



## **BOARD OF ADJUSTMENT RULES OF PROCEDURE**

### **I. GENERAL RULES**

The City of Kannapolis Board of Adjustment, hereinafter referred to as the “Board”, shall perform the duties and responsibilities as prescribed under the provisions of Section 2.3.C.(1) of the Kannapolis Development Ordinance (KDO); the Laws of the State of North Carolina (NCGS §160D-301); and these Rules of Procedure.

### **II. MEMBERSHIP, APPOINTMENT AND TERMS**

- A. Members appointed to the Board shall reside within the City of Kannapolis.
- B. The Board shall consist of seven (7) regular members and two (2) alternate members appointed by City Council. The membership of the Board shall include proportional representation for extraterritorial areas (ETJ), as provided in NCGS §160D-307. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the Board, and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.
- C. All members of the Board shall serve a term of three (3) years, except City Council shall appoint members to the Board to fill vacancies occurring for reasons other than expiration of terms for the period of the unexpired term only. City Council may reappoint members to successive terms without limitation.
- D. Before serving on the Board, each member shall take the oath of office in accordance with NCGS §160A-61.
- E. Members may be compensated per diem, based upon meetings actually attended and reasonable and necessary expenses, as determined by the appointing Council or by intergovernmental agreement.
- F. City Council may remove any member of the Board for just cause, as may be permitted by law. City Council shall provide the member with a public hearing, if requested.

### **III. OFFICERS, SECRETARY AND STAFF**

- A. At an annual organizational meeting, the Board shall elect one of its members as Chair and one as Vice-Chair.
- B. The Planning Director shall appoint a recording secretary to serve the Board. The secretary shall serve as clerk to the Board and shall keep detailed minutes of all proceedings, attested to by a majority of the members of the Board voting. The secretary shall also maintain all records of Board meeting, hearings and proceedings, as well as the correspondence of the Board, and is authorized to administer oaths at quasi-judicial proceedings before the Board.
- C. The Planning Director shall serve as professional staff for the Board.

#### IV. RULES OF PROCEDURE

The Board of Adjustment shall adopt all rules and procedures for the conduct of its business, consistent with state law. The rules shall be maintained by the Planning Director and shall be made available on the City's website.

#### V. MEETINGS

- A. The Board shall hold regular meetings each month in City Hall, Laureate Center located at 401 Laureate Way, Kannapolis, NC. However, meetings may be scheduled at or continued to another convenient place in the City in any case where the Planning Administrator or Chair determines it is in the public interest to do so. Meetings may also be canceled (see E below).
- B. The Chair of the Board shall conduct all meetings in accordance with these Rules of Procedure. In the absence of the Chair, the Vice-Chair shall act as Chair and shall have all powers of the Chair. In the absence of both, the Board shall elect a temporary Chair to conduct the meeting. The Chair shall be in charge of all proceedings before the Board and take such action necessary to preserve order and integrity of all proceedings. The Chair or Recording Secretary shall administer oaths.
- C. The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals or application for zoning variances or special use permits.
- D. All members must vote on every issue unless they have disqualified themselves for one or more of the reasons listed here. No member may participate in or vote on any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conduct includes, but is 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 other associational relationship with affected person; or a financial interest in the outcome of the matter. Upon objection raised to a member's participation, the remaining members of the Board shall rule on the objection by majority vote. (See also *Rules of Conduct for Members*.)
- E. If there are no appeals, or other business for the Board, or if so many members notify the Secretary that they cannot attend the meeting that a quorum will not be available, the Planning Administrator or Chair shall notify Board members of the cancellation.
- F. A quorum shall consist of four (4) 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 Planning Administrator or an application for a variance when fewer than six (6) members qualified to vote are present. If at the time of a hearing, there are not enough voting members present to decide upon a variance or appeal, the Chair shall continue the hearing until such time as sufficient voting members are present.
- G. All meetings shall be open to the public. Roberts Rules of Order will govern the meeting. The order of business at regular meetings shall be as follows:
  1. Call to Order
  2. Roll call and Recognition of Quorum
  3. Approval of Agenda
  4. Approval of Minutes
  5. Swearing-in of persons to provide testimony
  6. Public Hearing:
    - a. Presentation of facts by Planning Administrator
    - b. Presentation by applicant
    - c. Public Comment
  7. Cross examination/rebuttal by applicant
  8. Close Public Hearing

9. Board consideration of action on the case:
  - a. Motion to accept the City's exhibits into the record
  - b. Motion to approve/revise Findings of Fact
  - c. Motion to approve (approve with conditions) (deny)
  - d. Motion to Issue Order of Approval
10. Planning Director Update
11. Other Business
12. Adjournment

## VI. APPLICATIONS AND APPEALS.

### A. Hearings.

1. Application deadline. After notice of application or appeal is received, including all documentation required on the application, and payment of fees, a hearing shall be set for the next regularly scheduled meeting provided that the application or appeal is received by the required deadline.
2. Notice. The Planning Administrator shall give public notice of the hearing in accordance with state requirements and the KDO.
3. Conduct of the Hearing. Any party may appear in person, by agent, or by attorney at the hearing. The Board of Adjustment may subpoena witnesses and compel the production of evidence.

### B. Decisions.

1. Time. Decisions by the Board shall be made not later than thirty (30) days from the date of the hearing.
2. Form. The Board's decision shall be shown in the record of the case as entered in the Board's minutes and signed by the Secretary and the Chairperson and a copy shall be filed with the City Clerk. Such record shall show the reason 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 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. The record shall state in detail what, if any, conditions and safeguards the Board imposed in connection with granting the variance.
3. Voting at Hearings. The concurring vote of six (6) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Planning Administrator, or to decide in favor of the applicant, any matter on which the Board is required to pass, or to grant a variance from the provisions of the KDO.
4. Notice and Public Record of Decisions. The Planning Administrator shall give written notice of the decision to the appellant and/or the applicant and property owners, as well as to every aggrieved party who has filed a written request for such notice with the Secretary or Planning Administrator when the hearing is held. Such notice shall be delivered by email service and registered mail. A copy of the decision shall also be filed in the Planning Department. The decision shall be a public record, available for inspection at all reasonable times.
5. Judicial Review. Every decision of the Board shall be subject to review by the Superior Court by proceedings in the nature of certiorari. *Any* petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board is filed in the office of the City Clerk; 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 Planning

Administrator at the time of its hearing of the case, whichever is later. Such notice shall be delivered by email service and registered mail.

- C. **Types of Appeals.** Any person owning property or residing in the area of zoning jurisdiction may appeal from any order or act of the Planning Administrator pertaining to zoning administration of the KDO. The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Planning Administrator. In deciding appeals, the Board may hear both those based on an allegedly improper or erroneous interpretation of the KDO and those based on alleged hardship resulting from strict interpretation of the KDO.
- D. **Procedure for Filing Appeals.** The Board shall not hear any appeal unless notice thereof is filed within 30 days after the order, requirement, decision, or determination is made by the Planning Administrator. The applicant must file the application for a hearing with the Planning Administrator, who shall act as clerk for the Board on receiving this notice. All applications shall be made upon forms furnished for that purpose, and all information required thereon shall be complete before an appeal may be considered as having been filed.

## VII. RULES OF CONDUCT FOR MEMBERS AND ALTERNATE MEMBERS

Members of the Board may be removed for cause, including violation of the rules stated below.

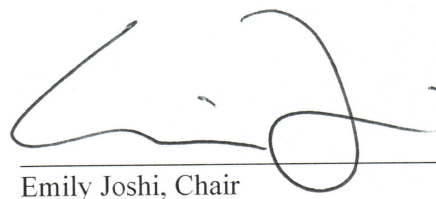
- A. Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board. Absence from three consecutive regular Board meetings within any three-month period shall be grounds for City Council to consider terminating the appointment of such person.
- B. All members shall vote on all issues brought before the Board unless excused by the Board.
- C. No member may participate in or vote on any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conduct includes, but is 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 other associational relationship with affected person; or a financial interest in the outcome of the matter. Upon objection raised to a member's participation, the remaining members of the Board shall rule on the objection by majority vote. (See also *Meetings*.)

## VIII. AMENDMENTS

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

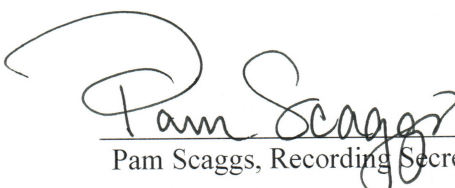
**ADOPTED the 16<sup>th</sup> day of January 2001.**

**AMENDED this the 6th day of August 2024.**



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Emily Joshi, Chair



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Pam Scaggs, Recording Secretary