

**RULES OF PROCEDURE
BOARD OF ADJUSTMENT
TOWN OF GARNER NORTH CAROLINA**

I. GENERAL RULES

The Board of Adjustment (Board) shall be governed by the applicable terms of Chapter 160D of the North Carolina General Statutes and the Town of Garner Unified Development Ordinance (UDO). All members shall thoroughly familiarize themselves with these laws. The purpose of the Board is to determine requests made by property owners in the Town of Garner for variances, appeals of administrative interpretations, and any other matters delegated to the Board. These Rules of Procedures also constitute the by-laws of the Board.

II. MEMBERS AND OFFICERS AND THEIR DUTIES

- A. Members. The Board shall consist of five regular members and three alternate members. Four regular members and two alternate members, appointed by the Garner Town Council, shall reside within the Town limits. One regular member and one alternate member, appointed by the Wake County Board of Commissioners, shall reside within the Town's extraterritorial planning jurisdiction (ETJ); however, if there are an insufficient number of interested residents from the ETJ, the Board of Commissioners may appoint other residents of the County to fill the position(s). If the Wake County Board of Commissioners fails to make these appointments within ninety (90) days after receiving a written request from the Town Council that they be made, the Town Council may make the appointments.
- B. Terms. Members shall be appointed for three-year staggered terms and shall continue to serve until their successors have been appointed and taken the oath of office. Vacancies may be filled for the unexpired terms only.
- C. Chair. The Chair shall be a regular member elected by a majority vote of the regular members of the Board. The Chair's term of office shall be one year or until a successor is elected, generally at the July or next subsequent meeting of each year, and shall be eligible for reelection. The Chair shall decide 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 Chair shall appoint any committees found necessary to conduct the business of the Board.
- D. Vice Chair. The Vice Chair shall be a regular member elected by the Board in the same manner and for the same term as the Chair. The Vice Chair shall serve as acting Chair in the Chair's absence and at such times shall have the same powers and duties as the Chair.
- E. Interim Chair. In the absence or recusal of both the Chair and Vice Chair, an Interim Chair shall be elected from those members attending the meeting following the roll

call by the Secretary or following a recusal motion. The Interim Chair shall relinquish all duties with regard to presiding at the earliest point at which such transition may orderly proceed after the arrival of the Chair or Vice Chair or the matter for which the Chair or Vice Chair must recuse has concluded.

- F. Secretary. The Planning Director shall designate an employee of the Garner Planning Department to act 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, 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 on such cases, and shall generally supervise the clerical work of the Board. The Secretary shall keep the minutes of every meeting of the Board 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 final determination of any question or application, indicating the names of members who are absent or fail to vote. The Secretary may make audio or video recordings of each meeting and hearing. The Secretary shall provide to every new member of the Board print or electronic copies of all relevant ordinances, these Rules of Procedure, and such other educational materials deemed appropriate. The Secretary shall arrange for an orientation for new members and shall coordinate provision of continuing education or training for Board members.
- G. Alternate Members. When possible, Town resident alternates shall serve only in the absence of Town resident regular members and ETJ alternates shall serve only in the absence of EJT regular members. Alternate members shall be appointed in the same manner as regular members and for three-year staggered terms. Alternate members shall be called on to attend only those meetings and hearings at which one or more regular members are absent or are unable to participate in hearing a case due to a conflict of interest. Regular members, on receiving notice of a special meeting that they cannot attend or on learning that they will be unable to vote on a particular case, shall give prompt notice to the Secretary that they are unable to attend or to participate. On receiving such notice, the Secretary shall, by the most expeditious means, notify an alternate member to attend. Assignments shall be rotated among the alternate members. At any meeting that they are called on to attend, alternate members shall have the same powers and duties of regular members. Alternate members who are present and participate in hearing an individual case shall continue to hear, deliberate, and vote on that case at any subsequent meeting.

III. RULES OF CONDUCT FOR MEMBERS

- A. Removal. Members of the Board may be removed pursuant to UDO § 3.4.2.F, including any violations of these Rules.

- B. Attendance. Faithful attendance at all meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite for continuing membership on the Board. The Secretary shall keep a record of attendance and shall provide reasonable notice to any member who is in risk of failing to meet the attendance requirements in UDO § 3.4.2.
- C. Recusal. No Board member shall take part in a hearing, consideration, or determination of any case in which he or she is personally or financially interested or which is prohibited by G.S. 160D-109. If an objection is raised to a member's participation in a case by a party to that case or by another member and that member does not recuse, the remaining members of the Board shall rule on the objection by majority vote. A recused member shall leave the meeting room or sit in the audience for the duration of the board's hearing, deliberation, and vote on the matter.
- D. No Board member shall vote on any matter that decides an application or appeal unless he or she has attended the Board's public hearing on that application or appeal.
- E. No Board member shall discuss any quasi-judicial case with, or receive any information about a case from, any parties to the case, other board members, or from other interested persons outside the evidentiary hearing on that case; however, members may seek and receive general information about ordinances and planning provisions pertaining to the case from the Chair, the Board's attorney, or town staff. Board members shall disclose at the hearing any pertinent facts about a pending case of which they have personal knowledge acquired prior to the hearing.
- F. Site Visit. A Board member may visit the site of a pending case provided that the visit is disclosed at the evidentiary hearing and provided efforts are made to avoid discussions about the case with property owners or other interested parties.
- G. Members shall not express individual opinions or judgments regarding a pending case prior to the determination of that case. Violation of this rule shall be cause for removal from the Board.

IV. MEETINGS

- A. Regular Meetings. Regular meetings of the Board shall be held on the fourth Thursday of each month at 7 p.m. in the Council Chambers at Garner Town Hall, provided that meetings may be held at any other convenient place in the Town if the Planning Director or Chair so directs before the meeting. The agenda for the meeting shall be posted on the Town as soon as it is available; however, notice of any quasi-judicial cases shall be provided in accordance with State law and the UDO.

- 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 the special meeting shall be given by either the Secretary or the Chair to each member of the Board and the public in compliance with the Open Meetings Law.
- C. Cancellation of Meetings. If there are no appeals, applications, or other business before the Board, or if a quorum will not be available, or if there is a weather emergency or similar situation, the Chair or Planning Director may cancel a regular meeting by providing notice to all Board members and the public.
- D. Quorum. A quorum shall consist of three members of the Board, but the Board shall not pass on any appeal or application when fewer than four members are present. If fewer than five voting members are present, a party to a quasi-judicial matter may request that the hearing be continued until five voting members are present. Whenever a quorum ceases to be present during a meeting, if no objection is raised by a member of the Board, the Board may continue to hear evidence and debate but may not vote on any action except to adjourn or to continue the matter to a subsequent meeting.
- E. Voting. All regular members may vote on any issue unless they are disqualified due to a conflict of interest under G.S. 160D-109. The required vote to decide variances shall be as provided in G.S. 160D-406(i) and shall not be reduced by any disqualifications if there are no qualified alternates available to take the place of such members. In all other matters, the vote of a majority of the members present shall decide issues before the Board. The Chair votes as any other Board member.
- F. Order 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 from previous meetings; (c) hearing of cases; (d) old/new business; (e) reports from Town staff; (f) reports from Board members or committees; and (g) adjournment. The Chair, or other presiding officer, may change the order of business, the order in which cases are heard, and rule on requests to withdraw or continue a case. Upon objection by a member or party to a case on the agenda, the issue shall be put to a vote of the members present.

V. APPEALS AND APPLICATIONS

- A. Types of Appeals and Applications.
 - 1. The Board shall hear and decide all appeals from final, binding written decisions or determinations made by the Planning Director as provided by the UDO and by State law.
 - 2. The Board shall hear and decide applications for variances from the UDO and other such ordinances as provided by the UDO.

3. The Board shall made interpretations of the Town's zoning map, including disputed questions of zoning district boundary lines and similar questions that may arise from administration of the development regulations of the Town.
4. The Board shall also hear and decide any other matters referred to it by the Town Council or on which the Garner Unified Development Ordinance (UDO) requires it to pass and any other matters assigned to it by ordinance or by law.

B. Procedure for Filing Appeals and Applications.

1. An appeal of a decision or determination of the Planning Director shall be filed with the Town Clerk within 30 days of the written decision. Any other person with standing shall file a petition with the Town Clerk within 30 days of actual or constructive notice of the disputed decision. The notice of appeal or petition shall state the grounds for the appeal. No appeal shall be heard by the Board unless the appeal is filed within thirty (30) days of written or constructive notice of the order or determination.
2. Applications for variances shall be accompanied by a site plan of sufficient size and accuracy to enable the Board to see the precise location and size of the variance. Such application shall specifically state the type of variance and include information supporting the standards in G.S. 160D-705(d). Upon submission of an application, Planning Department staff shall determine if these requirements have been satisfied.
3. All appeals, applications, and any other matter coming before the Board shall be made on the form furnished for that purpose. All required information shall be complete and all required fees paid before an appeal, application, or other matter may be considered as having been filed.
4. An applicant may withdraw any appeal, application, or other matter prior to the start of the evidentiary hearing on that matter. A withdrawal shall be made in writing. Upon withdrawal, the case is closed. A new application and fee must be submitted if the application is renewed.

C. Evidentiary Hearings.

1. Time. After an appeal, application, or other matter has been filed and determined to be complete, the Planning Director shall schedule the matter for hearing at a regular or special meeting.
2. Notice. The Board shall give public notice of hearing on all applications, including appeals, in the following manner:
 - (a) Pursuant to Session Law 2008-5 Electronic Public Notice and Town of Garner Ordinance (2012) 3659, legal notice of public hearings may be advertised electronically on the Town's website. The first notice shall be published no less than 10 days and no more than 25 days prior to the hearing.
 - (b) Notice shall be posted on the site that is the subject of the hearing or on an adjacent street or highway right-of-way at least 14 days prior to the hearing.

- (c) Written notice by mail to the appellant or applicant, and to any other person who makes a written request for such notice no later than 10, but not more than twenty-five (25) days prior to the date of the hearing. Written notice by mail to those persons who property owners and tenants of the property within 800 feet of the lot that is the subject of the appeal or application.
 - (d) Notices required by this section shall state the date, time, and place of the hearing, reasonably identify the subject property, and give a brief description of the action requested or proposed. Every reasonable effort to comply with the notice requirements of this section shall be made. However, failure to comply with any of the notice provisions (except Subsection (a) above) shall not render the Board's action on an appeal or other application invalid.
3. Subpoenas. Persons with standing on a quasi-judicial matter before the Board may make a written request to subpoena witnesses or to compel the production of evidence. The Chair shall issue subpoenas determined to be reasonable in nature and scope and not oppressive. The Chair shall rule on any objections or motions to quash subpoenas which decision may be appealed to the full Board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board or the party seeking 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.
 4. Written Materials. Written briefs, documents, letters, and staff reports may be submitted to Board members by the Secretary prior to an evidentiary hearing, provided that any such material is all submitted to all parties to that case and made available to the public at the same time as they are submitted to Board members. The Planning Director may establish reasonable deadlines for submission of any such material to be distributed prior to the hearing. Any such material shall be part of the hearing record and introduced as documentary evidence at the evidentiary hearing, subject to objection by any party with standing.
- D. Conduct of the Hearing. Any party with standing pursuant to Section 160D-1402 may appear in person, by agent, or by attorney at the hearing. The order of business for each hearing shall be as follows:
1. The Planning Staff shall give a preliminary statement of the case, including a summary of the facts and relevant ordinance provisions, and evidence to show whether or not the proposed use requested under the application will or will not meet the general requirements of the UDO;
 2. The applicant shall present evidence and arguments in support of their application;

3. Parties opposed to the application, including the staff from whom an appeal is taken, may present evidence and arguments against the application;
4. Other interested persons may present relevant evidence, subject to objection by any party with standing;
5. Parties with standing may present rebuttal evidence and closing arguments;
6. The Chair may summarize the evidence that has been submitted, subject to the opportunity by the parties to make objections or corrections;
7. The Board shall deliberate on the case with the hearing still open so that Board members may individually request information or clarification to evidence and arguments presented; and
8. The Chairperson shall close the hearing to the public at such time as a final motion on the application or determination of the case is made.

E. Oaths. All witnesses presenting testimony in evidentiary hearings shall be sworn in. Oaths may be administered by the Chair or the Secretary. An affirmation may be made by any witness with a religious objection to swearing. All witnesses may be questioned by any party with standing or by any member of the Board.

F. Witnesses. The Chair must recognize parties and witnesses before they are heard and confirm that witnesses are under oath. The Chair may limit testimony or evidence that is irrelevant, repetitive, incompetent, hearsay, or inadmissible opinion testimony. The Chair may establish reasonable procedures to assure that the hearing is conducted in a fair, impartial, and efficient manner. Board members may ask questions of any staff member, party, or witness appearing before the Board.

G. Rehearing. An application for a rehearing may be made to the Board and shall contain evidence that there has been a substantial change in the facts or conditions of 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 or conditions. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as a new application.

H. Decisions.

1. Time. Decisions by the Board shall be made in a reasonable time after completion of the evidentiary hearing.
2. Motions and Voting. The concurring vote of four-fifths (4/5) 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.
3. Form. All decisions of the Board on quasi-judicial matters shall be reduced to writing as soon as practicable after the case is decided.

The written decision shall reflect the Board's determination of contested facts and the application of pertinent standards to those facts. The written decision shall be signed by the Chair or the Secretary.

4. Effective Date and Filing. The written decision shall be delivered to the parties, the property owner, and other interested persons requesting notice by personal delivery, electronic mail, or first-class mail. A copy of the decision shall also be filed in the Town of Garner Planning Department at Town Hall and shall be a public record available for inspection during normal business hours. The decision is effective upon filing. The Secretary shall certify to the Town that the proper notice has been made.

VI. AMENDMENTS

Provided there has been prior notice of proposed amendments, these rules may be amended at any time by an affirmative vote of not less than four (4) members of the Board.

Adopted by the Board of Adjustment on May 25, 2023.