

**VILLAGE OF MARVIN  
BOARD OF ADJUSTMENT  
RULES OF PROCEDURE**

**I. GENERAL RULES**

The Zoning Board of Adjustment (hereinafter referred to as the “Board”) shall be governed by the terms of Chapter 160A, Article 19, part 3 of the General Statutes of North Carolina and by the Village of Marvin Zoning Ordinance. All members of the Board shall thoroughly familiarize themselves with these laws. The Board, being a public body, shall at all times conduct meetings in conformity with the applicable Open Meetings Law statutes.

**II. OFFICERS & DUTIES**

**A. Appointments**

The Board of Adjustment shall consist of five (5) regular members and two (2) alternate members, each appointed by the Village Council. Persons may be appointed to the same position for successive terms.

The alternate members of the Board shall be requested to attend all regular and special meetings and shall be able to cast a vote when a regular member of the Board is absent or if any Board member has a conflict of interest.

Once appointed by the Village Council, the alternate members shall be assigned numbers “1” and “2” by the Chairman. The following system shall be employed for using alternate members:

*Member “1” shall first be asked to serve. If he/she is absent or has a conflict of interest, Member “2” shall be asked to serve. If Member “1” does serve, Member “2” will be first asked to serve at the next meeting. If Member “2” does serve, Member “1” will be asked to serve at the next meeting. If Member “2” is asked to serve, but is absent or has a conflict of interest, Member “1” shall serve.*

**B. Elections**

A Chairman and a Vice-Chairman shall be elected by majority vote of the regular Board membership. Each officer shall serve for a one (1) year term but may be elected by the Board membership for successive terms to the same office. Annually, at the regular meeting of the Board held in the month of January, a Chairman and Vice-Chairman shall be elected. Each officer shall serve until relieved of his duties as herein provided.

**C. Duties**

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 Vice-Chairman shall serve as acting Chairman in the absence of the Chairman, and at such times he/she shall have the same powers and duties as the Chairman.

**D. Secretary**

The Village Council shall arrange to have secretarial duties performed for the Board. Said persons(s) (hereafter referred to as the “Secretary”), subject to the direction of the Chairman, shall take minutes and keep all records. The Secretary shall conduct all correspondence of the Board, arrange for all public notices required to be given, notify members of pending meetings and their agenda, notify parties to cases before the Board of its decision on such cases, and 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 chosen from outside the membership of the Board, he/she shall not be eligible to vote upon any matter. The minutes and records of the Board of Adjustment shall be kept in the Office of the Village Clerk.

**III. RULES OF CONDUCT FOR MEMBERS**

**A. Removal**

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

**B. Attendance**

In order for the Board to carry out its duties and responsibilities, it is necessary for all members to attend the meetings. If any regular member is absent for two (2) consecutive meetings, the Chairman may direct the Secretary to notify such member in writing of his absences and if such member fails to attend the next meeting, the Board of Adjustment may, by a majority vote of the remaining regular and alternate members, request that the position be vacated and also request that a replacement be made by the Village Council.

**C. Conflicts of Interest**

No member of the Board shall seek to influence a decision, participate in any action or cast a vote involving any matter that is before the Board which may result in a private benefit to themselves, their immediate relatives or their business interest. A member may be excused from voting on a particular issue under the following circumstances:

1. If the member has a direct financial interest in the outcome of the matter at hand; or
2. If the matter at hand involves the member's own official conduct; or
3. If the member has such close personal ties to the applicant that he/she cannot reasonably be expected to exercise sound and impartial judgment on behalf of the public’s interest.

If a Board member determines that he/she may have a conflict of interest on a particular issue, he/she shall declare the nature of such conflict and ask to be excused from voting on the issue related to such conflict. The remaining regular members, by majority vote, shall determine whether such conflict exists and whether said member may excuse himself/herself from further deliberations on said matter. If a member is excused from voting, he/she shall remove himself/herself from the meeting room during all deliberations pertaining to such matter. In no instance may a member be excused from voting merely due to an unwillingness to vote on the issue at hand and where no conflict of interest is found to exist.

A challenge to the existence of a conflict of interest or a challenge of an undisclosed conflict of interest may be filed by any interested party with the Board. Such a challenge may be an appeal for a review of the findings of the Board or may be for the purpose of alleging an undeclared conflict of interest. Any challenge made to the Board shall be supported by competent evidence and shall be submitted at a properly convened meeting of the Board. The Board shall hear all evidence and, by majority vote of the remaining regular members, shall make the final determination as to the existence of a conflict of interest.

In the event a Board member is found to have a conflict of interest and is excused from voting by the Board, he/she shall be replaced by an alternate member for that business associated with the conflict of interest.

All Board members may sign a Conflict of Interest form as requested by the Village Council, which does not preclude appointment to the Board.

#### **D. Discussion of Board Cases**

Board members shall refrain from discussing upcoming matters of business with any parties, including other Board members, prior to the meeting at which such items are to be publicly discussed; provided however, that members may receive and/or seek general technical information pertaining to the case from the Secretary or Zoning Administrator prior to the Board meeting at which the case is to be heard.

### **IV. MEETINGS**

#### **A. Regular Meetings**

Meetings of the Board shall be held at the Village of Marvin Village Hall as meetings warrant provided that meetings may be held at any other conveniently located place in the Marvin area as directed by the Chairman in advance of the meeting. The Secretary shall notify each member (including the alternate members) of each meeting.

#### **B. Special Meetings**

Special meetings of the Board may be called at any time by the Chairman provided that at least forty-eight (48) hours written notice of the time and place of a special meeting be given, by the Secretary, to each member of the Board including the alternate members.

### **C. Voting**

The Board shall not pass upon an appeal or application for a variance when there are less than four (4) voting members present. No more than five (5) regular and alternate members may vote on any matter for which a public hearing was held. Unless as otherwise specified, voting on procedural matters which does not necessitate a public hearing shall include all regular and alternate members in attendance. The Chairman shall be able to vote on any matter, including making a motion. An unauthorized abstention from voting from a member in attendance shall be considered as a “yea” vote. Only members who are in attendance shall be able to vote.

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

### **D. Conduct of Meetings**

All meetings shall be open to the public. The order of business at meetings shall be as follows:

1. Determination of Quorum
2. Approval of Minutes of Previous Meetings
3. Hearing of Cases
4. Other Business
5. Adjourn

### **E. Continuation of Meetings**

Meetings may be continued from one date to another provided that the reconvened meeting is held in a conveniently located meeting site in the Marvin area.

## **V. APPEALS, APPLICATIONS, PUBLIC HEARINGS**

### **A. Types of Appeals**

The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator.

### **B. Procedure for Filing Applications**

The Board shall hear no appeal unless a completed application for an appeal is filed within thirty (30) days after the interested party or parties received written notice of the order, requirement, decision, or determination by the Zoning Administrator. Applications for variances and appeals shall be heard no less than fourteen (14) days after the completed application is filed with the Zoning Administrator. Provided, however, that the Board shall hear the case within forty (40) days from the date of submittal of the complete application. All applications shall be made upon the form furnished by the Village for that purpose, and all information required thereon shall be complete before an application shall be considered as having been filed.

### **C. Fees**

A fee, in accordance with a fee schedule adopted by the Village Council shall accompany an application for an appeal or variance. No application shall be considered complete unless accompanied by the fee as herein prescribed.

### **D. Public Hearing Mandate**

A public hearing conducted by the Board shall be required to decide all appeals and interpretations and to grant any variances to the terms of the Ordinance

### **E. Conduct of Hearing**

Any Board public hearing shall be conducted in a quasi-judicial manner. Any party may appear in person or by agent or by attorney at the hearing. The Chairman shall place all persons presenting evidence before the Board under oath and the opposing party may cross-examine them. Unless otherwise determined by the Chairman, the order of business for public hearings shall be as follows:

1. The Chairman or such person as he/she shall direct, shall give a preliminary statement of the case;
2. Persons giving testimony shall be asked to be sworn in.
3. The applicant shall present the argument in support of his application;
4. Persons opposed to granting the application shall present the argument against the application;
5. Other persons in favor of granting the application shall present the argument for the application;
6. Both sides will be permitted to present rebuttals to opposing testimony;
7. The Chairman, or his designee, shall summarize the evidence that has been presented, giving parties the opportunity to make objections or corrections.
8. The Chairman shall close the period for public discussion. The Board shall publicly discuss the case without further input from the public. Board members, however, may seek input, clarification, etc. from persons eligible to give evidence who are seated in the audience on any piece of evidence heretofore presented. Cross-examination and rebuttals may be made only on any such new evidence presented.
9. The Board shall render a decision on the matter or, if it so chooses, continue the public hearing to a publicly stated date, time, and location at least forty-eight (48) hours thereafter. A final decision on a case shall be made no later than thirty (30) days after the public hearing was opened **or at the next regularly scheduled meeting of the Board of Adjustment following the hearing, whichever occurs later.**

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The Chairman shall have the authority to put fair and reasonable time limits on persons speaking at the public hearing in order to facilitate discussion and to have the meeting conducted in a time-efficient manner.

**F. Re-hearings**

An application for a rehearing may be made in the same manner as provided for in the original hearing. All applications for re-hearings shall be made within fifteen (15) days after the decision of the Board has been filed in its office. 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 there upon treat the request in the same manner as any other application. The Board shall not be required to hold a public hearing to determine whether or not a rehearing of the case shall be conducted. Said determination shall, however, require a four-fifths vote of the regular membership.

**G. Decisions**

1. Form

Written notice of the decision in a case shall be sent by certified mail or hand-delivered to the applicant and to every aggrieved party who has filed a written request for such notice with the Secretary or the Chairman when the hearing is held by the Secretary, within five (5) working days after the case is decided. The final decision of the Board shall be filed in the Village Clerk's Office. The final decision shown in the record of the case shall be entered in the minutes of the Board. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board.

2. Voting at Hearings

The concurring vote of four-fifths of the members of the Board (i.e., at least four (4) voting members) shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant any matter upon which the Board is required by Ordinance to pass. Voting on any issue shall be done by a show of hands or by voice, as directed by the Chairman. An abstention shall be counted as a "yes" vote.

**H.** Any person or persons, jointly or severally, aggrieved by any decision of the Board, may, within thirty (30) days after the Board's decision has been filed or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman at the time of its hearing of the case, whichever is later, 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 by the Superior Court by proceedings in the nature of certiorari as provided by law.

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**VI. AMENDMENTS**

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

Adopted, this 21<sup>st</sup> day of September, 2000.

Amended this 16<sup>th</sup> day of January, 2007.

Amended this 23<sup>rd</sup> day of February, 2010.

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*John Baresich, Chairman of the Board*

Attest:

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*Melody A. Graham, Clerk*