



## **BOARD OF ZONING APPEALS RULES OF PROCEDURE**

### **Article I Organization**

#### **Section 1. Rules**

These rules of procedure are adopted pursuant to S.C. Code § 6-29-790 for the Mount Pleasant Board of Zoning Appeals which consists of seven (7) members appointed by Town Council.

#### **Section 2. Officers**

The officers of the Board shall be a chairman and vice-chairman elected for one year terms at the first regularly scheduled meeting of the Board in each calendar year. The Board shall appoint a member of the staff of the Town as secretary of the Board.

#### **Section 3. Chairman**

The chairman shall be a voting member of the Board and shall:

- a. Call meetings of the Board;
- b. Preside at meetings and hearings; and swear in witnesses;
- c. Act as spokesperson for the Board;
- d. Sign documents for the Board;
- e. Have orders of the Board served on parties; and
- f. Perform other duties approved by the Board.

#### **Section 4. Vice-Chairman**

The vice-chairman shall exercise the duties of the chairman in the absence, disability, or disqualification of the chairman. In the absence of the chairman and vice-chairman, an acting chairman shall be elected by the members present.

#### **Section 5. Secretary**

The secretary shall:

- a. Provide and publish notice of appeals and meetings;
- b. Assist the chairman in preparation of agenda;
- c. See that property involved in appeals for variances or special exceptions is property posted;
- d. Keep recordings and minutes of meetings and hearings;
- e. Maintain Board records as public records;
- f. Serve Board decisions on parties;
- g. Attend to Board correspondence; and
- h. Perform other duties normally carried out by a secretary.



## **Article II Meetings**

### **Section 1. Time and Place**

An annual schedule of regular meetings shall be published and posted at the designated Town office in December of each year. Special meetings may be called by the chairman upon 24 hours notice, posted and delivered to all members and local news media. Meetings shall be held at the place stated in the notices and shall be open to the public.

### **Section 2. Agenda**

A written agenda shall be furnished by the secretary to each member of the Board and the news media upon request and shall be posted at least twenty four (24) hours prior to any meeting, including special meetings. Items may be removed from the agenda or postponed at a meeting by a majority vote.

### **Section 3. Quorum**

A majority of the members of the Board shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting.

### **Section 4. Rules of Order**

Robert's Rules of Order shall govern the conduct of meetings except as otherwise provided by these Rules of Procedure.

### **Section 5. Ex parte communication**

Unless required for the disposition ex parte of matters authorized by law, no commissioner or hearing officer who, in a contested case, is to render a final decision or to make a proposed final decision shall communicate, directly or indirectly, in connection with any issue of fact with any person or party, or in connection with any issue of law, with any party or the party's representative, without notice and opportunity for all parties to participate.

Unless required for the disposition of ex parte matters authorized by law, no party or intervenor in a contested case, no other agency, and no person who has a direct or indirect interest in the outcome of the case, shall communicate, directly or indirectly, in connection with any issue in that case, with a hearing officer or commissioner, or with any employee or agent of the commission assigned to assist the hearing officer or commissioners in such case, without notice and opportunity for all parties to participate in the communication.

The provisions of this section shall apply from the date the matter pending before the commission commences as a contested case, as set forth by the Regulations of State of South Carolina, to and including the effective date of the final decision.



## **Article III Appeals Procedure**

### **Section 1. Form of Appeal**

Appeals from administrative decisions, applications for variances, and applications for special exceptions shall be filed on forms approved by the Board and provided to applicants by the secretary. The Board may require additional information deemed necessary. The failure to submit adequate information may be grounds for dismissal. An application filed by an agent shall be accompanied by written designation of the agent signed by the applicant or party in interest.

### **Section 2. Time for Appeal**

An appeal from an administrative decision must be filed within thirty (30) days after actual notice of the decision by delivery of the approved appeal form to the secretary of the Board who shall notify the official appealed from.

### **Section 3. Calendar**

Appeals and applications shall be marked with the date of receipt and placed on the hearing calendar in the order in which received. Appeals shall be heard in the order on the calendar unless otherwise set by the Board for good cause shown.

### **Section 4. Withdrawal of Appeal**

Any appeal or application may be withdrawn by written notice delivered to the secretary prior to action by the Board. An appeal from an administrative decision which is withdrawn may not be refilled after the thirty (30) day time for appeal has expired. Withdrawn application for variances and special exceptions may be refilled after six (6) months and shall be placed on the calendar according to the date refilled.

### **Section 5. Continuances**

The hearing of an appeal or application may be continued by the Board upon its own motion. Requests for continuances from applicants or parties other than Board members may only be approved upon a showing of good cause.

### **Section 6. Deferrals**

Parties filing appeals or applications may, after the application has been advertised as part of a meeting's agenda, request that the application be deferred; except in the case of an appeal for reconsideration of a Board decision, which may not be deferred after the application has been advertised as part of an agenda. A request for deferral must be made in writing, signed (or sent via electronic mail) by the applicant or agent, and must specify a reason for the deferral. An appeal or application may be deferred by the Board upon its own motion. Applications deferred by the Board shall be heard at the next regularly scheduled meeting. Without an extraordinary and compelling reason, only one such deferral shall be permitted.



**Section 7. Notice**

- a. Public notice of a hearing of the Board shall be published in a local newspaper at least fifteen (15) days prior to the hearing. The newspaper notice shall include the time, date and place of the hearing, a description of each matter to be heard and the identification of the property affected.
- b. In cases involving variances or special exceptions, a sign shall be placed on or adjacent to the property affected. The sign shall be visible from each public thoroughfare abutting the property and shall state the appeal action requested (either variance or special exception), the time date and place of the hearing and a telephone number where additional information may be obtained.
- c. Parties in interest to the requested action shall also receive due notice. Receipt of a copy of the appeal application including the time and date of the appeal shall be considered notification to the applicant and/or his representative.

**Article IV  
Hearing Procedure**

**Section 1. Appearances**

The applicant or any party in interest may appear in person or by agent or attorney. The Board may postpone or proceed to dispose of a matter on the records before it in the absence of an appearance on behalf of an applicant.

**Section 2. Witnesses**

Testimony by each and every witness shall be presented under oath. The oath shall be administered by the Chair or the Chair's designee.

**Section 3. Cross-examination**

No party shall have the right to cross-examine witnesses; however, the opportunity to examine opposing witnesses may be freely extended when conducted in an orderly manner. Intimidation of witnesses will not be allowed.

**Section 4. Evidence**

Relevant documents, photographs, maps, plans, drawings, etc., will be received in the record without authentication in the form of legible copies. Relevant testimony which is not cumulative or hearsay will be received. The chairman will rule on all evidentiary matters. Evidence may be placed in the record with an objection noted.

**Section 5. Conduct of Hearing**

The normal order of hearing, subject to modification by the chairman, shall be:



After the statement of the matter to be heard, the established procedures will be grouped into three parts, as described below:

- a. Presentation by the official appealed (5-minute limit).
- b. Presentation by Applicant (5-minute limit).
- c. Public comment.
  1. Proponents of the request (3-minute limit).
  2. Opponents of the request (3-minute limit).

Board members shall refrain from making comments and /or asking questions during the proceedings. Upon the conclusion of the presentations, each member will then be called upon by the Chairman for comments and/or questions prior to a motion being made. The Board shall then have the opportunity to discuss any motion made.

#### **Section 6. Disposition**

- a. The Board may deliberate and make a final disposition of a matter by majority vote of members present at the hearing and qualified to vote, provided that not less than a quorum are present. The vote may be taken at the same or a subsequent meeting. A member may not vote on a matter which the member has not heard. Deliberations shall be conducted and voting shall be in public.
- b. In the event of a tie vote on any given motion, the board shall endeavor to either approve or disapprove an applicant's request through subsequent motions and votes. However, if after at least one additional attempt the board remains deadlocked as determined by the Chairman, no further motions are necessary. No final decision has been made and the matter is unresolved. The applicant may then return at a subsequent meeting for further consideration of the relief requested. Since no final decision has been rendered, a return will not be considered a rehearing subject to rehearing constraints; rather, it will be considered a new hearing. All board members, including those that had and had not participated in the original hearing may participate in the new hearing, but members that had previously participated must do so with an open mind to the new proceedings. Any member prejudiced otherwise shall state so on the record and must not participate.
- c. In order to complete additional applications and receive the necessary permits for construction, variances and special exceptions shall be vested for a period of two years, subject to the rights and restrictions contained within zoning code Section 156.049 Vested Rights. Failure to receive the necessary permits within the prescribed timeframe shall render the relief granted as a result of the appeal void and of no force or effect.
- d. Unless specifically modified by the Board's approval, relief granted as the result of an appeal shall be in accordance with the specific plans submitted with the application. Minor changes to the approved plans that do not affect the relief granted may be allowed to meet



subsequent approval requirements, if approval of the same is granted by the zoning administrator.

**Section 7. Form of Order**

An order shall be issued disposing of a matter by granting or denying relief with such conditions may be deemed necessary; or affirming, modifying, or reversing an administrative decision. A matter may be dismissed for lack of jurisdiction or prosecution. Findings of fact and conclusion of law shall be separately stated in an order.

**Section 8. Service of Order**

The secretary shall deliver a copy of an order to each party in interest by certified mail.

**Section 9. Rehearing**

The Board may grant a rehearing of an application which has been dismissed or denied upon written request filed with the secretary within fifteen (15) days after delivery of the order accompanied by new evidence which could not reasonably have been presented at the hearing, or evidence of a clerical error or mutual mistake of fact affecting the outcome.

**Article V  
Records**

**Section 1. Minutes**

The secretary shall record all meetings and hearings of the Board which shall be preserved until final action is taken on all matters presented. The secretary shall prepare minutes of each meeting for approval by the Board at the next regular meeting. Minutes shall be maintained as public records.

**Section 2. Orders and Documents**

The secretary shall assist in the preparation and service of all orders of the Board in appropriate form. Copies of all notices, correspondence, documentary evidence, orders and forms shall be maintained as public records.

**Article VI  
Adoption and Amendment**

**Section 1. Adoption**

These rules were adopted by vote of a majority of the members of the Board at the meeting held on January 28, 2019.

**Section 2. Amendment**

These rules may be amended at any regular meeting of the Board by majority vote of the members of the Board at least seven (7) days after the written amendment is delivered to all members.