

Incorporated 1927

# Town of Lake Lure

P. O. Box 255 • Lake Lure, NC 28746-0255 • 828/625-9983 • FAX 828/625-8371

## BY-LAWS ZONING BOARD OF ADJUSTMENT LAKE LURE, NORTH CAROLINA

### I. GENERAL RULES

The Zoning Board of Adjustment shall be governed by Chapter 160A, Article 19, §§160A-388 through 160A-393, of the North Carolina General Statutes, and by those powers and duties provided the Zoning Board of Adjustment by sections 92.080 through 92.088 of the zoning regulations of the Town of Lake Lure, North Carolina.

Members of the Zoning Board of Adjustment shall thoroughly familiarize themselves with these by-laws. The following clarification of duties and procedures specified in the statute and zoning regulations identified above does not duplicate either the statute or regulations. Both the statute and regulations must be consulted for the full powers and duties of the Zoning Board of Adjustment.

The Zoning Board of Adjustment is a quasi-judicial, decision making board. Quasi-judicial decisions involve the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. (NCGS 160A-393)

### II. ELECTION OF OFFICERS

A. The Board shall elect a chairman and vice chairman from among its members. Only regular members can be elected to these positions. A majority vote of the full membership (regular and alternate members) is required to elect these officers. Elected officers are eligible for re-election and there is no limitation regarding the number of times an officer can be re-elected.

B. Regular Elections. Regular elections of officers are held in January of each year. Officers elected in regular elections shall serve until they are no longer capable of performing the duties required, resign from the elected position or the Board, are removed for cause by a majority vote of the Town Council, or until a successor is elected, whichever occurs first.

C. Special Elections. Special elections are held anytime an elected officer is no longer capable of performing the duties required for the elected position or resigns from the elected position or the Board. Officers elected by special elections serve in the elected position until the next regular election.

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### **III. OFFICERS AND DUTIES**

A. Chairman. The chairman presides over Zoning Board of Adjustment meetings, hearings, and training sessions; swears-in all persons providing testimony on cases being heard; and, shall decide on all points of order and procedure, unless directed otherwise by a majority of the board in session at the time.

B. Vice Chairman. The vice chairman serves as chairman in the chairman's absence, and at such times, shall have the same powers and duties of the chairman.

C. Secretary. A secretary shall be provided by the town. The secretary, subject to the direction of the Chairman, shall keep all records, shall conduct all correspondence of the Board, shall arrange for 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 and hearing, every resolution acted upon by the Board, and all votes of any question, indicating the names of the members absent or failing to vote. The secretary is not eligible to vote on any matter.

### **IV. MEETINGS**

A. Board Meetings. Regular monthly meetings of the Board shall be held at a specified time and place, according to an annual schedule which will be published in January of the year. This schedule may be adjusted at any time by a majority vote of the board members. Meetings will be held in Town hall, provided however, that special meetings may be held at some other convenient place in the Town if so directed by the chairman, or requested by 3 or more members of the Board, at least 48 hours in advance of the meeting. Public notices of all meetings will be published in accordance with statutory requirements and the Zoning Regulations. Meetings may be canceled whenever there is no business for the Board, or whenever a quorum will not be available.

B. Conduct of meetings. All meetings shall be open to the public. The order of business at regular meetings may include, but is not limited to: 1) call to order, 2) roll call, 3) approval of the agenda, 4) approval of the minutes of the previous meeting, 5) hearing of cases as scheduled (anyone giving testimony on cases must be sworn or affirmed) with consideration and determination of cases heard, 6) reports of committees, 7) unfinished business, 8) new business, and 9) adjournment.

C. If the applicant or designated representative for a case is not at the Board's meeting, when the case is scheduled to be heard, the Board will not be obligated to vote on the case. The Board will consider any request to hear the appeal from the Zoning Administrator, or any other official of the Town, before deciding whether to postpone the matter.

D. If a meeting is canceled due to lack of quorum, disqualification of a Board member, or any other circumstances that will not allow the four-fifths vote of the board, the Chairman shall, if urgency dictates, convene the Board as soon as a majority of the membership is available to meet. Otherwise,

the Chairman, at his/her discretion, with agreement from the Zoning Administrator, can elect to hear that month's business at the next regular Board meeting.

E. If a board member has three absences in a twelve-month period, they will receive a verbal warning. If a board member has six absences in a twelve-month period, they will be asked to resign.

#### **V. QUORUM**

A. A quorum shall consist of three members of the Board, but the Board cannot vote on any appeal, variance request, conditional or special use permit when there are fewer than four members present.

B. If there are only four members available to hear a case, the Chairman will inform the applicant that all four would have to vote in the affirmative to grant the action requested since State Law requires a four-fifths vote. Discussion will occur as to the urgency of the case to determine whether a special meeting is needed. The applicant will then be given an opportunity to proceed with the case or to postpone it to the next regular meeting or a designated special meeting date if needed.

C. It is the inherent responsibility of all members, regular and alternates, to make every effort to attend every meeting to preclude the situation in paragraph B above.

#### **VI. VOTING**

A. No board member shall take part in a case in which he or she is personally or financially interested. Unless disqualified for personal or financial interest, all regular members may vote on any issue. Alternate members may only vote during the election of officers and on amendments to these by-laws, except when they are seated as part of the regular membership due to absence of a regular member; then, they may vote on any issue just as a regular member would. An abstention in any matter being voted on is considered an affirmative vote.

B. A four-fifths affirmative vote is required by State Law to grant an appeal, variance, conditional or special use permit. Failure to achieve a four-fifths affirmative vote automatically constitutes a denial or disapproval of the matter being voted upon.

C. In all other matters, except as noted in section IX (AMENDMENTS) of these by-laws, the vote of the majority of the members present and voting, shall decide issues before the Board.

#### **VII. REHEARINGS**

An application for a rehearing may be made in the same manner as provided for in 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. A rehearing shall be denied by the Board if in its judgment there has been no

substantial change in the facts, evidence, or conditions in the case. If the Board finds that there has been such a change, it shall thereupon treat the request in the same manner as any other application. An application for a rehearing shall be filed within one year of the original hearing that denied the original application.

### **VIII. ANNUAL REPORT**

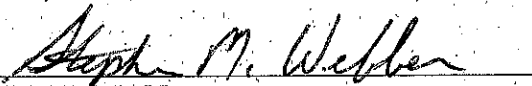
In December of every year, the Chairman shall prepare and submit a report of its activities for the year then ending to the Town Council. Such report shall contain a statement of the number of cases heard and a summary of the actions taken, along with any other matters the Board deems appropriate for inclusion.

### **IX. AMENDMENTS**

These by-laws, within the limits allowed by law, may be amended at any time by an affirmative vote of not less than four 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. Alternate members may vote on any amendment to these by-laws.

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DATE OF ORIGINAL ADOPTION:	<u>Unknown</u>
MAJOR AMENDMENT:	<u>January 23, 2007</u>
APPENDIX I ADDED:	<u>May 22, 2007</u>
DATE OF RE-ADOPTION:	<u>March 25, 2008</u>
LAST MAJOR AMENDMENT:	<u>January 22, 2013</u>
APPENDIX II ADDED:	<u>January 22, 2013</u>
APPENDIX III ADDED:	<u>January 22, 2013</u>

  
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CHAIRMAN

**APPENDIX I**

**POLICIES AND PROCEDURES**

**1. Board Policies.**

- A. Policies shall be adopted by a majority vote of the entire Board, including alternates.
- B. Policies may be amended or rescinded from time to time by a vote of a majority of members of the Board. Any proposed amendment may be read at any meeting. Final vote thereon, shall take place, if at all, not earlier than ten days nor later than seventy days following the initial reading.
- C. Policies may be suspended temporarily by a majority vote of those present, for reasons declared clearly and specifically and placed upon the minutes.

**2. Administration.**

The secretary shall house all official books, papers and records of the Board and shall be responsible for all official correspondence relative to hearings, meetings, resolutions and decisions of the Board, if any such delegation of duties is not specifically set forth in the Bylaws.

**3. Filing appeals and other applications.**

- A. Matters to come before the Board shall be filed with the Zoning Administrator between 8:30 a.m. and 4:30 p.m., except on weekends and holidays.
- B. All appeals shall be filed not later than 30 days after the appellant has received notice of the action that is appealed. Notice will be adjudged to have been received on the earliest of any of the following dates:
  - (1) in the case of hand delivery, on the date of delivery to the appellant or any person reasonably adjudged to be capable of forwarding it in a timely manner to the appellant or any director, officer or manager of the appellant;
  - (2) in the case of delivery sent return receipt requested, on the date of signing of the return receipt unless the appellant can demonstrate to the Board's satisfaction that such person was neither an appellant nor any person capable of forwarding it in a timely manner to the appellant or any director, officer or manager of the appellant;
  - (3) in the case of any other delivery sent through the U.S. mails, three days after the date of deposit in the U.S. mails, sufficient postage prepaid, and upon the credible sworn statement of the sender or any designee that the notice was so deposited and was not returned;

- (4) in the case of any nationally or regionally recognized private courier, on the date shown to have been delivered on a standard receipt or delivery form issued by the courier;
- (5) in the case of delivery by electronic mail, on the date of delivery indicated on an electronic delivery receipt form to an electronic address designated by the appellant to receive such notice, accompanied by a printed version of the receipt introduced by the credible sworn statement of the sender or any designee that the electronic receipt is genuine.

#### **4. Hearings.**

- A. Cases set for hearing on a given day shall be heard in the order in which they appear on the agenda unless the Chair directs otherwise. A Generic Protocol for Quasi-Judicial Hearings (short version) is at Appendix II to these bylaws. Appendix III is the long version of the same protocol. Either version may be used as needed for conducting hearings.
- B. The Chair shall rule on any matter of law before the Board, including the admissibility of evidence and the competence of any witness. In addition, the Chair may limit testimony by an examination of a witness for reasonable cause. On motion of the Chair or any Board member, the Chair's ruling may be reversed by an affirmative vote of three members of the board present for the entirety of the hearing to that point and eligible to vote on the application. In these bylaws and policies, a member may be absent from the meeting for a very brief period, as determined by the Chair under all the circumstances, and still be present for "the entirety of the hearing."
- C. Rulings of the Chair or the Board on the admissibility of evidence, the competence of witnesses and like matters shall not be strictly bound by the North Carolina Rules of Evidence; however, these rules shall be a guide to rulings on such matters, which rulings shall be made with the intention of preserving both the credibility of the evidence and the public policies of the State of North Carolina with respect to judicial and quasi-judicial hearings.
- D. Within a reasonable time before the hearing, any person who has the right to introduce evidence may subpoena witnesses.
- E. Each person who testifies at any hearing shall first furnish his name and address to the Board.
- F. Each matter in the hearing shall be heard in the following order. In each case, after testimony is presented, the witness may be cross examined.
  - (1) The Chair of the Board, or other presiding officer, shall read the notice of the hearing.

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- (2) The Zoning Administrator, or his designee, shall present a summary of the history of the application and contents of the file. The entire file shall be made part of the record of the case without the necessity of a motion by any person.
- (3) The applicant, or the applicant's designee, may make a statement giving reasons for the request.
- (4) Other persons in favor of the application shall be heard.
- (5) Those persons neither in favor of nor opposed to the application, may be heard.
- (6) The Zoning Administrator or other representative of the Town may present evidence.
- (7) Those persons opposed to the application shall be heard.
- (8) Parties shall have an opportunity to offer evidence in rebuttal.
- (9) The Chair shall close the hearing, after which no testimony shall be allowed unless the Board votes to reopen the hearing.
- (10) For good cause the Chair may continue the hearing.

**G. Following the hearing, the Board may take any of the following actions:**

- (1) Approve the application as submitted or modified. The Board may attach reasonable conditions to the approval of any application.
- (2) Deny the application.
- (3) Close the hearing and defer action on the case to a subsequent meeting, subject to its bylaws and procedures.

**H. No licensed attorney not appearing on his or her own behalf may both (1) offer testimony and (2) question any witness or argue (or both) at any one hearing.**

**I. The burden of proof in each case shall be as follows:**

- (1) In the case of an appeal, on the appellant.
- (2) In any other case, on the applicant.

**5. Decisions.**

If upon an attempted final vote no majority can be reached upon the issue, the Chair shall request of the members who voted with the decision reached in the initial vote to indicate as clearly as possible for the minutes, if in the Chair's opinion they did not do so at the time of the initial vote, the criteria of the regulations, met or unmet, upon which they based their vote, and the facts adduced at the hearing that support their conclusions.

**6. Public Records.**

The Board shall conform to the requirements of N.C.G.S. Chapter 132 regarding public records. Board public records are located in the offices of the Zoning Administrator, 2948 Memorial Highway, Lake Lure, NC. Regular office hours are from 8:30 a.m. to 4:30 p.m. business days. The official custodian of the public records shall be Board Secretary.

**7. Ethics.**

- A. No member of the board shall 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 conflicts 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. If an objection 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. A member who has been recused shall not sit with the Board and shall not participate in any further discussion on the matter.
- B. Every member sitting at any hearing shall announce before the beginning of testimony of the first witness any contacts concerning the application that are not already included in the file. The announcement or inclusion in the record will include the name of the person or persons with whom the contact occurred and the substance of the entire contact; *provided*, however, that no member need announce such general contacts concerning the hearing itself as may be general to all members in their capacity as members.

This appendix originally adopted by the Board of Adjustment of the Town of Lake Lure, North Carolina, in a meeting duly called, noticed and held in Lake Lure, North Carolina the 22-day of May, 2007.

The following Board members voted AYE: Werner Maringer, Bob Cameron, Mary Ann Dotson, Harvey Jacques, Fred Noble, Vicki Smith, and Stephen Webber

The following Board members voted NAY: None



APPENDIX II  
TOWN OF LAKE LURE  
BOARD OF ADJUSTMENT

GENERIC PROTOCOL FOR QUASI-JUDICIAL HEARINGS

- A. **Introduction.** [CHAIR INTRODUCES CASE BY READING THE AGENDA ITEM AND ADDING ANY OTHER HELPFUL COMMENTS.]
- B. **Swear Witnesses.**
- C. **Determination of Party Status.** [IF NECESSARY].
- D. **Ethical Considerations.** [AFTER SWEARING THE WITNESSES AND BEFORE OPENING THE HEARING, THE CHAIR SHOULD POLL THE MEMBERSHIP CONCERNING ETHICAL CONSIDERATIONS, INCLUDING CONFLICTS OF INTEREST AND EX PARTE COMMUNICATIONS.]
- E. **Staff Presentation.** [THE ZONING ADMINISTRATOR / LAKE ENFORCEMENT OFFICER OR DESIGNEE, PRESENTS A SUMMARY OF THE HISTORY OF THE APPLICATION AND CONTENTS OF THE FILE AND ANY OTHER TESTIMONY RELEVANT TO THE MATTER.]

*Cross-Examination.*

- F. **Appellant's or Applicant's Case.** [THE APPELLANT / APPLICANT PRESENTS ITS CASE.]

*Cross-Examination.*

- G. **Other Cases.** [ANY OTHERS WHO HAVE BEEN GRANTED PARTY STATUS (INCLUDING THE TOWN) PRESENT THEIR CASES.]

*Cross-Examination.*

- H. **Other Testimony.** [ANY OTHERS PRESENT WHO WISH TO TESTIFY ARE INVITED TO DO SO.]

*Cross-Examination.*

- I. **Rebuttal.** [THE PARTIES ARE AFFORDED THE OPPORTUNITY TO PRESENT REBUTTAL TESTIMONY IN THE FOLLOWING ORDER: THE TOWN; THE APPELLANT; OTHER PARTIES. REBUTTAL SHOULD BE LIMITED TO ADDRESSING MATTERS RAISED BY OTHER PARTIES IN THEIR TESTIMONY.]

*Cross-Examination.*

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- J. ***Closing Arguments.*** [IF REQUESTED, THE CHAIR MAY ALLOW PARTIES TO PRESENT CLOSING ARGUMENTS. IF CLOSING IS PERMITTED ANY PARTY, IT MUST BE PERMITTED ALL.]
- K. ***Close the Hearing.*** [AT THE CONCLUSION OF THE EVIDENCE AND CLOSING ARGUMENTS, IF ANY, THE CHAIR SHOULD CLOSE THE HEARING. THERE SHOULD BE NO MORE DIALOGUE BETWEEN THE AUDIENCE AND THE BOARD. THE HEARING MAY BE REOPENED ON MOTION AND A MAJORITY VOTE OF THE BOARD.]
- L. ***Deliberation.*** [BOARD MEMBERS SHOULD BE FORTHCOMING ABOUT THEIR ANALYSIS OF THE CASE. REMEMBER THIS IS A PUBLIC MEETING. MAKE SURE YOUR DISCUSSION IS AUDIBLE. STAFF IS WORKING HARD TO MAKE A RECORD, AND THE APPLICANT AND THE REST OF THE PUBLIC IS ENTITLED TO KNOW THE REASONS FOR YOUR DECISION. NO WHISPERING!!]
- M. ***Motion and Vote.*** [USE THE SUGGESTED MOTION WHICH WILL BE PROVIDED YOU IN YOUR AGENDA PACKET. ONCE THE MOTION HAS BEEN SECONDED, STATE SUCCINCTLY THE WAY YOU INTEND TO VOTE AND THE REASONS FOR THAT VOTE]

This appendix originally adopted by the Board of Adjustment of the Town of Lake Lure, North Carolina, in a meeting duly called, noticed and held in Lake Lure, North Carolina the 22 day of January, 2013.

The following Board members voted AYE: Michael Gray, John Kilby, Patricia Maringer, Melvin Owensby, Vicki Smith, and Stephen Webber

The following Board members voted NAY: None

**APPENDIX III**  
**TOWN OF LAKE LURE**  
**BOARD OF ADJUSTMENT**

**PROTOCOL FOR QUASI-JUDICIAL HEARINGS**

- A. **Introduction.** [CHAIR INTRODUCES CASE BY READING THE AGENDA ITEM AND THEN ADDS SOMETHING LIKE THE FOLLOWING].

“You are advised that the hearing on this matter will be *quasi-judicial* in nature. Accordingly, we can only entertain testimony or other evidence which is material and relevant to the case at hand. If you desire to testify, you must first be sworn, and you will be subject to examination by the members of this Board, by Town staff, the appellant, or another party who may be opposed to your position.

“It is incumbent upon this board to preserve an accurate record of what transpires here; therefore, we ask you to observe some rules of conduct. First, do not speak unless you have been recognized by me and are standing at the podium. Second, when you arrive at the podium, please state your name and address for the record.

“The appellant / applicant bears the burden of proving it is entitled to relief from this Board.

“Now, if you expect to testify in this matter, I ask you to come forward so that you may be sworn in. [ONCE THE WITNESSES ARE ASSEMBLED, ADMINISTER THE OATH]. Raise your right hands. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth? If so, please say, ‘I do.’”

- B. **Swear Witnesses.** [ADMINISTER THE OATH WITH LANGUAGE LIKE THE FOLLOWING:] “Do you swear or affirm that the testimony you are about to give in this matter is the truth, the whole truth, and nothing but the truth?”

- C. **Determination of Party Status.** [THE CHAIR STATES THE FOLLOWING:] “The Town and the appellant / applicant are determined to be parties with standing in this matter. Other persons are entitled to give testimony; however, if you desire to examine witnesses or present arguments, you must first be determined to have standing in the case. This means that you have a substantial interest in the outcome of the case which is different in kind from that of the general public. If there is anyone who wishes to be determined to have standing, please advise the board at this time so that we may examine you and make that determination.”

- D. **Ethical Considerations.** [AFTER SWEARING THE WITNESSES AND BEFORE OPENING THE HEARING, THE CHAIR SHOULD POLL THE MEMBERSHIP CONCERNING CERTAIN ETHICAL CONSIDERATIONS.] “I am now going to poll the members concerning certain ethical considerations. [TO THE MEMBERS:] First, have any members of this Board had any conversations or contacts

concerning this case other than the agenda packet distributed to the Board in anticipation of this meeting? [IF SO, THE MEMBER SHOULD ANNOUNCE THE NAME(S) OF THE PERSON(S) WITH WHOM THE CONTACT OCCURRED AND THE SUBSTANCE OF THE COMMUNICATION.] Second, is any member subject to a conflict of interest or otherwise unable to be an impartial decision-maker in the matter under consideration? [A MEMBER SHOULD EXCUSE HIMSELF FROM HEARING A CASE IF HE OR SHE CANNOT BE AN IMPARTIAL DECISION-MAKER. ONCE CONFLICTED MEMBERS HAVE BEEN EXCUSED, THE CHAIR SHOULD ADDRESS THE PARTIES AS FOLLOWS:]. Does any party have an objection concerning the impartiality of this panel?

- E. **Staff Presentation.** [THE ZONING ADMINISTRATOR / LAKE ENFORCEMENT OFFICER OR DESIGNEE, PRESENTS A SUMMARY OF THE HISTORY OF THE APPLICATION AND CONTENTS OF THE FILE AND ANY OTHER TESTIMONY RELEVANT TO THE MATTER. THE APPELLANT / APPLICANT AND ANY OTHER DESIGNATED PARTIES ARE OFFERED THE OPPORTUNITY TO CROSS-EXAMINE.]
- F. **Appellant's or Applicant's Case.** [THE APPELLANT / APPLICANT PRESENTS ITS CASE. OTHER PARTIES ARE OFFERED THE OPPORTUNITY TO CROSS-EXAMINE.]
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M. *Motion and Vote.* [USE THE SUGGESTED MOTION WHICH WILL BE PROVIDED YOU IN YOUR AGENDA PACKET. ONCE THE MOTION HAS BEEN SECONDED, STATE SUCCINCTLY THE WAY YOU INTEND TO VOTE AND THE REASONS FOR THAT VOTE]

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