Article 18, Part 3 of the General Statutes of North Carolina and by the Zoning Ordinance of Rowan County. All members of the Board shall thoroughly familiarize themselves with these laws.

II. OFFICERS AND DUTIES

A. Chairman. A chairman shall be elected by the full membership (including alternate members) of the Board of Adjustment from among its regular members. His term of office shall be one year and until his successor is elected, beginning on January 1, he shall be eligible for re-election. The chairman 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 chairman shall appoint any committees found necessary to investigate any matters before the Board.

B. Vice Chairman. A vice-chairman shall be elected by the Board from among its regular members in the same manner and for the same term as the chairman. He shall serve as acting chairman in the chairman's absence, and at such times he 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 its membership or from outside, to hold office during the term of the chairman and/or until a successor secretary has 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, 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 secretary 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. If the secretary is chosen from outside the Board's membership, he shall not be eligible to vote on any matter.

D. Clerk. A clerk shall be appointed by the chairman of the Board, either from within membership or from outside, to hold office during the term of the Chairman and/or until a successor clerk has been appointed. The clerk shall be eligible for reappointment. The clerk shall perform such tasks as the chairman may assign and shall

assist the secretary generally in performing his duties. If the clerk is chosen from outside the Board's membership, he shall not be eligible to vote on any matter.

III. MEMBERSHIP

The Board of Adjustment shall consist of five [5] regular members and two [2] alternate members. Three [3] members shall reside in the County outside the extraterritorial jurisdiction of a municipality and the two remaining members may be from any location within the County. The two [2] alternates may reside at any location within the County. A Rowan County Commissioner shall 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.

IV. 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 Board secretary that they are unable to attend or to participate. On receiving such notice, the secretary 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 [5] members participate officially in any meeting or hearing.

V. 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.

C. No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested.

D. 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, its secretary, or 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 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. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

VI. MEETINGS

A. Regular Meetings. Regular meetings of the Board shall be held at a date and location to be determined; meetings may be held at any convenient place in the county if the chairman so directs before the meeting.

B. Special Meetings. The chairman 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 secretary or the chairman, to each member of the Board.

C. 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 secretary that they cannot 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 24 (twenty-four) hours before the time set for the meeting.

D. Quorum. A quorum shall consist of 4 (four) members of the Board, but the Board shall not pass on any question relating to an appeal from a decision, order, requirement, or determination of the Zoning Administrator or an application for a variance when fewer than five [5] members are present, unless the Chairman receives affirmative testimony from the applicant, expressing the applicant's willingness for consideration of the case before only 4 (four) members of the Board, and the legal implications of utilizing 4 voting members as opposed to 5 voting members.

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 V. The required vote to decide appeals and applications shall be as provided in Section VII, D,4, and shall not be reduced by any disqualification. 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.

VII. APPEALS AND VARIANCES

A. *Types of Appeals.* 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. It shall also hear and decide all matters referred to it or on which the Rowan County Zoning Ordinance 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 Appeals.* No appeal or variance 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. The applicant must file his application for a hearing with the Zoning Administrator, who shall act as clerk for the Board in receiving this notice. All applications shall be made on the form furnished for that purpose, and all information required thereon shall be complete before an appeal may be considered as having been filed.

C. *Hearings.*

1. *Time.* After notice of appeal or request for a variance is received, the Board chairman shall schedule the time for a hearing, which shall be at a regular or special meeting within 45 (forty-five) days from the filing of such notice of appeal.

2. *Notice.* The Board shall give public notice of the hearing in a newspaper generally circulated in Rowan County by advertisement published at least 10 (ten) days before the date of the hearing for variances and appeals. The Board shall mail notices of the hearing to the parties to the action appealed from, and to such other persons as the Zoning Administrator shall direct, at least 10 days before the hearing. Notice of hearing shall be made to the applicant and all adjacent property owners via first class mail at least 10 days prior to 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 shall be posted on the property at least 10 days prior to the hearing.

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 chairman, or such person as he shall direct, shall give a preliminary statement of the case; (b) the Zoning Administrator, or such person as he directs, shall present a report on the case; (c) the applicant shall present the evidence and arguments in support of his 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 chairman 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 public 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 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. *Subpoena.* The board of adjustment may subpoena witnesses and compel the production of evidence. 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.

6. *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 not later than 45 days from the time of the hearing.

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 secretary and the chairman 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 exceptional difficulty or unnecessary hardship upon which the appeal 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 appealed from. The record shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a variance. A separate record of the decision in each case shall be prepared, filed in the Planning Department, and furnished to the parties as specified in Subsection 5.

3. *Expiration of Permits.* Unless otherwise specified, any order or

decision of the Board granting a variance shall expire if the applicant does not obtain a building permit or certificate of occupancy for such use within six (6) months from the date of the decision.

4. *Four-fifths vote.* The board of adjustment, by a vote of four-fifths of its members, may reverse any order, requirement, decision, or determination of an administrative officer charged with enforcing an ordinance adopted pursuant to NCGS 153A Article 18, or may decide in favor of the applicant a matter upon which the board is required to pass under the ordinance, or may grant a variance from the provisions of the ordinance. 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.

5. *Notices and Public Record of Decisions.* The secretary shall give written notice of the decision on the case to the appellant and/or the applicant and to every aggrieved party who has filed a written request for such notice with the secretary or the chairman of the Board when the hearing is held. Such notice may be delivered either by personal service or by registered mail or certified mail, return receipt requested. A copy of the decision shall also be filed in the County Managers Office, as specified in the zoning ordinance. The decision shall be a public record, available for inspection at reasonable times.

6. *Judicial Review 30 days to appeal.* Each decision of the board 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 board 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 secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

VIII. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four [4] 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 and effective on the _____ day of _____, 2010.

Chairman, Zoning Board of Adjustment

Clerk / Secretary