

# RULES OF PROCEDURE ZONING BOARD OF ADJUSTMENT North Topsail Beach, North Carolina

## I. GENERAL RULES

The Zoning Board of Adjustment shall be governed by the terms of City: Chapter 160A, Article 19, Part 3 of the General Statutes of North Carolina and by the Zoning Ordinance of the Town of North Topsail Beach, including any special acts of the General Assembly, CAMA Land Use Plan and other ordinances of the Town of North Topsail Beach that are pertinent. All members of the Board shall thoroughly familiarize themselves with these laws.

## II. OFFICERS AND DUTIES

A. **Chairman.** A chairman shall be elected by the full membership (including alternate members) of the Board of Adjustment from among its regular members. His term of office shall be one year and until his successor is elected, beginning on July 1, and he t shall be eligible for re-election. The chairman 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. The chairman shall appoint any committees found necessary to investigate any matters before l the Board.

B. **Vice Chairman.** A Vice chairman shall be elected by the Board from among its regular members in the same manner and for the same term as the chairman. He shall serve as acting chairman in the chair's absence, and at such times he shall have the same powers and duties as the chairman.

C. **Secretary.** A secretary shall be appointed by the chairman of the Board, either from within its membership or from outside, to hold office during the term of the chairman and/or until a successor secretary has been appointed. The secretary shall be eligible for reappointment. The secretary, subject to the direction of the chairman and the Board, shall keep all records, shall conduct all correspondence of 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 secretary 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 [mal determination of any question, indicating the names of members who are absent or fail to vote. If the secretary is chosen from outside the Board's membership, he shall not be eligible to vote on any matter.

## III. ALTERNATE MEMBERS

Alternate members of the Board shall be called on to attend **all** meetings 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, on receiving notice of a special meeting that they cannot attend or on

learning that they will be unable to participate in a particular case, shall give prompt notice to the Board secretary that they are unable to attend or to participate. On receiving such notice, the secretary shall, by the most expeditious means, notify an alternate member to attend. Assignments shall be rotated among the alternate members. At any meeting that they are called on to attend, alternate members shall have the same powers and duties as regular members.

#### IV. RULES OF CONDUCT FOR MEMBERS

A. Members of the Board may be removed for cause, including violation of the rules stated below.

B. Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board.

C. No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested.

D. No Board member shall vote on any matter that decides an application or appeal unless he has attended the public hearing on that application or appeal.

E. No Board member shall discuss any case with any parties thereto before 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 before the hearing.

F. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto before that case is determined. Violation of this rule shall be cause for dismissal from the Board.

#### V. MEETINGS

A. **Regular Meetings.** Regular meetings of the Board shall be held on the third Thursday of each month at 6:30 p.m. in the Committee Room of Town Hall provided that meetings may be held at any other convenient place in the town if the chairman so directs before the meeting.

B. **Special Meetings.** The chairman 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 meetings shall be given, by either the secretary or the chairman, to each member of the Board.

C. **Cancellation of Meetings.** If there are no appeals, applications for special use permits or variances, or other business for the Board, or if so many regular and alternate members notify the secretary that they cannot attend that a quorum will not be available, the chairman may dispense with a regular meeting by giving written or oral notice to all members not less than [twenty-four (24)] hours before the time set for the meeting.

D. **Quorum.** A quorum shall consist of [three (3)] members of the Board, but the Board shall not pass on any question relating to an appeal from a

decision, order, requirement, or determination of the Building Inspector or an application for a variance or special use permit when fewer than **four (4)** members are present.

**E. Voting.** All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section IV. The required vote to decide appeals and applications shall be as provided in Section VI, D, 4, and shall not be reduced by any disqualification. In all other matters the vote of a majority of the members present and voting shall decide issues before the Board. **All votes must have four affirmative for it to pass.**

**F. Conduct of Meetings.** All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) roll call; (b) approval of minutes of the previous meeting; (c) hearing of cases; (d) reports of committees; (e) unfinished business; (f) new business; (g) consideration and determination of cases heard.

## **VI. APPEALS 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 **Zoning Administrator**. It shall also hear and decide all matters referred to it or on which the Zoning Ordinance of the Town of North Topsail Beach requires it to pass. In deciding appeals, the Board may hear both those based on an allegedly improper or erroneous interpretation of the ordinance and those based on alleged hardship resulting from strict interpretation of the ordinance.

**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 **Zoning Administrator**. The applicant must file his application for a hearing with the **Zoning Administrator**, who shall act as clerk for the Board in receiving this notice. 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.

### **C. Hearings.**

1. **Time.** After notice of appeal is received, the Board chairman shall schedule the time for a hearing, which shall be at a regular or special meeting within [thirty-six (36)] days from the filing of such notice of appeal.

2. **Notice.** The Board shall give public notice of the hearing in a newspaper generally circulated in the Town of North Topsail Beach by advertisement published at least [five (5)] days before the date of the hearing. The Board shall mail notices of the hearing to the parties to the action appealed from, and to such other persons as the Building Inspector shall direct, at least [five (5)] days before the hearing.

Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal, and the time and place of the hearing.

3. **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 chairman, 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; (e) the chairman shall summarize the evidence that has been presented, giving the parties 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 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.

4. **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 the same manner as any other application.

#### **D. Decisions.**

1. **Time.** Decisions by the Board shall be made *not* later than [thirty (30)] days from the time of the hearing.

2. **Form.** The Board's final decision shall be shown in the record of the case as entered in the Board's minutes and signed by the secretary and the chairman on approval of the minutes by the Board. Such record shall show the reasons for the determinations, with a summary of the evidence introduced and the findings of fact made by the Board. When 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. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. When [an exception] [a special use permit] [a conditional use permit] is granted, the record shall state in detail any facts that support findings required to be made before such permit is issued. The record shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a variance or an [exception] [special use permit] [conditional use permit]. A separate record of the decision in each case shall be prepared, filed in [the City Clerk's office] [the Office of the Register of Deeds] [the Planning Department], and furnished to the parties as specified in Subsection 5.

3. **Expiration of Permits.** Unless otherwise specified, any order or decision of the Board granting [an exception] [special use permit] [conditional use permit] or a variance shall expire if the applicant does not obtain a building permit or certificate of occupancy for such use within six (6) months from the date of the decision.

4. **Voting at Hearings.** The concurring vote of four-fifths of the Board members shall be necessary to reverse any order, requirement, decision, or determination of the Building Inspector, to decide in favor of the applicant any matter on which the Board is required by ordinance to pass, or to grant a variance from the ordinance provisions. **[Comment:** This rule is in accord with the requirements of G.S. 160A-388(e) and G.S. 153A-345(e).]

5. **Notice and Public Record of Decisions.** The secretary shall give written notice of the decision in the case to the appellant and/or the applicant and to every aggrieved party who has filed a written request for such notice with the secretary or the chairman of the Board when the hearing is held. Such notice may be delivered either by personal service or by registered mail or certified mail, return receipt requested. A copy of the decision shall also be filed in [the Town Clerk's office] [the Office of the Register of Deeds] [the Planning Department], as specified in the zoning ordinance. The decision shall be a public record, available for inspection all reasonable times. **[Comment:** This provision is largely based on G.S. 160A-388(e) and G.S. 153A-345(e).]

## VII. 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, provided that such amendment be presented in writing at a regular or special meeting before the meeting at which the vote is taken.

Having adopted these general rules, the Board must follow them and not adopt a special rule for a particular case. Otherwise its actions are likely to be ruled void on the ground of arbitrariness.