



COUNTY OF GRANVILLE, NORTH CAROLINA

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Granville County Development Services

Planning (919) 603-1331

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The attached Rules of Procedure have been unanimously adopted by the Granville County Board of Adjustment this the 25th day of May, 2021.

Wayne Overton, Chair
Granville County Board of Adjustment

Kathy Morris, Secretary to the Board
Granville County Board of Adjustment

**RULES OF PROCEDURE
ZONING BOARD OF ADJUSTMENT,
GRANVILLE COUNTY, NORTH CAROLINA**

I. GENERAL RULES

The Zoning Board of Adjustment shall be governed by the terms of Chapter 160D of the General Statutes of North Carolina and by the Granville County, North Carolina Land Development Ordinance found in Chapter 32 of the Granville County Code of Ordinances (the "Ordinance"). 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 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 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 chairman's absence, and at such times he shall have the same powers and duties as the chairman.
- C. *Secretary.*** A secretary shall be elected by the Board in the same manner and for the same term as the chairman. However, the Secretary need not be a member of the Board. Granville County may also provide a deputy Secretary to serve some or all of the functions of Secretary to the Board. All references to "Secretary" shall refer interchangeably to the Secretary of the Board or any deputy secretary and assignments shall be given to the Secretary or deputy secretary by the Land Development Administrator or County Manager. The Secretary 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 final determination of any question, indicating the names of members who are absent or fail to vote.

III. ALTERNATE MEMBERS

Alternate members of the Board shall attend all meetings and hearings of the Board but no alternate member shall participate in the consideration of any case before the Board unless 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 Secretary that they are unable to attend or to participate. The alternate members will be ranked for order of participation at each meeting and that ranking will rotate at each meeting. Alternate members shall have the same powers and duties as regular members in all matters in which they participate.

Except at the election of officers, at no time shall more than seven members participate officially in any meeting or hearing.

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 evidentiary hearing on that application or appeal
- E. No Board member shall discuss any case with any parties thereto before the evidentiary hearing on that case, provided, however, that members may receive and/or seek information pertaining to the case from its Secretary 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 fourth Tuesday of each month at 7:00 p.m. at the Granville Convention & Expo Center at 4185 Highway 15 South, Oxford, North Carolina, 27565¹, provided that meetings may be held at any other convenient place if the chairman so directs before the meeting and appropriate notice is given in accordance with North Carolina Open Meetings Law codified at N.C. Gen. Stat. § 143-318.12(b).
- B. **Special Meetings.** The chairman may call special meetings of the Board at any time. At least 48 hours written notice of the time and place of special meetings shall be given, by either the

¹ Amended February 28, 2012 to change the location of the regular meeting place.

Secretary or the chairman, to each member of the Board. Notices shall also be given to the public and the media in a manner so as to comply with the North Carolina Open Meetings Law as codified at N.C. Gen. Stat. § 143-318.12(b).

- C. ***Cancellation of Meetings.*** If there are no appeals, applications for minor 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 and 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 the twenty-four (24) hours before the time set for the meeting.
- D. ***Quorum.*** For all matters except the granting of a variance, a quorum shall consist of four (4) members of the Board. 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 decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this section, vacant positions of 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 supermajority if there are no qualified alternates available to take the place of such members. See N.C. Gen. Stat. § 160D-406(i).
- E. ***Voting.*** A member of the Board 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. Moreover, no member of the Board may vote on a matter if his or her participation would violate the Rules of Conduct listed in Section IV above. 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. Objections may be raised by any person whose rights would be affected or by any member of the Board.
- 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) approval of decisions and/or orders; (d) hearing of cases; (e) reports of committees; (f) unfinished business; (g) new business; (h) consideration and determination of cases heard (if no decision is made directly following the hearing of a case).

VI. APPEALS AND APPLICATIONS

- A. ***Types of Applications.*** The Board shall hear and decide on the following applications: (1) Minor Special Use Permits; (2) Zoning Variance Applications; (3) Floodway Variance Applications; (4) Determinations of Vested Rights; (5) Subdivision Variances; (6) Watershed Variances; (7) Storm Water Variances; and (8) Appeals.
- B. ***Types of Appeals.*** The Board shall hear and decide Appeals of administrative decisions made by administrative officials charged with enforcement of the Granville County Land Development Code.
- C. ***Procedure for Filing Appeals.*** Appeals shall be subject to the following requirements and procedures:

- (1) Any person who has standing under G.S. 160D-405(b) or the County may appeal a decision to the Board. An appeal is taken by filing a notice of appeal with the secretary to the board of adjustment. The notice of appeal shall state the grounds for the appeal.
- (2) The official who made the decision shall give written notice of determination to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice of determination shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (3) The owner or other party shall have 30 days from receipt of the written notice of determination within which to file an appeal. 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.
- (4) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominent posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the land owner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an Ordinance provision to the contrary, posting of signs shall not be required.
- (5) The official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed 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 Ordinance. In that case, enforcement proceedings shall not be 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 such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant or local government may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

- (7) Subject to the provisions of subdivision (6) of this subsection and any Ordinance provisions to the contrary, the Board shall hear and decide the appeal within a reasonable time.
- (8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the County would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.
- (9) When hearing an appeal pursuant to G.S. 160D-406(h) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160D-1402(j).
- (10) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The Ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

D. Hearings.

1. *Time.* After an application or a notice of appeal is received, the Board shall hear the appeal or application within a reasonable time. In the case where enforcement proceedings are not stayed, an 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 such a request is filed.

2. *Notice.* Upon receipt of an application or a Notice of Appeal, the Land Development Administrator shall schedule an evidentiary hearing, and shall provide public notification in accordance with the standards in Chapter 32, Article XVII, Division 6 of the Land Development Code.

3. *Conduct of the Evidentiary Hearing.* Any party may appear in person, by appropriate agent (Agents may not engage in the unauthorized practice of law. See North Carolina State Bar, Authorized Practice Advisory Opinion 2006-1 (determining "that it is the unauthorized practice of law for someone other than a licensed attorney to appear in a representative capacity to advocate the legal position of another person, firm, or corporation that is a party to the proceeding" at a quasi-judicial hearing). North Carolina State Bar 2007 Format Ethics Opinion 3 requires that the attorney to the Board of Adjustment advise the Board of Adjustment of the contents and implications of Authorized Practice Advisory Opinion 2006-1), 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/she shall direct, shall give a preliminary statement of the case; (b) the applicant shall present the evidence and arguments in support of their 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, or such person as he shall direct, 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; provided, however, that all decisions of the Board shall be based on substantial evidence, that is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The Board may view the premises before the hearing, but the facts indicated by such inspection shall be disclosed at the evidentiary 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. The chairman may require opponents of an application who are aligned in interest to designate one of their numbers who himself or herself has standing to cross-examine the applicant and the applicant's witnesses. The chairman shall determine if opponents are aligned in interest and may conduct such examinations of said opponents as may be necessary to determine if said opponents are aligned in interest.

E. Decisions.

1. *Time.* Decisions by the Board shall be made within a reasonable time from the date of the close of the evidentiary hearing.

2. *Form.* Every quasi-judicial decision shall be based upon the competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be approved by the Board and be signed by the chair or other duly authorized member of the Board. The written decision shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a minor special use permit, or what conditions the Board imposes in connection with the granting of a variance.

3. *Notice and Public Record of Decisions.* A quasi-judicial decision is effective upon filing the written decision with the secretary to the Board. The decision of the Board shall be delivered within a reasonable time by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

VII. AMENDMENTS

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