

**RULES OF PROCEDURE**

**I. General Rules**

Pursuant to the provisions of **North Carolina General Statutes (N.C.G.S) 153A-345** and the provisions of ~~§3 and §6~~ of the Pender County **Unified Development Ordinance (UDO)**, incorporated herein by reference, these rules of procedure shall govern all matters before the Board until further amended. *The use of any term connoting gender shall mean each gender.*

**II. Members – Officers—Duties**

- A. The Board of Adjustment shall have the membership and serve the terms specified in Section ~~§6-2.4.1~~, Board of Adjustment, of the Pender County **Zoning UDO**.
- B. Chairman. The Chairman shall be elected by the full membership of the Board, including alternate members, from among the regular members of the Board. The term of office shall be one (1) year and until his successor is elected, beginning on January 1, and he shall be eligible for re-election. The chairman shall decide on 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.
- C. Vice-Chairman. A vice-chairman shall be elected by the Board from among its regular members and alternate members in the same manner and for the same term as the chairman. He shall serve as acting chairman in the chairman's absence, and at such times he shall have the same powers and duties as the chairman.
- D. Alternate Members of the Board shall attend all meetings of the Board, regular, and special, to replace any absent member or members unable to participate due to a conflict. At any meeting, in which they are called to sit on the Board, they shall have the same powers and duties as regular members.
- E. All members, regular and alternate, sit at the pleasure of the Board of Commissioners and subject to removal at any time.
- F. Secretary. The ~~Zoning~~ Administrator, or their designee from the Planning Staff, shall serve as Secretary to the Board of Adjustment. The Secretary, subject to the direction of the chairman and the Board, 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 agenda, shall notify

parties to cases before the Board of its decision in such cases, and shall generally supervise the clerical work of the Board. The Secretary shall keep the minutes of every Board meeting in a permanent volume. The minutes 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 on any resolution or on the final determination of any question or matter before the Board, indicating the names of members who voted, and who are absent and fail to vote.

### **III. Rules of Conduct for Members**

- A. Members of the Board may be removed for cause, including violation of the rules stated below.
- B. Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board. Upon the failure of a member, regular or alternate, to attend three (3) consecutive meetings, this shall require the Board upon a majority vote to declare the position vacant and request the Board of Commissioners to fill the vacancy. It may be the option of the Board to not remove a member due to extraordinary conditions such as sickness.
- C. No Board member shall take part in the hearing, consideration or determination of any case in which he has a conflict of interest. Board members shall reveal any potential conflict and if it might influence their judgment, or would give the appearance of impropriety, and may ask to be excused from voting on the issue. The Board of Adjustment may allow them to abstain by majority vote.
- D. Board Members shall make every effort not to discuss any case pending before the Board with any parties before the case is heard. The ~~Zoning~~ Administrator may prepare and submit materials to the Board regarding the actions of the Planning Department. In the event a case involves an appeal of the actions of or interpretation of the ~~Zoning~~ Administrator, the Board shall refrain from discussing the merits of the case with the ~~Zoning~~ Administrator prior to the hearing, provided that the Board may consider materials prepared by the Planning Department in the ordinary course of business.
- E. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto before that case is determined. Violation of this rule may be cause for dismissal from the Board.

#### IV. Meetings

- A. Regular Meeting. The Regular Meeting of the Board shall be held on the third Wednesday of each month at that place as may be designated by the Chairman from time to time for convenience of members and parties.
- B. Special Meeting. The Chairman may call a Special Meeting of the Board at any time. At least forty-eight (48) hours written notice of this Special Meeting shall be given by the Chairman, Secretary, or Clerk to each member of the Board.
- C. All notices of all meetings shall be made to the public and media as required by provisions of **N.C.G.S. 153A-345** ~~143-318~~.
- D. Cancellation of Meetings. If there is no business before the Board upon appeals and applications for variances, the Chairman or his designee may cancel the meeting by giving verbal and written notice to each member and alternate, by the Friday preceding the regularly scheduled meeting, or forty-eight (48) hours notice canceling a Special Meeting.
- E. Quorum. A quorum shall consist of four (4) members of the Board.
- F. Final Action. Final action on matters before the Board shall be as required in **N.C.G.S. 153A-345(e)** and **Section ~~§6.2B~~ 2.4.1 of the Pender County UDO. No final action can be taken on a variance without the concurring vote of four-fifths (4/5's) of the members of the Board. All other quasi-judicial matters require a simple majority vote by members of the Board.**
- G. Any member present eligible to vote and failing to vote such vote shall be in the affirmative of a motion and as properly seconded.
- H. Conduct of Meetings. All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) call to order; (b) roll call; (c) approval of minutes of the previous meeting; (d) hearing of cases; (e) reports of committees; (f) unfinished business; (g) new business; (h) adjournment.

#### V. Appeals

- A. Procedure for Filing Appeals. No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the interested party or parties receive notice of the order, requirement, decision, or determination by the ~~Zoning~~ Administrator. The applicant must file his application for a hearing with the ~~Zoning~~ Administrator, who shall act as Clerk for the Board in receiving this notice. All applications shall be made on the form furnished for that purpose and as approved by

the Board, and all information required thereon shall be complete before an appeal may be considered as having been filed.

Upon receipt of an Appeal, and as soon as possible, the ~~Zoning~~ Administrator shall serve on the appellant/applicant and or his representative, the written factual basis and legal reasons for the determination of the ~~Zoning~~ Administrator with a copy of these rules of procedure and notice of hearing.

B. Hearing.

- (1) Such matter shall be scheduled for the next regular meeting of the Board or as soon thereafter as the schedule of the Board permits. Where special or exigent circumstances exist, and upon application to the Chairman, a Special Meeting may be called to determine the matter.
- (2) Notice. The Board shall give public notice of the hearing in a newspaper generally circulated in Pender County by advertisement published at least **ten (10)** ~~five (5)~~ days before the date of the hearing.

Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal, and the time and place of the hearing.

Notice shall also be sent to adjacent/abutting landowners as disclosed by public record and posted on the site **in accordance with 153A-345.**

- (3) Conduct of the Hearing. Any party may appear in person, by agent, or by attorney at the hearing. The order of business for each hearing shall be as follows: (a) the chairman or such person as he shall direct, shall give a preliminary statement of the cases; (b) the applicant shall present the evidence and arguments in support of his application; (c) persons opposed to granting the application shall present the evidence and arguments against the application; (d) both sides shall be permitted to present rebuttals to opposing evidence and arguments. Witnesses may be called and actual 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 Members of the Board may view the premises before the hearing, but the facts indicated by such inspection shall be disclosed at the public 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 of the board or any member acting as chair and clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board as outlined in N.C.G.S. 153A-345.1 (f).**

- (4) Rehearings. 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. The Board shall deny the application for rehearing if, from the record, it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that a change has occurred, it shall thereupon treat the request in the same manner as any other application.

## **VI. Variance**

Applications for a variance must be filed with the ~~Zoning~~ Administrator or their agent and must meet all submission requirements as outlined in ~~Section 3.14.7 §6~~ of the Pender County ~~Zoning~~ UDO. ~~As required by N.C.G.S. 153A-345(e), no final action shall be taken a variance without the concurring vote of four-fifths (4/5's) of the members of the Board.~~

## **VII. Decisions**

- A. Time. Decisions by the Board shall be made not later than sixty (60) days from the close of the hearing, unless extraordinary conditions exist as determined by the board, in which the board shall render their decision not later than ninety (90) days from the close of the hearing.
- B. Form. The Board's final decision shall be shown in the record of the case as entered in the Board's minutes and signed by the secretary and the chairman on approval of the minutes by the Board. Such record shall show the reasons for the determinations, with a summary of the evidence introduced and the Findings-of-Fact made by the Board. When a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal application was based and which the Board finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. When a variance is granted, the record shall state in detail any facts that support findings required to be made before such variance is issued. The record shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a variance. A separate record of the decision in each case shall be prepared, filed in the Pender County Planning & Community Development Department, and furnished to the parties as specified in the ~~Section 3.14.7 §5~~ of the Pender County UDO.
- C. Expiration of Permits. Unless otherwise specified, any order or decision of the Board granting an appeal or a variance shall expire if the applicant does not obtain a building permit for such use within two (2) years from the date of the decision.
- D. Notice and Public Record of Decision. 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 chairman of the Board when the hearing is held. Such notice may be delivered either by personal service

or by registered mail or certified mail, return receipt requested. A copy of the decision shall also be filed in the Pender County Planning Department, as specified in the ~~zoning~~ **Pender County UDO**. The decision shall be a public record, available for inspection all reasonable times.

**VIII. Amendments**

These rules may be amended from time to time. Amendments in writing may be proposed by any member or any other person at a Regular Meeting of the Board. No action shall be taken upon such amendment until the next Regular Meeting of the Board. No amendment may be adopted unless adopted by an affirmative vote of no less than four (4) members.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2013 (amended)

\_\_\_\_\_  
Chairman

ATTEST: \_\_\_\_\_  
Secretary