

RULES OF PROCEDURE FOR THE BOARD OF ADJUSTMENT APEX, NORTH CAROLINA

I. General Rules

The Board of Adjustment (the "Board") shall be governed by the terms of North Carolina General Statutes Chapter 160A Article 19 and by the terms of Unified Development Ordinance of the Town of Apex (the "UDO"), North Carolina. All board members shall thoroughly familiarize themselves with these laws.

II. Officers and Duties

A. **Chair.** The chair shall be appointed by the Town Council. The term for the chair shall be for one (1) year, beginning January 1, and shall be eligible for reappointment per UDO Sec. 2.1.3(C). 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.

B. **Vice-Chair.** The vice-chair shall be appointed by the Town Council for the same term as the chair. He or she shall serve as acting chair in the absence or recusal of the chair, and at such time he or she shall have the same powers and duties as the chair.

C. **Secretary.** The Director of Planning and Community Development or designee shall serve as secretary to the Board. The secretary, subject to the direction of the chair and the Board shall keep all records, shall conduct all correspondence of the Board, 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 minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon 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.

III. Regular Members

The Board shall consist of five (5) members. Four (4) members of the Board shall be citizens of the town recommended by the Mayor and appointed by the Town Council and one (1) member shall be appointed by the Wake County Board of Commissioners. All members shall serve staggered three (3) year terms except when filling vacant unexpired terms. The one (1) member appointed to the Board of Adjustment by the Wake County Board of Commissioners as a representative from the extra-territorial jurisdiction outside the corporate limits of the town shall be a resident of such area and a citizen of the County. All members of the Board shall have voting power on all matters of business. The membership composition shall be periodically adjusted to reflect changes in extra-territorial population according to Section 2.1.3 of the UDO.

IV. Alternate Members

Alternate members of the Board shall be called upon to attend only those meetings and hearings at which one or more regular members are absent or unable to participate in the hearing of a case because of financial or other interest. Regular members, on receiving notice of a special meeting which they cannot attend or upon learning that they will be unable to participate in a meeting, shall promptly give notice to

the secretary of the Board that they are unable to attend or participate. On receiving such notice, the secretary shall, by the most expeditious means, notify an alternate member to attend in accordance with UDO Sec. 2.1.3(B)(8).

V. Meetings

A. **Regular Meetings.** Regular meetings of the Board shall be held on the third Tuesday of each month at 6:00 p.m. in the Town Hall.

B. **Special Meetings.** Special meetings of the Board may be called by the chair. At least forty-eight (48) hours written notice of the time and place of the special meeting shall be given, by the secretary or by the chair, to each member of the Board. The Open Meetings Law requirements must be met. However, for a case to be heard, all applicable notice requirements must be met.

C. **Cancellation of Meetings.** When there are no appeals or variances, or other business for the Board, or when a quorum will not be available, the chair or secretary may cancel a regular meeting by giving written or oral notice to all members.

D. **Quorum.** A quorum for considering variance requests and appeals shall be four (4) members of the Board. A quorum for all other general business matters not subject to the four-fifths majority rule shall be three (3).

E. **Voting.** The concurring vote of four-fifths of the members of the Board shall be necessary to grant a variance from the provisions of the UDO. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. 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 available to take the place of such members.

In addition, the following rules shall be observed:

1. If a motion to approve an issue fails to receive the required vote, a) the petition shall be deemed to be denied and b) the same motion shall not be allowed a second time. However, other motions to approve may be allowed by the chair provided substantially different conditions or safeguards are included in the motion.

2. If a motion to deny an issue is carried, the matter may not be reconsidered.

F. **Conduct of Meetings.** All meetings shall be open to the public. The order of business at regular meetings shall be as follows: a) review of minutes of previous meetings for possible approval; b) hearing of cases; and c) new business.

G. **Miscellaneous.** No Board member shall take part in the hearing or decision of any case in which he or she has 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. No Board member shall vote on any matter deciding an appeal unless he or she shall have attended the public hearing on that appeal. Board members shall not discuss the merits of cases pending before the Board except during deliberations by the Board at a public meeting after hearing all the evidence.

VI. Appeals

A. **Type of Appeal.** The Board shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of the UDO and may hear appeals arising out of any other ordinance that regulates land use or development pursuant to N.C.G.S 160D-405, as it may be amended from time to time. Appeals shall be taken by filing a notice of appeal with the Town Clerk. The secretary shall transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed. Appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the Board shall have all the powers of the officer from whom the appeal is taken.

B. **Procedure for Filing Appeals.** No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the interested party or parties receive notice of the order, requirement, decision, or determination by the official who made the decision. All applications shall be made upon the form furnished for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.

C. **Hearings.**

1. **Time.** After receipt of notice of an appeal, the Board chair or secretary shall schedule the time for a hearing, which shall be at a regular or special meeting.

2. **Notice.** The Board or secretary shall give public notice of the hearing as required by the UDO.

3. **Conduct of Hearing.** Any party may appear in person or by attorney at the hearing. The order of business of each hearing shall be as follows:

- a) The chair, or such person as he or she shall direct, shall give a preliminary statement of the case;
- b) The chair shall administer the oath to all witnesses who intend to testify;
- c) The applicant shall present the witnesses to give sworn testimony in support of his or her application;
- d) Persons opposed to granting the application shall present the witnesses to give sworn testimony against the application;
- e) Both sides will be permitted to present rebuttal evidence to opposing testimony;
- f) The chair shall close the evidentiary hearing, and open the Board's deliberations by summarizing the issues to be decided. Thereafter, the Board shall deliberate and render a decision. Members of the Board may view the premises before arriving at a decision; however, they must describe their observations at the public hearing so that all parties are on notice of the site visit; moreover, members may not discuss their site visit, among themselves or with others, except at the public hearing.

D. Decisions.

1. **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 and the chair. A decision to grant the relief petitioned for must be based on substantial evidence. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed. 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.

2. **Expiration of Permits.** Unless otherwise specified, any order or decision of the Board granting a variance shall expire if a building permit or certificate of occupancy for such use is not obtained by the applicant within one (1) year from the date of the decision.

3. **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.

VII. Amendments

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than three (3) members of the Board, provided that such amendment be presented in writing prior to the meeting at which the vote is taken.

These rules become effective June 15, 2021.

Adopted this the 15th day of June, 2021.


Chair