

**RULES OF PROCEDURE
ZONING BOARD OF ADJUSTMENT**

CITY OF BELMONT, NORTH CAROLINA

I. GENERAL RULES

Under authority of the General Statutes of North Carolina 160D-302 and the Land Development Code (LDC) of the City of Belmont, North Carolina, the City of Belmont, (hereinafter, "City") Board of Adjustment ("Board") hereby adopts these general rules of procedure for the hearing of matters coming before the Board. The Board, being a public body, shall at all times conduct meetings in conformity with the NC Open Meetings Law statute (Chapter 143, Article 33C of the General Statutes of North Carolina), and in conformity with the LDC and other governing law. In the event of a conflict between these rules and such other authorities, such other authorities shall control.

II. OFFICERS AND DUTIES

A. Appointments

The Board of Adjustment shall consist of five (5) regular members with at least one (1) of the members residing in the city's extraterritorial jurisdiction (ETJ). The total membership of the Board of Adjustment, at a minimum, shall be proportional to the population of City residents in relation to ETJ residents, rounded down to the nearest whole number. Board of Adjustment representatives from within the City limits shall be appointed by the Belmont City Council. Representatives from the ETJ area shall be appointed by the Gaston County Board of Commissioners upon consideration of a recommendation by City Council.

The Board of Adjustment member terms shall be staggered. To allow for staggered terms, two (2) initial appointments will be for terms of three (3) years; two (2) initial appointments will be for terms of two (2) years; and one (1) initial appointment will be for a term of one (1) year. Following the initial appointments, Board of Adjustment terms shall be three (3) years. An appointee to the Board of Adjustment shall not serve more than two (2) consecutive terms or a maximum of seven and a half (7.5) years if a member has filled an unexpired term, after which a member must wait three (3) years before being eligible for reappointment. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term.

At the regular Board meeting held in the month of May, the Board shall elect a Chair and Vice-Chair from its membership. The chair shall serve a maximum of two (2) consecutive one (1) year terms. An ETJ member may be elected to serve as chair on a basis that is proportional to the number of ETJ members serving on the Board. All regular members shall be allowed to vote. The Board shall review, amend, and certify as adopted these same rules of procedure as needed.

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 Chairman shall appoint any committees found necessary to investigate any matters before the Board. The Vice-Chair shall serve as acting Chair in the absence of the Chair, and at such times he or she shall have the same powers and duties as the Chair.

C. Secretary

The City Council shall arrange to have secretarial duties performed for the Board. Said person(s) (hereafter referred to as the “Secretary”), subject to the direction of the Chair, shall take minutes and keep all records. The Secretary shall conduct all correspondence of the Board, arrange for all public notices required to be given, notify members of pending meetings and their agenda, notify parties to cases before the Board of its decision on such cases, and generally supervise the clerical work of the Board. The Secretary shall keep in a permanent volume the minutes of every meeting of the Board. These shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of the 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. If the Secretary is appointed from outside the membership of the Board, he or she shall not be eligible to vote upon any matter. The minutes of the Board of Adjustment shall be kept by the Secretary for the public at the City Hall in both audio and written format, and shall serve as the official records of the Board.

III. RULES OF CONDUCT FOR MEMBERS

A. Removal

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

B. Attendance

In order for the Board to carry out its duties and responsibilities, it is necessary for all members to attend the meetings. If any regular member is absent for three (3) consecutive regular meetings within any twelve-month period, such member may be removed by the City Council and a replacement made for the unexpired portion of the term. The Board of Adjustment may make a recommendation to the City Council regarding removal of a member for duly cited causes. Such a request must be in writing, and signed by the Chair of the Board of Adjustment.

C. Conflicts of Interest

A member of any Board exercising quasi-judicial functions pursuant to this LDC 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 he or she may have a conflict of interest on a particular issue, he or she shall fully disclose the nature of such conflict and ask to be excused from any deliberations or voting on the issue related to such conflict. The remaining regular members, by majority vote, shall determine whether such conflict exists and whether said member may be excused from further deliberations on said matter. If a member is excused, he or she shall either: 1) be seated in the audience and not participate in any further discussion on said matter, or 2) he or she shall leave the meeting room during all deliberations

pertaining to such matter, whichever option the Chair decides is the most expedient and practical for the matter at hand. In no instance may a member be excused from voting merely due to an unwillingness to vote on the issue at hand, and when no conflict of interest is found to exist.

At or prior to the hearing, an objection to a board member's participation based on a conflict of interest or a challenge of an undisclosed conflict of interest may be raised by any person or entity with standing with the Board. If the member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

D. Discussion of Board Cases

Board members shall refrain from discussing upcoming matters of business with any parties, including other Board members, prior to the meeting at which such items are to be publicly discussed; provided however, that members may receive and/or seek general technical information pertaining to the case from the Secretary, City Manager, City Attorney or Planning Director prior to the Board meeting at which the case is to be heard. The Board also has the discretion to call forth any witnesses for a particular case by subpoena power, if necessary.

IV. MEETINGS

A. Regular Meetings

Regular meetings of the Board shall be held on the second Thursday of each month at 6:30 P.M. at City Hall; provided that meetings may be held at any other conveniently located place in the Belmont area if directed by the Chair sufficiently in advance of the meeting. Each member shall be notified of each meeting by the Secretary.

B. Special Meetings

Special meetings of the Board may be called at any time by the Chair provided that there is at least forty-eight (48) hours written notice of the time and place of a special meeting given and posted publicly, by the Board's Secretary, to each member of the Board.

C. Cancellation of Meetings

Whenever there are no appeals, applications for variances, or other business for the Board, or whenever so many regular members notify the Secretary of their inability to attend that a quorum will not be available, the Chair may dispense with a regular meeting by having the Secretary give written or oral notice to all members prior to the date and time set for the meeting. If a quorum is not present at a meeting, any evidentiary hearing shall be automatically continued to the next regular meeting of the Board.

D. Voting

A quorum shall consist of three (3) members of the Board. However, the concurring vote of four members (4/5) of the Board present at the hearing of a particular case shall be necessary to grant a variance; all other matters or appeals shall be decided by majority vote. The Chair shall be able to vote on any matter, including making and seconding a motion. 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.

E. Conduct of Meetings

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

1. Call to Order
2. Roll Call; Determination of Quorum
3. Approval of Minutes of Previous Meetings
4. Hearing of Cases
5. Other Business
6. Adjourn

F. Continuation of Meetings

Requests for postponing or continuing the hearing for good cause on a particular appeal or application may be made to the Board.

G. Withdrawal

An application or appeal will be considered to have been withdrawn under the following circumstances: (a) The applicant submits a written request to withdraw the application or appeal; (b) The property owner, if different than the applicant, submits a notarized request to withdraw the application or appeal; (c) The Board requests the applicant to furnish additional information within a specified period of time, and such information is not furnished by the applicant within the time period allowed; (d) Without prior notification to the Chair or Secretary to the Board, applicant does not appear at the scheduled hearing to testify regarding the merits of the application or appeal; or (e) The applicant appears at the scheduled hearing and requests that the application or appeal be withdrawn. The Chair has authority to determine whether an application or appeal has been withdrawn or may be considered withdrawn.

V. 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 other matters, as provided or required by the LDC or other authority.

B. Procedure for Filing Matters to Be Heard by the Board

1. **Appeals:** No appeal shall be heard by the Board unless a completed application is filed within thirty (30) days after the interested party or parties received notice of the order, requirement, decision, or determination by the Planning Director. All such applications shall be filed with the City Clerk.
2. **Discretionary Decisions:** An applicant may also bring, in a timely and complete fashion, the following for review and decision by the Board:

- a. Variances.
- b. Any other matters, as provided or required by the LDC or other authority.

C. Fees

A fee, in accordance with a fee schedule adopted by the City Council, shall accompany all applications to be heard by the Board. No application shall be considered complete unless accompanied by the fee as herein prescribed.

D. Public Hearing Mandate

A public hearing conducted by the Board shall be required to:

1. Decide all appeals. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed; and
2. Grant or deny any variance. In granting a variance, the Board may impose appropriate conditions that are reasonably related to the variance; and
3. Hear and decide all other matters referred to the Board, or upon which it is required to approve or disapprove.

E. Public Hearing Date

After receipt of a completed application for an appeal, variance, or other related matter under the jurisdiction of the Board, the Board shall hear the case at a regular or special meeting within forty-five (45) days from the date of submittal of the complete application, provided that a quorum of the Board can be established.

F. Conduct of Hearing

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

1. The Chair, or such person as he shall direct, shall give a preliminary statement of the case, along with explaining all procedures and processes for the public hearing.
2. All persons giving testimony shall be sworn in or affirmed by the Chair or any member acting as Chair and/or the Secretary/Clerk to the Board. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely may be proven guilty of a Class 1 misdemeanor.
3. Staff will provide an overview of the case. Any administrative materials from staff, absent a sustained objection from the Board, shall be made a part of the hearing record.
4. The applicant shall present the argument and testimony and other evidence in support of his or her application, and shall be allowed as much time as is reasonably necessary by the Board to present their case.
5. Persons with standing may present argument and testimony and other evidence in support of or in opposition to the application.
6. Other witnesses may present competent, material, and substantial evidence that is not repetitive, as allowed by the Board.

7. All parties shall be permitted to make objections to evidence and cross-examine and present rebuttals to opposing testimony.
8. The Chair shall make an initial ruling on any evidentiary objections, and the Chair's rulings may be appealed to the full board.
9. The Chair has the discretion to exercise reasonable time limits for those offering testimony and/or evidence at a public hearing, but doing so must not frustrate any rights for an applicant or witness to be heard.
10. The Chair, or its designee, shall summarize the evidence which has been presented.
11. Board members may ask or seek additional input, clarification, etc. from persons eligible to give evidence who are seated in the audience on any piece of evidence presented. Cross-examination and rebuttals may also be made only on any such new evidence presented. Once all of the evidence, public testimony, and general questions have been fully heard, the Chair shall close the period for public discussion. The Board shall then publicly discuss the case without further input from the public.
12. The Board may render a decision on the matter at the public hearing or, if it so chooses, continue the public hearing to a publicly stated date, time, and location, as indicated by a motion of the Board to do so.
13. The Board of Adjustment through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant or persons with standing under G.S. 160D-1402(c) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be immediately appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed.
14. For appeals of administrative decisions, the official who made the decision or the person occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness.

G. Decisions

1. Form

Each quasi-judicial decision shall be reduced to writing, reflect the Board's determination of contested facts and their application to the applicable standards, and be approved by the Board and signed by the Chair or other duly authorized member of the board. The decision will be effective upon filing the written decision with the City Clerk. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and 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 to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

2. Voting Procedures at Hearings

- a.** 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 or to determine an appeal made in the nature of certiorari. 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 alternative available to take the place of such members. This applies to all public hearings heard by the Board.
 - b.** Voting on any issue shall be done by a show of hands or by voice, as directed by the Chair, along with their respective reasoning for their decision. In addition, each Board member shall indicate by written decision, for the record, as to his or her vote and reasoning for the decision.
 - c.** An Abstention shall be counted as a "yes" vote.

- H.** 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. All records of any case subject to appeal to the Superior Court shall be preserved by the Board's Secretary, thereby allowing full access to any case records for those wishing to appeal.

- I.** In the event of any conflict between these Rules and the LDC, the provisions of the LDC shall govern.