

RULES OF PROCEDURE
ZONING BOARD OF ADJUSTMENT
CITY OF KINGS MOUNTAIN
NORTH CAROLINA

Adopted August 22, 2023

I. GENERAL RULES

The Zoning Board of Adjustment (hereinafter referred to as the “Board”) shall be governed by the terms of 160D of the General Statutes of North Carolina and by the City of Kings Mountain Unified Development Ordinance. All members of the Board shall thoroughly familiarize themselves with these laws.

II. OFFICERS AND DUTIES

A. ELECTIONS

A Chair and Vice-Chair shall be elected by the full membership of the Board annually at the regular meeting of the Board held in the month of January and also at the first Board of Adjustment meeting following any City Council Organizational meeting. The Chair and Vice-Chair shall be chosen from the pool of members who also serve as City Council members. These officers shall be elected for a term of one (1) year and may be re-elected for successive terms to the same office. Members shall be notified of the date, time, and place of the election of officers at least seven (7) days prior to the regular July meeting or before any election required after a City Council Organizational meeting. Each officer shall serve until relieved of his duties as herein provided.

B. DUTIES

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. The Chair shall appoint any committee found necessary to investigate any matters before the Board. The Vice-Chair shall serve as acting Chair in absence of the Chair, and at such time shall have the same powers and duties as the Chair.

C. SECRETARY

The Planning Director, or designee, shall serve as the professional staff of the Board and shall appoint a recording secretary to keep minutes and summarize all proceedings, attested to by a majority of the members of the Board voting. In addition, the secretary shall maintain all records of Board meetings, hearings, and proceedings, as well as the correspondence of the Board.

III. ALTERNATE MEMBERS

Members of the Board will alternate as outlined in the COKM Unified Development Ordinance (UDO). Due to the nature alternates are chosen, all Board members shall be requested to attend all regular and special meetings and shall be able to cast a vote when a regular member of the Board is absent or if one of the Board members has a conflict of interest. At any meeting at which an alternate member votes, the alternate member shall have the same powers and duties as regular members. Except for the election of officers and the adoption or amendment to the Rules of Procedure, at no time shall there be more than five (5) members officially participating in any Board meeting or hearing.

IV. RULES OF CONDUCT FOR MEMBERS

A. CONFLICTS OF INTEREST

A Board member shall not participate in or vote on any quasi-judicial matter in a manner that would violate the affected person's constitutional rights to an impartial decision-maker. Impermissible violations of due process include, but are not limited to the following:

1. Undisclosed ex parte communications; or
2. A close familial, business, or other associational relationship with an affected person; or
3. A financial interest in the outcome of the matter; or
4. A member having a fixed opinion prior to hearing the matter that is not susceptible to change.

If a Board member determines that her or she may have a conflict of interest on a particular issue, said member shall disqualify himself from participating in considering the issue and shall not sit with the Board during such consideration. A member of the Board may raise the question of conflict of interest of another member regarding a specific issue that is before the Board. A majority vote of those regular members without such conflict shall determine if such conflict does exist. In the event a regular member disqualifies himself or is asked by a majority of the remaining regular members to disqualify himself, he shall be replaced by an alternate member for that business associated with the conflict of interest.

B. DISCUSSION OF BOARD CASES

No Board member shall discuss any case with any parties thereto prior to the public hearing on that case, including other Board members; provided however, that members may receive and/or seek general technical information pertaining to the case from the Board Secretary, City Manager, City and/or Board Attorney, or Planning Director prior to the hearing.

Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto prior to its determination of that case. Violation of this rule shall be cause for dismissal from the Board.

V. MEETINGS

A. REGULAR MEETINGS

Regular monthly meetings of the Board shall be held in accordance with a schedule adopted annually by the Board of Adjustment. Each member shall be notified of each regular meeting by the Secretary to the Board.

B. SPECIAL MEETINGS

Special meetings of the Board may be called at any time by the Chairman. At least 48 hours prior written notice of the time and place of special meetings shall be given, by the Secretary, to each member of the Board and posted on the bulletin board on the main floor of City Hall.

C. CANCELLATION OF MEETINGS

Whenever there is no business for the Board, or whenever so many regular and alternate members notify the Secretary of inability to 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 prior to the time set for the meeting and posting same on the bulletin board on the main floor of City Hall.

D. QUORUM

A quorum for handling non-hearing matters shall consist of a majority of the seated or appointed members of the entire Board.

A quorum for hearings shall consist of three of the five members sitting for the particular hearing. However, the Board shall not pass upon any question relating to an application for a variance, an appeal from a decision, order, requirement, or determination of the Zoning Administrator, or an application for a special use permit when there are less than four (4) voting members 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 vote of any member who is qualified to vote on an issue but who has abstained from such voting shall be officially counted and shown in the record as a "yes" vote.

A newly appointed Board member may vote on an application or appeal if he or she have listened to the audio recordings, read all of the evidence and information, and have become familiar with the facts of the case.

F. CONDUCT OF MEETINGS

All meetings shall be open to the public. The order of business at regular meetings shall be as follows:

- roll call
- call meeting to order
- adoption of agenda
- approval of minutes of previous meetings
- hearing of cases and determination of cases heard
- other business
- adjournment

VI. PUBLIC HEARINGS

A. TYPES OF MATTERS TO BE HEARD BY THE BOARD

The Board shall hear the following matters:

1. Appeals;
2. Variances; and
3. Any Special Use Permits not heard by City Council; and
4. Any other matters, as provided or required by the UDO or other authority.

B. PROCEDURE FOR FILING MATTERS TO BE HEARD BY THE BOARD

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. All such applications shall be filed with the City Clerk or designee.

Other Decisions: An applicant may also bring, in a timely and complete fashion, the following for review and decision by the Board:

1. Variances
2. Special Use Permit requests not heard by City Council
3. Any other matters, as provided or required by the UDO or other authority.

All applications shall be made upon the form furnished for that purpose, and all information required thereon shall be complete including any fees paid, before an application shall be considered as having been filed.

C. PUBLIC HEARING

A public hearing conducted by the Board shall be required to (1) decide all appeals from determinations made by the Zoning Administrator; (2) grant any variances to the terms of the ordinance; (3) hear and decide all special use permit requests not heard by City Council; (4) hear

and decide all other matters referred to it or upon which it is required to pass by the City of Kings Mountain Unified Development Ordinance. A public hearing shall not be required to elect officers or to conduct similar administrative duties.

After receipt of application, the Board Chair shall schedule the time for a hearing, which shall be at a regular or special meeting within forty-five (45) days from the filing of such ~~notice of appeal~~ application. The City of Kings Mountain shall mail notices first class, to all property owners adjacent to the property(ies) in question. A conspicuous sign shall be conspicuously posted on the piece(s) of property in question providing notice of the hearing at least ten (10), but not more than twenty-five (25), days prior to the public hearing. Said sign(s) shall remain until a final decision is made.

D. CONDUCT OF HEARING

All Board public hearings shall be conducted in a quasi-judicial manner. Any party may appear in person, by agent, or by attorney at the hearing. The order of business for hearing shall be as follows:

1. The Chairman, or such person as he shall direct, shall give a preliminary statement of the case,
2. All persons giving testimony shall be sworn in or affirmed,
3. Staff will provide an overview of the case,
4. The Applicant, his agent, or attorney shall present the argument in support of the application,
5. Persons opposed to granting the application shall present the argument against the application,
6. Persons with standing may present argument in support of or opposed to the application,
7. Other witnesses may present competent, material, and substantial evidence that is not repetitive, as allowed by the Board,
8. Both sides will be permitted to present rebuttals to opposing testimony,
9. The Chair shall as necessary summarize the evidence which has been presented, giving the parties opportunity to make objections or corrections.

The Board may view the premises before arriving at a decision. The Board shall not conduct the public hearing if neither the applicant, his agent nor his attorney are in attendance.

E. DECISIONS

1. TIME

Decisions by the Board shall be made not more than forty-five (45) days from the date the public hearing was concluded.

2. FORM

Written notice of the decision in a case shall be given to the applicant by the Secretary after the case is decided. 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 Chairman. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board. Where 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. Where a variance is granted, 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.

3. 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 within twelve (12) months from the date of the decision.

4. VOTING AT HEARINGS

The concurring vote of four-fifths (4/5's) of the Board (i.e., at least four voting members) shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter. Voting on any issue shall be done by a show of hands or by voice, secret ballots shall not be allowed.

5. PUBLIC RECORD OF DECISION

The decisions of the Board, as filed in its minutes, shall be a public record available for inspection at the Planning Director's Office during normal business hours. Any aggrieved party has thirty (30) days to appeal the Board's decision to the local Superior Court by proceedings in the form of certiorari.

VII. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than six (6) members of the Board, or a majority of the seated or appointed members, provided that such amendment be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.