



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of 5 yeas and nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the 27th day of May , 2021, and an affirmative vote of yeas to nays by The Board of Commissioners at its regular meeting on the day of , 20 if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 3 – Administration and Review Authority, Sec. 3.4 Zoning Board of Adjustment

(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS
IN RED.)

ARTICLE 3. - ADMINISTRATION AND REVIEW AUTHORITY

Sec. 3.4 – Zoning Board of Adjustment

3.4.1 Establishment

The establishment of the Zoning Board of Adjustment created by the Ordinance entitled: The Zoning Ordinance of the Town of Highlands, 1970, is hereby re-affirmed.

The Zoning Board of Adjustment shall be governed by the terms of G.S. ch. **160D, art. 7**, ~~160A, art. 19, pt. 3~~, and by the Unified Development Ordinance of the Town of Highlands. The Zoning Board of Adjustment shall act in a quasi-judicial capacity. All members of the Board shall thoroughly familiarize themselves with these laws.

3.4.2 Terms and Compensation

A. *Terms.*

1. The regular term of office for each member shall be three (3) years. A member cannot serve more than two (2) terms consecutively.
2. The Board of Commissioners may, in its discretion, appoint alternate members to serve on the Zoning Board of Adjustment in the absence of any regular member. 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 Zoning Board of Adjustment and



serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

- B. *Compensation.* Members of the Zoning Board of Adjustment shall serve without pay, but shall be reimbursed for any expenses incurred in pursuit of the Board's activities.

3.4.3 Membership, Officers and Duties

- A. *Numbers.* The Zoning Board of Adjustment shall consist of five (5) members all of which shall be appointed by the Mayor and Board of Commissioners.
- B. *Composition.* Officers of the organization shall be chairman, vice chairman, and secretary.
1. *Chairman.* A chairman shall be elected by a minimum of four (4) members of the Board of Adjustment from among its regular members. His term of office shall be one (1) year and until his successor is elected, beginning on July 1, and he shall be eligible for re-election. 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.
 2. *Vice Chairman.* A vice chairman shall be elected by the Board in the same manner and for the same term as the Chairman. He 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.
 3. *Secretary.* A secretary shall be elected by the Board, either from within or outside its membership, to hold office during the term of the Chairman and/or until a successor Secretary shall have been appointed. The Secretary shall be eligible for re-appointment. The Secretary, subject to the direction of the Chairman and the Board, shall arrange for all public notices required to be given, shall notify members of pending meetings and their agenda, shall make a reasonable attempt to 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 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 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 chosen from outside the membership of the Board, the Secretary shall not be eligible to vote upon any matter.
 4. *Alternate members.* There shall be two (2) alternate members of the Zoning Board. Alternate members of the Board shall be required to attend all meetings and hearings and shall be called upon to participate in the hearing of a case where



a regular member is absent or excused because of financial or other interest. At any meeting or hearing in which they are called upon to participate, alternate members shall have the same powers and duties as regular members. Alternate members may vote at the election of officers and may participate and vote on all issues, except that they may not participate or vote during hearings unless substituting for a regular member.

- C. *Report.* A written report shall be submitted from the Zoning Board to the Town Board of Commissioner on a monthly basis. This report may include activities, problems, and actions of the Zoning Board, as well as any requests or recommendations. Said reports shall be submitted by the Chairman or by the Planning and Development Director.

3.4.4 Powers and Review Authority

- A. The Zoning Board of Adjustment shall have the power to issue Special Use Permits in accordance with this Ordinance.
- B. The Zoning Board of Adjustment shall have the power to hear appeals relating to the location of district boundaries in accordance with this Ordinance.
- C. The Zoning Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made in the enforcement of this Ordinance by either the Planning and Development Director or designee.
- D. Where the Zoning Board of Adjustment finds a threat to water quality and the public health, safety and welfare, it shall institute any appropriate action or proceeding to restrain, correct, or abate the condition and/or violation.
- E. The Zoning Board of Adjustment shall have the authority to grant a variance from the requirements of this Ordinance in accordance with Sec. 4.18, Variances.
- F. The Zoning Board of Adjustment shall have the authority to review and provide recommendations to the Town Board of Commissioners for applications that propose the creation of a new Conditional Zoning District.

3.4.5 Meetings, Quorum

- A. *Meetings.* Meetings shall be held at such times and places as the Zoning Board of Adjustment shall determine. All meetings shall be open to the public and conform to the North Carolina Open Meetings Law, G.S. ch. 143, art. 33C.
- B. *Quorum.* A quorum shall consist of three (3) members of the Board. In the absence of a quorum, the Chairman may continue the meeting to a time when a quorum can be obtained. The Planning and Development Director will notify members and alternates when the meeting is to be continued.



3.4.6 Rules of Procedure

~~The Zoning Board of Adjustment shall adopt rules of procedure for the conduct of its business, consistent with State law and this Ordinance.~~

- A. **Process Required.** – Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.
- 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 local government 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 local government 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 administrator or staff 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 local government, 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.



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.

- E. **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 local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.
- F. **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.
- G. **Subpoenas.** – The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately 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.
- H. **Appeals in Nature of Certiorari.** – When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).



- 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 local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

3.4.7 Decisions

- A. *Time.* Decisions by the Board shall be made not more than thirty-six (36) days from the time of the hearing.
- B. *Form.* Notice of the decision in a case, in the form of a written ruling, shall be given to the applicant by the Secretary or the Planning and Development Director as soon as practicable after the case is decided. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the Secretary and the Chairman upon approval of the minutes by the Board. The record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board. Where 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 in an appeal may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. Where an exception or a special use permit is granted, the record shall state in detail any facts supporting findings required to be made prior to the issuance of such permit. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a variance or an exception or special use permit.
- C. *Voting at Hearings.* The concurring vote of four-fifths (4/5) of the Board shall be necessary to grant a non-administrative variance from the Ordinance provisions. 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.

- D. *Public Record of Decisions.* The decisions of the Board, as filed in its minutes and written ruling, shall be a public record, available for inspection at all reasonable times.
- E. *Rehearings.* An application for a rehearing may be made in the same manner as provided for an original hearing. 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 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 thereupon treat the request in the same manner as any other application.
- F. *Appeals.* Unless specifically provided otherwise, a petition for review of a quasi-judicial decision shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with G.S. 160D-406(j). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.