

RULES OF PROCEDURE  
ZONING BOARD OF ADJUSTMENT  
TOWN OF MAGGIE VALLEY  
NORTH CAROLINA

**I. GENERAL RULES**

The Zoning Board of Adjustment shall be governed by the terms of Chapter 160D-302 of the General Statutes of North Carolina and by the Zoning Ordinance of Town of Maggie Valley. All members of the Board shall be residents of the Town of Maggie Valley and thoroughly familiarize themselves with these laws.

**II. OFFICERS AND DUTIES**

A. *Chairman.*

A chairman shall be elected by the full membership of the Board of Adjustment from among its regular members. The chairman will preside over the Board for a term of 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/she shall serve as acting chairman in the chairman's absence, and at such times he/she 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 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. If the secretary is chosen from outside the Boards membership, he/she shall not be eligible to vote on any matter.

D. *Clerk*

The Clerk shall be appointed to the Board of Adjustment by the Board of Alderman. The clerk shall perform such tasks as the chairman may assign and shall perform all of the duties of the

secretary until such time as the chairman appoints a secretary to the Board. The clerk will not be eligible to vote on any matter.

### **III. ALTERNATE MEMBERS**

Alternate members of the Board shall be required to attend all meetings. Alternate members shall have the same ability to enter into the discussion of all issues brought in front of the Board. At no time shall more than five members vote in any meeting or hearing; however no Alternate member shall vote on any issue before the Board unless the Alternate is standing in for a regular member.

### **IV. RULES OF CONDUCT FOR MEMBERS**

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

- A. Faithful attendance at the meetings of the Board of Adjustment is required in order to maintain membership on the Board, and members who miss 3 consecutive meetings, or four (4) regular meetings in a calendar year, automatically forfeit membership. A member terminated for lack of attendance may appear before the Board of Aldermen and request reinstatement.
- B. No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested.
- C. 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.
- D. 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.
- E. 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.
- F. ***Removal for conflict of interest on individual matters will be by a 4/5 vote by the full Board, with all alternate members included as part of the full Board.***

### **V. MEETINGS**

- A. *Regular Meetings.*  
Regular meetings of the Board shall be held on the third Thursday of each month at 5:30 p.m. in the Board room of the 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 (including electronic mail) of the time and place of special meetings shall be given, by either the Secretary or the Chairman, to each member of the Board. Public notice shall be given for specially called public hearings as required by the General Statutes and Section VI, C, 2 of these rules.

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 (including electronic mail) or oral notice to all members not less than twenty-four (24) hours before the time set for the meeting.

D. *Quorum.*

A quorum for routine administrative decisions and for deciding an appeal from a decision, order, requirement, or determination of the Building/Zoning Code Enforcement Officer, or an application for a special exception, shall consist of three members of the Board. However, a quorum needed for the Board to pass on any question relating to an application for a variance will require no less than 4 members to be present in order to have a 4/5's vote of the Board. It would be most fair to the applicant to only have a full Board hear these matters, using alternates to replace any absent regular members.

E. *Voting.*

All regular members may vote on any issue unless they have disqualified themselves for one or more reasons. 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. 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. The required vote to decide appeals and applications shall be as provided in Section VI, D, 4. For the purposes of this subsection, 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 member. In all other matters the vote of a majority of the members present and voting shall decide issues before 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) reports of committees

- (d) unfinished business
- (e) new business
- (f) hearing of cases
- (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 Building/Zoning Code Enforcement Officer, it shall also hear and decide all matters referred to it or on which the Zoning Ordinance of the Town of Maggie Valley 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 Building/Zoning Code Enforcement Officer. The applicant must file his application for a hearing with the Building/Zoning Code Enforcement Officer respectively, 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 Clerk shall schedule the time for the hearing. If the application is received at least twenty working days prior to the next scheduled regular hearing, the applicant will be heard at that scheduled meeting. If application is received after that time it will be heard within 38 days or sooner from the filing of such notice of appeal. At the discretion of the chairman, special hearings may be called only after giving proper public notice.
2. *Notice.* Notice of hearings shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. Such notices shall state the location of the building or lot if applicable, 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 considerations 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 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. This is a maximum time limit, normally decisions will be made at the meeting with which the hearing was held.
- 2. *Form.* Every quasi-judicial decision shall be based upon 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 Board's final decision shall be shown in the record of the case and entered in the Board's minutes and signed by the secretary/clerk and the chairman. 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 exceptions, 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, special use permit, or 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, or conditional use permit. A separate record of the decision in each case shall be prepared, filed in the Town Clerk's office 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, certificate of occupancy, or comply with the

terms of the variance, special use permit, or conditional use permit to a substantial completion 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 grant a variance from the ordinance provisions. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal. For the purposes of this subsection, 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.
5. *Notice and Public Record of Decisions.* A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The written decision shall be signed by the chair or other duly authorized member of the board. The decision of the board shall be delivered 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. Such notice may be physically picked up from the town clerk's office once the decision becomes effective. The person required to provide notice shall certify that proper notice has been made. A copy of the decision shall also be filed in the Town Clerk's office at Town Hall. The decision shall be a public record, available for inspection at all reasonable times.

## **VII. SUCCESSION**

When vacancies occur on the Board, vacancies will be filled by a vote of the remaining Board from available Alternate members to fill the vacancies. The Board will then proceed to interview candidates to present to the Board of Aldermen for appointment to the Board as an Alternate member.

## **VIII. AMENDMENTS**

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than 4/5 members of the full Board of Aldermen, provided that such amendment be presented in writing at a regular or special meeting before the meeting at which the vote is taken.

Adopted this 9<sup>th</sup> day of November 2004. Amended the 13<sup>th</sup> day of September 2018.  
Amended the 18<sup>th</sup> day of January 2024. Amended the 16<sup>th</sup> day of May 2024.

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William Banks, Chair of the Board of Adjustment

Attest:

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Noah Taylor Assistant Town Planner