

Cumberland County, North Carolina Board of Adjustment

Rules of Procedure

I. GENERAL RULES

The Board of Adjustment shall be governed by the terms of the *General Statutes of North Carolina*, § 153A-345, including subsequent amendments, and by the *Cumberland County Zoning Ordinance*, adopted June 20, 2005 as it may be amended from time to time. All members of the board shall thoroughly familiarize themselves with these regulations.

II. OFFICERS AND DUTIES

- A. *Chairman*. The chairman shall be elected by majority vote of the membership of the board from among its regular members. The chairman's term of office shall be for one calendar year beginning on July 1 and ending on June 30, and until the successor is qualified. The chairman shall be eligible for reelection provided that the individual remains qualified as a regular member and the term limit has not expired. Subject to these rules, the chairman shall rule upon all points of order and procedures, unless overruled by a majority of the board in session at the time.
- B. *Vice-Chairman*. A vice-chairman shall be elected by the regular board members in the same manner and for the same term as the chairman. The vice-chairman shall serve as acting chairman in the absence of the chairman and at such times when so acting, the vice-chairman shall have the same powers and duties as the chairman.
- C. *Secretary*. The individual fulfilling the duties as secretary shall be a County Planning and Inspections staff member and shall be assigned to serve the board by the County Planning and Inspections Director (hereinafter *director*) or the director's designee. The secretary shall act in this capacity so long as the staff member assigned is performing in an acceptable manner as determined by the director or the director's designee. 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 and ensure the administrative work of the board is properly and efficiently accomplished. The secretary shall ensure that a complete set of minutes of the record for every board meeting is kept in a permanent volume in a secure location. The minutes shall show the record of all material 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. The secretary shall not be eligible to vote on any matter coming before the board.

III. MEMBERS

- A. Membership on the Board of Adjustment shall be governed by the terms of the *General Statutes of North Carolina*, § 153A-345, as in effect, and by the *Cumberland County Zoning Ordinance* adopted June 20, 2005, and as amended from time to time.
- B. Individual board members, whether appointed as a regular member or an alternate, may be removed for cause, including violation of these rules, by majority vote of the County Board of Commissioners.
- C. Faithful attendance at all meetings of the board and conscientious performance of the duties required of members of the board shall be considered a prerequisite of continuing membership on the board. Regular members missing three consecutive meetings without good cause shall be requested to resign immediately, and if a resignation is not submitted may be removed by the County Board of Commissioners.
- D. Board members shall not take part in the hearing, consideration or determination of any case in which the board member is personally or financially interested or as to which the board member may have a bias making it inappropriate for the board member to participate in consideration of such case.
- E. Board members shall not vote on any matter deciding an application or appeal unless the board member attended the meeting in which the hearing on the application or appeal occurred.
- F. Board members shall not discuss any case with any parties or independently investigate any case prior to the hearing on that case. While prior knowledge or modest communications prior to a hearing does not automatically disqualify a board member from participating in a case, board members must not enter the hearing with a fixed opinion about the case and each board member must disclose on the record at the start of the hearing any personal prior knowledge and/or communications.
- 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. Violations of this rule will be reported to the County Board of Commissioners and could be cause for removal from the board.

IV. MEETINGS

- A. *Regular Meetings.* Regular meetings of the board shall be held monthly on the third Thursday of the month, except that if no application is filed by the application deadline schedule prior to a meeting date, the secretary shall notify all members that no meeting will be held for that month. The meetings shall be held in Public Hearing Room #3 at the Historic Courthouse, 130 Gillespie Street at 6:00 p.m., except as specified for special meetings below.
- B. *Special Meetings.* Special meetings of the board may be called at any time by the chairman. At least 48 hours written notice of the time and place of special meetings shall be given by the secretary or the chairman, to each member of the board, and notice shall also be given in compliance with the *North Carolina Open Meetings Law*. Special meetings can only be called if it is pre-determined that a quorum of the board members can be present.
- C. *Quorum and Voting.* A quorum shall consist of four members of the board. However, the concurring vote of four-fifths of the members of the board for the hearing of a particular case shall be necessary to: reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of any County ordinance in which the Board of Adjustment has been designated as the appeals board; to grant any variance from any County ordinance that the board has the authority to vary; to rule on matters concerning nonconforming uses; to interpret the official zoning maps; and pass upon disputed questions of lot lines or district boundary lines as they arise in the administration of the *County Zoning Ordinance*. A simple majority vote is required to find in favor of an application for a Special Use Permit and for matters subject to approval as high density developments under the provisions of the *Cumberland County Water Supply Watershed Management and Protection Ordinance*.
- D. *Conduct of Meetings.* All Board of Adjustment meetings shall be open to the public. Except for consideration of high density development applications subject to the provisions of the *County Water Supply Watershed Management and Protection Ordinance*, all board meetings shall follow quasi-judicial protocol. The order of business at regular meetings generally shall be as follows:
1. Roll call;
 2. Adjustments to the agenda;
 3. Approval of the minutes of the previous meeting;
 4. Abstentions by board members;
 5. Public hearing deferrals;

6. Board member disclosures;
7. Board policy statement regarding appeal process read to audience;
8. Hearing of cases;
9. Discussion by board members and staff;
10. Updates on previously heard cases; and
11. Adjournment.

V. APPLICATIONS

- A. *Type of Applications.* The board shall hear and decide all matters referred to it and as enumerated in Section 1603 of the *County Zoning Ordinance*.
- B. *Procedure for Filing Applications.* All applications for hearings shall be filed with the secretary, or with the administrative official, acting as secretary for the board for purposes of receiving this notice. All applications shall be made upon the form furnished for that purpose, and all required information shall be provided thereon before an application shall be considered as complete and having been filed.
- C. *Fees.* Applications shall not be considered as having been submitted until there has been paid to “Cumberland County” a filing fee as set forth in the *Cumberland County Fee Schedule*.
- D. *Hearings:*
 1. *Date and Time of Hearing.* Upon receipt of a completed application, the secretary will schedule the case to be heard in accordance with the board’s adopted *Deadline/Meeting Schedule*.
 2. *Notice.* The secretary shall ensure public notice of the hearing by publishing or advertising in a newspaper of general circulation within the County the date, time and location of the hearing along with specific information from the application to afford the public actual notice of the matter applied for. The notice of the hearing is to be published a minimum of ten days and not more than 25 days prior to the meeting in which the case is to be heard.
 3. *Conduct of Hearing.* Any party may appear in person or by attorney at the hearing. The order of business for hearing each case shall be as follows: (a) the chairman, or such person as he shall direct, shall give a preliminary statement of the case, (b) after being sworn in by the chairman, the applicant

will present evidence relevant to this application together with his/her contentions as to why the application shall be granted; (c) persons opposed to granting of the application will be allowed to present relevant evidence and contentions against the granting of this application; (d) both sides if desired, will be allowed to present rebuttal evidence and arguments; (e) following presentation of a case, the board shall make its decision setting forth its findings of fact, its conclusions, and any conditions of approval. Witnesses may be questioned following presentation of their testimony by board members, and thereafter by any other interested persons.

4. *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 a substantial material change in the facts, evidence, or conditions of the case. A rehearing shall be denied by the board if in its judgment there has been no substantial material change in the facts, evidence, or conditions of the case. If the board finds that there has been such a change, the request for rehearing shall thereupon be scheduled and heard in the same manner as any other application.

E. *Decisions:*

1. *Time.* Decisions by the board shall generally be rendered at the same meeting in which the case was heard. In the event, the board has requested additional information or by consensus among its members agree that additional time is warranted for the applicant or opponents, the case may be rescheduled for a date certain, typically should be set for the following month regularly scheduled board meeting.
2. *Form.* The final decision of the board for each case shall be shown in the record of the minutes of the meeting in which the case is heard. The formal approval of the minutes shall be ascertained in the minutes following the month in which a case is heard. The record shall show the reasoning for the decision, with a summary of the evidence introduced and the findings of fact, if required, and conclusions made by the board.
3. *Public Record of Decisions.* The decisions of the board, as filed in the board's record book shall be a public record, available for inspection at all reasonable times.

VI. ANNUAL REPORT TO BOARD OF COUNTY COMMISSIONERS AND COUNTY JOINT PLANNING BOARD

The secretary shall prepare and submit in July of each calendar year to the Board of County Commissioners and County Joint Planning Board a summary of the Board of Adjustment's activities for the preceding fiscal year. Such report shall contain a statement of the cases heard and a summary of the actions taken, along with any other matters which the board deems appropriate for inclusion in such report.

VII. AMENDMENTS

These rules may be amended at any time by an affirmative vote of not less than four members of the board, provided that such amendment be presented in writing at a regular meeting preceding the meeting at which the vote is taken.

Read, approved, and adopted by the Board of Adjustment on this 26th day of September, 1972, the following board members voting AYE: Chairman Hill, Vice-Chairman Lytton, Mr. Averitte, Mr. Huggins, and Mr. Starling.

Amended on this 16th day of July, 1987.

Amended on this 19th day of July, 2007.

Amended on this 20th day of January, 2011.