



RULES OF PROCEDURE
BOARD OF ADJUSTMENT
WATAUGA COUNTY
NORTH CAROLINA

I. GENERAL RULES

A. The Board of Adjustment shall be governed by the terms of Chapter 160D, Article 4 and Article 7, Section 705 of the North Carolina General Statutes.

II. COMPOSITION

A. The Board of County Commissioners may provide for the appointment of a Board of Adjustment consisting of five or more members, each to be appointed for three years. In appointing the original members or in filling of vacancies, the Commissioners may appoint alternate members to serve on the Board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Alternate members shall have the same powers and duties as regular members. Each designated zoning area shall, if practicable, have at least one resident as a member of the Board of Adjustment; otherwise the provisions of G.S. 153A-25 regarding qualifications for appointive office shall apply.

III. OFFICERS AND DUTIES

A. A Board Chair shall be elected by the Board membership to preside over meetings of the Board. The Chair's term of office shall be one year and until a successor is elected. The Chair 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.

B. A Board Vice-Chair shall be elected by the Board membership in the same manner and for the same term as the Chair. The Vice-Chair shall have the same power and duties as the Chair when called upon to serve in the Chair's absence.

C. A member of the County staff shall serve as Board Clerk. The Clerk, subject to the direction of the Chair and 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.

D. County Ordinances may provide that the Board of Adjustment hear and decide upon special use permits, requests for variances, and appeals of decisions made by administrative officials charged with enforcement of the ordinance.

IV. ALTERNATE MEMBERS

A. Alternate members of the Board shall be called on to attend only those meeting 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 unable to participate in a particular case or meeting shall give prompt notice to the Board Clerk that they are unable to attend or to participate. Assignments shall be rotated among the alternate members. On receiving such notice, the Clerk shall, by the most expeditious means, notify an alternate member to attend.

V. RULES OF CONDUCT FOR MEMBERS

A. A member of the Board exercising quasi-judicial functions pursuant to this Article 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 of the Board shall be held on the 4th Monday of each month at 5:30 p.m. in the Watauga County Administration Building. Meetings may be held at any other convenient place in the county if the Chair so directs before the meeting.

B. The Chair may call special meetings of the Board at any time. At least forty-eight (48) hours written notice of the time and place of special meeting shall be given, by either the Clerk or the Chair, to each member of the Board.

C. If there are no appeals, applications for special use permits, variance requests or other business to come before the Board, the Clerk may dispense with a regular meeting.

D. A quorum is necessary for the Board to conduct its business. A quorum shall consist of four (4) members of the Board.

E. The concurring vote of four-fifths of the board shall be necessary to grant a variance; simple majority is sufficient for all other matters. For the purpose of this subsection, vacant positions on the board and members who are disqualified from voting shall not be considered members of the board for calculation of the requisite majority provided no qualified alternates are available for the hearing.

VII. APPEALS AND APPLICATIONS

A. The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the County's designated administrative officer(s). Any person who has standing under G.S.160D-1402, or the County, may appeal a decision to the Board. The Board shall also consider requests for variance, conditional use permit applications, and other matters referred to it.

B. The owner of property that is subject to the decision, and other party seeking a decision if different from the owner, shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt of any source of actual or constructive notice of the decision within which to file an appeal. 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. Appeals must be filed with the County Clerk. Parties to an appeal may agree to mediation or other forms of alternative dispute resolution upon approval of all parties involved. The County Attorney may facilitate and manage the procedures for mediation or alternative dispute resolution.

C. Upon receipt of a complete application to appear before the Board, the Board Clerk shall schedule a hearing as follows:

1. Notice. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the ordinance. In the absence of evidence to the contrary, the county may rely on tax listings to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within the same time period, the county shall prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
2. 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 as he shall direct, shall give a preliminary statement of the case; (b) the applicant shall present the evidence and arguments in support of his application; (c)

persons opposed to granting the application shall present the evidence and arguments against the application; (d) both sides shall be permitted to present rebuttals to opposing evidence and arguments. 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.

3. Oaths. The Chair and Clerk are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board, willfully swears falsely is guilty of a Class 1 misdemeanor.
4. Subpoenas. The Board, through the Chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S.160D-1402 may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled.
5. 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 same manner as any other application.

D. The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial 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. A quasi-judicial decision is effective upon filing the written decision with the Board Clerk. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

E. On its own motion, or at the request of an applicant, appellant, or other party, the Board may defer the hearing of cases or continue cases on which hearings have already begun.

1. An initial request for continuance may be granted by the Board Chair without need of the Board of Adjustment to convene. If the decision of the Chair is to deny the request, such denial may be reconsidered by the full board at the request of any party. Any subsequent request to continue a hearing shall be decided by the Board of Adjustment at the scheduled hearing date.


2. A request shall include a short statement of the reason(s) for the continuance and should be made in writing at least five (5) working days prior to the hearing date so that all parties may receive notice of the Chair's decision. A continuance shall be granted upon good cause shown.

VIII. AMENDMENTS

A. 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 amendment be presented in writing at a regular or special meeting before the meeting at which the vote is taken.

ADOPTION DATE: December 10, 1990
AMENDED: March 24, 2014
July 28, 2014
February 28, 2022

ATTEST:



JOE FURMAN, CLERK TO THE BOARD OF ADJUSTMENT
WATAUGA COUNTY
NORTH CAROLINA