

**RULES OF PROCEDURE  
BOARD OF ADJUSTMENT  
Emerald Isle, North Carolina**

**1. GENERAL RULES**

The Board of Adjustment shall be governed by the terms of Chapter 160D, of the General Statutes of North Carolina and the Unified Development Ordinance of Emerald Isle Town Code, as amended.

**2. MEMBERSHIP/TERMS**

- a. The Board of Adjustment is composed of five (5) regular members and two (2) alternate members.
- b. When a regular member vacates their seat during the term, the alternate who has served the longest shall be elevated to the regular member vacant position and shall serve as a regular member. A citizen appointed to fill a vacancy shall fill the respective alternate seat.
- c. At any meeting an alternate member is called to serve, the alternate member shall have the same powers and duties as regular members.

**3. OFFICERS AND DUTIES**

- a. The officers of the Board of Adjustment shall consist of the Chairperson and the Vice-Chairperson.
- b. A Chairperson shall be elected by a majority vote from the full membership of the Board. The term of office shall begin on July 1 and be for one (1) year, and/or until a successor is elected. The Chairperson is eligible for re-election. Duties include: deciding on all points of order and procedure, subject to these rules, unless directed otherwise by a vote of the majority of the Board in session at the time; and, appointing committees found necessary to investigate any matters before the Board.
  - i. Chairperson shall have the following duties and powers:
    1. To preside at all meetings and public hearings of the Board;
    2. To decide all points of order and procedure;
    3. To entertain and answer questions of rules and/or procedures;
    4. To appoint members to all standing and temporary committees;
    5. To adjourn an emergency meeting;
    6. To call a brief recess at any time;
    7. To certify rulings of the Board; and,
    8. Shall exercise full voting rights on all matters under consideration.
- c. A Vice-Chairperson shall be elected by the Board in the same manner and for the same term as the Chairperson. The Vice-Chairperson shall serve as acting Chairperson in the absence of the Chairperson. At such times, he/she shall have and exercise the same powers and duties as the Chairperson.

- d. In the absence of both the Chairperson and Vice-Chairperson, the Board of Adjustment shall select its presiding officers from those present.
- e. In the event the office of Chairperson becomes vacant, the Vice-Chairperson shall be elevated automatically to the position of Chairperson. In the event the office of Vice-Chairperson becomes vacant, the Board of Adjustment shall elect a new Vice-Chairperson.

#### **4. SECRETARY**

A staff member of the Town shall serve as Secretary to the Board. The Secretary, subject to the direction of the Chairman, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all public notices required to be given, shall notify members of pending meetings and their agendas, shall notify parties to cases before the Board of its decision on such cases, and shall 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 members of the Board upon any resolution or upon the final determination of any questions.

#### **5. RULES OF CONDUCT**

- a. Members of the Board may be removed for cause, including violation of the rules stated below.
- b. Faithful attendance at all Board meetings is required by both regular and alternate members. When any member has missed three (3) or more consecutive regular meetings or fails to attend seventy-five percent (75%) of all regular meetings, the Chairperson shall notify the Town Board of that members attendance. Appointments shall be made in accordance with Section 2.2.3 of the Unified Development Ordinance. Absence due to sickness, death, or other emergencies of the like nature shall be recognized as excused absences by the Chairperson, and shall not affect the member's status. Members may request a leave of absence. Leave of absence requests shall be forwarded to Town Board for approval.
- c. No member of the Board of Adjustment shall participate in either the discussion or vote on any special use permit, variance or appeal from an administrative officer's decision in any manner that would violate the affected persons' constitutional right to a fair and impartial decision maker. Prohibited conflicts include but are not limited to a member having a fixed opinion prior to hearing the matter and not willing to consider changing his or her mind; and undisclosed ex-parte communications with the person before the board, any witnesses, staff or other board members. Decisions on either a request for recusal by a member or objections by a person appearing before the board shall be decided by a simple majority vote.

- d. No Board Member shall take part in the hearing, consideration, or determination of any matter in which that Board Member is involved or has a financial or personal interest. Personal interest shall be defined as having a family member involved in the project under consideration, a neighborhood association involvement where a Board Member is on the governing body of such association, or where the Board Member is involved in a conflict or dispute with the applicant on a matter unrelated to the application. If a Board Member has such a conflict, he shall declare the conflict and request to be excused from voting on the issue. A majority vote of the remaining members present shall be required to excuse the member.
- e. For purposes of these rules, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. (2019-111, s. 2.4.)
- f. No Board member shall vote on any matter deciding an application or appeal, unless he/she shall have attended the Evidentiary Hearing on that application or appeal.
- g. No Board member shall discuss any case with any parties in interest prior to the Evidentiary Hearing on that case, including fellow Board members.

## 6. CONFLICTS

### a. Unified Development Ordinance

If there is a conflict between the Board of Adjustment Rules of Procedure and the Town of Emerald Isle Unified Development Ordinance, the Unified Development Ordinance shall prevail.

### b. Members

No member of the Board of Adjustment shall seek to influence a decision, participate in any action or cast a vote involving any matter that is before the Board of Adjustment which may result in a private benefit to themselves, their relatives or their business interest. In applying this rule the following procedure shall govern:

- i. A Board member who determines there exists a conflict of interest, shall declare the existence of a conflict and shall refrain from any deliberation on the matter and shall leave any chamber in which such deliberations are to take place.
- ii. A Board member who believes there may exist a conflict of interest shall declare his/her possible conflict and may ask for a determination by the Board of Adjustment. A majority vote of the Board of Adjustment shall determine whether a conflict of interest exists.
- iii. A challenge of the existence of a conflict of interest or a challenge of an undisclosed conflict of interest may be presented to the Board of Adjustment by any interested party. The Board of Adjustment shall hear all evidence and shall, by majority vote, make the final determination as

- to the existence of a conflict of interest.
- iv. Withdrawal from participation in any matter is necessary only in those specific cases in which a conflict arises. There shall be no attempt to exclude entire categories of considerations because of the business or profession with which a member is associated.
- c. Quasi-Judicial Decisions. – A member of any board exercising quasi-judicial functions pursuant to NCGS 106D 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.
- d. Administrative Staff. – No staff member shall make a final decision on an administrative decision required by NCGS 160D if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person, or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

## 7. MEETINGS

- a. Regular Meetings. Regular meetings of the Board shall be held the third Monday of each month, as necessary, starting at 6:00 PM in the Board of Commissioners Room of Town Hall; 7500 Emerald Drive; provided that meetings may be held at some other time, date, or convenient location in the Town, if directed by the Chairperson of the Board and publicly advertised as required by law.
- b. Special Meetings. Special meetings of the Board may be called at any time by the Chairman or by any three (3) regular members of the Board. Notice shall be given as required by law. If a special meeting is called in order to hear an appeal or application, the need for convening a special meeting must be based on all of the following:
  - i. The need has not been created by the applicants own actions;
  - ii. The need has been created by unusual or unexpected circumstances that cannot be handled at the next regular meeting of the Board.

- c. Quorum. A quorum shall consist of four (4) members of the Board. It shall be mandatory that a quorum be present for the Board to pass upon any question relating to an appeal or an application for a variance or special use permit.
- d. Voting.
  - i. The concurring vote of four-fifths (4/5) of the Board shall be necessary to grant a variance.
  - ii. 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.
  - iii. Vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter under GS 160D-1-9(d) shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members. A majority of the members shall be required to decide requests for special/conditional use permits or appeals from zoning officer decisions. Full membership of the Board shall be defined as the five (5) regular members, except it shall not include vacant positions or disqualified members per GS 160D-4-6(i).
  - iv. A majority of the Board shall be required to pass the findings of fact.
- e. Conduct of Meetings. All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) roll call; (b) approval of minutes of previous meetings; (c) hearing of cases; (d) reports of committees; (e) unfinished business; and (f) other business.

## 8. HEARINGS ON APPLICATIONS

- a. Notice. The Board shall give public notice of a hearing in accordance with NCGS §160D-406(b) which includes:
  - i. Posting a sign on the property which is subject to the action not less than ten (10) days prior to the hearing.
  - ii. Giving notice of the hearing to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the ordinance.
  - iii. The notice shall be delivered by personal delivery, electronic mail or by first-class mail to the last addresses listed for the recipients on the county tax abstracts and shall be provided not less than 10 days before the date fixed for the hearing.
  - iv. Before an application is considered as being complete, the petitioner shall be required to furnish the Planning Department with the names and mailing addresses of the owners of all properties located abutting the parcel from the tax records maintained by Carteret County. Where the property is bounded by a street, alley, stream or similar boundary,

the landowner across such boundary shall also be considered as an adjoining landowner.

- v. Using individual mail notices and property posting for quasi-judicial hearings constitutes constructive notice per NCGS §160D-406.

**b. Standing.** All persons who meet the requirements of NCGS §160D-405(b), NCGS § 160D-1402(c), plus the Town including but not limited to:

- i. People who have an ownership interest in the property affected by the decision;
- ii. People who an option to purchase or contract to purchase the property which is the subject of the decision;
- iii. Applicant before the decision-making board/commission;
- iv. Any person who suffers special damages as a result of the decision;
- v. An incorporated or unincorporated association to which owners or lessees of property in a designated area affected by the decision. All applications submitted under this section must use the provided form and include all required information from the applicant to be considered officially filed for an appeal or application.
- vi. If there is a question as to (a) whether the Appellant has legal standing as a person aggrieved or (b) whether the Appellant has received notice of the order, requirement or decision appealed, then the Town Attorney's office shall provide an opinion to the Board.

**c. Evidence.**

Every decision of the Board of Adjustment shall be based upon competent, material, and substantial evidence in the record as defined in NCGS 160D-406(j). The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if:

- i. except for the items noted in sub-subdivisions 1, 2, and 3. of this subdivision that are conclusively incompetent, the evidence was admitted without objection; or,
- ii. the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it.
- iii. The term "competent evidence," as used in this subsection, shall, regardless of the lack of a timely objection, not be deemed to include the opinion testimony of lay witnesses as to any of the following:
  - 1. The use of property in a particular way would affect the value of other property.
  - 2. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
  - 3. Matters about which only expert testimony would generally be admissible under the rules of evidence.
- iv. Hearsay evidence as defined under the North Carolina Rules of Civil Procedure is not admissible and may not be considered. Any testimony

or written documentation that falls within a recognized exception to the hearsay rule may be admitted and considered by the Board.

v. Administrative Materials

Town staff shall transmit to the Board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the Board prior to the hearing if, at the same time, they are distributed to the Board, a copy is also provided to the applicant and to the property owner if that person is not the applicant. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board at the hearing.

d. Preliminary Hearing on Evidence Admissibility

The applicant has the right to request a preliminary hearing to object to the admissibility of evidence, subject to the provisions outlined in Section (c). This hearing may be conducted on the same day as the full hearing on the applications or scheduled across multiple meetings, at the discretion of the Board and based on the complexity of the evidentiary issues. Failure to request or designate a specific preliminary hearing on evidence admissibility does not preclude the applicant from arguing the admissibility of evidence during the full hearing on the application. The Chairperson shall rule on any objections raised during the preliminary hearing, and such rulings may be appealed to the full Board.

e. Conduct of Hearing.

- i. The hearing on the application shall adhere to the provisions of Section (d) regarding evidence admissibility and proceed as a quasi-judicial process. All parties with standing have the right to participate fully in the hearing and may appear in person or by agent or by attorney. Other witnesses may present competent, material, and substantial evidence that is not repetitive, as allowed by the Board. Objections regarding jurisdictional and evidentiary issues may be made to the Board. The Chairperson shall rule on any objections, and the Chair's rulings may be appealed to the full Board.
- ii. The order of business for each hearing shall be as follows:
  1. All witnesses before the Board shall be placed under oath.
  2. Affidavits and unsworn documents are not admissible for consideration.
  3. Town Staff shall give the preliminary statement of the case and present evidence and exhibits. For appeals of administrative decisions, the administrator or staff person who made the decision (or his/her successor if the person is no longer employed) shall be present at the hearing to appear as a witness.
  4. Applicant and Board may cross examine or ask questions of Town Staff.
  5. The applicant and those who wish to speak on his/her behalf shall

present the argument in support of his/her application; the appellant can present evidence but if any person or other party to the proceedings would be prejudiced by such presentation, the board will continue the hearing.

6. City Staff and the Board may cross examine or ask questions of the applicant. Board members may ask questions of witnesses.
7. Persons opposed to granting the application shall present the argument against the application;
8. Both sides will be permitted to present rebuttals to opposing testimony;
9. A representative of the Town shall present the department's views and recommendations on behalf of the citizens of the Town of Emerald Isle. Witnesses may be called, and factual evidence may be submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a court of law. The Board may, in its discretion, view the premises and obtain additional facts in the matter before arriving at a determination of the case.
10. The Chairperson closes the public hearing and asks for a motion to: grant or deny a variance request; or affirm, reverse, or modify a zoning interpretation or notice of violation.
11. The Chairperson asks for a second to that motion.
12. Board members vote and issue their rulings.

f. Decision.

- i. The decision shall be made within a reasonable time as provided in these Rules of Procedure unless a different time is provided by statute or ordinance, generally by its next meeting. The Board acts in a quasi-judicial role.
- ii. In that, all decisions must be made based upon competent, material and substantial evidence in the record.
- iii. The Board may affirm, reverse or modify the decision of the administrative official.
- iv. The decision shall be reduced to writing and signed by the Chair. The decision shall show the contested facts and the board's application of the facts to the applicable standards.
- v. A separate record of each case shall be prepared and filed in the Planning Department.

g. Notice and Public Record of Decisions. The Secretary 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 the Chairperson when the hearing is held. Such notice may be delivered either by personal service or by registered mail or certified mail, return receipt requested. 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 Chairperson. The decision shall be a public record, available for inspection at all reasonable times.

h. Re-Hearings. An application for a rehearing may be made in the same manner

as provided for an original hearing. The application may be submitted by the original petitioner or by an aggrieved party. Evidence in support of a rehearing shall initially be limited to that which is necessary to enable the Board to determine at least one (1) of the following:

- i. New facts or evidence is available for which there was no capacity of being obtained at the previous meeting and that will substantially change the conditions of the case.
- ii. Procedural rules which substantially changed the conditions of the case were not followed. However, no harmless error shall be grounds for granting a rehearing. A harmless error is one which would not have changed the outcome of the matter, or for which refusal to rehear does not deny a substantial right.

The application for a rehearing shall be denied if the Board in its records does not find at least one (1) of the two (2) conditions stated above to be true. A vote of a simple majority of the Board members present is required to grant an application for a rehearing. If the Board finds that a rehearing is in order, the burden of proof shall be on the person requesting the rehearing.

## **9. APPEALS AND VARIANCES**

- a. Types of Zoning Appeals. The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Administrative Official who is authorized to enforce the Town's Unified Development Ordinance. It shall also hear and decide all matters referred to it upon which it is required to pass by the Code of Ordinances for the Town of Emerald Isle. In considering appeals, it may hear those cases based upon an allegedly improper or erroneous interpretation of the Ordinance.
- b. Types of Zoning Variances. The Board shall hear and decide all requests for variances from the Unified Development Ordinance and any other applicable ordinances. It shall also hear and decide all matters referred to it upon which it is required to pass by the Code of Ordinances for the Town of Emerald Isle. In considering variances, it may hear those cases based upon alleged hardship resulting from strict enforcement of the Ordinance.
- c. Required Time for Filing Appeals. No appeal shall be heard by the Board unless application is filed by the owner or other party within thirty (30) days of receipt of the written order, requirement, decision, or determination made by the administrative officer charged with the enforcement of the Unified Development Ordinance. Any other person with standing to appeal has thirty (30) days from receipt from the source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice of the administrative officer's determination given by first class mail is deemed received on the third business day following deposit of the notice for mailing with the US Postal Service. Notice may be served by hand delivery, electronic mail or first-class mail.
- d. Filing of Appeal. Appeals must be filed in writing with the Town Clerk within the

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time requirements and stating the grounds for the appeal. All applications shall be made upon the form furnished for that purpose and all required information shall be provided by the applicant before an appeal or an application shall be considered as having been filed.

- e. Fees. No application or notice of appeal shall be considered as having been completed until the filing fee set by the Town has been paid.
- f. Time of Hearing. After receiving the completed notice of appeal from the applicant, the Secretary shall schedule a hearing at the next regular meeting or at a special meeting held in accordance with Section 8 of these Procedures, within sixty (60) days from the filing of such completed notice of appeal, unless agreed upon by the parties otherwise.
- g. Stays of Decision.
  - i. Appeals from notices of violations or other enforcement orders. Decisions are stayed pending the appeal, except when the official who made the decision files with the Board of Adjustment a certification in the form of an affidavit stating the facts and the basis for the opinion that a stay would cause imminent peril to life or property or the transitory nature of the property that enforcement would be difficult if stayed.

#### **10. GENERAL MATTERS**

- a. Expiration of Permits. Unless otherwise specified, any order or decision of the Board granting a special use permit shall expire if a building permit or certificate of occupancy for such use is not obtain by the applicant within six (6) months from the date of the decision, where the Town Board authorizes such in the ordinances. Permits for variances shall run with the land or until the conditions under which the variance was granted have changed.
- b. Amendments. These rules may, within the limits allowed by law, be amended at any time by affirmative vote of the majority of the Board of Commissioners. The Board of Adjustment may propose amendments to these Rules of Procedure in writing to the Board of Commissioners.

These Rules of Procedures were approved by a unanimous vote of the Board of Commissioners on June 10, 2025.