

## **Bylaws for Lake Waccamaw Board of Adjustment**

**A. General rules-** The Board of Adjustment, shall be governed by the terms of Chapter 160A, Article 19, Part 3 of the North Carolina General Statutes and by the zoning ordinance of the Town of Lake Waccamaw. All members of the Board shall thoroughly familiarize themselves with these laws.

### **B. Officers and duties-**

1. Election of Officers— The Board shall elect a Chairman, Vice-Chairman, and Clerk to the Board at the regular meeting each July. All officers may succeed themselves.
2. The Chairman— The Chairman shall preside at all meetings and Public Hearings of the Board; shall decide on all matters of order and shall develop a meeting agenda with the assistance of the Zoning Administrator/Town Manager; and shall provide the Lake Waccamaw Board of Commissioners with an annual report of the Board activities by June 30 of each year.
3. The Vice-Chairman— In absence of the Chairman, the Vice-Chairman shall perform all duties assigned to the Chairman.
4. The Clerk to the Board— The Clerk to the Board is charged with responsibility for the keeping of minutes of all regular meetings, special meetings, and Public Hearings called by the Board. The Clerk, after conferring with the Chairman, shall have staff send notices of all regular meetings, special meetings, and Public Hearings at least four (4) days in advance of the meeting and shall notify members by phone at least twenty-four (24) hours in advance of special or emergency meetings. The Clerk is also charged with the responsibility for all the Board related correspondence and for the maintenance of the Board records and files,
5. The Zoning Administrator— As the zoning enforcement officer the Zoning Administrator shall serve as an ex officio, non-voting, member of the Board, giving counsel and providing information when required or requested. The Zoning Administrator/Town Manager shall also serve as the Assistant Clerk and provide required assistance to the Clerk and the Board.

### **C. Number of Members.**

1. A board of adjustment is hereby established. In succeeding paragraphs the word "board" shall mean the board of adjustment. Said board shall consist of six (6) regular members and two (2) extra-territorial jurisdiction members. Appointments shall be made in the following manner:
2. The Lake Waccamaw Board of Commissioners shall appoint six (6) residents of the Town to serve for a period of three (3) years. The Columbus County Board of Commissioners shall appoint two (2) members to the Board who reside within the approved extra-territorial limits of Lake Waccamaw for three (3) year terms. County appointments will be made at the request of the municipal government. Members

may be reappointed to unlimited successive terms. Appointment to unfulfilled terms shall be for the length of the original appointment. As of September 8, 2003, the Lake Waccamaw Planning Board will assume the duties of the Board of Adjustment. The Planning Board members serving as of the date listed above will serve in a dual capacity, both as Planning Board and Board of Adjustment members.

**D. Rules of conduct for members.**

1. Members of the board may be removed for cause, including violation of the rules stated below.
2. 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.
3. No board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested.
4. No board member shall discuss any case with any parties thereto before 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 before the hearing.
5. No board member shall vote on any matter that decides an application or appeal unless he has attended the public hearing on that application or appeal.
6. Members of the board 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.

**E. Meetings-** All meetings of the board shall be held at a regular place and be open to the public. The board shall keep minutes of its proceedings in a file maintained for that purpose. The minutes shall show those members present, the nature of the issue, facts presented as evidence, findings of fact by the board, and the decision of the board (including a record by name of each member's vote). The minutes shall be considered public record. No action shall be taken on any matter unless a quorum is present.

1. *Time:* Meetings will be called as needed and will be held on the first (1<sup>st</sup>) Monday night of each month, as necessary.
2. *Quorum:* A quorum shall consist of no fewer than five (5) members.
3. *Voting:* All regular members may vote on any issue unless they have disqualified themselves for one (1) or more of the reasons listed in section D. The required vote to decide appeals and applications shall be four-fifths (4/5), and shall not be reduced by any disqualification. In all other matters the vote of a majority of the members present and voting shall decide issues before the board.

4. *Conduct of meetings:* All meetings shall be open to the public. The order of business at meetings shall be as follows: a) roll call; b) approval of minutes of the previous meetings; c) hearing of cases; d) reports of committees; e) unfinished business; f) consideration and determination of cases heard. All meetings will be held in accordance with the North Carolina Open Meetings Law.

**F. The board shall have the following powers:** Any person aggrieved or any officer, department, board or bureau of the city affected by such decision may take an appeal from the decision of the zoning administrator to the board of adjustment. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board that by reasons of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by restraining order which may be granted by the board or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

1. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator. The concurring vote of four-fifths (4/5) members of the board shall be necessary to reverse any order, requirement, decision or determination of the zoning administrator to decide in favor of the applicant any matter which it is required to pass under the zoning ordinance or to effect any variation in such ordinance.
2. To permit a temporary building for business or industry in the residential zone, which is incidental to the residential development, such permit to be issued for a period of not more than one (1) year.
3. To permit a garage, other than a private garage, but for storage purposes only, as an accessory building to a hotel, hospital or similar institution in the residential zone where it is deemed necessary for the public convenience or welfare and where this can be done without substantially derogating from the intent and purposes of this ordinance.
4. To authorize upon appeal in specific cases variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in undue hardship, and so that the spirit of this ordinance shall be observed and substantial justice done.

In considering all proposed variations of this ordinance, the board shall before making any finding in a specified case, first determine that the proposed variation will not constitute any change in the zones shown on the zoning map and will not impair an adequate supply of light and air to adjacent property, or materially increase the public danger of fire, and safety, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, morals, and general welfare.

In granting a variance the board may attach thereto such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable in furtherance of the purposes of this ordinance.

Before a variance is granted, it shall be shown that special circumstances attach to the property that does not generally apply to other property in the neighborhood. A variance may be granted only when the practical difficulty of undue hardship complained of is due to the particular characteristics of the property and not to the general conditions of the neighborhood which may reflect an undue stringency of the ordinance itself. A hardship peculiar to the applicant, as distinguished from others affected by the general rule, must be shown. The fact that property may be utilized more profitably will not be considered adequate to justify the board in granting a variance.

Any person or persons, jointly or severally, aggrieved by any decisions of the board, or any taxpayer, or any officer, department, board or bureau of the town of Lake Waccamaw may within thirty (30) days after the filing of the decision in the office of the board, but not thereafter, present to a court of competent jurisdiction, a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality, whereupon such decision of said board shall be subject to review as provided by law.

## **G. Appeals and applications.**

1. *Types of appeals:* The board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the building inspector or zoning administrator. It shall also hear and decide all matters referred to it or on which the zoning ordinance of the Town of Lake Waccamaw requires it to pass. In deciding appeals, the board may hear both those cases based upon an allegedly improper or erroneous interpretation of the ordinance and those based upon alleged hardship resulting from strict interpretation of the ordinance.

2. *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 building inspector and/or zoning administrator. The applicant must file his application for a hearing with the zoning administrator, who shall act as clerk for the board in receiving this notice. 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.

## **H. Hearings:**

1. *Time:* After notice of appeal is received, the board chairman shall schedule a time for the hearing. The hearing shall be held as soon as possible after the notice of appeal is received.

2. *Notice:* The board shall give notice of the hearing in a newspaper of general circulation by advertisement published in two (2) successive weeks before the date of the hearing. Notice of meetings will be sent to adjacent property owners.

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 person as he shall direct, shall give a preliminary statement of the case; b) the applicant shall present the evidence and arguments in support of his application; c) persons opposed to granting the application shall present evidence and arguments against the application; d) both sides shall be permitted to present rebuttals to opposing evidence and arguments; e) the chairman shall summarize the evidence that 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 the hearing, but the facts indicated by such inspection shall be disclosed at the public hearing and made a part of the record. All witnesses before the board shall be placed under oath, and the opposing party may cross-examine them.

4. *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.

## **I. Decisions:** Decisions by the board shall be made within a reasonable time.

1. *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 clerk to the Board 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. The record shall state in detail what, if any, conditions and safeguards the board imposes in connection with granting of a variance. A separate record of the decision in each case shall be prepared, filed in the town clerk's office, and furnished to the parties as specified in subsection 4.

2. *Expiration of permits:* Unless otherwise specified, any order or decision of the board granting a variance shall expire if the applicant does not obtain a building permit or certificate of occupancy for such use within six (6) months from the date of the decision.

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 building inspector and/or 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 provisions.

4. *Notice and public record of decisions:* The clerk to the Board 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/clerk or the chairman of the board when the hearing is held. A copy of the decision shall also be filed in the town clerk's office. The decision shall be a public record, available for inspection at all reasonable times.