

RULES OF PROCEDURE

Board of Adjustment

Kernersville, N. C.

I. GENERAL RULES

The Board of Adjustment shall be governed by terms of Article 3 of Chapter 160D of the General Statutes of North Carolina and by the Unified Development Ordinance. All members of the Board shall thoroughly familiarize themselves with these laws.

II. OFFICERS AND DUTIES

- A. Chairman. The Chairman shall be elected by majority vote of the membership of the Board from among its members. The term of office shall be for one year, and until his successor is elected, beginning on July first, and the Chairman shall be eligible for re-election. Subject to these rules, the Chairman shall decide upon all points of order and procedure, 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 matter before the Board.
- B. Vice-Chairman. A Vice-Chairman shall be elected by the Board from among its members in the same manner and for the same term as the Chairman. He 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.
- C. Secretary. The Secretary to the Board shall be the appointed Zoning Officer for the Town of Kernersville. The Secretary, subject to the direction of the Chairman, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all public notices required to be given, and shall 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 be the record and show 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. The Secretary shall not be eligible to vote upon any matter.
- D. Clerk. A clerk may be appointed by the Chairman of the Board, either from within or outside its membership, to hold office during the term of the Chairman and/or until a successor Clerk shall have been appointed. The Clerk shall be eligible for reappointment. The Clerk shall perform such tasks as may be assigned by the Chairman, and shall assist the Secretary generally in the performance of his duties. If the Clerk is chosen from outside the membership of the Board, he shall not be eligible to vote upon any matter.

III. MEMBERS

- A. Membership on the Zoning Board of Adjustment shall be governed by the terms of Chapter 160D, Article 3 of the General Statutes of North Carolina and by the Unified Development Ordinance. Membership shall consist of ten (10) regular members and four (4) alternate members as follows:
1. Eight (8) regular members and two (2) alternate members must reside within the corporate limits. These members are appointed by the Board of Aldermen.
 2. Two (2) regular members and two (2) alternate members who must reside outside of the corporate limits but within the extraterritorial zoning jurisdiction. These members are nominated by the Board of Aldermen and appointed by the Forsyth County Board of County Commissioners.

Only ten (10) members can sit on the Board at any meeting.

- B. Members of the Board may be removed for cause, including violation of any of the rules stated below.
- 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.
- D. No Board member shall take part in the hearing, consideration or determination of any case in which he is personally or financially interested. Such interest should be declared prior to the hearing of that case. A member of the 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.
- E. No Board member shall vote on any matter deciding an application or appeal unless he shall have attended the public hearing or read the minutes on that application or appeal.
- F. No Board member shall discuss any case with any parties thereto prior to 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 prior to the hearing.
- G. Members of the Board will 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 reported to the appointing authority, and may be cause for dismissal from the Board.

IV. MEETINGS

- A. Regular Meetings. Regular meetings of the Board shall be held on the fourth Monday of each month in the Kernersville Municipal Council Chambers, provided, however, that meetings may be held at some other convenient place in the Town if directed by the Chairman in advance of the meeting. Meeting time shall be 7:00 PM.
- B. Special Meetings. Special meetings of the Board may be called at any time by the Chairman. At least forty-eight (48) hours notice of the time and place of special meetings shall be given, by the Secretary or the Chairman, to each member of the Board. A quorum of eight (8) members must be present to conduct any business.
- C. A quorum shall consist of eight (8) members of the Board. The concurring vote of four-fifths (4/5) of the board shall be necessary to grant a variance. Approval by a majority of the members shall be required to issue a Special Use Permit. For votes on Appeals/Interpretations, a majority of the members shall be required to overturn a decision of the Zoning Administrator or his/her designee. All other matters coming before the Board of Adjustment, such as the approval of minutes or decision regarding rehearing requests, etc. shall be decided based on majority vote.

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 majority if there are no qualified alternates to take the place of such members.

- D. Conduct of Meetings. All meetings shall be in accordance with the North Carolina Open Meetings Statute, and subject to these rules. The order of business at regular meetings shall be as follows: (a) roll call; (b) approval of minutes of previous meetings; (c) public hearings; (d) other business. The consideration and determination of cases shall be made at the conclusion of the public hearing of the evidence in each case.

V. APPEAL AND APPLICATIONS

- A. Types of Appeals. The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Building Inspector, the Zoning Officer, the Watershed Administrator or the Housing Officer. It shall also hear and decide all matters referred to it or upon which it is required to pass by the Unified Development Ordinance within the Extraterritorial Zoning Jurisdiction of the Town of Kernersville, North Carolina. 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.

- B. Procedure for Filing Appeal. No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the interested party or parties receive written notice of the order, requirement, decision or determination by the Building Inspector or Zoning Officer. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

No application for a Special Use Permit or Variance Request to be issued by the Board of Adjustment shall be considered by the Board unless a completed application is received not less than twenty (20) days prior to the next regularly scheduled meeting of the Board. All applications for hearings shall be filed with the Secretary of the Board at Town Hall, Kernersville, North Carolina. All applications shall be made upon the form furnished for that purpose, and all required information shall be provided thereon before an appeal or an application shall be considered as having been filed. Any resident of the zoning jurisdiction may appeal from any order or act of the Building Inspector or Zoning Officer pertaining to the enforcement of the Zoning Ordinance.

- C. Fees. No application or notice of appeal shall be considered as having been completed until there has been paid to the Town of Kernersville a filing fee in the amount prescribed by the Budget Ordinance, and its attachments, as set by the Board of Aldermen.

- D. Hearings.

1. Time. After receipt from the Secretary of the completed notice of appeal or application, the Chairman shall schedule the time for a hearing, which shall be either at the next regularly scheduled meeting within thirty-six (36) days from the filing of such notice or completed application, or at a special meeting.
2. Notice. The Board shall give public notice of the hearing by all of the following means:
 - a. Posted Notice of Hearing. The applicant shall post on the property a notice of public hearing at least fifteen (15) days prior to the date of the hearing before the Board of Adjustment. Such notice shall be of sufficient size to contain, and shall contain, heavy black lettering not less than three (3) inches high on a white background and shall be posted in a conspicuous place on the premises. Where such posting is not clearly visible from the nearest public right-of-way, a second directional sign which is clearly visible from the nearest public right-of-way shall be posted. A sign shall be provided by the Zoning Administrator consistent with these requirements. Such sign structure shall be removed by the applicant within thirty (30) days after said public hearing.
 - b. Mailed Notice of Hearing. Notice of hearings shall be mailed to the person or entity whose appeal, application or request is the subject of the public hearing; to the owner of the property that is subject to the public hearing, if different from the applicant; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other person

entitled to receive notice as otherwise provided in the Unified Development Ordinances. The County Tax listing shall be utilized to determine the owners entitled to receive mailed notice. The notice must be deposited in the mail at least ten (10), but not more than twenty-five (25) days, prior to the date of the hearing.

3. Conduct of Hearing. The Board shall not hear a case unless and until the applicant is present or represented at the public hearing. Any party may appear in person or 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 applicant shall present the arguments in support of his case or application;
 - c. persons opposed to granting the application shall present the argument against the application;
 - d. both sides will be permitted to present rebuttals to opposing testimony;
 - e. Community Development staff may give report;
 - f. the Chairman shall summarize the evidence which has been presented, giving the parties an 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 chair of the board or any member acting as chair and the clerk to the board 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 of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor. The Board may, in its discretion, view the premises and obtain additional facts in the matter before arriving at a determination of the case.

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 change in the facts, evidence, or conditions in the case. If the Board finds that there has been such a change, it shall thereupon treat the request in the same manner as any other application. After the evidence has been presented and the Board has discussed it, a 4/5ths majority vote of those members present will be required to decide whether the request is to be reheard. If the vote to rehear does not receive a 4/5ths vote, then the request to rehear is denied and no further action will be taken on the petition.

E. Decisions.

1. Time. Decisions by the Board shall be made not more than thirty-six (36) days from the time the hearing is closed.

2. Form. Written notice of the decision in a case shall be given to the applicant by the Secretary as soon as possible after the case has been decided. 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 Chairman and the Secretary upon approval of the minutes by the Board. The record shall show the reasons for the decision, with a summary of the evidence introduced and the findings of fact made by the Board.
- (a) Variances. 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 upon a showing of all of the following:
- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from the Building Inspector, the Zoning Officer, the Watershed Administrator or the Housing Officer. 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 or an exception.

- (b) Special Use Permits. Where a special use permit is granted, the record shall state in detail any facts supporting findings required to be made prior to the issuance of a permit. The record shall also show in detail any conditions imposed on the issuance of the permit by the Board. If a special use permit is denied by the Board, the record shall show the reasons for denial of the permit.

3. Expiration of Permits. Unless otherwise specified, any order or decision of the Board granting a variance or a special use permit shall expire if a building or zoning permit or certificate of occupancy for such use is not obtained by the applicant within one year from the date of the decision.

4. Voting at Hearings. The concurring vote of four-fifths (4/5) of the board shall be necessary to grant a variance. A majority of the members shall be required to issue a Special Use Permit. 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 majority if there are no qualified alternatives to take the place of such members.

No member shall be excused from voting except upon matters involving the consideration of his own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

5. Voting at Rehearings. The concurring vote of a 4/5ths majority of the Board shall be necessary to determine whether to rehear a case or not.

6. Public Record of Decisions. The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times during normal business hours. Written notice of the decision in a case shall be filed by the Secretary in the office of the Board as soon as practicable after the case has been decided.

VI. ANNUAL REPORT TO PLANNING BOARD AND BOARD OF ALDERMEN

- A. The Board shall prepare and submit in June of every year, to the Planning Board and Board of Aldermen a report of its activities for the year then ending. Such report shall contain a statement of the number of 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

- A. These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than eight (8) sitting 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.

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Read, approved and adopted by the Kernersville Board of Adjustment on the 23rd day of February 1998.

Amended the scheduled meeting time to 7:00 by the Kernersville Board of Adjustment on the 27th day of June 2005.

Amended the scheduled meeting time to 7:00 by the Kernersville Board of Adjustment on the ____ day of ____ 20__.

These rules of procedure shall be effective this __ day of ____ 20__.

Chairman

Secretary (Zoning Officer)