

BOARD OF ADJUSTMENT RULES OF PROCEDURE

TOWN OF MINERAL SPRINGS, NORTH CAROLINA

I. GENERAL RULES

The Board of Adjustment (hereinafter referred to as the "Board") shall be governed by the terms of North Carolina General Statute 160A-388 (160D-3-2 effective 01/01/21) and by the Town of Mineral Springs Zoning Ordinance. All members of the Board shall thoroughly familiarize themselves with these laws. The Board, being a public body, shall at all times conduct meetings in conformity with the applicable Open Meetings Law statutes.

II. OFFICERS AND DUTIES

A. APPOINTMENTS

The Board of Adjustment shall consist of Five (5) regular members and two (2) alternate members, each appointed by Town Council of Mineral Springs and shall be residents of the Town.

Alternate members of the Board shall be requested to attend all regular and special meetings. Alternate members, while attending any regular or special meeting of the Board and serving in the absence of any regular member shall have and may exercise all the powers and duties of such regular members.

The alternate members shall be assigned numbers "1" and "2" by the Chairman. The following system shall be employed for using alternate members:

Member "1" shall first be asked to serve. If he is absent or has a conflict of interest, Member "2" shall be asked to serve. If Member "1" does serve, Member "2" will be first asked to serve at the next meeting. If Member "2" does serve, Member "1" will be asked to serve at the next meeting. If Member "2" is asked to serve but is absent or has a conflict of interest, Member "1" shall serve.

Board members shall be appointed for three (3) years terms. Terms shall be staggered so as to allow the appointment of new members each year. Upon expirations of a member's term of office, that member is expected to continue service until a replacement is appointed by the Town Council.

Vacancies occurring on the Board shall be filled by the Town Council for the remaining portion of an unexpired term.

B. ELECTIONS

The Board shall select from its membership a Chairman and Vice Chairman to serve for a period of one (1) year, or until their successors are elected. Elections shall take place each year at the first meeting held after July 1.

C. DUTIES

To hear and decide requests for special use permits;

To authorize, in specific cases, variances from the terms of the Ordinance.

To hear and decide appeals from any order, requirement, decision or determination made by an administrative official changed with the enforcement of the Ordinance.

To hear and decide requests for certificates of nonconformity adjustment.

To perform the powers and duties set forth in the Flood Damage Prevention regulation.

The Chairman of the Board, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence. To request the issuance of a subpoena, persons with standing under NCGS 160A-393(d) (160D-14-2(c) effective 01/01/19) 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 the 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 appealed to the full Board. If a person fails or refuses to obey the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

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 he shall have the same powers and duties as the Chairman

D. SECRETARY

The Town Council of Mineral Springs shall arrange to have secretarial duties performed for the Board. Said persons (s) (hereafter referred to as the "Secretary", subject to the direction to the Chairman, 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 agendas, 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 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. The minutes and records of the Board of Adjustment shall be kept at Town Clerk's office.

III. RULES OF CONDUCT FOR MEMBERS

A. REMOVAL

Members of the Board may be removed 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 misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year may lose his or her status as a member of the Board and shall be replaced by the Town Council. Absences due to sickness, death, other emergencies of like nature shall be recognized as approved and shall not affect the member's status on the Board; except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced. ,

C. CONFLICTS 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 interest. A 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 matter at hand; or
2. If the matter at hand involves the member's own official conduct; or
3. If the member has such close personal ties to the applicant that he cannot reasonably be expected to exercise sound and impartial judgment on behalf of the public's interest.
4. If the member has a fixed opinion prior to the hearing or has had undisclosed ex parte (without equal representation) communications.

If a Board member determines that he may have a conflict of interest on a particular issue, he shall declare the nature of such conflict and ask to be excused from 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 excuse himself from further deliberations on said matter. If a member is excused from voting, he shall seat himself in the audience and not participate in any further discussion on said matter or (at his discretion) he shall remove himself from the meeting room during all deliberations pertaining to such matter. In no instance may a member be excused from voting merely due to an unwillingness to vote on the issue at hand and where no conflict of interest is found to exist.

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 evidence. In order to find that a member does have a conflict of interest, a majority vote to such effect of the remaining regular members shall be required.

In the event a Board member is found to have a conflict of interest and is excused from voting by the Board, he shall be replaced by an alternate member for that business associated with the conflict of interest.

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 or Ordinance Administrator prior to the Board meeting at which the cases to be heard.

IV. MEETINGS

A. REGULAR MEETINGS

Regular meetings of the Board shall be held on the third Tuesday of each month at 7:00 p.m. at the Mineral Springs Town Hall provided that meetings may be held at any other conveniently located place in the Mineral Springs area as directed by the Chairman in advance of the meeting. Each member (including the alternate members) shall be notified of each meeting by the Secretary or other person so designated by the Chairman.

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 notice of the time and place of a special meeting be given by the Chairman, the Secretary, or other person so designated by the Chairman, to each member of the Board including the alternate members.

C. QUORUM

A quorum shall consist of at least four (4) voting members. A quorum shall be in attendance in order to open a meeting of the Board.

D. CANCELLATION OF MEETINGS

Whenever there are no appeals, interpretations, applications for variances, special use permits, or other business for the Board, or whenever so many regular and alternate members notify the Secretary or Chairman of their inability to attend that a quorum will not be available, the Chairman may dispense with a meeting by having the Secretary, or other person so designated by the Chairman give written or oral notice to all members prior to the time set for the meeting.

E. VOTING

The Board shall not pass upon an appeal, interpretation, or application for a variance when there are fewer than four (4) voting members present. No more than (5) regular and alternate members may vote on any matter for which a public hearing was held. Unless as otherwise specified, voting on

procedural matters which does not necessitate a public hearing shall include all regular and alternate members in attendance. The Chairman shall be able to vote on any matter, including making and seconding a motion. An unauthorized abstention from voting from a member in attendance shall be considered as a "yea" vote. Only members who are in attendance shall be able to vote.

No Board member shall vote on any matter deciding an application or appeal unless he shall have attended the public hearing on that application.

F. CONDUCT OF MEETINGS

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

- (a) Determination of Quorum
- (b) Approval of Minutes of Previous Meetings
- (c) Hearing of Cases
- (d) Other Business
- (e) Adjourn

G. CONTINUATION OF MEETINGS

Meetings may be continued from one date to another provided that the reconvened meeting occurs at least forty-eight (48) hours thereafter, and such meeting is held in a conveniently located meeting site in the Mineral Springs area.

V. APPEALS, APPLICATIONS, PUBLIC HEARINGS

A. TYPES OF APPEALS

The Board shall hear and decide all appeals of decisions of administrative officials charged with enforcement of the Development Ordinance and may hear appeals arising out of any other ordinance that regulates land use or development.

B. PROCEDURE FOR FILING APPLICATIONS

No appeal shall be heard by the Board unless a completed application for an appeal is filed within thirty (30) days of the decision having been made by the zoning administrator. Applications for variances shall be submitted no less than fourteen (14) days prior to the regular or special meeting at which the case is to be heard. All such applications shall be filed with the Secretary. The Zoning Administrator may file an application for an interpretation of the 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.

C. FEES

A fee, in accordance with a fee schedule adopted by the Town Council of Mineral Springs shall accompany an application for an appeal or variance or special use permit. This fee shall be waived for an application initiated by the Zoning Administrator. 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: decide all special use permits and appeals and interpretations and to grant any variances to the terms of the Ordinance.

E. PUBLIC HEARING DATE

After receipt of a completed application for an appeal, interpretation, or variance, the Board shall hear the case at a regular or special meeting within forty (40) days from the date of submittal of the complete application.

After receipt of a completed application for a special use permit, the Board shall hear the case at a regular or special meeting a minimum of sixty (60) days prior to the Board meeting at which the request is to be heard.

F. CONDUCT OF HEARING

Any Board public hearing shall be conducted in a quasi-judicial manner. Any party may appear in person or by agent or by attorney at the hearing. All persons presenting evidence before the Board shall be placed under oath by the Chairman and the opposing party may cross-examine them. The order of business for public hearings shall be as follows:

1. The Chairman, or such person as he shall direct, shall give a preliminary statement of the case;
2. Persons giving testimony shall be asked to be sworn in.
3. The applicant shall present the argument in support of his application;
4. Persons opposed to granting the application shall present the argument against the application;
5. Other persons in favor of granting the application shall present the argument for the application;
6. Both sides will be permitted to present rebuttals to opposing testimony;
7. The Chairman, or his designee, shall summarize the evidence which has been presented, giving parties the opportunity to make objections or corrections.
8. The Chairman shall close the period for public discussion. The Board shall publicly discuss the case without further input from the public. Board members, however, may seek input, clarification, etc. from persons eligible to give evidence who are seated in the audience on any piece of evidence heretofore presented. Cross-examination and rebuttals may be made only on any such new evidence presented.
9. The Board shall render a decision on the matter or, if it so chooses, continue the public hearing to a publicly stated date, time, and location at least forty-eight (48) hours thereafter. A final decision on a case shall be made no later than thirty-one (31) days after the public hearing was opened.

G. REHEARINGS

An application for a rehearing may be made in the same manner as provided for in the original hearing. All applications for rehearing shall be made within fifteen (15) days after the decision of the Board has been filed in its office. Evidence in support of the application shall initially be limited to that which 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 application for rehearing shall be denied by the Board if, from the record, it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as any other application.

The Board shall not be required to hold a public hearing to determine whether or not a rehearing of the case shall be conducted. Said determination shall, however, require a four-fifths vote of the regular membership. The Board shall render a decision on the question of a rehearing within thirty-one (31) days from the day the evidence for rehearing was first heard by the Board.

H. DECISIONS

1. TIME

Decisions by the Board shall be made within thirty-one (31) days from the date the hearing was officially opened.

2. FORM

Written notice of the decision in a 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 Secretary, or the Chairman when the hearing is held by the Secretary, within five (5) working days after the case is decided. The final decision of the Board shall be filed in the office of the Town Clerk. 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.

3. VOTING AT HEARINGS

The concurring vote of four-fifths of the members of the Board (i.e., at least four (4) voting members) shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, make an interpretation, or to decide in favor of the applicant any matter upon which the Board is required by Ordinance to pass. Voting on any issue shall be done by a show of hands or by voice, as directed by the Chairman. An abstention shall be counted as a "yes" vote.

- I. Any person or persons, jointly or severally, aggrieved by any decision of the Board, may, within thirty (30) days after the Board's decision has been filed 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 Chairman 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 illegality, whereupon such decision of said Board shall be subject to review by the Superior Court by proceedings in the nature of certiorari as provided by law.

VI. AMENDMENTS

These rules, within the limits allowed by law, may be amended at a time by an affirmative vote of a majority of the entire membership of the Board, provided that such amendment be presented in writing at a regular meeting preceding the meeting at which the vote is taken.

May 26, 2020
DATE OF ADOPTION

JIM MULLER, CHAIRMAN

VICKY BROOKS, TOWN CLERK