
SECTION 3.4 BOARD OF ADJUSTMENT.

3.4.1. Powers and Duties.

3.4.1.1. The Board of Adjustment shall hear and decide:

3.4.1.1.1. Appeals of decisions of administrative officials charged with enforcement of this Ordinance (as provided in Section 4.10.1) and requests for variances (as provided in Section 4.10.2). As used in this subsection, the term "decision" includes any final and binding order, requirement, or determination. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use and development.

3.4.1.1.2. Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines.

3.4.1.1.3. Any other matter the Board is required to act upon by any other Town ordinance.

3.4.1.2. The Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Article.

3.4.2. Creation and Organization.

3.4.2.1. The Zoning Board of Adjustment shall be governed by the terms of the G.S. 160A-388)

3.4.2.2. Membership and Vacancies. The Board of Adjustment shall consist of five members who shall be residents of the area within the municipal limits and shall be appointed by the Town Council for overlapping terms of three years. The Town Council, at its discretion, may appoint not more than three alternate members to serve on the Board of Adjustment in the absence or temporary disqualification, for any cause, of any regular member or to fill a vacancy pending appointment of a member. Such alternate members, while attending any regular or special meeting of the Board and serving on behalf of any regular member, shall have and exercise all the powers and duties of such regular members so absent. Vacancies which occur other than the expiration of term shall be filled by the Town Council for the remaining period of the term vacated.

3.4.2.3. Meetings of the Board of Adjustment.

3.4.2.3.1. Regular Meetings. Meetings of the board of adjustment shall be held at the call of the Chair and at such other times as the board of adjustment may determine. All meetings of the board shall be held at a regular place and shall keep minutes of its proceedings in a book maintained for that purpose only, showing the vote of each member upon each question, or, if absent and failing to vote, an indication of such fact; and final disposition of each matter to come before them. The chair of the board or the clerk to the board may administer oaths to witnesses.

3.4.2.3.2. Special Meetings. Special meetings of the Board may be called at any time by the Chair, or in his absence, the Vice-Chair. At least 48-hours written notice of the time and place of special meetings shall be given by the Secretary or the Chair to each member of the Board.

3.4.2.3.3. The Board shall conduct its meetings in accordance with the quasi-judicial procedures set forth in Section 4.11.

3.4.2.3.4. Conflicts on Quasi-Judicial Matters. A member of the Board of Adjustment or any other body exercising the functions 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 violations of due process 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 member's participation and that member does not recuse himself or herself, the remaining members shall, by majority vote, rule on the objection.

3.4.2.3.5. All meetings of the Board shall be open to the public and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.

3.4.2.4. Quorum and Voting.

3.4.2.4.1. The concurring vote equal to four-fifths of the members of the board present at a meeting and not excused from voting (a quorum being present), shall be necessary to grant any variance. All other actions of the board, including decisions relating to special use permits, shall be taken by majority vote of those present and not excused from voting, a quorum being present. A quorum shall consist of the number of members equal to four-fifths of the regular board membership (excluding vacant seats).

3.4.2.4.2. Once a member is physically present at a board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with subsection 3.4.2.3.4 or 3.4.2.4.3 or has been allowed to withdraw from the meeting in accordance with Subsection 3.4.2.4.4.

3.4.2.4.3. A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:

3.4.2.4.3.1. If the matter at issue involves the member's own official conduct; or

3.4.2.4.3.2. If the participation in the matter might violate the letter or spirit of the member's code of professional responsibility.

3.4.2.4.4. A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at the meeting.

3.4.2.4.5. A roll call vote shall be taken upon the request of any member.

3.4.2.5. Board of Adjustment Officers and Duties.

3.4.2.5.1. Chair. The Chair shall be elected by majority vote of the membership of the Board from among its members. His term of office shall be for one year, and until his successor is elected, beginning on July 1, and the Chair shall be eligible for re-election. Subject to these rules, the Chair shall decide upon all points of order and procedure, unless directed otherwise by a majority of the Board in session at the time. The Chair shall appoint any committees found necessary to investigate any matter before the Board with the approval of Town Council.

3.4.2.5.2. Vice-Chair. A Vice-Chair shall be elected by the Board from among its members in the same manner and for the same term as the Chair. He shall serve as acting Chair in the absence of the Chair, and at such times he shall have the same powers and duties as the Chair.

3.4.2.5.3. Secretary. The Zoning Administrator shall serve as Secretary.

3.4.3. Rules of Procedure.

All meetings held by the Board of Adjustment shall be held in accordance with G.S. ch. 143A, art. 33B, or as may be amended, and should be recorded. The Board shall keep accurate minutes of its proceedings suitable for review in Court showing:

3.4.3.1. The record of all procedural requirements of the meeting including number and names of all Board members present, names of witnesses heard, whether parties were represented by council,

whether subpoenas were issued and to who, whether cross-examination of witnesses was requested and allowed, and any other event at the hearing that had any effect on the outcome.

3.4.3.2. The factual evidence presented to the Board of Adjustment by all parties concerned.

3.4.3.3. The findings of fact and the reasons for the determinations by the Board of Adjustment.

3.4.3.4. The vote of each member, or if absent or failing to vote, indicating such fact, all of which shall be public record and be filed with the office of the Town Clerk.

3.4.3.5. The Board may issue subpoenas. If there is noncompliance with the subpoena, the Board may apply to the courts for an order to comply.

(Ord. of 10-9-2018)