

**RULES OF PROCEDURE  
BOARD OF ADJUSTMENT**

**UNION COUNTY, NORTH CAROLINA**

**I. GENERAL RULES**

The 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 Union County Development Ordinance. All members of the Board shall thoroughly familiarize themselves with these laws and procedures. The Board, being a public body, shall at all times conduct meetings in conformity with the applicable Open Meetings Law statutes.

The board of adjustment is responsible for performing those duties expressly identified in these Rules of Procedure or any other county ordinance and for acting on all applications before it. In addition, the board of adjustment is authorized to adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of the North Carolina General Statutes or the Union County Development Ordinance.

**II. OFFICERS AND DUTIES**

**A. Appointments**

The Board of Adjustment shall consist of five (5) regular members and two (2) alternate members appointed by the County Commissioners. The alternate members of the Board shall be required to attend regular and special meetings and shall be able to cast a vote when a regular member of the Board is absent or if any Board member has a conflict of interest.

The alternate members shall be assigned numbers “1”, and “2” by the Chairman. The following system shall be employed for using alternate members:

Member “1” shall first be asked to serve. If he (hereinafter, “he,” “him,” or “his” shall each refer to both the male or female gender) is absent or has a conflict of interest, Member “2” shall be asked to serve, etc. If Member “1” does serve, Member “2” will be first asked to serve at the next meeting, etc.

All regular and alternate Board members shall be appointed for three (3) year staggered terms. Terms shall begin on May 1 and expire on April 30.

The Clerk to the Board of Commissioners and the Secretary to the Board of Adjustment shall be responsible for maintaining a current list of Board members, including the effective date of their appointment and expiration date of their term. The Clerk shall keep the County Commission informed as to when any term is to expire, at least sixty (60) days prior to the expiration date.

At the regular Board meeting held in the month of May, the Board shall elect a Chairman and Vice-Chairman from their membership. All regular and alternate members shall be allowed to vote. Eligibility to hold these offices, however, shall be limited to regular members. Terms of office shall be one year. Persons may be reelected to the same office for successive one-year terms. At this meeting, before the election of the chair, the board of adjustment's attorney must temporarily preside over the meeting until the chair is elected.

Vacancies in either chair or vice chair positions must be filled for the remainder of the unexpired term. If an officer voluntarily resigns before or during a board of adjustment meeting, a new officer election must be held during the next regularly scheduled board of adjustment meeting in accordance with the general election process.

Within one year of appointment, each new regular and alternative member of the board of adjustment must undergo training pursuant to a course of study approved by the Zoning Administrator. Failure to attend such training may constitute grounds to recommend removal.

#### **B. Duties**

The Chairman 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 Chairman shall appoint any committees found necessary to investigate any matters before the Board. The Vice-Chairman shall serve as acting Chairman in the absence of the Chairman, and at such times he shall have the same powers and duties as the Chairman. In the event of the absence of both the Chairman and the Vice-Chairman from a Board of Adjustment meeting, the regular members present may elect a temporary Chairman for that meeting and proceed with the order of the business.

#### **C. Secretary**

The County Commission shall arrange to have secretarial duties performed for the Board. Said person(s) (hereafter referred to as the "Secretary"), subject to the direction of the Chairman, shall take minutes and keep all records. The Secretary 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 keep in a permanent volume the minutes of every meeting of the Board. These shall show the record of all important facts pertaining to each meeting and hearing, 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. If the Secretary is appointed from outside the membership of the Board, he shall not be eligible to vote upon any matter. The minutes

of the Board of Adjustment shall be kept at the office of the Zoning Administrator located at the Union County Government Center.

### **III. RULES OF CONDUCT FOR MEMBERS**

#### **A. Attendance**

In order for the Board to carry out its duties and responsibilities, all members shall attend all meetings.

#### **B. Conflicts of Interest**

No member of the Board of Adjustment shall seek to influence a decision, participate in any action or cast a vote involving any matter that is before the Board which may result in a private benefit to him, his immediate relatives or his business interest. In order to meet this requirement the Chairman shall, before each petition's public hearing, ask the members if any of them have a conflict of interest. A member may be excused from voting on a particular issue under the following circumstances:

1. If the member has a direct financial interest in the outcome of the matter at hand; or
2. If the matter at hand involves the member's own official conduct; or
3. If the member has such close personal ties to the applicant or other interested parties that he cannot reasonably be expected to exercise sound and impartial judgment on behalf of the public's interest.

If a Board member determines that he may have a conflict of interest on a particular issue, he shall declare the nature of such conflict and ask to be excused from voting on the issue related to such conflict. The remaining regular members, by majority vote, shall determine whether such conflict exists and whether said member may excuse himself from further deliberations on said matter. If a member is excused from voting he shall remove himself from the meeting room during all deliberations pertaining to such matter. In no instance may a member be excused from voting merely due to an unwillingness to vote on the issue at hand and where no conflict of interest is found to exist.

A challenge to the existence of a conflict of interest or a challenge of an undisclosed conflict of interest may be filed by any interested party with the Board. Such a challenge shall be reviewed by the Board. Any challenge made to the Board shall be supported by competent evidence and shall be submitted at a properly convened meeting of the Board. The Board shall hear all evidence and, by majority vote of the remaining regular members, shall make the final determination as to the existence of a conflict of interest.

A Board member may only be excused or removed due to a conflict of interest by a majority vote on a motion to remove the Board member. In the event a Board member is

found to have a conflict of interest and is excused from voting by the Board; he shall be replaced by an alternate member for that business associated with the conflict of interest.

**C. Discussion of Board Cases**

Board members shall refrain from discussing upcoming matters of business with any parties, other Board members, prior to the meeting at which such items are to be publicly discussed; provided however, that members may receive and/or seek general technical information pertaining to the case from the Secretary or Zoning Administrator prior to the Board meeting at which the case is to be heard.

**D. Removal**

Members of the Board may be removed by the County Commission for cause, including violation of the rules stated herein. The Board of Adjustment may vote to recommend to the County Commission regarding removal of a member for duly cited causes and the request must be in writing, signed by the Chairman or Vice Chairman of the Board of Adjustment.

**IV. MEETINGS**

All Board of Adjustment meetings are open to the public and whenever feasible the agenda for each meeting should be made available before the meeting.

**A. Regular Meetings**

Regular meetings of the Board shall be held on the Third Monday of each month at 6:00 P.M. in the Union County Board of Commissioners Board Room, First Floor, Union County Government Center; provided that meetings may be held at any other convenient location in Union County if directed by the Chairman in advance of the meeting. Each member (including the alternate members) shall be notified of each meeting by the Secretary.

**B. Special Meetings**

Special meetings of the Board may be called at any time by the Chairman provided that at least forty-eight (48) hours written notice of the time and place of a special meeting be given, by the Secretary, to each member of the Board including the alternate members and posted in accordance with the North Carolina General Statutes.

**C. Cancellation of Meetings**

Whenever there are no appeals, interpretations, applications for special use permits, applications for variances, or other business for the Board, or whenever so many regular and alternate members notify the Secretary of their inability to attend so that a quorum will not be available, the Chairman may dispense with a regular meeting by having the

Secretary give written or oral notice to all members prior to the time set for the meeting and post the cancellation in accordance with the North Carolina General Statutes.

#### **D. Requests for Continuance**

Requests for a continuance of a hearing on any case scheduled before the Board of Adjustment may be made by the applicant or an interested party. An interested party for a case is a person or legal entity who has standing to appeal the Board's decision to Superior Court, or is a person or legal entity that received legal notice of the case. This definition of an "interested party" is only for purposes of determining who may request a continuance of a case and for no other purpose.

An applicant or interested party may make a request for continuance before the case's scheduled hearing date, or may make a request for continuance at the beginning of the hearing. The procedure for a pre-hearing request for continuance shall be different than the procedure for a request for continuance made at the beginning of the hearing. If an applicant or interested party intends to request a continuance of a case, the Board suggests that the request for continuance be made in advance of the scheduled meeting.

If a request for continuance is made prior to the scheduled meeting, the request shall be in writing and shall be submitted at least 2 business days (excluding holidays and weekends) in advance of the scheduled hearing. The request for continuance shall be submitted to the Zoning Administrator. If this is the first request for continuance, the Zoning Administrator shall have the authority to grant or deny the request for continuance. If the requesting party disagrees, or if an adverse side (applicant or interested party) disagrees with the Zoning Administrator's decision, this request for continuance decision may be appealed, in writing, and the request will be brought before the Board at the regular scheduled meeting and the Board will make a final decision on the request for continuance. If there is a second request for continuance, whether by the same person or another person, this second or subsequent request for continuance must be decided by the Board, not the Zoning Administrator. The Board can be polled by the Zoning Administrator prior to the scheduled hearing and the Board can vote to grant the request, to deny the request, or to defer a decision until the scheduled meeting.

The criteria for determining whether to grant or deny a request for continuance, whether by the Board or the Zoning Administrator, shall be as follows:

1. Has the request for continuance been made in good faith?
2. Has there been a prior request for continuance of the case?
3. If the requesting party is not the applicant, how much notice has the requesting party had of the matter?
4. Does the requesting party have a legitimate basis for needing additional time to prepare for the hearing?

5. What is the substantive reason that the requesting party has given to support a continuance?
6. Is there any urgency that suggests that the matter needs to be heard at the scheduled meeting and should not be continued?

The Zoning Administrator shall have the authority to request information from the applicant or interested parties concerning the request for continuance so that the request for continuance can be properly evaluated.

If the request for continuance is to be decided by the Board, then the granting of the request for continuance requires a majority vote of the Board Members.

If the request for continuance is to be considered by the Board at a scheduled meeting, the applicant and interested parties are hereby notified that they should be prepared to proceed with the hearing in the event the request for continuance is denied.

#### **E. Time Limits for Meetings**

All regular and special meetings of the Board shall be limited to a maximum of three (3) hours. This time limit may be extended if a majority of voting members present vote to do so. The Zoning Administrator will have discretion as to the Agenda and will attempt to schedule cases so that all cases scheduled can be heard within the time limit.

#### **F. Quorum**

The rules governing quorum for the Board are found in Section 85.030 of the Union County Development Ordinance, as such ordinance may be modified from time to time by the Board of Commissioners.

#### **G. Voting**

The rules governing voting by members of the Board are found in Section 85.030 of the Union County Development Ordinance, as such ordinance may be modified from time to time by the Board of Commissioners.

#### **H. Conduct of Meetings**

All meetings shall be open to the public. The order of business at regular meetings shall be as follows or as otherwise directed by the Chairman:

1. Roll Call; Determination of Quorum.
2. Approval of Minutes of Previous Meetings.

3. Presentation of the Meeting Procedures.
4. Hearing of Cases.
5. Other Business.
6. Adjourn.

**I. Continuation of Meetings**

Meetings may be continued from one date to another provided that the reconvened meeting occurs at a conveniently located meeting site in Union County.

**V. APPEALS, APPLICATIONS, VARIANCES, AND PUBLIC HEARINGS**

**A. Types of Matters Heard**

The Board shall hear and decide requests for variances, requests for Special Use Permits, and all appeals from any order, requirement, decision, or determination made by the Zoning Administrator.

**B. Procedure for Filing Appeals**

No appeal from the Zoning Administrator's decision shall be heard by the Board unless a completed application for an appeal is filed within thirty (30) days after the interested party or parties received notice of the order, requirement, decision, or determination by the Zoning Administrator. All such applications shall be filed with the Zoning Administrator. All applications shall be made upon the form furnished by Union County for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.

**C. Fees**

A fee, in accordance with a fee schedule adopted by the County Commission, shall accompany all applications coming before the Board. No application shall be considered complete unless accompanied by the fee as herein prescribed.

**D. Public Hearing Mandate**

At a public hearing conducted by the Board, the Board shall be required to:

1. Hear and decide upon all appeals; and
2. Hear and decide upon any variance to the terms of the Ordinance; and

3. Hear and decide upon any special use permits to the terms of the Ordinance; and
4. Hear and decide upon all other matters referred to it or upon which it is required to consider pursuant to the Union County Development Ordinance.

**E. Public Hearing Date**

After receipt of a completed application for an appeal, variance, or special use permit, the Board shall attempt to hear the case at a regular or special meeting within sixty (60) days from the date of submittal of the complete application.

**F. Conduct of Hearing**

Any Board public hearing shall be conducted in a quasi-judicial manner, as further described in Section 85.030 of the Union County Development Ordinance. Any party may appear in person or by agent or by attorney at the hearing. All persons presenting evidence before the Board shall be placed under oath by the Chairman and any party may cross-examine them.

The order of business for public hearings shall generally be as follows:

1. Persons giving testimony shall be asked to be sworn in;
2. The Chairman, or such person as he shall direct, shall give an introduction of the case;
3. The Zoning Administrator shall give a preliminary statement of the case;
4. The applicant shall present the evidence in support of his application;
5. Persons opposed to granting the application shall present the evidence against the application;
6. Other persons in favor of granting the application shall present the evidence for the application;
7. Both sides will be permitted to present rebuttals to opposing testimony;
8. Both sides will be permitted to cross-examine witnesses.
9. The Chairman shall close the public hearing. The Board shall publicly discuss the case without further input from the public. Board members, however, may seek input, clarification, etc. from persons eligible to give evidence who are seated in the audience on any piece of evidence



heretofore presented. Cross-examination and rebuttals may be made only on any such new evidence presented.

10. The Board shall render a decision on the matter or, if it so chooses, continue the public hearing to a publicly stated date, time, and location. No further notice of a continued hearing need be made unless a period of six (6) weeks or more elapses between hearing dates.
11. When making their decision on a Special Use Permit or Variance the Board shall vote and then render their decision.

### **G. Reconsideration of Board Action**

An application for rehearing may be made pursuant to Article 80 of the Union County Development Ordinance. All applications for re-hearings shall be made within thirty (30) days after the decision of the Board has been filed in its office.

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 facts, evidence, or conditions. If the Board finds that there has been a change, it shall there upon treat the request in the same manner as any other application. The Board of Adjustment shall be required to hold a public hearing to determine whether or not a rehearing of the case shall be conducted. Said determination shall, however, require a majority vote of the Board of Adjustment.

### **H. Decisions**

#### **1. Time**

Decisions by the Board shall be made within forty-five (45) days from the date the hearing was officially closed.

#### **2. Form**

Written notice of the decision in a case shall be sent to the applicant and to every aggrieved party who has filed a written request for such notice with the Secretary, or the Chairman when the hearing is held, within ten (10) working days after the case is decided. The final decision of the Board shall be filed in the Union County Government Center. 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.

#### **3. Voting at Hearings**

The concurring vote of a majority of the members of the Board present shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or to decide in favor of the applicant any matter upon which the Board is required by Ordinance to pass. Voting on any issue shall be done by a show of hands or by voice, as directed by the Chairman. An Abstention shall be counted as a “yes” vote.

## **V. Appeals of Board Decisions**

Any person or persons, jointly or severally, aggrieved by any decision of the Board, may, within thirty (30) days after the Board’s decision has been filed or after a written copy thereof is delivered to said aggrieved party who has filed a written request for such copy with the Secretary or Chairman at the time of the hearing of the case, whichever is later, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is improper, in whole or in part, specifying the grounds of impropriety, whereupon such decision of said Board shall be subject to review by the Superior Court by proceedings in the nature of certiorari as provided by law.

## **VI. ADOPTION OF 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 (including alternate members) provided that such amendment be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

These rules shall at all times be consistent with all ordinances of Union County and laws of the State of North Carolina. Should any provisions of these rules be inconsistent with such ordinances or laws of the State of North Carolina, said ordinances and laws shall control.