

**RULES OF PROCEDURE  
ZONING BOARD OF ADJUSTMENT**

**TOWN OF INDIAN TRAIL, NORTH CAROLINA**

**I. GENERAL RULES**

The Zoning Board of Adjustment (hereinafter referred to as the “Board”) shall be governed by the terms of Chapter 160A, Article 19, Part 3 of the General Statutes of North Carolina and by the Town of Indian Trail Land Use 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 three (3) alternate members appointed by the Town Board. Persons may be appointed to the same position for successive terms. The alternate members of the Board shall be requested to attend all regular and special meetings and shall be able to cast a vote when a regular member of the Board is absent or if any Board member has a conflict of interest.

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.

At the regular Board meeting held in the month of June, the Board shall elect a Chairman and Vice-Chairman from their membership. All regular and alternate members shall be allowed to vote. Office-holders, however, shall be limited to regular members. Terms of office shall be one year. Persons may be reelected to the same office for successive terms.

**B. DUTIES**

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.

### **C. SECRETARY**

The Town Board shall arrange to have secretarial duties performed for the Board. Said person(s) (hereafter referred to as the “Secretary”), subject to the direction of 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 agenda, 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 the 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. If the Secretary is appointed from outside the membership of the Board, he shall not be eligible to vote upon any matter. The minutes of the Board of Adjustment shall be kept at the Board’s office located at the Town Hall.

### **III. RULES OF CONDUCT FOR MEMBERS**

#### **A. Removal**

Members of the Board may be removed by the Town Board 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 is absent for three (3) consecutive regular meetings “within any twelve-month period, such member may be removed by the Town Council and a replacement made for the unexpired portion of the term. Alternate members may be removed by the Town Council for repeated failure to attend or participate in meetings when requested to do so pursuant to Section 4-2 as set forth above. The Board of Adjustment may make a recommendation to the Town Council regarding removal of a member for duly cited causes and the request must be in writing, signed by the Chairman of the Board of Adjustment.”

#### **C. Conflicts of Interest**

No member of the Board of Adjustment 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 judgement on behalf of the public's interest.

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 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 and, by majority vote of the remaining regular members, shall make the final determination as to the existence of a conflict of interest.

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, Town Manager, Town Attorney or Zoning Administrator prior to the Board meeting at which the case is to be heard.

### **IV. MEETINGS**

#### **A. Regular Meetings**

Regular meetings of the Board shall be held on the Fourth Thursday of each month at 7:00 P.M. at the Town Hall; provided that meetings may be held at any other conveniently located place in the Indian Trail area if directed by the

Chairman in advance of the meeting. Each member (including the alternate members) shall be notified of each meeting by the Secretary.

**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 written notice of the time and place of a special meeting is given, by the Secretary, to each member of the Board including the alternate members.

**C. Cancellation of Meetings**

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

**D. Voting**

The Board shall not pass upon an appeal, special use permit, interpretation, or application for a variance when there are less than four (4) voting members present. No more than five (5) regular and alternate members may vote on any matter for which a public hearing was held. Unless as otherwise 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. No Board member shall vote on any matter deciding an application or appeal unless he shall have attended the public hearing on that application.

**E. Conduct of Meetings**

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

- (A) Roll Call; Determination of Quorum
- (B) Approval of Minutes of Previous Meetings
- (C) Hearing of Cases
- (D) Other Business

(E) Adjourn

**F. 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 Indian Trail area.

**V. APPEALS, APPLICATIONS, PUBLIC HEARINGS**

**A. Types of Appeals**

The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator. In addition, the Zoning Administrator may file an application with the Board in cases where an interpretation of the Ordinance is needed.

**B. Procedure for Filing Appeals**

No appeal shall be heard by the Board unless a completed application for an appeal is filed within forty-five (45) days after the interested party or parties received notice of the order, requirement, decision, or determination by the Zoning Administrator. All such applications shall be filed with the Zoning Administrator. 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 Board shall accompany an application for an appeal or variance. 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:

- (1) Decide all appeals and interpretations
- (2) Grant any variance to the terms of the Ordinance and,

- (3) Hear and decide all other matters referred to it or upon which it is required to pass by the Zoning 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-five (45) days from the date of submittal of the complete application.

**F. Conduct of Hearing**

Any Board public hearing shall be completed in a quasijudicial 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 hours later than thirty-one (31) days after the public hearing was opened.

## **G. Rehearing**

An application for a rehearing may be made in the same manner as provided for in the original hearing. An application for the 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 a 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 there upon treat the request in the same manner as any other application. The Board of Adjustment 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 Board of Adjustment.

## **H. Decisions**

### **1. Form**

Written notice of the decision in a case shall be sent by first class mail 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, within five (5) working days after the case is decided. The final decision of the Board shall be filed in Town Hall. 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.

### **2. 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 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.