

RULES OF PROCEDURE
LOWELL BOARD OF ADJUSTMENT

TOWN OF LOWELL
NORTH CAROLINA

PART I. General Rules

The Board of Adjustment (hereinafter referred to as the “Board”) shall have all the powers and duties as authorized and prescribed by Section 160D-302 of the General Statutes of North Carolina and by Article 4 of the Town of Lowell Development Ordinance.

Should any conflict between documents be found, the order of precedence shall be (1) the General Statutes, (2) the Lowell Development Ordinance, and (3) these Rules.

All members of the Board shall thoroughly familiarize themselves with these documents. The Board, being a public body, shall at all times conduct meetings in conformity with the applicable Open Meetings Law Statutes.

PART II. Officers and Duties

A. Appointments

The Board of Adjustment shall consist of five (5) regular members and two (2) alternate members (hereinafter, collectively, the “members”). All Board members shall be residents of the Town of Lowell; and shall be appointed by the Town Council for the designated terms set forth in Section 4.3-2(A) of the Lowell Development Ordinance (LDO), unless repealed, or Section 4.3-2 of the LDO from and after the effective date of the LDO.

Each Board member shall be sworn by the Mayor or their designee before assuming any position on the Board in accordance with Section 4.3-3 of the LDO.

The alternate members of the Board shall attend all regular and special meetings, and shall be permitted to fully participate in Board business whenever a regular member of the Board is absent, or if any Board member is determined to have a conflict of interest.

B. Elections

A Chairman and Vice-Chairman shall be elected by majority vote of the regular and alternate Board membership at the first called meeting following initial establishment of the Board. Each officer shall serve for two(2) year terms but may be elected by the Board membership for successive terms to the same office. Biannually thereafter at the regular meeting of the Board held in _____, a Chairman and Vice Chairman shall be elected. Each officer shall serve until relieved of their duties as herein provided.

C. Duties

The Chairman 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 Chairman shall serve as acting Chairman in the absence of the Chairman, and at such times they shall have the same powers and duties as the Chairman.

D. Clerk to the Board

The Town Council shall arrange to have clerical duties performed for the Board. Said person(s) (hereinafter referred to as the "Clerk to the Board"), shall take minutes and keep all records. The Clerk to the Board shall keep in a permanent volume the minutes of every meeting of the Board. These minutes shall accurately reflect the record of all important facts pertaining to each meeting and hearing, the names of all members in attendance, alternates seated, if any, every resolution acted upon by the Board, and all votes of the seated members of the Board upon any resolution or upon the final determination of any question, including the names of any regular members present, but excused from voting per Sub-sections 4.3-5 and/or 4.3-6, and the names of any sitting members abstaining to vote. The minutes and records of the Board of Adjustment shall be kept at Town Clerk's office.

E. Staff Assistance

The Planning, Zoning and Subdivision Administrator shall generally serve as staff to the Board and shall provide (or cause to be provided) such technical assistance as requested. In particular, the Planning, Zoning and Subdivision Administrator shall conduct all correspondence for the Board, arrange for all public notices required to be given, notify members of pending meetings and provide agendas for same in advance, notify interested parties of Board decisions on cases, and generally supervise the clerical work of the Board.

PART III. Rules of Conduct for Members

A. Removal

Members of the Board may be removed for cause, including violation of any of the rules provided 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, the Chairman may direct the Clerk to the Board to notify such member in writing of their absences. If such member fails to attend the next regular meeting, the Board of Adjustment may, by a majority vote of the remaining regular and alternate members, request that the position be vacated.

C. Conflict of Interest

No member of the Board shall seek to influence a decision, participate in any action or cast a vote involving any matter that is before the Board, which may result in a private benefit to themselves, their immediate relatives or their business interests. A sitting member may be excused from voting on a particular issue under the following circumstances:

1. If the member has a direct financial interest in the outcome of the issue; or
2. If the matter at issue involves the member's own official conduct; or
3. If a member has such familial, business, or other associational relationship with an affected person that the member cannot reasonably be expected to exercise sound judgment in the public interest; or
4. If a member has a fixed opinion prior to hearing the matter that is not susceptible to change; or
5. If a member has undisclosed ex parte communications.

If a sitting Board member declares that they may have a conflict of interest on a particular issue, they shall declare the nature of such conflict and ask to be excused from voting on the issue related to such conflict. The remaining sitting members, by majority vote as required by G.S. 160D-109(e), shall determine whether such conflict exists and whether said member may excuse themselves from further deliberations on said matter. If a member is excused from voting, they shall not participate in any further discussion on said matter or (at their discretion) they shall remove themselves from the meeting room during all deliberations pertaining to such matter. In no instance may a sitting member be excused from voting merely due to unwillingness to vote on the issue at hand and where no conflict of interest is found to exist by their fellow Board members.

A challenge to the existence of a conflict of interest or a challenge of an undisclosed conflict of interest may be filed by any interested party with the Board. Such a challenge may be an appeal for a review of the findings of the Board or may be for the purpose of alleging an undeclared conflict of interest. Any challenge made to the Board shall be supported by competent evidence and shall be submitted at a properly convened meeting of the Board. The Board shall hear all such evidence. In order to find that a sitting member does have a previously undisclosed conflict of interest, a majority vote to such effect of the remaining members shall be required.

In the event a sitting Board member is found to have a conflict of interest and is excused from voting on particular issue by the Board; they shall be replaced by an alternate member for that business associated with the conflict of interest, as provided for in Rule II.A.

D. Discussion of Board Cases

Board members shall refrain from discussing forthcoming or anticipated matters of business with any parties, including other Board members, prior to the meeting at which such items are to be publicly discussed.

Members may receive and/or seek general technical information pertaining to a case from the Clerk to the Board or Zoning Administrator prior to the Board meeting at which the case is to be heard. Such requested information shall be provided to all members in writing, and shall also be entered into the case record by the Clerk to the Board.

Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto, or one another, before or during the hearing for that case.

PART IV. Meetings

A. Regular Meetings

Regular meetings of the Board shall be held on the Second Wednesday of January, April, July and October at 6:00 p.m. in the Lowell Facilities Building. All Board members shall be notified of and provided an agenda for each meeting by the Planning, Zoning and Subdivision Administrator, and public notices shall be posted by the Clerk to the Board as prescribed by law.

B. Special Meetings

Special meetings of the Board may be called at any time by the Chairman, provided that at least forty-eight (48) hours advance notice of the time, place and purpose of such special meetings are provided by the Clerk to the Board to all members of the Board. Public notices to this effect shall also be posted.

C. Quorum

A quorum shall consist of at least four (4) sitting members, entitled to vote on matters brought before the Board, including any alternates seated, as set forth in Rule III.A. A quorum shall be in attendance in order to open any meeting of the Board.

D. Cancellation of Meetings

Whenever there are no appeals, interpretations, applications for variances, or other business for the Board, or whenever so many regular and alternate members notify the Clerk to the Board or Chairman of their inability to attend that a quorum can not be established, the Chairman may dispense with a meeting. In such instance, the Clerk to the Board shall give written or oral notice to all Board members as much in advance of the scheduled meeting date as possible, and post suitable public notice.

E. Voting

The concurring vote of at least three-fifths (3/5) of the sitting members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Planning, Zoning and Subdivision Administrator, or to decide in favor of the applicant on any other matter upon which the Board is required to pass; however, a concurring vote of at least four-fifths (4/5) of the sitting

members of the Board shall be necessary to grant a variance from the provisions of the Zoning Ordinance.

The Chairman shall be able to vote on any matter, including making and seconding a motion. An unauthorized abstention from voting by a sitting member shall be considered as a “yes” vote. No sitting Board member shall vote on any matter deciding an application or appeal unless they shall have attended the evidentiary hearing(s) on that application.

Unless otherwise specified in these Rules, all regular and alternate members may vote on procedural matters, which do not necessitate a evidentiary hearing.

F. Conduct of Meetings

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

1. Call to Order
2. Determination of Quorum; Recording of Seated (Voting) Members
3. Approval of Minutes of Previous Meetings
4. Hearing of Cases
5. Other Business
6. Consideration and Determination of Cases
7. Adjournment/Continuation

G. Continuation of Meetings

Meetings may be continued from one date to another at a publicly stated date, time, and location. No further notice of a continued hearing need be published unless a period of six weeks or more elapses between hearing dates.

PART V. Appeal, Applications, Evidentiary hearings

A. Types of Appeals

The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Planning, Zoning & Subdivision Administrator, hear and decide any appeals that require an interpretation of the Zoning Ordinance, and hear and grant variances to certain provisions of the Zoning Ordinance.

B. Procedure for Filing Applications

No appeal shall be heard by the Board unless a completed application for an appeal is filed within thirty-six (36) calendar days of the date a decision was made by the Planning, Zoning & Subdivision Administrator, or in accordance with rules of Constructive Notice as established by the State of North Carolina. Applications for variances shall be submitted no less than fourteen (14) calendar days prior to the regular or special meeting at which the case is to be heard. All such applications shall be filed with the Planning, Zoning & Subdivision Administrator. The Planning, Zoning & Subdivision Administrator may file an application for an interpretation of the Zoning Ordinance at any time. All applications shall be made upon the form furnished by the Town for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.

The Planning, Zoning & Subdivision Administrator shall determine if an application is complete. If any application is found to be incomplete, the Planning, Zoning & Subdivision Administrator shall notify the applicant and assist in completion of the application before placing same before the Board.

C. Fees

A fee, in accordance with a fee schedule adopted by the Town Council of Lowell shall accompany an application for any appeal or variance. This fee shall be waived for any application initiated by the Planning, Zoning & Subdivision Administrator, the Planning Board or the Town Council. No application shall be considered complete unless accompanied by the fee as herein prescribed.

D. Hearing Mandate

A hearing conducted by the Board shall be required to decide all appeals, interpretations, and to grant any variances to the provisions of the Zoning Ordinance.

E. Evidentiary Hearing Date and Notice

Notice of such a hearing shall be posted at or near the subject property at least ten (10) calendar days before the hearing date. Written notice shall be provided to the applicant, any owners of record whose property is immediately adjacent to any property identified in the application, and any other person who makes a written request for such notice at least ten (10) days before the hearing.

F. Conduct of Hearing

All Board hearings shall be conducted in a quasi-judicial manner. The Chairman may limit discussion among parties present or ask unruly members of the public to leave the meeting.

Any party may appear in person or be represented by agent or by attorney at any hearing. All persons desiring to present evidence before the Board shall first be placed under oath by the

Chairman. Presentation of evidence carries with it the obligation to submit to cross-examination by any opposing party.

The order of business for each case presented at a Board hearing shall be as follows:

1. All persons desiring to give testimony, and having signed up beforehand with the Clerk to the Board to present evidence or arguments, shall be sworn in. In the event any individual(s) declines to be sworn, they may still be heard, but shall be advised by the Chairman that the Board will consider their statements merely as information, not as evidence.
2. The Chairman shall request that any sitting Board member, or any other person present, advise of the existence of any potential conflict of interest regarding the case about to be heard. Any such indication in the affirmative shall be disposed of in accordance with Rule III.C before proceeding further.
3. The Planning, Zoning & Subdivision Administrator, or such other person as the Chairman may direct, shall give a preliminary statement of the case.
4. The applicant shall present evidence and arguments in support of their application.
5. Other persons in favor of granting the application shall present arguments for the application.
6. Persons opposed to granting the application shall present arguments against the application.
7. Both sides will be permitted to present rebuttals to opposing testimony, and cross-examine the opposing party(s). The Chairman shall ensure that cross-examinations are conducted with brevity and decorum, and limited to matters directly relevant to the case at hand.
8. The Chairman, or their designee, shall summarize the evidence, which has been presented, giving all interested parties the opportunity to make objections or offer corrections.
9. The Chairman shall close this case for public discussion, and shall proceed to the next case, if any, and thereafter to the next item of business on the meeting agenda. The Board shall subsequently and publicly discuss the case, calling upon the Planning, Zoning & Subdivision Administrator for input, clarification, etc. as deemed desirable, but without further input from the public. Board members, however, may seek further input, clarification, etc. from persons previously sworn and eligible to give evidence who are seated in the audience on any piece of evidence heretofore presented. Cross-examination of any rebuttals by opposing parties at that time shall only be permitted on any such new evidence presented.

The Board shall render a decision on the matter in the manner prescribed in Rule IV.E, or, as it so

chooses, the Board may continue the hearing to a publicly stated date, time, and location. No further notice of a continued hearing need be published unless a period of six weeks or more elapses between hearing dates.

G. Decision

1. Time - Decisions by the Board shall be made within thirty (30) calendar days after the date of the hearing, or any continuation thereof, was concluded, or at the next regularly scheduled meeting of the Board following the hearing conclusion, whichever occurs later.

2. Form - Written notice of the decision in each case shall be sent by first class mail or hand-delivered to the applicant and to every aggrieved party who has filed a written request for such notice with the Planning, Zoning & Subdivision Administrator. The final decision shown in the record of the case shall be entered in the minutes of the Board. 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. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination which was the cause for an appeal or interpretation.

3. Voting At Hearings - Voting on any issue placed before the Board shall be conducted in accordance with Rule IV.E.

H. Board Decision Appeals

Any person or persons, jointly or severally, aggrieved party who has filed a written request for such copy at the time of its hearing of the case, whichever is later, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of alleged illegality, whereupon such decision of said Board shall be subject to review by the Superior Court of Gaston County by proceedings in the nature of certiorari as provided by Article 14 of G.S. 160D.

PART VI. Amendments

These rules within the limits allowed by law, may be amended at any time by an affirmative vote of a majority of the entire membership of the Board in attendance at such time, but consisting of not less than three (3) regular members; provided that such amendment be presented in writing at a regular meeting preceding the meeting at which the vote is taken.

Adopted this ____ day of _____, 20__.

Vieta Benson, Chairperson

Ratified by Town Council:

ADOPTED on this the ____ day of _____, 20__

Sandy Railey, Mayor

Beverly Harris, Town Clerk