

**RULES OF PROCEDURE
BOARD OF ADJUSTMENT
HILLSBOROUGH, NORTH CAROLINA**

I. GENERAL RULES

The function of the Board of Adjustment (hereinafter “Board”) is to hear and determine certain quasi-judicial matters under the development regulations of the Town of Hillsborough; specifically, the Unified Development Ordinance (hereinafter “UDO”), Flood Damage Prevention Ordinance and Minimum Housing Code.

The Board shall be governed by the terms of Chapter 160D (Local Planning and Development Regulation) of the General Statutes of North Carolina (hereinafter “NCGS”) and by the UDO. The Board shall exercise such additional authority as may be given it under general law, special act, and local ordinance. These Rules of Procedure are intended to supplement and explain procedural provisions and requirements set out in the applicable provisions of law and ordinance.

These rules of procedure are adopted by the Board under its authority as spelled out in UDO Section 2 (Administration), Subsection 2.4 (Board of Adjustment), Paragraph 2.4.8 (Rules of Procedure).

All members of the Board shall thoroughly familiarize themselves with the statutes and ordinances specified above and these Rules of Procedure.

II. OFFICERS AND DUTIES

A. *Chair.* The Chair shall be a regular member elected by a majority vote of the full membership of the Board (including alternate and extraterritorial members). The Chair’s term of office shall be one year, or until a successor is elected. The Chair shall decide upon all points of order and procedure, subject to these rules. The Chair shall rule on all objections to the presentation of evidence. Rulings of the Chair may be appealed by a member of the Board to the full Board. The Chair shall appoint any committees found necessary to conduct the business of the Board.

B. *Vice-Chair.* The Vice-Chair may be either a regular or alternate member of the Board elected by the Board in the same manner and for the same term as the Chair. The Vice-Chair shall serve as Acting Chair in the absence of the Chair, and at such times the Vice-Chair shall have the same powers and duties as the Chair.

C. *Interim Chair.* In the event neither the Chair nor the Vice-Chair is available for a particular case or meeting, the Board shall elect one of its members to serve as Interim Chair for that case or meeting. At such times the Interim Chair shall have the same powers and duties as the Chair. Should the Chair or Vice-Chair arrive while the Interim Chair is presiding, the Interim Chair shall relinquish all duties with regards to presiding at the earliest point at which such transition may orderly proceed.

D. Secretary. The Planning Director or their designee shall serve as secretary to the Board. The Secretary shall, subject to the direction of the Chair and the Board, keep all records, conduct all correspondence of the Board, arrange for all public notices required to be given, notify Board 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 summary of 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 brought before the Board for a vote, indicating the names of members absent or failing to vote. The Secretary shall not be eligible to vote upon any matter.

The Secretary shall provide to every new member of the Board print or electronic copies of all relevant ordinances, these Rules of Procedure and such other educational materials deemed appropriate. The Secretary shall arrange for an orientation for new members and coordinate provision of continuing education for Board members.

E. Clerk. A Clerk may be appointed by the Secretary. The Clerk shall perform such tasks as may be assigned by the Chair or Secretary and shall assist the Secretary generally in the performance of the clerical work of the Board. The Clerk shall not be eligible to vote upon any matter. If a clerk to the Board is not designated, the Secretary shall perform the duties of the Clerk.

III. MEMBERS

A. Regular Members. Regular members receiving notice of a meeting which they cannot attend or upon learning that they will be unable to participate in a particular case shall promptly give notice to the Secretary that they are unable to attend or participate. The member shall, if feasible, provide that notice to the Secretary at least two working days prior to the date of the hearing.

B. Alternate Members. Alternate members shall be encouraged to attend all meetings of the Board, but shall participate in hearing, deliberating, and deciding a case only when acting in the place of a regular member. On receiving such notice that a regular member will not be participating, the Secretary shall, by the most expeditious means, notify an alternate member to attend. An alternate member shall be called upon by the Chair to participate in an individual case in the place of a member who has a conflict and is ineligible to participate in that case. Assignments shall be rotated between the alternate members except that the alternate appointed from the extraterritorial jurisdiction area (hereinafter "ETJ") shall be called first when the regular member from the ETJ is unavailable.

At any meeting or case upon which they are called upon to participate, alternate members shall have the same powers and duties as regular members. Alternate members who are present and participate in hearing an individual case shall continue to hear, deliberate and vote on that case at any subsequent meeting.

C. *ETJ Members.* The Board shall have ETJ regular and alternate members appointed as mandated by NCGS 160D-307 (Extraterritorial Representation on Boards). ETJ members shall have the rights to participate in all matters and cases before the Board.

IV. RULES OF CONDUCT FOR MEMBERS

A. The Board may, after deliberation on the matter, by majority vote request that a member's position be vacated for cause and a replacement member appointed by the Town Board. Where feasible, the Town Board shall notify a member being considered for removal of the reasons for removal and give that member an opportunity to respond.

B. 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.

Any regular member who is absent for more than three consecutive regular meetings or more than half of the regular meetings in a calendar year shall lose their status as a Board member. Absence due to sickness, death in the immediate family, or other emergencies of a similar nature shall be recognized as excused absences and shall not affect a member's status on the Board, except that in the event of a long illness or other such cause for prolonged absence the member shall be replaced. The Secretary shall keep a record of attendance and shall provide reasonable notice to any member who is in immediate risk of failing to meet these attendance requirements.

In the event the Board meets fewer than 12 times in a given calendar year, the number of absences stated above will be pro-rated to the closest percentage.

C. Board members shall disclose at the hearing any pertinent facts about a pending case of which they have personal knowledge prior to the hearing. Other than this type of disclosure, a Board member seated for a hearing should not testify at that hearing. A Board member who is recused from a case should avoid testifying as a witness in that hearing if at all feasible.

D. Board members 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 (discussion of the case outside of the hearing); a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome of the matter. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes step, half, and in-law relationships. Board members shall endeavor to avoid the appearance of impropriety. A member with a potential bias or conflict of interest shall declare that at the opening of the hearing on the matter and shall seek the Board's permission, by majority vote, to be excused from participating in the hearing and decision of the matter.

If an objection is raised to a Board member's participation in a case by a party to the case or by another Board member, at or prior to the hearing or vote on a particular matter, and that

member does not seek recusal for themselves, the remaining members shall by majority vote rule on the objection.

When a member is recused, that member shall absent themselves from the hearing room for the duration of the Board's hearing, deliberation, and vote on the matter.

E. Board members shall not discuss any quasi-judicial case with or receive any information about a case from any parties to the case, other Board members, or from other interested persons outside the evidentiary hearing on that case. No Board member shall conduct an investigation or gather facts about the case outside the evidentiary hearing. A Board member may visit the site of a pending case provided the visit is disclosed at the evidentiary hearing. Board members may seek and receive general information about ordinance and planning provisions pertaining to the case from the Chair, the Town Attorney or Town staff (except when a staff member is a party or an adversarial witness), provided any factual queries regarding the pending case itself shall only be made in open session at the evidentiary hearing.

F. Board members shall not vote on the merits of any quasi-judicial matter unless the Board member has either attended the evidentiary hearing on that matter or has thoroughly reviewed the full hearing record for that matter.

G. Board members shall not express individual opinions or judgments regarding a pending quasi-judicial case prior to the determination of that case.

V. MEETINGS

A. *Regular Meetings.* Regular meetings of the Board shall be held on the 2nd Wednesday of each month at 7:00 PM in the Board Meeting Room of the Town Hall Annex Building; provided that meetings may be held at any other convenient place, date or time in the Town of Hillsborough if directed by the Chair in advance of the meeting and proper notice is given in accordance with applicable provisions of the UDO and State law. The Secretary shall make the schedule of regular meetings available to the public and shall post a copy of the schedule on the Town website.

Regular meetings and hearings may be rescheduled by the Chair if a scheduled meeting or hearing cannot be held because of a holiday, weather, lack of a quorum or other unusual circumstance. Notice of a rescheduled meeting shall be provided in the same manner as required for a special meeting.

When an evidentiary hearing will be conducted at a regular or special meeting, all required notices to the parties must be provided within the times set by State law and the UDO.

B. *Special Meetings.* Special meetings of the Board may be called at any time by the Chair in accordance with applicable provisions of the Open Meetings Law, NCGS 143-318.12 (Public Notice of Official Meetings). At least 48 hours written notice of the time and place of a special meeting shall be given by the Secretary to each member of the Board and to each news

organization and person requesting such notice. The notice may be provided by electronic mail. This notice shall also be posted on the Town website.

Special meetings may be called by the Chair as necessary for Board training, work sessions, a heavy workload, or the conduct of Board business.

C. *Organizational Meeting.* During the regular meeting each April, the Board shall select from among its regular members a chair and vice-chair by means of a simple majority vote of the Board members present.

D. *Cancellation of Meetings.* If there are no quasi-judicial cases to be heard or other business before the Board, if there is a weather emergency or similar situation, or if so many regular and alternate members indicate that they will not be able to attend that a quorum will not be available, the Secretary may cancel a regular meeting by giving written or oral notice to all Board members. If feasible, notice of cancellation shall be made not less than 24 hours before the time set for the meeting. The Secretary shall post a notice of the meeting cancellation at the regular meeting location.

E. *Quorum.* A quorum of the Board, necessary to meet, shall consist of four members of the Board. The Board shall not vote on any questions related to an appeal of a decision or determination of the Planning Director or an application for a variance or special use permit when fewer than four voting members of the Board are present. If fewer than five voting members of the Board are present, a party to a quasi-judicial matter may request that the hearing be continued until five voting members are present. Whenever during a meeting a quorum ceases to be present, if no objection is raised by a member of the Board, the Board may continue to hear evidence and debate but may not vote on any action except to adjourn.

F. *Hearing Deferral and Continuance.* Once a quasi-judicial case has been noticed for hearing, the Board generally expects the case to be heard at that time. An applicant may make a written request to delay consideration of a case to the next scheduled meeting, provided that the request is received at least 24 hours prior to the scheduled meeting. Except for good cause shown, if an applicant fails to appear at a meeting to prosecute his or her application, and the hearing has been continued one time before, the Board may dismiss the application for failure to prosecute. An application that has been dismissed may be resubmitted upon payment of applicable fees.

The Board may in its discretion continue any hearing when the Board deems that to be reasonable in order to receive additional evidence or to further deliberate. In all instances the Board shall decide cases within a reasonable time.

G. *Voting.* All regular members shall vote on any issue unless they have been disqualified or excused for one or more of the reasons stated in Section IV. Alternate members shall vote on any issue for which they are seated in place of regular members unless they have disqualified themselves for one or more of the reasons stated in Section IV.

The required vote to issue a variance shall be four-fifths of all members eligible to vote on the matter. If a motion to approve a variance does not receive the affirmative vote of four-fifths of those members eligible to vote, the variance shall be deemed denied. When this occurs, members who did not cast an affirmative vote on granting the variance shall state for the record their rationale for casting a negative vote. The required vote to decide any other quasi-judicial matter shall be a simple majority of all members eligible to vote on the matter.

In all other matters, the vote of a majority of the voting members present shall decide issues before the Board. The Chair votes as any other Board member.

For the purposes of these Rules of Procedure, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter for one or more of the reasons stated in Section IV 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.

H. *Conduct of Meetings.* All meetings shall be open to the public, except for closed sessions as allowed by law. Unless the Board determines that its order of business should be other than stated in this paragraph, the order of business at regular meetings shall be as follows:

- i. call to order, roll call and announcements;
- ii. action on minutes of previous meetings, including acceptance of corrections;
- iii. hearing, consideration, and determination of cases;
- iv. reports of committees;
- v. unfinished business;
- vi. new business;
- vii. adjournment.

Without objection from a member, the Chair, or other member presiding at the meeting, may change the order of business, the order in which cases are heard, and rule on requests to withdraw or continue a case. Upon objection, the issue shall be put to a vote of the Board.

I. *Agenda and Meeting Materials.* An agenda for each meeting and hearing shall be prepared by the Secretary and shall be distributed to all members of the Board, applicants with cases to be heard, and any other interested person who has made a written request to receive an agenda. The agenda shall be distributed prior to regular and special meetings.

Written briefs, documents, letters, and staff reports may be submitted to Board members by the Secretary prior to an evidentiary hearing, provided that any such material is also submitted to all parties to that case at the time they are submitted to the Board members. Staff may establish reasonable deadlines for submission of any such material to be distributed prior to the hearing.

Such materials shall be distributed at the same time the meeting agenda is distributed. Any such material shall be part of the hearing record and introduced as documentary evidence at the evidentiary hearing. Board members shall endeavor to review the materials prior to the hearing.

J. *Meeting Recordings.* The Secretary shall make audio or video recordings of each meeting and hearing. Electronic recordings that may be used to generate transcripts for judicial review as needed shall be made of each meeting and shall be held for safekeeping by the Secretary in accordance with record retention policies set by State law and Town ordinance. Any party to a quasi-judicial proceeding may request a verbatim transcript of the evidentiary hearing, with the cost of preparation of the transcript borne by the party making that request. Any person may make an audio or video recording of any Board hearing or meeting, provided it is done in a manner that does not disrupt the hearing or meeting.

K. *Oaths.* All witnesses presenting testimony in evidentiary hearings shall be sworn in. Oaths may be administered by the Chair or the Secretary to the Board. An affirmation may be made by any witness with a religious objection to swearing.

L. *Subpoenas.* The applicant, the local government or any person with standing under NCGS 160D-1402(c) on a quasi-judicial matter before the Board may make a written request to subpoena for witnesses or to compel the production of evidence. The Chair or, in the chair's absence, anyone acting as chair, shall issue requested subpoenas determined to be reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. The Chair's decisions on subpoenas may be immediately appealed to the full Board. If a person fails or refuses to obey a subpoena, the Board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

VI. APPEALS AND APPLICATIONS

A. *Types of Appeals and Applications.*

1. The Board shall hear and decide all appeals from final, binding written decisions or determinations made by the Planning Director as provided in the UDO, and Minimum Housing Inspector as provided in the Town of Hillsborough Minimum Housing Code and by State statute.

2. The Board shall hear and decide petitions for variances from the UDO and Flood Damage Prevention Ordinance.

3. The Board shall hear and decide special use permits as assigned by the UDO.

4. The Board shall make interpretations of disputed questions of zoning district boundary lines and similar questions that may arise from administration of the development regulations of the Town of Hillsborough.

5. The Board shall also hear and decide all matters referred to it or upon which it is required to pass by the UDO and any other matters assigned to it by ordinance or by law.

B. Procedure for Filing Appeals.

1. An appeal of a decision or determination of the Planning Director or Minimum Housing Inspector shall be filed with the Town Clerk or other such officer as designated by the UDO. The notice of the appeal shall state the grounds for the appeal. No appeal shall be heard by the Board unless the appeal is filed within thirty (30) days of written or constructive notice of the order or determination made by the Planning Director.

Appeals from decisions and determinations of the Minimum Housing Inspector shall be made within 10 days of such decision or determination.

2. Applications for variances and special use permits shall be accompanied by a site plan of sufficient size and accuracy to enable the Board to see the precise location and size of the variance and/or nature and location of the special use permit being sought. Such application shall specifically state the type of variance or special use permit sought. Upon submission of an application, the Planning Director shall determine if these requirements are satisfied.

3. All appeals, applications and any other matter coming before the Board shall be made upon the form designated by the Planning Director for that purpose.

4. All required information shall be complete and all required fees paid before an appeal, application or other matter shall be considered as having been filed.

5. An applicant may withdraw any appeal, application or other matter prior to the start of the evidentiary hearing on that matter. A withdrawal shall be made in writing. Upon withdrawal the case is closed. A new application and fee must be submitted if the application is renewed.

C. Evidentiary Hearings.

1. *Time.* After receipt of an appeal, application or other matter, the Secretary shall schedule the matter for hearing at the first available regular or special meeting within 36 days from acceptance of a complete application.

2. *Notice.* The Board shall give notice of evidentiary hearings by complying with the notice requirements as set out for the specific appeal or application in the UDO, Flood Damage Prevention Ordinance or Minimum Housing Code.

If a hearing is set for a given date and a quorum of the Board is not then present, the hearing shall be continued until the next regular Board meeting by announcement by the Chair without further advertisement. In addition, the Board may, without further advertisement, continue a hearing to a date certain after the hearing has been called to order.

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

- (a) the Chair, or such person as the Chair may direct, shall give an opening statement regarding the nature of the hearing and the process that will be followed. The Chair shall poll all Board members participating in the case as to any ex parte communications, bias or conflicts of interest. Issues regarding standing, participation of Board members in consideration of the case or other jurisdictional issues shall be addressed before the merits of the matter before the Board are addressed. Witnesses to offer testimony will be sworn in;
- (b) The Chair or the staff shall provide a preliminary statement of the case, including a summary of facts and relevant ordinance provisions. Staff shall present the application, supporting materials, staff report and any other written materials received and distributed prior to the hearing for introduction into the hearing record.
- (c) the applicant shall present evidence and argument in support of the application or appeal taken;
- (d) parties opposed to the application, including the staff from whose determination an appeal is being taken, may present evidence and argument;
- (e) other persons may present relevant evidence;
- (f) staff may be called upon to make a recommendation to the Board concerning requests for special use permits and variances;
- (g) parties may present rebuttal evidence;
- (h) closing statements or summaries may be made by parties to the case and staff; and
- (i) the Board shall deliberate on and make a determination of the case.

Applicants and persons in support or opposition shall be given 15 minutes each to present their initial case and/or arguments in support of the application. The Board may extend this time period given the complexity and/or subject matter of the case. Opponents and other persons shall be given such time as the Board may determine is appropriate under the circumstances of the case to present evidence or arguments. Rebuttals to evidence and arguments made after the initial presentations shall follow this same format.

Witnesses may be called and factual evidence may be submitted. The Chair must recognize witnesses before they are heard and confirm that they are under oath. The Chair shall allow all witnesses to be heard but may limit testimony or evidence that is irrelevant, repetitive, incompetent, hearsay or inadmissible opinion testimony. The Chair shall allow the parties to the case to make direct and cross-examination of witnesses and to present rebuttal evidence. The Chair may establish reasonable procedures to assure that is done in a fair, impartial and efficient manner. Board members may ask questions of any witness.

The Board shall not be limited to consideration of such evidence as would be admissible in a court of law, but all decisions must be based on competent, material and substantial evidence properly placed in the hearing record. Board members may view the premises before arriving at a decision, but any key facts observed by members shall be disclosed at the hearing and made a part of the record.

Upon completion of the presentation of evidence and recommendation by the staff, Board members shall discuss the case among themselves in open session and may recall any witness to ask further questions and otherwise deliberate among themselves. Board members shall not discuss the case or give opinions on the evidence until initial presentation of the case is completed.

4. *Rehearings.* An application for a rehearing may be made to the Board in the same manner as provided for an original hearing and shall contain evidence that there has been a substantial change in the facts or conditions of the case. The Board may decide to conduct a full evidentiary hearing to consider such application. 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 or conditions since the Board's initial determination in the case. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as a new application.

D. Decisions.

1. *Time.* Decisions by the Board shall be made in a reasonable time from the completion of the evidentiary hearing. A decision may not be continued indefinitely.

2. *Motion and Voting.* Voting on an appeal, application or other matter shall be in accordance with the provisions of the North Carolina General Statutes. A vote on a request for a variance, special use permit or on an appeal of a staff determination shall be in the form of a motion to approve the request, and such motions shall require a second. A motion made to determine a quasi-judicial matter shall state specifically any conditions desired to be made a part of that decision and shall reference, if appropriate, any documents or maps submitted as part of that application. Any such references made in the motion shall, if approved, be part of the record and decision in that case. The vote of each member shall be recorded. If a requested application is not approved, the members voting not to approve shall state for the record the factual findings and rationale that support their opposition.

3. *Form.* All decisions of the Board on quasi-judicial matters shall be reduced to writing as soon as practicable after the case is decided. The written decision shall reflect the Board's determination of contested facts and the application of the pertinent standards to those facts. The written decision shall be signed by the Chair or other duly authorized member of the Board. After signature, the written decision shall be filed with the Secretary and delivered to the parties.

4. *Effective Date and Filing.* Decisions of the Board on quasi-judicial matters are effective upon filing the written decision with the Secretary and the delivery of the decision to the applicant, the property owner if that entity is not the applicant, and to any other person who

filed a written request for a copy of the decision prior to or at the evidentiary hearing on the matter. The decision may be delivered by personal service, first-class mail or electronic mail.

5. *Public Records of Decisions.* The decisions of the Board shall be a public record available for inspection at all reasonable times. All decisions shall be entered into the minutes of the Board. The Secretary shall maintain copies of all written decisions of the Board.

VII. AMENDMENTS

These rules may be amended without prior notice by unanimous vote. Otherwise, consideration of the proposed amendment shall be set over to the next regular meeting.

These Rules of Procedure rescind and replace the original Rules and Procedures of the Town of Hillsborough Board of Adjustment adopted by the Board on February 26, 1981 and as last amended April 11, 2018.

This is to certify that the above rules were unanimously adopted by the Board of Adjustment at its meeting duly held on the 13th day of October 2021.

Tom King, AICP, CZO
Senior Planner/Secretary to the Board of Adjustment