

RULES OF PROCEDURE

ZONING BOARD OF ADJUSTMENT KANNAPOLIS, NORTH CAROLINA

I. GENERAL RULES

The Zoning Board of Adjustment shall be governed by the terms of Chapter 160A, Article 19, Part 3 of the General Statutes of North Carolina and the Unified Development Ordinance of the City of Kannapolis.

II. OFFICERS AND DUTIES

A. Chairperson. The Board of Adjustment shall elect a Chairperson from among its regular members. The term of office shall be one year, beginning in July each year, and continue until a successor is elected. The Chairperson shall be eligible for re-election. The Chairperson 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 Chairperson may administer oaths to witnesses.

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. The Vice Chairperson shall serve as Acting Chairperson in the Chairperson's absence, and at such times shall have the same powers and duties as the Chairperson.

C. Secretary. The City Clerk or their designee shall serve as Secretary. 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 action taken by the Board, and all votes of members of the Board on any action on the final determination of any question, indicating the names of members who are absent or fail to vote. The Secretary does not act in the capacity of a Board member.

III. RULES OF CONDUCT FOR MEMBERS AND ALTERNATE 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. Absence from three consecutive regular Board meetings within any three-month period shall be grounds for the City Council to consider terminating the appointment of such person.

C. All members shall vote on all issues brought before the Board unless excused by the Board.

D. No Board member shall take part in the hearing, consideration, or determination of any case in which the member has a conflict of interest. Board members shall announce their potential conflict of interest prior to the hearing and the Board shall vote to allow the member to be excused from the case.

F. Conduct of Meetings. All meetings shall be open to the public Roberts Rules of Order will govern the meetings. The order of business at regular meetings shall be as follows

1. Roll Call
2. Recognition of Quorum.
3. Approval of Minutes
4. Opening Statement.
5. Swearing-in of persons to provide testimony Presentation of facts by Planning Administrator
6. Presentation by applicant.
7. Comments in favor of request.
8. Comments in opposition to the request.
9. Cross examination/rebuttal by applicant.
10. Board consideration of action on the case
 - a. Findings of fact
 - b. Close hearing
 - c. Vote on Board decision.
11. Old Business.
12. New Business
13. Adjournment.

G. Alternate Members. The alternate members of the Board shall receive notices of all Board meetings and shall attend all meetings so as to keep abreast of hearings and actions and to take the place of regular members, as directed by the Chairperson, should regular members be unable to attend or participate All members, on receiving notice of a meeting that they cannot attend or upon learning that they will be unable to participate in a meeting or vote on a particular item, shall promptly give notice to the Secretary of the Board that they are unable to attend or to participate Alternate members participating in the place of regular members shall have the same authority and responsibility as if they were regular members The Chairperson shall designate the manner in which alternate members serve in the place of regular members.

V. APPEALS AND APPLICATIONS.

A. Types of Appeals. Any person owning property or residing in the area of zoning jurisdiction may appeal from any order or act of the Planning Administrator pertaining to zoning administration of the Unified Development Ordinance The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Planning Administrator 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. The Board shall not hear any appeal unless notice thereof is filed within 30 days after the order, requirement, decision, or determination is made by the Planning Administrator The applicant must file his application for a hearing with the Planning Administrator, who shall act as clerk for the Board in receiving this notice All applications shall be made upon forms furnished for that purpose, and all information required thereon shall be complete before an

E No Board member shall vote on any matter that decides an application or appeal unless the member has attended the hearing on that application or appeal In addition, voting by proxy shall not be permitted.

F No Board member shall discuss any case with any parties thereto before the 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, Planning Administrator, or Secretary before the hearing.

G Members of the Board shall not express individual opinions on the proper judgment of any case publicly or with any parties thereto before that case is determined.

IV. MEETINGS

A. Regular Meetings. The Board shall hold regular meetings on the first Tuesday of each month at 6 00 PM in the Kannapolis Train Station located at 201 South Main Street, Kannapolis, NC However, meetings may be scheduled at or continued to another convenient place in the City in any case where the Chairperson determines it is in the public interest to do so

B. Special Meetings. The Chairperson may call special meetings of the Board at any time At least 48 hours written notice of the time and place of the special meeting shall be given, by either the Secretary or the Planning Administrator to each member of the Board.

C. Cancellation of Meetings. If there are no appeals, or other business for the Board, or if so many members notify the Secretary that they cannot attend a meeting that a quorum will not be available, the Chairperson may cancel the meeting. The Chairperson shall cause the notification of all Board members of the cancellation.

D. Quorum. A quorum shall consist of four (4) members of the Board, but the Board shall not pass on any question relating to an appeal from a decision, order, requirement, or determination of the Planning Administrator or an application for a variance when fewer than six (6) members qualified to vote are present. If at the time of a hearing, there are not enough voting members present to decide upon a variance or appeal in favor of the applicant, the Chairperson shall continue the hearing until such time as sufficient voting members are present.

E. Voting. All members must vote on every issue unless they have disqualified themselves for one or more of the reasons listed in Section III. The required vote to decide appeals and variance applications shall be as provided in Section 388, Part 3, Article 19, Chapter 160A of the General Statutes of North Carolina and shall not be reduced by any disqualification. Except as otherwise provided in Section VI, the vote of a majority of the members present and voting shall decide issues before the Board.

appeal may be considered as having been filed.

C. Hearings.

1 Application deadline. After notice of appeal is received, a hearing shall be set for the next regularly scheduled meeting provided that the appeal is received by the first Friday of the preceding month.

2 Notice. The Board shall give public notice of the hearing in accordance with the provisions of the Unified Development Ordinance

3 Conduct of the Hearing. Any party may appear in person, by agent, or by attorney at the hearing. The Board of Adjustment may subpoena witnesses and compel the production of evidence

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 substantial change has occurred, it may by simple majority approve the application for rehearing after which 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 30 days from the date of the hearing.

2 Form. The Board's decision shall be shown in the record of the case as entered in the Board's minutes and signed by the Secretary and the Chairperson and a copy shall be filed with the City Clerk on the first working day following the signings. Such record shall show the reason 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 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. The record shall state in detail what, if any, conditions and safeguards the Board imposed in connection with granting of a variance.

3 Voting at Hearings. The concurring vote of six (6) members of the Board shall be necessary to reverse any order, requirement, decision, of determination of the Planning Administrator, or to decide in favor of the applicant any matter on which the Board is required to pass, or to grant a variance from the provisions of the Unified Development Ordinance

4 Notice and Public Record of Decisions. The Planning Administrator shall give written notice of the decision in the case to the appellant and/or the applicant and to every aggrieved party who has filed a written request for such notice with the Secretary or Planning Administrator when

the hearing is held. Such notice may be delivered either by personal service or by registered mail or certified mail return receipt requested. A copy of the decision shall also be filed in the Planning Department. The decision shall be a public record, available for inspection at all reasonable times

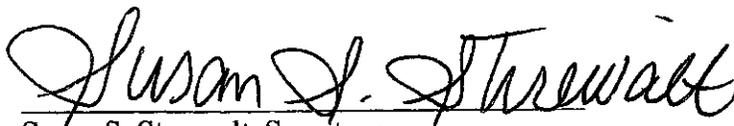
5 Judicial Review Every decision of the Board shall be subject to review by the Superior Court by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after the decision of the Board is filed in the office of the City Clerk, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Secretary or Planning Administrator at the time of its hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party by personal service or by registered mail or certified mail return receipt requested.

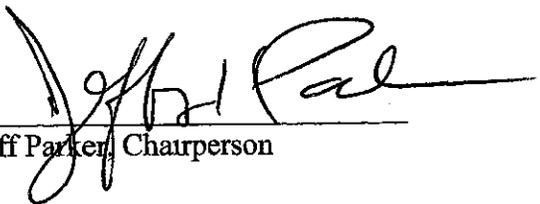
VI. AMENDMENTS

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

ADOPTED the 16th day of January, 2001.

AMENDED this the 5th day of June, 2012.


Susan S Strewalt, Secretary


Jeff Parker, Chairperson