

## Rules of Procedure

Havelock Board of Adjustment

Havelock, North Carolina

### Amendment 2

This supersedes the original dated February 27, 1980 and Amendment 1 dated August 26, 1980.

The following Rules of Procedure are adopted by the Havelock Board of Adjustment pursuant to the provisions of Section 153.03 of the Unified Development Ordinance (UDO) of the City of Havelock, North Carolina.

#### I. GENERAL RULES

- A. The Havelock Board of Adjustment (hereinafter called "Board") shall be Governed by the terms of Article 3 of Chapter 160D of the General Statutes of North Carolina and by the Unified Development Ordinance of the City of Havelock, North Carolina (hereinafter called "UDO"). All members of the Board shall thoroughly familiarize themselves with these laws.

#### II. OFFICERS AND DUTIES

- A. Chair. The Chair shall be elected by majority vote of the membership of the Board from among its members. His/Her term of office shall be for one year commencing on the 1<sup>st</sup> day of July each year and until his/her successor is elected. The Chair shall be eligible for re-election. Subject to these rules, the Chair shall decide upon all points of order and procedure unless directed otherwise by a majority of the Board in session at the time. The Chair shall appoint any committees found necessary to investigate any matter before the Board.
- B. Vice Chair. A Vice Chair shall be elected by the Board from among its members in the same manner and for the same term as the Chair. He/she shall serve as acting Chair in the absence of the Chair, and at such times he/she shall have the same powers and duties as the Chair.
- C. Secretary. A secretary shall be appointed by the Board of Adjustment, either from within the membership of the Board or an employee of the City, to hold office during the term of the Chair or until a successor is appointed. The Secretary, subject to the direction of the Chair, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all public notices required to be given, 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 an employee of the City, he/she shall not be eligible to vote upon any matter.

### III. MEMBERS

- A. Membership on the Board shall be governed by the terms of Chapter 160D, Article 3 of the General Statutes of North Carolina and by Chapter 153.03 of the City of Havelock UDO.
- 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. The Chair, upon majority vote of the Board, may recommend to the City Board of Commissioners that any member can be removed for cause. In the case of an ETJ member, the recommendation shall be forwarded to the County Board of Commissioners.

### IV. MEETINGS

- A. Regular Meetings. Regular meetings of the Board shall be held on the last Wednesday of each month at 5:30 P.M. in the City Hall; provided, however, that meetings may be held at some other time and/or place in the City if directed by the Chair in advance of the meeting; providing further, if no business is scheduled prior to the scheduled meeting, there need not be any meeting.
- B. Special/Emergency Meetings. Special or Emergency meetings of the Board may be called at any time by the Chair or a majority of the members of the Board. Notice of a special meeting shall be provided as stated in N.C.G.S. 143-318.12(b). At least six (6) hour notice of the time and place of emergency meetings shall be given by the Secretary or the Chair to each member of the Board.
- C. Quorum and Voting. A quorum shall consist of five (5) members of the Board, one of whom must be a member from the City's extraterritorial jurisdiction. No member of the Board may be excused from voting except when immediate personal or financial interests preclude impartial consideration of the issues. Failure to vote by a member who is present at the meeting or who has withdrawn, without being duly excused hereunder shall be counted as an affirmative vote. Members present at the meeting who are not voting shall not participate in the quasi-judicial proceedings.
  - (1) Right to an Impartial Decision Maker. A Board member may not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are 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 an affected person, or a financial interest in the outcome of the matter.

- D. Conduct of Meetings. Except as otherwise authorized by the laws governing meetings of public bodies, all meetings shall be open to the public, subject to these rules. The order of business at regular meetings shall be as follows or otherwise directed by the Chair: (a) roll call; (b) reading of minutes of previous meetings; (c) reports of committees; (d) unfinished business; (e) new business; (f) hearing of cases; (g) consideration and determination of cases.

## V. APPLICATION PROCEDURES

A. Procedure for Application, Special Use Permits.

1. The procedure for application for, and the establishment of, a special use permit shall be governed by UDO Chapter 153.12.
2. Unless such term is extended by a majority vote of the Board, the Board shall render a written decision either approving or denying the application for a special use permit within thirty-six (36) days following the evidentiary hearing provided for in UDO Chapter 153.12.

B. Procedure for Administrative Review, Interpretation and Variance.

General Procedure. The procedure for appeals (including administrative review or interpretation of decisions of the Zoning Administrator) and variances shall be governed by UDO Chapter 159.

1. Parties Appellant. An appeal may be taken to the Board by any person aggrieved or by an officer, department or board of the City.
2. Time. No appeal shall be heard by the Board unless the appellant files a notice of appeal specifying the grounds therefore, with the Director of Planning and Inspections and the Secretary of the Board, within thirty (30) days from the date of the order, requirement, decision, determination, refusal, interpretation, or other matter forming the basis of appeal.
3. Form of Notice of Appeal. The notice of appeal shall be on the official form furnished for that purpose or in a form substantially similar to such form. All required information shall be provided on such form before an appeal shall be considered as having been filed.

4. Fees. No application or notice of appeal shall be considered as having been filed until there has been paid to the City of Havelock a filing fee as from time to time may be set by the City Board of Commissioners.

## VI. HEARING

A. Time. After receipt from the Director of Planning and Inspections and/or Secretary of the completed notice of appeal or application, together with all the papers constituting the record upon which the action appealed from was taken, the Chair shall schedule the time for an evidentiary hearing, which shall be at a regular or special meeting within thirty (30) days from the filing of such notice of appeal or application.

B. Notice. The Board shall give public notice of the hearing by all of the following means no less than ten (10) days and no more than 25 days prior to the date of the hearing:

(1) by publishing or advertising notice of the hearing in a newspaper having general circulation in the City of Havelock one time; and,

(2) by mailing notices of the hearing to:

- the applicant;
- the owner of the property that is the subject of the hearing if the owner did not initiate the hearing;
- the owners of all parcels of land abutting the parcel of land that is the subject of the hearing;
- to any other persons entitled to receive notice; and,
- the Commanding Officer, MCAS Cherry Point (via Certified Mail);

(3) by posting a conspicuous notice of the hearing on the property which is the subject of the action; and,

(4) by posting on the City's website.

All such notices shall state the location of the building or real property, the general nature of the question(s) involved, and the date, time, and place of the hearing. The Board may rely upon the County tax records in determining the identity of record owners of real property.

C. Conduct of Hearing on Appeals or Applications of Special Use Permit.

- (1) Minutes. The Secretary shall take minutes to record the procedural aspects of the meeting, such as names of Board members present at the hearing, the names of the voting members, the names of witnesses, whether parties were represented by counsel, whether cross-examination was requested, and the other important events at the hearing that had an impact on the outcome. The Secretary shall also take minutes of the testimony of witnesses in order that a narrative summary of what was said by each witness can be made; provided, however, minutes of the testimony need not be made if the testimony is recorded or otherwise transcribed.
- (2) Appearance. The hearing shall be open to the public. All persons with standing to appeal the decision regarding the matter of the hearing shall be given an opportunity to present evidence and arguments and ask questions of persons who testify. The Chair shall determine whether a party has standing. Non-parties may be allowed to present competent, material, and substantial evidence that is not repetitive. Any party or other interested person may appear at the hearing in person or by an attorney or other agent.
- (3) Order of Business. The order of business for each hearing shall be as follows:
  - (a) the Chair, or such other person as he/she shall direct, shall make a brief preliminary statement of the case and shall establish each voting member's impartiality;
  - (b) the Director of Planning and Inspections or his/her designee will present the facts of the case;
  - (c) the appellant or applicant may make a brief opening statement or argument and present evidence in support of the appeal or application;
  - (d) any party with standing opposed to the relief sought by the appeal or application may make a brief opening statement or argument and present evidence in opposition to the appeal or application;
  - (e) all parties shall be permitted to cross-examine witnesses and present evidence in explanation and rebuttal; and
  - (f) other interested persons may present evidence in favor of or in opposition to the relief sought.
- (4) Cross-Examination and Inspection of Documents. Each party shall have the right to cross-examine adverse witnesses and inspect documents offered in evidence.
- (5) Witnesses to be Sworn. All witnesses shall be sworn by the Chair before testifying unless sworn testimony is waived by stipulation or otherwise.
- (6) Documentary and Physical Evidence. Copies or originals of documentary and physical evidence of any kind admitted by the Board shall be retained and made a part of the permanent record of the case. Provided, however, where elaborate diagrams or expensive displays cannot be copied, the Chair may return such diagrams or displays to the owner and the Secretary shall summarize the content of the diagrams or displays in the minutes.

- (7) Exclusion of Evidence. The Board may exclude incompetent, irrelevant, or immaterial evidence. If evidence is excluded, the proponent of the proposed evidence may include in the record a statement as to what the evidence would have been if it had been admitted.
- (8) Consideration of Matters Not Presented in Evidence By Parties. Facts within the special knowledge of the members of the Board or acquired by their personal inspection of the premises may be considered by the Board provided such facts are revealed at the public hearing and made a part of the record and the appellant or applicant and other parties are given an opportunity to meet such facts by evidence or argument.
- (9) Use of Affidavits. The Board may admit into evidence a sworn affidavit that is otherwise relevant and material, only if the proponent of same complies with the following conditions; (a) at least four (4) days prior to the hearing at which admission of the affidavit is sought, the proponent of same shall deliver, or cause to be delivered, a copy of the affidavit to the Secretary and to any and all opposing parties of whom the proponent has knowledge; (b) attached to such affidavit shall be a notice containing the name and address of the affiant and a statement that he or she will not be called to testify orally and not be subject to cross-examination unless the opposing party or parties or the Chair demands by written notice the right of cross-examination; (c) the right to cross-examine the affiant is waived and the affidavit, if introduced, shall have the same effect as if the affiant had testified orally, unless the opposing party or parties or the Chair delivers, or causes to be delivered, to the proponent at least twenty-four (24) hours prior to the hearing at which admission of the affidavit is sought a written request to cross-examine the affiant at the hearing; and (d) if opportunity to cross-examine is not afforded after any such request duly made hereunder, the affidavit shall not be received in evidence.
- (10) Record of the Vote. The vote of every member on every issue shall be recorded in the minutes.

## VII. DECISIONS

- A. Time. Unless such time is extended by a majority vote of the Board, all decisions by the Board shall be made not more than thirty (30) days from the time of the hearing.
- B. Form. The decision of the Board shall be in writing signed by the Chair and shall state the basic facts on which the Board relied with sufficient specificity to inform the parties of the basis of the Board's decision.
  - (1) 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.

(2) Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.

C. Notice.

(1) Appeals. Application for Interpretation or Variance. Written notice of the decision in a case shall be furnished to the parties by the Secretary as soon as practicable after the case has been decided by personally delivering or mailing (registered or certified) a copy of the decision to such parties. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board. The record shall show the reasons for the decision.

(2) Special Use Permit. Section 153.12 of the UDO shall govern notification of approval or rejection of applicant of a special use permit.

D. 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.

E. Judicial Review. All quasi-judicial decisions shall be subject to review by the Superior Court of Craven County.

#### VIII. PETITION FOR REHEARING OF A SPECIAL USE PERMIT APPLICATION

A. Time for Filing; Content. A petition for rehearing of a denied application, must be filed within ten (10) days after the date of the decision of the Board has been issued. Such petition shall clearly demonstrate that (1) circumstances affecting the property have substantially changed; or, (2) new information is available that could not with reasonable diligence have been presented at a previous hearing. Any such petition shall be denied if the Board determines there is no such substantial change. A request for rehearing does not extend the 30-day period within which an appeal must be taken to Superior Court.

B. How Addressed; Filed. A petition to the Board shall be addressed to the Board and shall be filed with the Secretary.

C. How Determined. Within thirty-six (36) days after the petition is filed, the Board will either grant or deny the petition. Any such petition shall be denied if the Board determines there is no substantial change. Determination to grant or deny will be made solely upon the written petition; no written response will be received from the opposing party; and no oral argument by any party will be heard. Determination by the Board is

final. The rehearing may be granted as to all or less than all points suggested in the petition. When the petition is denied, the Secretary shall forthwith notify all parties

- D. Procedure When Granted. Upon grant of the petition the Secretary shall forthwith notify the parties that the petition has been granted, and if the Board has ordered oral argument, shall give notice of the time set therefore, which time shall be not less than thirty-six (36) days from the date of such notice. The case will be reconsidered solely upon the record, the petition to rehear, and the oral argument if one has been ordered by the Board.
  
- E. Necessity. The filing of a petition for rehearing shall not be a prerequisite for seeking judicial review of any decision of the Board.

IX. AMENDMENTS

- A. These rules, within the limits allowed by law, may be amended at any time by an affirmative vote of not less than four-fifths (4/5) 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.

This Amendment 2 shall become effective on the 19<sup>th</sup> day of May, 2022

First presented on April 20, 2022.

Read, approved and adopted by the Board of Adjustment on the 18<sup>th</sup> day of May, 2022.

  
Chair

  
Secretary

