

**RULES OF PROCEDURE (BY-LAWS)  
TOWN OF FRANKLIN  
PLANNING BOARD AND ZONING BOARD OF ADJUSTMENT**

**I. GENERAL RULES**

The Franklin Planning Board serves in the dual capacities of the Franklin Planning Board and the Franklin Zoning Board of Adjustment. The Planning Board shall be governed by the terms of Chapter 160A, Article 19, Part 361, of the General Statutes of the State of North Carolina, as well as the “Ordinance to Establish a Planning Board for the Town of Franklin.” The Zoning Board of Adjustment shall be governed by the terms of Chapter 160A, Article 19, Part 388, of the North Carolina General Statutes, as well as the Unified Development Ordinance for the Town of Franklin, as amended. All members of the Planning Board and Board of Adjustment shall thoroughly familiarize themselves with these laws. Except as may be specifically noted, these rules of procedure shall apply equally to the Franklin Planning Board and Franklin Zoning Board of Adjustment. In the event of a conflict between laws or rules of procedure regulating the functions of the two boards, the more restrictive provision shall govern. For the purposes of this set of by-laws, the Franklin Planning Board and Franklin Zoning Board of Adjustment shall hereafter be referred to as the “Board.”

**II. APPOINTMENT OF MEMBERS**

A. **Filling expiring terms.** When a term of membership on the Board is to expire, and the member whose term is to expire is willing to be reappointed to a further term of membership, the Land Use Administrator shall so inform the Board of Aldermen and the Board of Aldermen may reappoint the member.

B. **Procedure for filling vacancies.** In the event of a vacancy on the Board, due to death, resignation, or inability to fulfill the duties of membership, the Land Use Administrator shall ask the Board of Aldermen to advertise an opening via the Town’s website, print media, and any other form of advertisement the Board of Aldermen may prescribe. Once the period for submitting applications for membership has closed, the Land Use Administrator shall gather resumes of applicants and verify whether such applicants reside within the Town limits or within the Town’s Extraterritorial Jurisdiction. The Land Use Administrator shall forward to the Board applications and resumes of applicants. At the call of the Chairman, the Board may interview applicants. The Board shall discuss the applications, in open session, and shall forward the Board’s recommendation for filling the vacancy or vacancies to the Board of Aldermen or the Board of County Commissioners, as appropriate.

**III. OFFICERS AND DUTIES**

A. **Chairman.** A chairman shall be elected by the full membership of the Board from among its members. His term of office shall be one year and until his successor is elected, beginning on July 1, and he shall be eligible for reelection. 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 chairman shall preside at all meetings and hearings of the Board, and shall have the duties normally conferred by parliamentary usage of such officers, which include the authorization and certification of the expenditure of funds. The chairman shall be one of the members of the Board, and shall have the privilege of discussing all matters before the Board and voting thereon. The chairman, in his official capacity as chairman of the Zoning Board of Adjustment, is authorized to administer oaths to witnesses in any matter coming before the Zoning Board of Adjustment function.

B. **Vice Chairman.** A vice chairman shall be elected by the Board from its members 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.

C. **Secretary.** The secretary shall be the Town Clerk, unless another employee of the Town is designated by the Town Manager. The secretary, subject to the direction of the chairman of the Board, shall keep all records 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 or 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. The secretary shall not be eligible to vote upon any matter.

D. **Planning staff.** The planning staff 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.

E. **Election of Officers.** Nomination of officers shall be made from the floor at the annual organization meeting which shall be held once each year in June, and the elections shall follow immediately thereafter. A candidate receiving a majority vote of the members present (providing there is a quorum present) at the organizational meeting of the Board shall be declared elected and shall serve for one year or until reelected until his successor shall take office. Terms of officers shall extend from July 1 to June 30 of the following year. Vacancies in offices shall be filled immediately by regular election procedure.

### III. RULES OF CONDUCT

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

B. Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite of continuing membership on the Board. If a Board member fails to attend more than three (3) consecutive meetings, that member may be replaced by the Board of Aldermen at its discretion.

C. No Board member can participate in or vote on any matter where they have a fixed opinion on the case prior to the hearing, they have undisclosed ex parte communications, have close family, business, or associational ties with an affected person, or have a financial interest in the outcome of the case.

D. No Board member shall vote on recommendations if they have a direct, substantial, readily-identified financial interest in the outcome of the decision.

E. No Board member shall vote on any matter deciding an application or appeal unless he shall have attended the public hearing on that application or appeal.

F. No Board member shall discuss any zoning case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from any other member of the Board, its secretary or clerk prior to the hearing.

G. Members of the Board will not express individual opinions on the proper judgment of any zoning case with any parties thereto prior to its determination of that case. Violation of this rule shall be cause for dismissal from the Board.

H. If an objection based on this section is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

#### IV. MEETINGS

A. Regular Meetings. Regular meetings of the Board of Adjustment shall be held on the 2<sup>nd</sup> Monday of each month at 4:00 p.m. in the Town Hall, provided that meetings may be held at any other convenient place in the Town of Franklin if directed by the chairman in advance of the meeting. This section may be considered for amendment at a regular meeting of the Board of Adjustment.

Regular meetings of the Planning Board shall be held on the 3<sup>rd</sup> Monday of each month at 4:00 p.m. in the Town Hall, provided that meetings may be held at any other convenient place in the Town of Franklin if directed by the chairman in advance of the

meeting. This section may be considered for amendment at a regular meeting of the Planning Board.

B. Special Meetings. Special meetings of the Board may be called at any time by the chairman. At least forty-eight (48) hours written notice of the time and place of special meetings shall be given, by the secretary, planning staff, or by the chairman, to each member of the Board. Written notice to members may be made by email; notice of meetings shall be published as required by North Carolina law.

C. Cancellation of Meetings. Whenever there are no appeals, applications for exceptions or variances, or other business for the Board, or whenever so many members notify the planning staff of inability to 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 not less than twenty-four (24) hours prior to the time set for the meeting.

D. Voting/Quorum. All members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section III. The required vote to decide appeals and applications shall be as provided in Section V, D, 4, and shall be reduced by the number of members who must recuse themselves when no alternate member is available.

In all other matters, such as providing recommendations and advice to the Board of Aldermen on zoning ordinance or map amendment matters, a vote of a majority of the members present and voting shall decide issues before the Board in its Planning Board capacity as long as there is a quorum present. A quorum shall consist of four (4) members from the total membership of the Planning Board for all matters pertaining to the Planning Board.

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; (b) reading of minutes of previous meetings; (c) hearing of zoning cases; (d) communications; (e) project reports and reports of committees; (f) unfinished business; (g) new business; (h) consideration and determination of zoning cases heard; (i) adjournment.

## V. ZONING APPEALS AND APPLICATIONS

A. Types of Appeals. The Board of Adjustment shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Land Use Administrator. It shall also hear and decide all matters referred to it or upon which it is required to pass by the zoning ordinance of the Town of Franklin. In deciding appeals, it 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. Appeals shall include applications for variances that the Board is designated to act upon.

B. Procedure for Filing Appeals. No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the interested party or parties receive notice of the order, requirement, decision, or determination by the Land Use Administrator. The applicant must file his application for a hearing with the Land Use Administrator, who shall act as clerk for the Board in receiving this notice. All applications shall be made upon the form furnished for the purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.

C. Hearings.

1. Time. After receipt of notice of appeal, the Board chairman shall schedule the time for a hearing, which shall be at a regular or special meeting at least thirty (30) days from the filing of such notice of appeal, unless the hearing is expedited pursuant to section C.3. below.

2. Notice. The Land Use Administrator shall mail notice of the hearing 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. 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.. 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. Stay of Enforcement; Expedited Hearing. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the Land Use Administrator certifies by affidavit to the Board after the notice of appeal has been filed that a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a court order. If proceedings are not stayed, the appellant may file with the Land Use Administrator a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed.

4. Conduct of Hearing. Any party may appear in person or by agent or by attorney at the hearing. The order of business for hearing shall be as follows: (a) the chairman, or such person as he shall direct, shall give a preliminary statement of the case; (b) the applicant shall present the argument in support of his application; (c) persons opposed to granting the

application shall present the argument against the application; (d) both sides will be permitted to present rebuttals to opposing testimony; (e) the chairman shall summarize the evidence which has been presented, giving the parties opportunity to make objections or corrections. 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 arriving at a decision. All witnesses before the Board shall be placed under oath and the opposing party may cross-examine them.

5. Rehearing's. 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

#### D. Decisions.

1. Time. Decisions by the Board shall be made not more than thirty (30) days from the time of the hearing.

2. Form. Written notice of the decision in a case shall be delivered to the applicant by the Land Use Administrator as soon as practicable after the case is decided. Notice shall be delivered by personal delivery, electronic mail, or by first class mail to the applicant, property owner, and to any person who has submitted a written request for copy, prior to the date the decision becomes effective. 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 chairman upon approval of the minutes by the Board. Such record shall show the reasons for the determination, with the 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 may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. The record shall state in detail, what, if any, conditions and safeguards are imposed by the Board in connection with the granting of the variance.

3. Expiration of Permits. Unless otherwise specified, any order or decision of the Board granting a variance shall expire if a building permit

or certificate of occupancy for such use is not obtained by the applicant within six (6) months from the date of the decision.

4. Voting at Hearings. (A) The quorum for the Board of Adjustment to hear and decide variances shall consist of four-fifths of the Board's membership who are eligible to vote on the matter, or who have recused themselves and been replaced by an available alternate. In all other cases, quorum for a hearing by the Board of Adjustment shall be four (4), and a majority of the members shall be required to decide any other quasi-judicial matter or determine an appeal made in the nature of certiorari.

(B) The quorum for the Planning Board shall consist of four (4) of the members appointed. The concurring vote of a majority of those members present and voting shall be required to make recommendations to the Town Board on those matters on which the Planning Board is required to act by the Unified Development Ordinance, or on other business of the Board.

5. Public Record of Decisions. The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

## VI. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of a majority of the members of the Board, provided that such amendment be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

Adopted this 16<sup>th</sup> day of March\_2015.

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Chairman, Franklin Planning Board  
and Zoning Board of Adjustment

Attest:

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Secretary