

BOARD OF ADJUSTMENT

RULES OF PROCEDURE



Adopted: July 1986
Amended: January 1995
Amended: October 2000
Amended: July 26, 2001
Amended: April 10, 2003
Amended: August 13, 2015

BOARD OF ADJUSTMENT

Rules of Procedure

I. GENERAL RULES

The Board of Adjustment of the City of High Point, North Carolina and Environs (hereafter referred to as the “Board of Adjustment”) shall be governed by the provisions of Section 160A, Article 19, Part 3 of the General Statutes of North Carolina and by the provisions of Title 9, of the Code of Ordinances of the City of High Point, North Carolina, revised 1992 and any subsequent amendments thereto. All Board of Adjustment members shall thoroughly familiarize themselves with these provisions.

II. OFFICERS AND DUTIES

- A. Chair: A chair shall be elected for a term of one (1) year by the Board of Adjustment from among its regular members and shall be eligible for re-election. The Chair will decide all matters of order and procedure, subject to these Rules of Procedure, unless directed otherwise by a majority of the Board of Adjustment in session. The Chair shall appoint any committees found necessary to investigate any matter before the Board of Adjustment or to perform any of its duties.
- B. Vice-Chair: A vice-chair shall be elected for a term of one (1) year by the Board of Adjustment from among its regular members in the same manner as the Chair. He/she shall serve as acting Chair in the absence of the Chair and at such times shall have the same powers and duties as the Chair.
- C. Executive Secretary: The Director of Planning and Development, or his/her designee, shall serve as Executive Secretary of the Board of Adjustment. The Executive Secretary, subject to the direction of the Chairman of the Board of Adjustment, shall advise the Board of Adjustment on technical aspects of zoning, advise the Board of Adjustment regarding specific aspects of any appeal or request coming before it and keep all records and conduct all correspondence of the Board of Adjustment. The Executive Secretary shall keep minutes of each Board of Adjustment meeting, recording all important facts pertaining to each item considered and every action by the Board of Adjustment and all votes of all members upon any matter, indicating the names of absentees or those failing to vote. All minutes shall be filed in the office of the Department of Planning and Development and become public record.

- D. Method of Election. Annually, at the first regular meeting in the month of July, the Board shall elect a Chair and Vice-Chair. If such a regular meeting is cancelled or a quorum lacking, then the election shall be held within 36 days thereafter, at a regular or special meeting.

III. ALTERNATE MEMBERS

Alternate members of the Board of Adjustment shall be called upon to attend only those meetings and hearings at which one or more regular members are absent or unable to participate in the hearing of a case because of financial or other interest. Regular members, on receiving notice of a special meeting which they cannot attend or upon learning that they will be unable to participate in a meeting, shall promptly give notice to the Secretary of the Board that they will not be able to attend or to participate. On receiving such a notice, the Secretary shall by the most expeditious means, notify an alternate member to attend. Assignments shall be rotated between the alternate members.

*Except at the election of officers, at no time shall more than (5) members participate in any meeting or hearing.

IV. RULES OF CONDUCT FOR MEMBERS

- A. Members of the Board may be removed for cause, including violation of the rules stated below.
- B. Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite of continuing membership of the Board.
- C. No Board member shall take part in the hearing, consideration or determination of any case in which he/she has financial interests and/or close business ties, close family ties, or any other contacts which effect his/her ability to make an unbiased decision.
- D. 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 or appeal.
- E. No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided however, that members may receive and/or seek information pertaining to the case from any other member of the Board, its secretary or clerk prior to the hearing.

V. MEETINGS

- A. Regular Meetings: Regular meetings of the Board of Adjustment shall be held on the second Thursday of each month at 4:00 p.m. in the Third-Floor Conference Room of the Municipal Office Building or at any other place in the City or environs, if the Chair so directs, provided at least forty-eight (48) hours notice is given by the Chair or the Executive Secretary to all members of the Board of Adjustment (including alternate members) involved in the matters to be considered.
- B. Special Meetings: Special meetings of the Board of Adjustment may be called at any time by the Chair with notice given in accordance with Section 9-9-1(b) of the Development Ordinance. At least forty-eight (48) hours notice of time and place of a special meeting shall be given by the Chairman or the Executive Secretary to all members of the Board of Adjustment (including alternate members) involved in the matters to be considered.
- C. Cancellation of Meetings: Whenever there is no business for the Board of Adjustment, the Chair may dispense with a regular meeting by giving notice to all members (including alternate members) no less than forty-eight (48) hours prior to the time set for the meeting.
- D. Quorum: Regarding matters pertaining to the area within the jurisdiction of the City, a quorum shall consist of four (4) of the members of the Board of Adjustment, except that five (5) members shall be required for a quorum in the case of a hearing for a property in the City's extraterritorial zoning jurisdiction. The fifth member shall be a designated representative of the extraterritorial jurisdiction.
- E. Absence and Attendance: It shall be the duty of all Board of Adjustment members to inform the Planning and Development Department of any anticipated absence and notification shall be immediately after receipt of the agenda. A regular member who misses three (3) consecutive regular meetings or 33% or more of the regular meetings in a calendar year loses his status as a voting member of the Board until reinstated or replaced by the City Council, or the Guilford County Board of Commissioners if an extraterritorial member. Absences due to sickness, death or other emergencies of like nature shall be regarded as proved absences and shall not affect the member's status on the Board; except, that in the event of a long illness or other such case for prolonged absence the member may be replaced.

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

- (1) Roll Call, meeting called to order.
- (2) Reading of minutes of previous meeting.
- (3) Requests, suggestions or petitions from citizens.
- (4) Reports of committees.
- (5) Witnesses sworn.
- (6) Hearing cases.
- (7) Other business.
- (8) Deciding cases.
- (9) Adjourn.

G. Agenda: The Planning and Development staff shall be responsible for preparation of an agenda prior to each regular meeting of the Board of Adjustment. The agenda shall be mailed to all Board members (including alternate members) involved in the matter to be considered prior to the date of a regular meeting.

H. Voting: All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section IV. The required vote to decide appeals and applications shall be as provided in Section VI. D. 4. and shall not be reduced by any disqualification. In all other matters the vote of a majority of the members present and voting shall decide issues before the Board.

VI. APPEALS AND APPLICATION

In consideration of appeals from the Enforcement Officer or requests made to the Board of Adjustment, the Board shall be governed by the following rules:

- A. Types of Appeals: The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Enforcement Officer. It shall also hear and decide all matters referred to it or upon which it is required to pass by the Development Ordinance of the City of High Point. In deciding appeals, it may hear both those based on an allegedly improper or erroneous interpretation of the Ordinance and those based upon alleged hardship resulting from a strict interpretation of the Ordinance.
- B. Procedure for Filing Appeals: No appeal shall be heard by the Board unless notice thereof is filed within a reasonable time after the interested party or parties receive notice of the order, requirement, decision, or determination by the Enforcement Officer. The applicant must file his application for a hearing with the Planning and Development staff, who shall act as clerk for the Board in receiving this notice. All applications shall be made upon the form furnished for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.

C. Hearings

1. Time: After receipt of notice of appeal, the Board Chair shall schedule the time for a hearing, which shall be at a regular or special meeting within thirty-six (36) days from the filing of such notice of appeal.

2. Notice: The Board shall give public notice of the hearing in a newspaper published in High Point by advertisement published for two (2) consecutive days at least five (5) days prior to the date of the hearing. The Board shall circulate notices of the hearing to the parties to the action appealed from, and to such other persons as the Building Inspector shall direct, at least five (5) days prior to the hearing. On the site a notice shall be posted in a conspicuous location(s) with the time, date, and notice of the public hearing. In addition, first class mailed notice of the hearing shall be given to the owner of all parcels of land within 100 feet of the subject property, as shown on the county tax listings.

3. Conduct of Hearing: No appeal from the Administrative Officer or request to the Board of Adjustment shall be considered by the Board unless the party is present in person or by agent or by attorney at the hearing. The order of business for hearing shall be as follows:

- (a) the Chairman, or such person as he shall direct, shall give a preliminary statement of the case;
- (b) the applicant shall present the argument in support of his/her application;
- (c) persons opposed to granting the application shall present the argument against the application;
- (d) both sides will be permitted to present rebuttals to opposing testimony;
- (e) the Chairman shall summarize the evidence which has been presented, giving parties opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a court of law. The Board may view the premise before arriving at a decision. All witnesses before the Board shall be placed under oath and the opposing party may cross-examine them.

4. Rehearings: An application for a rehearing may be made in the same manner as provided for 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. 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 grants the

rehearing request, it shall thereupon treat the request in the same manner as any other application.

D. Decisions

1. Time: Decisions by the Board shall be made not more than thirty (30) days from the time of the hearing unless the appeal is continued by official action of the Board to a subsequent meeting.

2. Form: Written notice of the decision in a case shall be given to the applicant by the Planning and Development Staff within ten (10) days of the date of the Board's decision.

3. Minutes: The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board, upon approval of the minutes by the Board. Such record shall show the reason for the determination, with a summary of the evidence introduced and the findings of fact made by the Board. When a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and approved; the record shall state in detail any findings of fact as required by the Development Ordinance. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from.

4. Expiration of Permits: Unless otherwise specified, any order or decision of the Board granting a variance shall expire if a building permit or certificate of occupancy for such use is not obtained by the applicant within one (1) year from the date of the decision.

5. Voting at Hearings: The concurring vote of four-fifths (4/5) of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Enforcement Officer, to decide in favor of the applicant any matter upon which the Board is required by Ordinance to pass, or to grant a variance or special exception from the ordinance provisions.

6. Public Record of Decisions: The decision of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

VII. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than three (3) 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.