

**ZONING BOARD OF ADJUSTMENT
RULES OF PROCEDURE
Approved 1/17/2013 by Board of Adjustment
Adopted by Town Council: _____
TOWN OF SUNSET BEACH NORTH CAROLINA**

I. GENERAL RULES

The Zoning Board of Adjustment shall be governed by the Terms of the Town: Chapter 160A, Article 19, Part 3 of the General Statutes of North Carolina and by the Zoning Ordinance of the Town of Sunset Beach. All members of the Board shall thoroughly familiarize themselves with these rules of procedure.

II. OFFICERS AND DUTIES

A. Chairman.

The Chairman shall be elected by its full membership (including Alternate and Extraterritorial members) of the Board of Adjustment from among the regular members. The Chairman's term of office shall be one year. The election shall be held in September of each year or until his/her successor is elected, and he/she 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.

B. Vice Chairman.

A Vice Chairman shall be elected by the full Board from among its regular members in the same manner and for the same term as the Chairman. He/She shall serve as Acting Chairman in the Chairman's absence, and at such times he/she shall have the same powers and duties as the Chairman.

C. Secretary.

A Secretary shall be appointed by the Chairman of the Board, either from within its membership or from outside, to hold office during the term of the Chairman and/or until a successor Secretary has been appointed. The Secretary shall be eligible for reappointment. 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 on 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 on the by 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. If the Secretary is chosen from outside the Boards membership, he/she shall not be eligible to vote on any matter. Should the Secretary not be able to attend a specific meeting the Chairman may appoint a Temporary Assistant Secretary to allow business to continue as scheduled.

III. ALTERNATE MEMBERS

Alternate Members of the Board shall attend all meetings and hearings. When a town

member of the Board is absent from a meeting or unable to participate in a particular case, the Alternate Members for the town shall have all the rights, privileges, and duties of a Member of the Board. The same shall be true for the Alternate Members for the extraterritorial jurisdiction when an Extraterritorial Member is absent or unable to participate.

At no time shall more than five members and Alternate Members participate officially in any meeting or hearing.

IV. RULES OF CONDUCT FOR MEMBERS AND ALTERNATE MEMBERS

A. Members and Alternate 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 and Alternate members shall be considered a prerequisite of continuing membership on the Board. (A Member or Alternate Member who cannot attend a meeting or will be unable to participate in a particular case shall notify the town hall or Chairman prior to the meeting if possible.)

C. No Board Member or Alternate Member shall take part in the hearings, consideration, or determination of any case in which he/she is personally or financially interested.

D. No Board Member or Alternate Members shall vote on any matter that decides an application or appeal unless he/she has attended the public hearing on that application or appeal. The Chairman may grant an exception if the Member or Alternate Member has reviewed the minutes and records of the hearing.

E. No Board Members or Alternate Members shall discuss any case with any parties thereto before the public hearing on that case; provided, however, that Members and Alternate Members may receive and/or seek information pertaining to the case from any other Member of the Board or its Secretary before the hearing.

F. Members of the Board and Alternate Members 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 shall be cause for dismissal from the Board.

V. MEETINGS

A. Regular Meetings

Regular Meetings of the Board shall be held on the third Thursday of each month at 9:00 a.m. in the Town Hall provided that meetings may be held at any other time in the Town if the Chairman so directs before the meeting.

B. Special Meetings

The Chairman may call Special Meetings for the Board for any time. Either the Secretary or the Chairman shall give at least a forty-eight hours' written or oral notice of the time and place of the Special Meetings, to each member of the Board.

C. Cancellation of Meetings

If there are no Appeals, Applications for Special Use Permits or Variances, or other business before the Board, or if so many Regular and Alternate Members notify the Secretary that they cannot attend that a Quorum will not be available, the Chairman may dispense with a regular meeting by giving written or oral notice to all Members as soon as possible.

D. Quorum

A quorum shall consist of four members of the Board, but the Board shall not pass on any question relating to an appeal from decision, order, requirement, or determination of the Zoning Administrator or an Application for Variance or Special Use Permit when fewer than four members are present.

E. Voting

All Regular Members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section IV. The required vote to decide appeals and applications shall be as provided in Section VI, D, 3, and shall not be reduced by any disqualification.

F. Conduct of Meetings

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

- (a) Roll Call;
- (b) Approval of Minutes of the previous meeting;
- (c) Hearing of Cases;
- (d) Consideration and Determination of Cases Heard;
- (e) Reports of Committees;
- (f) Old Business;
- (g) New Business.

VI. APPEALS AND APPLICATIONS

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. It shall also hear and decide all matters referred to it or on which the zoning ordinance of Sunset Beach requires it to pass. In deciding Appeals, the Board may hear both those based on an allegedly improper or erroneous interpretation of the ordinance and those based on alleged hardship resulting from strict interpretation of the ordinance.

B. Procedure for Filing Appeals

No Appeal shall be heard by the Board unless notice thereof is filed within thirty 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/her application for a hearing with the Zoning Administrator. All applications shall be made on the form furnished for that purpose, and all information required thereon shall be complete before an Appeal may be considered as having been filed.

C. Hearings

1. Time

After Notice of Appeal is received, the Board Chairman shall schedule the time

for a Hearing, which shall be at a regular or special meeting within thirty-six days from the filing of such Notice of Appeal.

2. Notice

The Board shall give public notice of the Hearing in a newspaper generally circulated in Sunset Beach by advertisement published at least five days before the date of the Hearing. The Board shall mail notices of the Hearing to the parties to the action appealed from, immediately adjacent (excluding any public right-of-way) at least five days before 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.

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 persons as he/she shall direct, shall give a preliminary statement of the case;
- (b) all Witnesses before the Board shall be placed under oath by swearing or affirmation;
- (c) staff reports
- (d) any other witness presenting evidence or testimony
- (e) the Applicant shall present the evidence and arguments in support of his/her application;
- (f) both sides shall be permitted to present rebuttals to opposing evidence and arguments.

Witnesses may be called and factual 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 Board may view the premises before the Hearing, but the facts indicated by such inspection shall be disclosed at the Hearing and made a part of the record. The opposing parties may cross-examine witnesses.

3. 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.

D. Decisions

1. Time

Decisions by the Board shall be made not later than thirty (30) days from the time of the Hearing.

2. 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 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 Special Use Permit is granted, the record shall state in detail any facts that support findings required to be made before such permit is issued. The record shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a variance or a special use permit. A separate record of the decision in each case shall be prepared, filed in the Town Hall and furnished to the parties as specified in Subsection D.4. below.

3. Voting at Hearings

The concurring vote of four-fifths of the Board 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 on which the Board is required by ordinance to pass, or to grant a Variance from the ordinance provision.

4. Notice and Public Record of Decisions.

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 Town Hall, as specified in the Zoning Ordinance. The decision shall be a public record, available for inspection at all reasonable times.

VII. AMENDMENTS

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