

# TOWN OF GRANITE FALLS BOARD OF ADJUSTMENT

## RULES OF PROCEDURE

### I. General Rules

The Zoning Board of Adjustment, hereinafter call the Board, shall be governed by the terms of Chapter 160D of the General Statutes of North Carolina and by the terms of the Zoning Ordinance of the Town of Granite Falls, North Carolina. All board members shall thoroughly familiarize themselves with these laws.

### II. Board Appointments

All appointments to this Board shall be made by the Granite Falls Town Council. Members representing the Town's extraterritorial jurisdiction (ETJ) will also be approved by the Caldwell County Commissioners.

### III. Oath of Office

All members appointed to the Board of Adjustment shall, before entering their duties as a Board member, qualify by taking an oath of office as required by North Carolina General Statute 160A-61. This oath shall be administered by either the Chairperson or Vice-Chairperson of the Board.

### IV. Officers and Duties

A. **Chairperson**. A Chairperson shall be elected by the full membership (including alternate members) of the Board of Adjustment from among its regular members. Elections shall be held at the first meeting following approval of Board Appointments by the Granite Falls Town Council and Caldwell County Commissioners (in the case of ETJ members). His or her term shall be for one (1) year or until a successor is elected and shall be eligible for reappointment. The Chairperson 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 Chairperson shall appoint any committees found necessary to investigate any matters before the Board.

B. **Vice-Chairperson**. A Vice-Chairperson shall be elected by the Board from among its regular members in the same manner and for the same term as the Chairperson. He or she shall serve as acting Chairperson in the absence of the Chairperson, and at such time he or she shall have the same powers and duties as the Chairperson.

C. **Secretary**. A Secretary shall be appointed by the Board. The Secretary, subject to the direction of the Chairperson and the Board shall keep all records, shall conduct all correspondence of the Board, and shall generally supervise the clerical work of the Board including arranging all required public notices. The Secretary shall keep in a permanent volume the minutes of every meeting of the Board. These minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon the Board, and all votes of members of the Board upon any resolution or upon the final determination of any question, indicating the names of members absent or failing to vote.

## **V. Alternate Members**

Alternate members of the Board shall be called upon to attend all regular meetings including those meetings and hearings at which one or more regular members are absent or unable to participate in the hearing of a case because of a conflict of interest. Regular members, on receiving notice of a special meeting which they cannot attend or upon learning that they will be unable to participate in a meeting, shall promptly give notice to the Secretary of the Board that they are unable to attend or participate. On receiving such notice, the Secretary shall, by the most expeditious means, notify an alternate member to attend for voting purposes. Assignments shall be rotated between the alternate members. At any meeting which they are called upon to attend for voting purposes, alternate members shall have and may exercise the same powers and duties as regular members. In addition, at any meeting which an alternate is not called upon to serve as a voting member, the alternate may participate fully in the meeting, but shall not have the right to vote.

Except at the election of officers, at no time shall more than seven (7) members participate officially in any meeting or hearing.

## **VI. Rules Of Conduct For Meetings**

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. In order for the Board to carry out its duties and responsibilities, it is necessary for all members to attend the meetings. If any member has two (2) consecutive unexcused absences from meetings or a total of four (4) unexcused absences from meetings in a one-year period the Board of Adjustment may, by unanimous vote of the remaining members, request that the position be vacated and also request that a replacement be made by the Town Council.

Excused and unexcused absences are to be determined by the Chairperson, or in the Chairperson's absence, the acting Chairperson. Excused absences are generally defined as medical or family emergencies or unavoidable business/personal conflicts.

C. No Board member shall take part in the hearing, consideration or determination of any case in which he/she has a conflict of interest.

D. No Board member shall vote on any matter that decides an application or appeal unless he/she 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, or its Secretary before the hearing.

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

## VII. Meetings

A. **Regular Meetings.** Regular meetings of the Board shall be held on the second Wednesday of each month at 5:00 p.m. in the Town Chamber at 4 South Main Street; provided notice is given by the Secretary, however, should the chairperson so direct, meetings may be held at any other regular place in the town upon proper notice.

B. **Special Meetings.** Special meetings of the Board may be called at any time by the Chairperson. At least forty-eight (48) hours written notice of the time and place of the special meeting shall be given, by the Secretary or by the Chairperson, to each member of the Board. The Open Meetings Law requirements must be met. However, for a case to be heard, the applicable notice requirements must also be met.

C. **Cancellation of Meetings.** Whenever there are no appeals, applications for exceptions or variances, or other 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 Chairperson may dispense with a regular meeting by giving written or oral notice to all members.

D. **Quorum.** A quorum for considering variance requests shall be six (6) of the members of the Board. A quorum for all other general business matters not subject to the four-fifths majority rule shall be four (4).

E. **Voting.** The concurring vote of four-fifths of the members of the Board shall be necessary to grant a variance from the provisions of the ordinance. A majority of the members will be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.

In addition, the following rules shall be observed:

1. If a motion to approve a variance fails to receive the required four-fifths vote, a) the petition shall be deemed to be denied and b) the same motion shall not be allowed a second time. However, other motions to approve may be allowed by the chairperson provided substantially different conditions or safeguards are included in the motion.

2. If a motion to deny a variance is carried, the matter may not be reconsidered.

F. **Conduct of Meetings.** All meetings shall be open to the public. The order of business at regular meetings shall be as follows: a) call to order; b) review of minutes of previous meetings for possible approval; c) hearing of cases; d) reports of committees; e) updates and other communications f) adjournment.

G. **Conflicts of Interest.** 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 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. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent or grandchild. The term also includes the step, half and in-law relationships.

## VIII. Variances

When unnecessary hardships would result from carrying out the strict letter of the ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

1. Unnecessary hardships would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance.

Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

The Board may also hear variance requests from other development regulations.

## **IX. Appeals and Applications of Decision of Zoning Administrator**

- A. **Decision of Zoning Administrator.** An appeal from the decision of the Zoning Administrator may be taken by any person aggrieved or affected by such decision to the Board of Adjustment. The official who made the decision shall give written notice 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 shall be delivered by personal delivery, electronic mail, or by first-class mail. The owner or other party shall have 30 days from receipt of the written notice 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.
- B. **Notice of Decision.** 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 prominently posted on the property for at least 10 days. Posting of the signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Posting of signs is not required.
- C. **Notice of Hearing.** Notice shall be mailed to adjacent property owners, at least ten (10) days, but not more than twenty-five (25) days, prior to the public hearing.
- D. **Timeframe for Appeal.** Such appeal shall be taken within thirty (30) days by filing with the Town Clerk a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record upon which the action appealed

from was taken. The Zoning Administrator 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.

- E. **Stay of Proceedings.** An appeal stays all legal proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Adjustment after the notice of appeal shall have been filed that, by reason of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record an application, on notice to the Zoning Administrator and on due cause shown.
- F. **Expedited Hearing.** 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 of Adjustment 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 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.
- G. **Hearing.** 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 Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing to another date.
- H. **Decision of the Board of Adjustment.** In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or in part, or may modify any order, requirements, decision or determination and to that end shall have the powers of the administrative official from whom the appeal is taken.

## **X. Decisions of the Board.**

1. **Written Decision.** The Board shall inform all parties involved of its decision in writing, stating the reasons supporting the decision. The written decision shall be signed by the Board of Adjustment Chair and is effective upon filing with the Zoning Administrator, serving in their role as Secretary to the Board of Adjustment. The written decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant and property owner prior to the date the decision becomes effective.

2. **Expiration of Permits.** Unless otherwise specified, any order or decision of the Board granting a development approval shall expire if a building permit or certificate of occupancy for such use is not obtained by the applicant within one (1) year from the date of the decision.

3. **Public Record of Decisions.** The written decisions of the Board, as maintained by the Secretary to the Board, shall be a public record and available for inspection at all reasonable times.

## **XI. 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 preceding the meeting at which the vote is taken.

Adopted this the 14<sup>th</sup> day of April, 2021.