

CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS



STAFF REPORT DEPARTMENT OF GROWTH MANAGEMENT

MEETING DATE:	July 23, 2013
PROJECT:	Resolution Approving the Amended Rules of Procedure for the Town of Bluffton Construction Board of Adjustment and Appeals
PROJECT MANAGER:	Brie Giroux, Senior Policy Analyst, Growth Management

RECOMMENDATION: The Construction Board of Adjustment and Appeals approve a Resolution adopting the Rules of Procedure for the Town of Bluffton Construction Board of Adjustment and Appeals (Attachment 1).

INTRODUCTION: The Town of Bluffton Construction Board Of Adjustment And Appeals (Construction Board) was established under the provisions of the Code of Ordinances for the Town of Bluffton Chapter 5, Official Construction Code adopted by Town Council through Ordinance 2008-19 on October 21, 2008. Once established, the Construction Board adopted Rules of Procedure on January 27, 2009 (Attachment 2).

In an ongoing effort to align Growth Management Boards, Commissions, and Committees, Staff drafted standardized Rules of Procedure which were adopted by Town Council Resolution on October 11, 2011. Further, Town Council established Chapter 3 Boards, Committees, and Commissions Terms, Appointments and Qualifications (Attachment 3) of the Code of Ordinances for the Town of Bluffton (Code) through Ordinance 2012-01 adopted on February 20, 2012 which was later amended by Ordinance 2012-08 adopted on November 13, 2012.

As a result, Staff drafted the proposed Construction Board Rules of Procedure to align with the Standardized Rules of Procedure adopted by Town Council and comply with the Code.

These proposed Rules of Procedure detail the roles, responsibilities, and functions of the Construction Board to provide clarity and guidance to effectively conduct meetings, perform duties, and ensure compliance with local and state law.

ATTACHMENT:

1. Resolution Adopting the Amended Rules of Procedure for the Town of Bluffton Construction Board of Adjustment and Appeals.
 - a. Exhibit A – Construction Board of Adjustment and Appeals Rules of Procedure.

2. Current Construction Board of Adjustment and Appeals Rules of Procedure.
3. Code of Ordinances for the Town of Bluffton, Chapter 3 Boards, Committees, and Commissions Terms, Appointments and Qualifications.

**CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS
RESOLUTION**

**ADOPTING THE AMENDED RULES OF PROCEDURE FOR THE TOWN OF
BLUFFTON CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS**

WHEREAS, the Town of Bluffton Construction Board Of Adjustment And Appeals (Construction Board) was established under the provisions of the Code of Ordinances for the Town of Bluffton Chapter 5, Official Construction Code adopted by Ordinance 2008-19 on October 21, 2008; and

WHEREAS, the Town has determined that it is in its best interest for all Boards, Commissions and Committees to adopt Rules of Procedure; and

WHEREAS, the Construction Board adopted Rules of Procedure on January 27, 2009; and

WHEREAS, the Construction Board desires to amend the adopted Rules of Procedure; and

WHEREAS, the Construction Board shall adopt these amended Rules of Procedure by Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF BLUFFTON CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS AS FOLLOWS:

1. The Town of Bluffton Construction Board Of Adjustment And Appeals hereby adopts the amended Rules of Procedure which are attached and incorporated as "Exhibit A" hereto.

THIS RESOLUTION SHALL BE EFFECTIVE IMMEDIATELY UPON ADOPTION.

SIGNED, SEALED AND DELIVERED AS OF THIS ____ DAY OF _____,
_____.

Chair

ATTEST:

Secretary

Exhibit A

Town of Bluffton Construction Board of Adjustment and Appeals Rules of Procedure

Section 1. Establishment.

The Town of Bluffton Construction Board of Adjustment and Appeals (Board) is established under the provisions in the Town of Bluffton Code of Ordinances for the Town of Bluffton Chapter 3, Boards, Committees and Commissions Terms, Appointments and Qualifications (Code); and Chapter 5, Official Construction Code (Construction Code).

Section 2. Rules.

The Board is adopting these Rules of Procedure by Resolution in accordance with the Code.

Section 3. Membership.

- A. Appointment. The Board shall consist of nine (9) members appointed by Town Council in accordance with the Construction Code. A vacancy in membership must be filled for the unexpired term by Town Council appointment. Board members shall serve without compensation. No member of the Board shall hold any other public office or elected position in the Town, other municipalities within Beaufort County, or Beaufort County.
- B. Officers. The Chair and Vice-Chair shall be elected annually by a majority vote of members present and qualified to vote and shall perform the following duties:
1. The Chair shall be a voting member of the Board and shall:
 - i. Call meetings of the Board to order;
 - ii. Call Special Meetings of the Board;
 - iii. Preside at meetings and hearings;
 - iv. Swear in witnesses;
 - v. Sign documents for the Board;
 - vi. Have orders of the Board served on parties;
 - vii. Appoint any committees found necessary to investigate any matters before the Board; and
 - viii. Perform other duties approved by the Board.
 2. The Vice-Chair shall preside over the meeting or hearing and perform the required duties set forth in Section 3.B.1 of these Rules of Procedure in the absence of the Chair. In the absence of the Chair and Vice-Chair, an

acting Chair shall be elected by a majority vote of members present and qualified to vote.

- C. Secretary. The Building Official, or their designee, shall serve as Secretary and shall perform the following duties:
1. Provide notice of meetings and Public Hearings;
 2. Assist the Chair and Staff in preparation of agenda;
 3. Keep minutes of meetings and hearings;
 4. Maintain Board records as public records;
 5. Attend to Board correspondence;
 6. Serve orders of the Board on parties; and
 7. Perform other duties normally carried out by a Secretary.
- D. Removal. A member shall notify the Secretary of an absence 24 hours before the scheduled meeting. Town Council may remove any member after written notice in accordance with Code of Ordinances of the Town of Bluffton Chapter 3, Section 3.2(d).

Section 4. Education and Training.

- A. Yearly Board and Commission Updates. Not less frequently than once annually, the Town Manager may convene a meeting of all Chairs of the Boards and Commissions for purposes of allowing the Chairs to share experiences in addressing issues of process and procedure. Not less frequently than once annually, the Building Official shall present an update to Town Council of the Boards activities for the previous 12 months at a regularly scheduled Town Council meeting.

Section 5. Voting/Quorum.

- A. 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.
- B. Voting. A member must be present to vote. Each member shall vote on every question unless disqualified by law. The Board may deliberate and make final disposition of a matter by a majority vote of members present and qualified to vote. Deliberating and voting shall be done in public. The concurring vote of a simple majority of the required quorum of the Board shall be necessary to affirm any motion by the Board for a variance. To appeal the Building Official's interpretation there must be five (5) concurring votes of the Board. If the five (5) votes are not rendered by the Board the Building Official's interpretation stands.

Section 6. Ethics.

- A. Ethics Reform Act. The Board shall adhere to the *South Carolina Ethics Reform Act*, (S.C. Code of Laws, Title 8, Chapter 13).
- B. Disqualification. The question of disqualification shall be decided by the member affected, who shall announce the reason for disqualification, provide the Secretary with a completed Recusal Form, have it placed in the minutes, and refrain from deliberating or voting on the question in any way.
- C. Ex Parte Contact. Any ex parte contacts with applicants, opponents, or other parties of interest in a matter to come before the Board shall be reported at the earliest opportunity to the Chair. It shall be considered the duty of Board members to conduct themselves in a manner that will discourage such contact.
- D. Expressions of Bias. Board members shall avoid all situations and circumstances that may lead to bias or prejudice in manners presented to the Board. No Board member shall offer expressions of individual opinion regarding any matter of consideration by the Board prior to the meeting.

Section 7. Meetings.

- A. Robert's Rules of Order. The current edition of *Robert's Rules of Order* shall govern the conduct of meetings except as otherwise provided by these Rules of Procedure.
- B. Meeting Schedule. Meetings of the Board must be scheduled at least once (1) per month. Each December, the Board shall adopt, publish, and post its schedule of meetings for the next calendar year. Meetings shall be held at the Theodore D. Washington Municipal Building located at 20 Bridge Street at 6:00 pm and shall be open to the public. Meetings may be cancelled by the Building Official if there is no business before the Board.
- C. Agendas. The Secretary shall post the meeting agenda at least five (5) days prior to each regular meeting by notice delivered to the local news media, interested citizens and posting at Town Hall. Special meetings may be held at the call of the Chair or a majority of the Board upon twenty-four (24) hours by notice delivered to the local news media, interested citizens and posting at Town Hall.
- D. Agenda Amendment. Items may be added to the agenda at a meeting by a majority vote of members present and qualified to vote.
- E. Applicant Attendance. The applicant or any party in interest must 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.

- F. Conduct of Meeting. In matters brought before the Board for public meeting, the normal order to hear the agenda item, subject to modification by the Chair, shall be:
1. Statement of matter to be heard;
 2. Presentation by Staff;
 3. Presentation by Applicant;
 4. Staff Remarks;
 5. Board Comments and Questions;
 6. Public Comment on the current agenda item;
 7. Final Staff Remarks;
 8. Final Applicant Remarks; and
 9. Motion, debate, and vote of the Board.
- G. Public Comment. Members of the public desiring to be heard by the Board during the Public Comment agenda item or during a Public Hearing must provide written notice to the Secretary before the start of the meeting. Members of the public shall be recognized by the Chair before stating their business and shall be limited to three (3) minutes.
- H. Recess. A recess may be called by the Chair or by a majority vote of members present and qualified to vote. The Chair shall state the duration of the recess and time the meeting will recommence before the recess begins. The recess start and end time shall be recorded in the minutes.
- I. Executive Session. The Board may enter Executive Session as set forth in the *South Carolina Freedom of Information Act (S.C. Code of Laws, Title 30, Chapter 4)*. The Board may request the attendance of non-members as they deem appropriate. All proceedings of Executive Sessions are confidential and attendees are honor bound not to divulge the proceedings.
- J. Workshops. The Board may periodically hold workshops to discuss issues and general policies and procedures to determine the necessity for future action. No formal action shall be taken at the workshop. Workshop sessions shall be open to the public.
- K. New Items after 9:30 pm. The Board will not hear new items after 9:30 pm unless authorized by a majority vote of members present and qualified to vote. Items not heard before 9:30 pm may be continued to the next regular meeting or a special meeting date as determined by the Board.
- L. Minutes. The Secretary shall prepare minutes of each meeting showing the vote of each member upon each question, and if members are absent or failing to vote. The minutes shall also document the Boards examinations and other official actions. The minutes shall be approved by a majority vote of members present and qualified to vote at the next regular meeting. Minutes shall be maintained as public records in the Department of Growth Management.

Section 8. Appeals of Building Code Administrator Decisions

- A. Applicability. In accordance with Section 5.1.112.1 of the Construction Code, the Board shall hear appeals from administrative decisions in the enforcement of the International Code Council and technical standards as adopted by the South Carolina Building Codes Council, as amended.
- B. Filing. The Notice of Appeal must be delivered to the Department of Growth Management within ten (10) days of the decision becoming public record by issuance or denial of a permit, or the filing of a written decision in the office of the Building Official. Application submissions must cite the Ordinance(s) upon which the request is based, the decision being appealed, a narrative stating the grounds of the request, a detailed plat and/or plan of the property(s) involved, any additional materials on which the decision being appealed is based, and all fees paid in full. The Board or Staff may request additional information deemed necessary. Failure to submit adequate information may be grounds for dismissal.
- C. Withdrawal of Appeal. An appeal or application may be withdrawn by written notice to the Secretary prior to action by the Board.
- D. Decisions. In exercising the above power, the Board may, in conformity with the provisions of the Construction Code, reverse or affirm, wholly or in part, or may modify the order, requirements, decisions, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

Section 9. Public Hearing

- A. Public Hearing Notice. The Building Official shall cause notice of the public hearing to be published fifteen (15) days prior to the public hearing in a newspaper of general circulation in the Town. Notices shall also be electronically published on the Town of Bluffton website, posted at Town Hall, and distributed either in hardcopy or electronically to any person, agency, or organization registered to receive such notifications.
- B. Testimony under Oath. Parties in interest may present testimony under oath. The oath "Do you swear to tell the truth, the whole truth and nothing but the truth?" shall be administered by the Chair. Witnesses may be compelled to attend by subpoena requested at least ten (10) days prior to a hearing and signed by the chairman. The Board may call its own witnesses when deemed appropriate.
- C. 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. The Board may question participants at any point in the Hearing.

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

- E. Orders of the Board. All final decisions and orders of the Board must be in writing and be permanently filed in the office of the Board as a public record. Within fifteen (15) days of a ruling, 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 conclusions of law shall be separately stated in final decisions or orders of the Board. The Secretary shall delivery a copy of an order to each party in interest by certified mail immediately upon execution of the order by the Chair.

- F. 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.

Section 10. Contempt and Penalty.

In case of contempt by a party, witness, or other person before the Board, the Board may certify this fact to the Circuit Court of the county in which the contempt occurs and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.

Section 11. Appeals of Board Decisions.

Appeals of Board decisions shall be in accordance with the provisions set forth in the Code.

Section 12. Amendment and Adoption.

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

These rules were adopted by vote of a majority vote of members present and qualified to vote at a regular public meeting on _____.

Attest: _____
Secretary
Chair

TOWN OF BLUFFTON

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

Rules of Procedure

I. Officers and Duties

The Construction Board of Adjustments and Appeals (hereinafter referred to as the “Board”) at its regular meeting in January of each year shall elect a Chairman and Vice Chairman.

- A. Chairman. A Chairman shall be elected by the voting members of the Board. His term shall be for one year, and his succession in office shall be limited to three years after which time he cannot be re-elected until after a one year period. The Chairman shall preside at all meetings of the Board and decide 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.
- B. Vice Chairman. A Vice Chairman shall be elected by the Board from among its members in the same manner and for the same term as the Chairman. He shall serve as acting Chairman in the absence of the Chairman, and at such times he shall have the same powers and duties as the Chairman. The Vice Chairman shall succeed the Chairman if he vacates his office before his term is completed, the Vice Chairman to serve the unexpired term of the vacated office. A new Vice Chairman shall be elected at the next regular meeting.
- C. Secretary. The Director of Building Safety or his designee shall be the Secretary of the Board and shall be responsible taking applications, notification of meeting, taking and maintenance of minutes, and any other necessary staff support.

II. Meetings.

- A. Regular meetings. Regular meetings of the Board shall be held on the fourth Tuesday of each month provided there is an agenda item for the Board.

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Rules of Procedure

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- B. Special Meetings. Special meetings of the Board may be called at any time by the Chairman. At least twenty-four (24) hours notice of the time and place of special meetings shall be given by the Chairman to each member of the Board, the local media and posted at Town Hall provided, that this requirement may be waived by action of a majority of all members.
- C. Cancellation of Meetings. Whenever there is not business the Chairman will dispense with a regular meeting by giving notice to all members not less than twenty-four (24) hours prior to the time set for the meeting.
- D. Notification of Absence. Each member of the Board who has knowledge of the fact that he will not be able to attend a scheduled meeting of the board shall notify the Building Safety Department at the earliest possible opportunity and, in any event, prior to 4:00 PM on the day before the meeting. The staff shall notify the Chairmen of the board in the event that the projected absence(s) will produce a lack of quorum. Three unexcused absences during one calendar year shall be cause for dismissal from the Board.
- E. Quorum. A quorum shall consist of five (5) members of the Board.
- F. Conduct of Meetings. All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) approval of agenda; (b) approval of minutes of previous meeting (s); (c) old business; (d) new business; (e) citizen comments; (f) adjournment. A copy of the agenda shall be placed on display at Town Hall at least twenty-four (24) hours prior to the meeting.
- G. Deadline for Agenda. The deadline for filing for placement on the agenda for any variances shall be two weeks prior to consideration by the Board or as approved by the Board.
- H. Filing of application. An appellant must file a completed application with the secretary of the Board and must pay a non-refundable filing fee of Seventy-five (\$75) dollars.

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Rules of Procedure

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- I. Vote. The concurring vote of a simple majority of the required quorum of the Board shall be necessary to affirm any motion by the Board for a variance. To appeal the Building Official's interpretation there must be five (5) concurring votes of the Board. If the five (5) votes are not rendered by the Board the Building Official's interpretation stands.
- J. Conflict of Interest. Any member of the board who shall feel he has a conflict of interest on any matter that is on the Board agenda shall voluntarily excuse himself, and refrain from discussing and voting on said item as a Board member. Rules of Conduct Resolution as adopted by Town Council.

III. Amendments.

These rules may be amended at any time by an affirmative vote of not less than seven (7) members of the Board, provided that such amendment shall have first been presented to the entire membership in writing as a regular or special meeting preceding the meeting at which the vote is taken.

IV. Procedure for Presentation of an Appeal or variance request

At the discretion of the Chairman, the appellant will first be given a maximum of ten (10) minutes to present his appeal or variance request; the respondent will then be given a maximum of ten (10) minutes to present his response. The appellant will be allowed an additional five (5) minutes for his rebuttal followed by an additional five (5) minutes rebuttal from the respondent. The Board may go into executive session for deliberation on matters covered under the South Carolina Freedom of Information Act.

CODE OF ORDINANCES FOR THE TOWN OF BLUFFTON**Chapter 3. Boards, Committees and Commissions Terms, Appointments and Qualifications****Section. 3.1. Definitions.**

Board: A body established by the Town of Bluffton or laws of the state of South Carolina to advise council and its staff in appropriate matters as set forth by its charter, and/or perform such other functions granted to the group by the enabling statute or ordinance and any other amendments thereto.

Committee: An ad hoc group established to advise Council in matters for which the group is organized.

Commission: An organization with authorities, limitations and responsibilities as specified by the laws of the South Carolina.

Section. 3.2. Membership.**(a) Number of members**

- 1) The Board, Committee or Commission shall have odd number of voting members of no less than three, nor more than nine unless modified by individual charter. The Board, Committee or Commission may also include one nonvoting member serving ex-officio as designated by the Town Manager or Town Council.

(b) Term

- 1) Terms shall apply to those Boards, Committees or Commissions for which Town Council has established terms lengths.
- 2) Board, Committee or Commission members shall serve at the pleasure of Town Council for a whole-year term of 3 years.
- 3) Any partial term in excess of one-half plus one day of a full term shall not be considered as a full term.
- 4) Any partial term less than half the full term shall be considered a full term.
- 5) Members shall serve until their successors are appointed and qualified.
- 6) No reappointment can be considered less than 30 days prior to the expiration of a particular term.
- 7) Board, Committee or Commission terms as established by Town Council begin July 1 and end June 30.

- 8) Establishment of a new Board, Committee or Commission will start with staggered terms of one year, two years and three years divided evenly as possible between the new members starting July 1 and ending June 30 for each term.
- (c) Selection criteria.
- 1) Town Council shall appoint Board, Committee or Commission members with consideration for demographic representation and the following:
 - 2) Knowledge and experience relevant to the needs of the particular Board, Committee or Commission;
 - 3) Diverse representation of backgrounds, professions and viewpoints;
 - 4) Diverse geographic representation of the Town; and
 - 5) Potential dual membership on more than one Board, Committee or Commission.
- (d) Removal from Board/Committee/Commission.
- 1) The Town Council has the absolute authority to remove a member, with or without cause, upon a majority vote of Town Council
 - 2) A member shall be removed automatically for:
 - i. Absence from more than 1/3 of the Board, Committee or Commission meetings per annum whether excused or unexcused;
 - ii. Failure to attend any three consecutive regular meetings;
 - iii. Violation of subsection (e) below.
- (e) Conflict of interest.
- 1) Conflicts of interest and disqualifying economic interests shall, in the first instance, be governed by the South Carolina Ethics Reform Act of 1991, as amended. Conflict of interest shall be handled in the following way.
 - 2) Upon making application for membership on a Board, Committee or Commission, all members shall certify they do not have a conflict of interest.
 - 3) Upon appointment, members shall disqualify themselves from voting or otherwise participating in any particular issue, which may arise, in which they have a conflict of interest or disqualifying economic interest, as required by S.C. Code Section 8-13-700(B).
 - 4) A member, who has an actual or known potential conflict of interest, shall take such action as is required by the South Carolina Ethics Reform Act of 1991, as amended and abstain

from voting and discussing the issue, which is the subject of a conflict.

- (f) Registered voter.
 - 1) Board, Committee or Commission members shall hold a valid voter registration card in Beaufort County.
- (g) Quorum.
 - 1) Quorum means a simple majority of the members serving.

Section. 3.3. Chairman and Vice Chairman.

The Board, Committee or Commission shall elect a chairman and a vice chairman, by simple majority of the voting members during their first meeting in July. The chairman and the vice chairman shall serve for one year and shall be eligible for re-election to serve in that post for as long as that individual remains a member of that Board, Committee or Commission.

Section. 3.4. Compensation.

Members of Boards, Committees or Commission shall serve without pay. However, they may be reimbursed for expenses incurred in the discharge of their duties, with prior approval of the Town Manager, subject to the provisions of their respective charter.

Section. 3.5. Support.

Town staff and resources shall be provided to any Board, Committee or Commission on an ongoing basis, or on a case-by-case basis, at the sole discretion of the Town Manager.

Section. 3.6. Compliance.

Boards, Committee or Commission covered by the Municipal Code of the Town of Bluffton or laws of the state of South Carolina must follow the Town of Bluffton policies that may be implemented or adopted from time to time.

Section. 3.7. Minutes.

The Chairman of each Board, Committee or Commission shall keep or cause to be kept activities of each body, including minutes of all meetings.