



**RULES OF PROCEDURE OF
THE BOARD OF ADJUSTMENT
OF THE TOWN OF BLACK MOUNTAIN**

Amended: September 16, 2021

I. AUTHORIZATION AND PURPOSE

The Board of Adjustment shall be governed by the terms of Chapter 160D-302 of the General Statutes of North Carolina and Division 6 of the Town of Black Mountain Code of Ordinances. The purpose of the rules of procedure are to clarify procedures and governing terms for how the Board of Adjustment membership conducts its meetings. The rules of procedures are not intended to add, modify, or delete provisions from the Town of Black Mountain Code of Ordinances.

II. MEMBERSHIP, OFFICERS, AND STAFFING

1. The Board of Adjustment (“The Board”) consists of five regular members and three alternate members, all of whom shall reside within the corporate limits of the Town and who are appointed by the Town Council as described in the Town Ordinance.
2. Terms of appointment for regular Board members shall be three years from date of appointment, ending June 30.
3. The Board members shall meet and elect a chair, vice chair and secretary by a majority vote of the membership on an annual basis.
4. At meetings, the Chair shall serve as the presiding officer, managing the agenda, facilitating discussion and debate, calling and accounting for votes, and keeping hearings orderly and effective.
5. In absence of the Chair, the Vice-Chair shall serve as the presiding officer. In absence of the Chair and Vice-Chair, the Secretary shall serve as the presiding officer.
6. The Clerk to the Board or the Zoning Administrator shall assist the Board in conducting their business. The Clerk to the Board or the Zoning Administrator shall be responsible for the keeping of the records of the Board including minutes and will prepare and deliver notices of meetings and hearings of the Board. The minutes shall show the record of all important facts pertaining to each meeting and hearing, every order adopted by the Board, and all votes of members of the Board on any final determination of any question, indicating the names of members who are absent or fail to vote. The Clerk to the Board or

the Zoning Administrator shall prepare public notices required to be given, notification of members of pending meetings and their agenda, and notification to parties to cases before the Board of its decision on such cases. The Zoning Administrator shall be present at all meeting in which his/her determination is being appealed.

III. THE PRESIDING OFFICER

1. The Presiding Officer shall have the following powers:
 - a. To ask for motions for consideration or action;
 - b. To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
 - c. To determine whether a speaker has gone beyond reasonable standards of courtesy in his/her remarks and to entertain and rule on objections from other members on this ground;
 - d. To rule on the admissibility of evidence.
 - e. To entertain and answer questions of procedure;
 - f. To call a brief recess at any time;
 - g. To adjourn in an emergency; and
 - h. To continue any meeting at which there is not a quorum.

2. A decision by the Presiding Officer or by a quorum under any of the first three powers listed may be appealed to the Board upon a motion of any member. Such a motion is in order immediately after a decision under those powers is announced and at no other time. The member making the motion need not be recognized by the Presiding Officer, and the motion, if timely made, may not be ruled out of order.

IV. MEETING AND ATTENDANCE

1. The Board shall meet each month on the third Thursday at 6:00 p.m. All meetings of the Board of Adjustment shall be governed by the State's Open Meetings Law and shall be advertised, posted, and open to the public.
2. Special meetings of the Board may be called at any time by the chair. At least 48 hours' notice of the time and place of special meetings shall be given to each member of the Board and notice of such meetings shall be posted and published as required by law.
3. If there are no appeals, applications for special use permits or variances, or other business for the Board, or if so many regular and alternate members notify the Zoning

Administrator or the Clerk to the Board they cannot attend and that five members will not be available, the meeting may be canceled by giving written or oral notice to all members not less than twenty-four hours before the time set for the meeting if at all possible.

4. If a meeting is for the purpose of hearing appeals, applications for special use permits or variances, or other business for the Board is continued, the Zoning Administrator or the Clerk to the Board shall notify the other members of the Board and the parties to the matters to be heard by the Board of a later date to which the hearing shall be continued. If the continuance occurs as the result of a lack of five board members present, and the date to which such hearing is continued is later than the next regular meeting of the Board, notice of such new hearing shall be posted and published giving notice of the new date, time and place and the matters to be heard if such notice was required for the originally scheduled meeting.
5. Faithful attendance is considered a prerequisite for the maintenance of membership in the Board. Members should notify the Zoning Administrator or the Clerk to the Board if unable to attend a regularly scheduled meeting.
6. Alternate members of the Board shall be required to attend all meetings and hearings. All members, upon receiving notice of a meeting that they cannot attend or on learning that they will be unable to participate in a particular case, shall give prompt notice to the Zoning Administrator or the Clerk to the Board that they are unable to attend or to participate. On receiving such notice, the Zoning Administrator shall, by the most expedient means, notify an alternate member to replace the absent regular member. Assignments shall be rotated among the alternate members, when possible, with each alternate serving in a hearing before any alternate is called to serve again. At any meeting that they are called on to attend, alternate members shall have the same powers and duties as regular members. At no time shall more than five members participate officially in any meeting or hearing. Alternates are subject to the same rules of attendance as regular members.
7. Failure to attend three consecutive, regularly scheduled meetings without being excused will result in a notification to the absentee board member and the Town Council with a possible recommendation for dismissal.

V. QUORUM

1. A quorum shall consist of four members of the Board.
2. Any member who has withdrawn from a meeting without being excused by a majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

VI. PROCEDURE

- A. 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 agenda; (c) approval of minutes of the previous meeting; (d) hearing of cases including consideration and determination, unless final determination is delayed by a vote of a majority of the Board to allow the Board additional time to review the evidence; (e) any additional information; (f) communications from staff and/or board; and (g) adjournment.
- B. The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator. It shall also hear and decide all matters referred to it or on which the Zoning Ordinance of the Town of Black Mountain requires it to pass. In deciding appeals, the Board shall hear those based on allegedly improper or erroneous interpretation of the ordinance, and it shall hear variance applications based on alleged hardship resulting from strict interpretation of the ordinance.
- C. No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the aggrieved party or parties receive final, binding, written notice of the order, requirement, decision, or determination by the Zoning Administrator. The applicant must file his application for a hearing with the Clerk to the Board. All applications shall be complete before an appeal may be considered as having been filed.
- D. Hearings.
1. After notice of appeal, request for variance or request for special use permit is received, a hearing shall be scheduled for the next regular monthly meeting with sufficient time after the filing of the notice or request to allow for the proper notices to be given 10 to 25 days prior to the hearing.
 2. Notice of the hearing shall be given by mail to the owner and adjacent property owners within two hundred feet 10 to 25 days prior to the hearing. The notice shall state the location of the building or lot, the general nature of the question involved in the notice or request, and the time and place of the hearing. At the same time, the property must be prominently posted with a notice of the hearing on the site that is the subject of the hearing. (A published notice is not required by statute; however, it can be required by the local ordinance.)
 3. Any party may appear in person or by an attorney at the hearing. The order of business for each hearing shall be as follows: (1) the chair, or such person as he/she shall direct, shall give a statement as to the function of the board in the type of matter before the board and the procedure to be followed for the particular hearing, together with any other explanatory statements as the board may adopt as part of the hearing introduction; (2) the Zoning Administrator shall give a preliminary statement of the case; (3) the applicant shall present the evidence and arguments in support of his/her application; (4) persons opposed to the granting of the application shall present evidence and arguments against the application; (5) both sides shall be permitted to present rebuttals to opposing evidence and arguments; and (6) the chair shall

summarize the evidence that has been presented, giving the parties opportunity to make objections or corrections. Witnesses may be called, and factual evidence 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 view the premises before the hearing, but the facts indicated by such inspection shall be disclosed at the evidentiary hearing and made a part of the record. All witnesses before the Board shall be placed under oath, and the opposing party may cross-examine them. The chair may limit the time of presentations or statements of those who are not parties to the case being heard and are not witnesses called by the parties to the case.

4. 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, or if significant and substantial new evidence has been discovered. The Board shall deny the application for a rehearing if, from the record, it finds that there has been no substantial change in facts, evidence, or conditions, or newly discovered evidence. If the Board finds that change has occurred, it shall thereupon treat the request in the same manner as any other application. A rehearing will not be granted for the presentation of additional evidence that was readily discoverable prior to the hearing. The Board may rehear a matter on its own motion for the same reasons.

E. Decisions

1. Decisions by the Board shall be made not later than thirty (30) days from the time of the hearing.
2. The Board's final decision shall be set out in order stating the findings of fact and determinations of the Board signed by the Chair or person who acted as the Chair at the hearing, which said order may be signed and served prior to the approval of the minutes of the Board. The minutes of the hearing shall include a summary of the evidence introduced.

When a variance is granted, the order shall state in detail any exceptional difficulty or unnecessary hardship upon which the approval was based and which the Board finds to exist.

When a decision is rendered on an appeal, the decision may reverse or affirm, wholly or partly, or modify the order, requirements, decision, or determination appealed from.

When a special use permit is granted, the record shall state in detail any facts that support the findings required to be made before such permit is issued. The record shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a variance or a special use permit.

The order shall be filed in the minutes of the Board and in the office of the Clerk to the Board, and furnished to the applicant, the property owner (if different from the applicant) and any parties who request a copy of the order.

3. Unless otherwise specified in the order, any order or decision of the Board granting a special use permit or variance shall expire as set out in the ordinance of the Town.
4. The Zoning 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 Zoning Administrator or the Chair when the hearing is held. Such notice may be delivered by personal delivery, email, first class mail or certified mail, return receipt requested. A copy of the decision shall also be filed in the minutes of the Board and in the office of the Clerk to the Board and other place which may from time to time be specified in the zoning ordinance or required by the North Carolina General Statutes. The decision shall be a public record, available for inspection at all reasonable times.

VII. VOTING

All regular members may vote on any issues unless they have disqualified themselves for one or more of the reasons listed in section VIII. The concurring vote of four-fifths of the board 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. 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 alternates available to take the place of such members.

VIII. CONFLICTS OF INTEREST

1. No Board member shall take part in the hearing consideration or determination of any case in which he/she is personally or financially interested.
2. No Board member shall have a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, or a close familial, business or other associational relationship with an affected person.
3. No Board member shall vote on any matter that decides an application or appeal unless he/she has attended the evidentiary hearing on that application or appeal.
4. No Board member or alternate member shall discuss any case with any parties thereto before the evidentiary hearing on that case. Members may receive and/or seek information from the clerk before the hearing pertaining to the hearing date, time and place of the hearing, and materials submitted with the application or appeal.

5. Members of the Board shall not express individual opinions on the proper judgement of any case with any parties thereto or among themselves other than during deliberations at the hearing before the case is determined. Violation of this rule shall be cause for dismissal from the Board.

IX. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four (4) members of the Board, provided that such amendment be presented in writing at a regular or special call meeting at which the vote is taken.

X. EFFECTIVE DATE

The rules shall become effective upon their adoption.

John Dewitt, Chair

ATTEST:

Jennifer Tipton, Clerk to Board of Adjustment