

Beaufort County Zoning Board of Appeals

Rules of Procedure

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Article I

Rules of Procedure

Section 1. Rules of Procedure

These Rules of Procedure are adopted by the Zoning Board of Appeals to carry out its powers and responsibilities under Code of Laws of South Carolina (1976), as amended (the "SC Code"), Sections 6-29-780,-790,-800 and -810. These Rules of Procedure may be suspended by majority vote of the Board to meet particular circumstances. If there is a situation where these Rules of Procedure do not specifically apply, then the most recent edition of Robert's Rules of Order published by Da Capo Press shall govern the conduct of meetings. An informational chart summarizing types of motions and votes in Robert's Rules of Order is attached.

Section 2. Amendment

These rules may be amended at any time by an affirmative vote of a majority of the members of the Board; provided however, that such amendments shall have first been presented to the entire Board, in writing, at a Regular or Special Meeting preceding the Regular or Special Meeting at which the vote is taken.

Article II

Conflict of Interest

At a minimum, South Carolina law regarding conflicts of interest [SC Code Section 8-13-10, et seq.,) shall control Board members' actions. In addition, any member of the Board who believes that he or she has or may have a conflict of interest of any nature on any matter before the Board shall, be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest or conflict of interest exists.

Article III

Meeting Administration, Public Comment

Section 1. Quorum

A simple majority of all current members of the Board is a quorum for conducting Board business. If at any point during a meeting there is a lack of a quorum, the Board is no longer able to conduct business.

Section 2. Agenda (Order of Business)

A written agenda shall be furnished by the Secretary to each member of the Board and the public. An agenda may be changed at the related meeting by a majority vote of the members present.

Public hearing items should be so noted with each pertinent item. Generally, the agenda should contain:

1. Call to Order;
2. Pledge of Allegiance;
3. Roll Call;
4. Freedom of Information Act Compliance;
5. Use of Cellular Telephones or Other Electronic Sound Emitting Devices Prohibited;
6. Review of Meeting Protocol as described within, including Citizen Participation;
7. Review of Notice Requirements;
8. Approval of Agenda;
9. Approval of Minutes of Previous Meeting
10. Submissions by applicants;
11. Old Business;
12. New Business;
13. Board Business;
14. Adjournment.

Section 3. Minutes

A. **Meetings**. Minutes of meetings are governed by the SC Code Sections 30-4-70 through 30-4-90). Minutes of each Board meeting shall be recorded by the Secretary and approved at the next available meeting after their preparation.

B. **Lack of Quorum**. If there is lack of a quorum of the Board, minutes may be recorded but shall include a statement in the header of each page indicating that a quorum was not present and the minutes are not official. Such minutes shall not be approved by the Board at a later meeting.

Section 4. Public Comment

For all matters that are the subject of a public hearing, at the conclusion of presentations by the Applicant and the Staff, the Chairperson will open the public hearing. The Chairperson may set a time limit for all public comments and may determine the order of the comments. The Chairperson may recognize citizens to comment even if they did not sign up to speak. Each person will have the opportunity to speak for three (3) minutes. At the conclusion of the public comment, the Chairperson will close the public hearing. The Applicant and Staff, or any other party to a particular matter may request that the Chairperson allow additional clarification after the public comments. Public comment is not permitted in a case involving an appeal from a decision by the Director or his/her Designee.

Section 5. Meeting Protocol

The Chairperson will review the protocol at the start of each meeting. The meeting protocol includes further information about the following: speaker sign-up sheet, length of time for speakers, the order of presentation, the opening and closing of a public hearing. The speaker sign-up sheet and notice of the requirement to sign up will be posted to the start of the meeting.

Section 6. Motions and Final Decisions

A motion by a Board member is the procedure leading to a final decision by the Board, when the motion is seconded by another Board member and adopted by a vote of a majority of the Board members present. A motion shall describe the proposed decision with findings and conclusions to support the motion. If the motion is seconded and adopted by the Board, the final decision, contained in a Notice of Action must be in writing and be permanently filed in the office of the Board as a public record. The final decision must include findings and conclusions.

Section 7. Voting

A. A Board member must either be present for the full presentation of each case to be permitted to discuss and vote on the case, or represent to the Board that the member has fully examined all of the submitted documents and materials and reviewed previous minutes.

B. All members of the Board shall be voting members, and shall be entitled to vote on any issue before the Board unless disqualified by law.

C. A simple majority of a quorum shall be required to approve any matter before the Board.

Section 8. Supplemental Submissions/Briefs

Any supplemental written submission or legal brief must be delivered (original plus nine (9) copies) to the Secretary of the Board no later than 9:00 a.m. on the fifth business day before the applicable meeting in order for the Secretary to distribute such writing to each Board member by the close of

business on the next day. The Board reserves the right to require or permit later written submissions or briefs, or proposed findings of fact and conclusions of law to be submitted by the Applicant, the Staff, or any other party to a particular matter. Any submission or brief containing any citation to an opinion of a court must include a complete copy of the cited opinion. Any written or oral information sent directly to any Board member shall be disregarded and promptly turned over to the Chairman through the Secretary of the Board.

Section 9. Communication among Board Members or with an Outside Party

Any communication in writing, including by e-mail, or orally, by any Board member with any outside party regarding the substance of any matter before the Board that is or may be brought to a vote other than during a public hearing must be disclosed to the Board.

Article VI

Procedures for Hearing an Application for a Variance

The following procedures shall be applicable in the presentation of an Application for a Variance.

Section 1. Presentation of the Applicant and Staff, and Public Comment

A. The Applicant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant believes support the Application for a Variance. During the presentation by the Applicant, members of the Board may ask such questions as they deem appropriate. At the discretion of the Chairperson, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board.

B. The Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant believes supports the Application for a Variance. During the presentation by the Staff, members of the Board may ask such questions as they deem appropriate. At the discretion of the Chairperson the Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board.

C. The Applicant shall have a maximum of ten (10) minutes to present any rebuttal.

D. Following the presentations by the applicant and the Staff, the Chairperson shall open the public hearing and the Board shall receive comments from the public on the application for a Variance. After the completion of public comments, the Chairperson shall close the public hearing.

E. Following the presentations, the Board may ask such additional questions of the Applicant, the Staff, or the public as the Board members deem appropriate.

F. After the completion of public comments, the applicant and the Staff shall each have a maximum of ten (10) minutes to present any rebuttal or clarification they may deem appropriate. The Applicant shall have the right to last reply.

G. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.

Section 2. Vote on an Application for a Variance

A. Following the presentation by all parties as set forth above, the Board, upon a motion duly made and seconded, shall vote on the Application for a Variance.

B. The Motion shall contain, at a minimum, a finding of those facts which the member making the motion deems material to the decision including appropriate references to the relevant criteria of the Community Development Code (the “CDC”).

C. Pursuant to the provisions of the CDC, the Board shall approve the Application for a Variance, approve the Application for a Variance with conditions or modifications; or deny the Application for a Variance.

D. Following the vote, the Staff shall prepare a written Notice of Action. The Notice of Action shall include the decision of the board as well as the findings of fact and conclusions of law adopted by the Board with respect to the Application for a Variance and shall be signed by the Chairperson.

E. The signed Notice of Action shall be mailed by certified mail to the Applicant and the record owner of the real property affected by the Application for a Variance, if different from that of the Applicant.

F. The decision of the Board shall be deemed final and appealable upon mailing of the Notice of Action.

G. The Secretary to the Board shall file a copy of the Notice of Action in the official records of the Board. The certificate of mailing of the Notice of Action shall be made a part of the Board's file on the Application for a Variance.

Article V

Procedures for Hearing an Application for a Special Use Permit

The following procedures shall be applicable in the presentation of an Application for a Special Use Permit:

Section 1. Presentation of the Applicant and Staff, and Public Comment

A. The Applicant shall have a maximum of twenty (20) minutes to present the facts and Applicable legal principles that the Applicant believes support the Application for a Special Use Permit. During the presentation by Applicant, members of the Board may ask such questions as they deem appropriate. At the discretion of the Chairperson, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board.

B. The Staff shall have a maximum of twenty (20) minutes to present its recommendations and the facts and applicable legal principles that the Staff believes are applicable for a Special Use Permit. During the presentation by the Staff, members of the Board may ask such questions as they deem appropriate. At the discretion of the Chairperson the Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board.

C. The Staff shall have a maximum of ten (10) minutes to present any rebuttals.

D. Following the presentations by the Applicant and the Staff, the Board shall open the public hearing and the Board shall receive comments from the public on the Application for a Special Use Permit. After the completion of public comments, the Chairperson shall close the public hearing.

E. Following the presentations, the Board may ask such additional questions of the Applicant, Staff or the public as the Board members deem appropriate.

F. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.

Section 2. Vote on an Application for Special Use Permit

A. Following the presentation by all parties as set forth above, the Board, upon a motion duly made and seconded, shall vote on the Application for a Special Use Permit.

B. The motion shall contain, at a minimum, a finding of those facts which the member making the motion deems material to the decision and appropriate references to the relevant criteria of the CDC.

C. Pursuant to the provisions of the CDC, the Board shall approve the Application for Special Use Permit; approve the Application for Special Use Permit with conditions or modifications; or, deny the Application for Special Use Permit.

D. Following the vote, the staff shall prepare a written Notice of Action. The written Notice of Action shall include the decision of the board as well as the findings of fact and conclusions of law adopted by the Board with respect to the Application for a Special Use Permit and shall be signed by the Chairperson.

E. The signed Notice of Action shall be mailed by certified mail to the Applicant and the record owner of the real property affected by the Application for Special Use Permit, if different from the Applicant.

F. The decision of the Board shall be deemed final and appealable upon mailing of the Notice of Action.

G. The Secretary to the Board shall file a copy of the Notice of Action in the official records of the Board. A certificate of mailing of the Notice of Action shall be made a part of the Board's file on the Application for a Special Use Permit.

Article VI

Procedures for Hearing an Application for Appeal

The following procedures shall be applicable in the presentation of an Application for Appeal from a decision of the Director or his/her Designee:

Section 1. Jurisdiction

Once an appeal has been taken from any final decision of the Director or his/her Designee, the jurisdiction of the Director on the decision appealed shall cease, unless the matter is remanded by the Board to the Staff.

Section 2. Presentation of the Applicant, the Staff, and any Necessary Parties

A. The Applicant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant believes support the Application for Appeal. During the presentation by the Applicant, members of the Board may ask such questions as they deem appropriate. At the discretion of the Chairperson, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board.

B. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes are applicable to the Application for Appeal. During the presentation by the Staff, members of the Board may ask such questions as they deem appropriate. At the discretion of the Chairperson, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board.

C. If there are any necessary parties to an appeal, as determined by the Board, other than the Applicant and the Staff, such necessary parties shall each have a maximum of twenty (20) minutes to present the facts and applicable legal principles that they believe are applicable to the Application for Appeal. During the presentation by any necessary party, members of the Board may ask such questions as they deem appropriate. At the discretion of the Chairperson, a necessary party's time may be extended if they are unable to complete the presentation due to questioning from the Board.

D. Following the presentations, the Board may ask such additional questions of the Applicant, the Staff, or any necessary parties as the Board members deem appropriate.

E. The Applicant, the Staff, and necessary parties shall each have a maximum of ten (10) minutes to present any rebuttal or clarification they may deem appropriate. The Applicant shall have the right to last reply.

F. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.

Section 3. Vote on the Application for Appeal

A. Following the presentations by all parties as set forth above, the Board, upon a motion duly made and seconded, shall vote on the Application for Appeal.

B. The motion shall contain, at a minimum, a finding of those facts which the member making the motion deems material to the decision, including appropriate references to relevant criteria of the CDC.

C. When voting on the motion, the Board shall:

1. Affirm the action or decision of the Director; or,

2. Modify the action or decision of the Director, and that end, the Board shall have all of the powers of the Director, and may issue a permit, or direct that a permit be issued; or,

3. Reverse the action or decision of the Director, and to that end the Board shall have all of the powers of the Director, and may issue a permit, or direct that a permit be issued; or,

4. Remand the action or decision of the Director for such further proceedings as the Board deem appropriate.

Affirm the action of the Administrator from which the Appeal was taken; or,

D. Following the vote, the Board shall issue a written Notice of Decision. The written notice of decision shall include the decision as well as the findings of fact and conclusions of law adopted by the Board.

E. The Notice of Decision shall be mailed by certified mail to the Applicant, any necessary parties, and owner of record of the real property affected by the Application for Appeal, if different from that of the Applicant.

F. The Notice of Decision of the Board shall be deemed final and applicable upon mailing of the Notice of Decision.

G. The Secretary to the Board shall file a copy of the Notice of Decision in the official record book. The certificate of mailing shall be made a part of the Board's file on the Appeal.

Article VII

Procedures for a Remand

A. A member of the Board may move for a remand of any matter before the Board at any, time, subject to review and determination by the Board, if the record before the Board is insufficient. The motion for remand shall specifically set forth factual and legal grounds that cause the record to be insufficient.

B. Within sixty (60) days after a remand, unless otherwise agreed to by the parties, the remanded matter must be set for a new hearing before the Board, with written notice being given to all persons who express an interest in being informed.

C. If a remand is granted, the County and the Applicant shall obtain and present all additional information needed to render the record sufficient as detailed in the motion for the remand.

Article VIII

Procedure for Reconsideration

Any party aggrieved by a decision of the Board, if they desire to do so, is required to file any Petition for Reconsideration by delivering the same to the Director within five (5) days from the date of hearing. "Delivered" as referenced in this section, means actual delivery.

A. The Petition for Reconsideration shall be in writing and shall state with particularity the points alleged to have been overlooked or misinterpreted the Board.

- B. The Petition for Reconsideration shall be presented to the Board at the next regular scheduled meeting following the filing of the Petition for Reconsideration after compliance with the public notice requirements for a Board meeting.

C. Motions:

1. A Motion to grant the Petition for Reconsideration may only be made by a member of the Board who voted on the prevailing side in the original vote. The effect of the granting of a Motion for Reconsideration shall be that the Board will review the entire matter as if no previous vote had been taken.
2. A Motion to deny the Petition for Reconsideration may be made by any member of the Board. The effect of a vote denying a Petition for Reconsideration is that the vote shall be considered to be the Board's final action on the matter. A Notice of Decision shall be delivered to the Applicant following such vote.
3. Successive Petitions for Reconsideration are prohibited. No matter that has been reconsidered may be reconsidered a second time. The Board may not reconsider a denial of a Petition for Reconsideration.

Article IX

Miscellaneous

Section 1. Deferral of Application

An applicant may request that the Board consider a deferral of the application by submitting a written request for deferral to the Director. If public notification has not been provided in accordance with the CDC, the Director shall consider and decide the deferral request. A request for deferral shall be approved only for good cause. If public notification has been provided, the request for deferral shall be placed on the public hearing agenda for the Board to make a decision. The Board shall approve the request only for good cause. If an application is withdrawn after the required notice of the public hearing is provided, no application proposing the same or similar development or all or part of the same land shall be submitted within six (6) months after the date of withdrawal.

Section 2. Executive Session

If a member determines after reviewing a matter before the Board that the Board would benefit from the advice of legal counsel in executive session, they shall contact the Chairperson or his designee. The Chairperson will determine if an executive session is warranted. If the Chairperson decides that the Board would benefit from an executive session, they will inform the Board's secretary of the request. The Chairperson's decision can be overridden by a majority vote of the Board taken at a regular or special meeting of the Board.

Executive Session is a portion of a meeting of the Board at which the proceedings are secret. A member of the Board can be punished under disciplinary procedure if he violates the secrecy of an executive session. Anyone else permitted to be present is honor-bound not to divulge anything that occurred.

Permitted reasons for an executive session include:

legal advice relating to(a) a matter before the board,;
a pending, threatened or potential claim, or
procedural, conflict of interest, or general issues unrelated to a specific matter before the Board.

A motion must be made and seconded to go into executive session for specific, stated reasons, and passed by a majority vote;

No formal action may be taken in executive session except to:
Adjourn the executive session and return to public session

The Board can request attendance by non-members as they deem appropriate.

Section 3. Recess

A recess shall be declared as deemed appropriate by the Chairperson or by majority vote of the members present at the meeting. No discussion of any agenda item shall be conducted by Board members during the recess.

For the Zoning Board of Appeals
Beaufort County, South Carolina

By: 
Mr. Kevin Mack, Chairman

Date of Approval: August 26, 2021