



**ZONING BOARD OF ADJUSTMENT
GASTON COUNTY, NORTH CAROLINA**

RULES OF PROCEDURE

I. GENERAL RULES

The Zoning Board of Adjustment (hereinafter referred to as the “Board”) shall be governed by the terms of Chapter 153A, Article 18, Part 3 of the General Statutes of North Carolina and by the Gaston County Unified Development Ordinance. All Members of the Board shall thoroughly familiarize themselves with these laws and abide by the rules set forth below.

II. OFFICERS AND DUTIES

A. MEMBERSHIP

Members of the Board shall be appointed for designated terms by the Gaston County Board of Commissioners. The Board shall consist of seven (7) regular members and two (2) alternate members. All members shall be residents of Gaston County and reside within the zoning jurisdiction of Gaston County as indicated on the Official Zoning Map.

Alternate members of the Board shall attend all regular and special meetings. In the event that a regular member is absent from the meeting or should a regular member be removed due to conflict of interest, the alternate shall be able to cast a vote in the same manner as a regular member on business of the Board.

The alternate members shall have full voting privileges on the adoption or amendment of these Rules of Procedure and other procedural aspects of the Board’s business when serving as full voting members of the Board. Alternate members may participate in any discussion before a vote on procedural matter whether voting or not.

B. ELECTIONS

The Board shall elect a Chair and a Vice-Chair by the full membership (including alternate members of the Board.) The Chair and Vice-Chair shall be selected from regular members of the Board, with the alternates not being eligible for these positions. These positions shall be elected annually at the regular meeting of the Board held in the month of January. These officers shall serve at the pleasure of the Board and shall be elected for a one (1) year term. Members shall be notified at least seven (7) days prior to the regular January meeting, when officers are to be elected. Each officer shall serve until relieved of his or her duties as herein provided.

C. OFFICERS’ DUTIES

1. The Chair 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 Chair shall appoint any committees deemed necessary to investigate any matters before the Board. The Chair shall act as spokesperson for the Board, unless otherwise directed by a majority of the Board.

2. The Vice-Chair shall assume the full duties and responsibilities of the Chair in the absence of the Chair. In the Absence of the Chair and Vice-Chair, a temporary Chair shall be elected by the remaining members of the Board, to assume the duties and responsibilities of the Chair for a specified time period.
3. The Planning Director or his or her designee shall serve as Secretary to the Board. The Secretary shall be responsible for taking minutes at all Board meetings. These minutes shall reflect actions of the Board and pertinent facts dealing with business before the Board. The minutes shall further reflect every resolution acted upon by the Board, and all votes of members of the Board upon any resolution or upon the final determination of any question, indicating the names of members absent or failing to vote. The Secretary, subject to the direction of the Chair and the Board, shall conduct all correspondence of the Board, arrange for all public notices required to be given, notify members of pending meetings and their agenda, notify parties to cases before the Board of its decision on such cases, and generally supervise the clerical work of the Board. The Secretary shall provide a copy of the minutes of the meetings prior to minutes becoming official minutes of the Board. A copy of the minutes of all meetings of the Board of Adjustment shall be maintained in the Planning office by the Secretary.

III. RULES OF CONDUCT FOR MEMBERS

- A. Members of the Board may be removed for violation of the rules stated herein.
- 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 regular member is absent for three (3) consecutive regular meetings, said member is deemed to have resigned from the Board. The Chair may direct the Secretary to notify such member in writing of his or her absences, and direct the secretary to notify the member that said member has until the next regularly scheduled meeting to show cause in writing why said member should be reinstated to the Board. If the Board determines that sufficient cause was given, the Chair shall direct the secretary to make a request to the Board of Commissioners to reinstate the member.
- C. Should any member of the Board be financially or otherwise closely associated with any issue that comes before the Board, said member shall make public said possible conflict, the nature of the conflict, and ask for a determination by the Board. A majority vote of those voting members without such conflict shall determine if said conflict does exist, and should a conflict exist, the Board shall grant the member removal from the discussion or vote on issue involved. 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. Similarly, any interested party may challenge the existence of a conflict of interest or ask for the determination of an undisclosed conflict of interest.
- D. Withdrawal from participation in any matter is necessary only in those specific cases in which a conflict has been determined. There shall be no attempt to exclude entire categories of considerations because of the business or profession with which a member is associated.
- E. Any regular Board member (or alternate member who has replaced an absent or excused voting member) present at a meeting who abstains from voting on a matter without first having been excused from voting, shall be declared to have voted "Yea" on such matter.
- F. No Board member shall vote on any matter unless he or she shall have attended the entire public hearing on that application. If a public hearing is continued from one meeting date to another, an

alternate member may replace a regular meeting only if the alternate member was in attendance at all previous public hearing sessions concerning that application.

- G. No Board member shall discuss any case with any parties or other Board member thereto prior to the public hearing on that case; provided however, that member may receive and/or seek information pertaining to the case from the Secretary, the Zoning Administrator, or Zoning Enforcement Officer prior to the hearing.
- H. Members may 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.

IV. MEETINGS

- A. Regular meetings of the Board shall be held on the third Thursday of each month at 4:00 P.M. in the Gaston County Administration Building. Meetings may be held in other locations at the direction of the Chair or Board provided that meetings may be held at any other convenient place in the Gaston County area and notice is given by the Secretary in accordance with applicable laws and policies of the County for meeting notification. Each member (including the alternate members) shall be notified of each meeting by the Secretary to the Board.
- B. Special meetings of the Board may be called at any time by the Chair, or the Vice-Chair, serving in capacity of the Chair. Notice shall be given at least forty-eight (48) hours in advance of the meeting, stating the time, place and purpose of the meeting to each member of the Board including the alternate members, and other appropriate persons or organizations in compliance with the open meetings law.
- C. Cancellation of Meetings: Whenever there is no business before the Board, or whenever so many members notify the Secretary of their inability to attend that a quorum will not be available, the Chair may dispense with regular meeting by having written or oral notice to all members no less than twenty-four (24) hours prior to the time set for the meeting.
- D. Quorum: In no case shall less than six (6) nor more than seven (7) members of the Board be allowed to vote on any matter other than administrative issues. The concurring vote of at least six (6) voting members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator; to decide in favor of the applicant on any matter upon which the Board is required by Ordinance to pass.
- E. Conduct of Meetings: All meetings shall be open to the public. The order of business at regular meetings shall be as follows.
 - 1. Call to Order
 - 2. Determination of Quorum
 - 3. Approval of Minutes of Previous Meetings
 - 4. Hearing of Cases
 - 5. Consideration and Determination of Cases Heard
 - 6. Reports of Committees
 - 7. Other Business
 - 8. Adjourn

V. APPEALS, APPLICATIONS, PUBLIC HEARINGS

- A. **Types of Appeals:** The Board shall consider through a public hearing and decide all appeals from, and review any order, requirement, decision, or determination made by the Zoning Administrator. In deciding appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of the Ordinance and those based upon alleged hardship resulting from strict interpretation of the Ordinance. In addition, the Zoning Administrator may file an appeal with the Board in case where an interpretation of the Ordinance is needed.
- B. **Procedure for Filing Appeals:** No appeal shall be considered by the Board through a public hearing unless notice thereof is filed with the Zoning Administrator within fifteen (15) days after the interested party or parties receive written notice of the order, requirement, decision or determination by the Zoning Administrator. All applications shall be made upon the form furnished for that purpose by the County, and all information required thereof shall be furnished before an appeal shall be considered as having been filed.
- C. **Conduct of Hearing:** Any party may appear in person or by agent or by attorney at the hearing. The order of business for hearings shall be as follows:
1. The chair, or such person as he shall direct, shall give a preliminary statement of the case, and the Chair shall swear in all witnesses and participants to give testimony before the Board.
 2. The applicant shall present the argument in support of his or her application without time limitation as long as the applicant or his designated representative are addressing the findings-of-fact.
 3. Persons opposed to granting the application shall present the argument for the application being limited to three (3) minutes. The Secretary will keep the time and may give a thirty (30) second warning.
 4. The Chair (or Secretary, at the Chair's direction) shall summarize the evidence which has been presented, giving the parties opportunity to make objections or corrections. Board members may individually view the premises before arriving at a decision. All witnesses giving evidence before the Board shall be placed under oath and the opposing party may cross-examine them.
 5. Staff, however, may inform the Board members at any time during or after the public hearing on any procedural matter, through the Chair.
 6. The Chair shall close the public hearing immediately prior to a vote being taken on a particular application.
- D. **Rehearing:** An application for a rehearing shall be made in the same manner as provided for in an original hearing. Said application may only be filed within fifteen (15) days after the date of written notification of the Board's action. 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. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as any other application.

A public hearing shall be required to be held by the Board to determine whether a rehearing is to be held. Those Board members who voted on the application at the prior public hearing need not all be voting to determine if a rehearing is to be held. In order to conduct a rehearing, the concurring vote of at least six (6) voting members shall be required.

E. Decisions:

1. Time: Decisions by the Board shall be made no later than thirty-one (31) days from the date the hearing was closed.
2. Form: The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the Secretary upon arrival of the minutes by the Board. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board.

Where 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 are imposed by the Board in connection with the granting of a variance.

3. Expiration of Permits: Unless otherwise specified in the terms of the case, any order or decision of the Board granting a case shall expire if a building permit, certificate of compliance, or certificate of occupancy (if a building permit is not required) for such use is not obtained within twenty-four (24) months from the date of the Board's decision.
4. Voting at Hearings: In no case shall less than six (6) nor more than seven (7) members of the Board be allowed to vote on any matter other than administrative issues. The concurring vote of at least six (6) voting members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator; to decide in favor of the applicant on any matter upon which the Board is required by Ordinance to pass.
5. Public Record of Decision: The decisions and deliberations of the Board, as filed in its minutes, shall be of public record, available for inspection at the Secretary's office during normal business hours.

VI. AMENDMENTS

These rules, may, within the limits allowed by law, be amended at any time by the affirmative vote of not less than six(6) regular or alternate 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.

ADOPTED THIS ____ 19th _____ DAY OF ____ APRIL _____, 2012.

Being no further business, Chairman Bolynn adjourned the Organization Meeting of the Board of Adjustment.

Secretary

Certification

I, Donna S. Buff, Clerk to the Gaston County Board of Commissioners, do hereby certify that the above is a true and accurate copy of The Zoning Board of Adjustment Rules of Procedure By-laws as adopted by the Board of Commissioners on September 27, 2012.

SEAL


Donna S. Buff, Clerk



RESOLUTION TITLE: APPROVAL CONSIDERATION OF THE BOARD OF ADJUSTMENT UPDATED RULES OF PROCEDURE – BYLAWS

- Whereas,** the rules of procedure – bylaws is a guiding document, which serves a dual purpose for the BOA both as rules of procedure and bylaws; and,
- Whereas,** during the past year, the Board of Adjustment, County Legal Department, and Planning Staff, have reviewed the current Rules of Procedure – Bylaws for the purposes of updating where necessary; and,
- Whereas,** over the course of several meetings, the Board of Adjustment and Planning Staff examined and discussed the recommended revisions; and,
- Whereas,** the proposed recommended revisions were reviewed by the County Legal Department, and was determined to be consistent with state rules; and,
- Whereas,** after the final review of the recommended revisions, the Board of Adjustment voted to recommend approval of the updated Rules of Procedure – Bylaws to the Board of Commission.

Now, Therefore, Be It Resolved by the County Commission that after consideration of the approval request, approves the revisions (attached) to the Board of Adjustment Rules of Procedure – Bylaws.

Be It Further Resolved that the County Manager is authorized to make necessary notifications in this matter to appropriate parties.

DO NOT TYPE BELOW THIS LINE

I, Donna S. Buff, Clerk to the County Commission, do hereby certify that the above is a true and correct copy of action taken by the Board of Commissioners as follows:

NO.	DATE	M1	M2	CARPENTER	PHILBECK	KEIGHER	LOFTIS	PRICE	CBROWN	FRALEY	VOTE
2012-275	9/27/2012	TP	CB								U

DISTRIBUTION: Board of Adjustments Chairman; Laserfiche Users

A=AYE, N=NAY, AB=ABSENT, ABS=ABSTAIN, U=UNANIMOUS