

## RULES OF PROCEDURE

### ZONING BOARD OF ADJUSTMENT

North Topsail Beach, North Carolina

#### **Article 1. Organization**

**A. General.** The Zoning Board of Adjustment (the “Board”) shall be governed by the terms of Chapter 160D of the General Statutes of North Carolina (effective July 1, 2021) and by the Unified Development Ordinance (the “UDO”) of the Town of North Topsail Beach (“Town”), including any special acts of the General Assembly, the Town’s Comprehensive Plan adopted as the CAMA Land Use Plan and other ordinances of the Town of North Topsail Beach that are pertinent. All members of the Board shall thoroughly familiarize themselves with these laws.

**B. Composition.** The Town by ordinance provides for the appointment of a Zoning Board of Adjustment consisting of five regular members and up to four alternate members, each to be appointed for a term of three years by the Board of Aldermen. Terms expire on May 1. In the filling of vacancies caused by the expiration of the terms of existing members, the Board of Aldermen may appoint certain members for less than three years so that the terms of all members shall not expire at the same time. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.

**1. Chair.** A Chair shall be elected by the full membership (including alternate members) of the Board of Adjustment from among its regular members. His or her term of office shall be one year and until his or her successor is elected, beginning on June 1, and he or she shall be eligible for re-election. The Chair 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.

**2. Vice Chair.** A Vice Chair shall be elected by the Board from among its regular members in the same manner and for the same term as the Chair. He or she shall serve as acting Chair in the Chair's absence, and at such times he or she shall have the same powers and duties as the Chair.

**3. Secretary.** The Planning Director shall serve as secretary to the Board. The secretary, subject to the direction of the Chair and the Board shall keep all records, shall conduct all correspondence of the Board, and shall generally supervise the clerical work of the Board.

**4. Clerk.** The clerk shall perform such tasks as the Chairman may assign and shall assist the secretary generally in performing his or her duties. The secretary clerk 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 on by the Board, and all votes of members of the Board on any resolution or on the

final determination of any question, indicating the names of members who are absent or fail to vote.

**D. Duties.** The Board shall hear and decide all matters upon which it is required to pass under any statute or development regulation adopted by the Board of Aldermen.

**E. Conflicts of interest.** A member exercising quasi-judicial functions pursuant to this Chapter 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 associational relationship with an affected person, or financial interest in the outcome of the matter.

**F. Rules of procedure** A copy of the adopted rules of procedure shall be maintained by the Town Clerk and posted on the Town Web site.

**G. Oath of office.**

1. All members appointed to the Board, before entering their duties, qualify by taking an oath of office as required by G.S. 153A-26 and G.S. 160A-61.

2. All appointments to the Board shall be made by the Board of Aldermen. The Board of Aldermen may establish reasonable procedures to solicit, review, and make appointments.

**Article 2. MEETINGS**

**A. Regular Meetings.** Regular meetings of the Board shall be held on the third Tuesday of each month at 6:00 p.m. in the first-floor conference room at Town Hall provided that meetings may be held at any other convenient place in the town if the Chair so directs before the meeting.

**B. Special Meetings.** The Chair may call special meetings of the Board at any time. At least forty-eight (48) hours written notice of the time and place of special meetings shall be given, by either the secretary or the Chair, to each member of the Board. The Open Meetings Law requirements must be met. However, for a case to be heard, all applicable notice requirements must be met.

**C. Cancellation of Meetings.** When there are no appeals or variances, or other business for the Board, or when a quorum will not be available, the Chair or secretary may cancel a regular meeting by giving written or oral notice to all members.

**D. Quorum.** A quorum shall consist of three (3) members of the Board, but the Board shall not pass on any question relating to an appeal from a decision, order, requirement, or determination of the Zoning Administrator or an application for a variance or special use permit when fewer than four (4) members are present.

E. **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) adoption of the agenda; (c) approval of minutes of the previous meeting; (d) hearing of cases, consideration and determination of cases heard.

### Article 3. Procedures

A. **Process Required.** – The Board shall follow quasi-judicial procedures in determining appeals of administrative decisions and variances.

B. **Notice of Hearing.** - Notice of evidentiary hearings conducted pursuant to this Chapter shall be mailed to the person or entity whose appeal, application, or request is the subject 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 local development regulation. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The Board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the Board is not then present, the hearing shall be continued until the next regular Board meeting without further advertisement.

C. **Administrative Materials.** - The Planning Director or Clerk to the Board 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 appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. 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. **Presentation of Evidence.** - The applicant, the Town, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the Board.

E. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the Board. The Board Chair shall rule on any objections, and the Chair's rulings may be appealed to the full Board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

F. **Appearance of Official New Issues.** - The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the Town, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.

G. **Oaths.** - The Chair of the Board or any member acting as Chair and the clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

H. **Voting.** 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. For the purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(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.

I. **Decisions.** The Board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the Board's determination of contested facts and their application to the applicable standards, and be approved by the Board and signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the Board or such other office or official as the development regulation specifies. The decision of the Board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the Town that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.