



**City of
High Point**

**Board of
Adjustment**

**Rules of
Procedure**

Adopted: January 11, 2018

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CITY OF HIGH POINT BOARD OF ADJUSTMENT RULES OF PROCEDURE

Section 1. Purpose and Duties

1.1. Purpose

To establish procedures for organizing and conducting the business of the Board of Adjustment ("BOA" or "the Board") in executing its duties and responsibilities.

1.2. Duties

The duties of the Board shall be those listed in Section 2.2. Review Authorities, of the City of High Point Development Ordinance.

Section 2. General Governing Statutes, Ordinances and Rules

The Board is governed by the applicable provisions of the North Carolina General Statutes 160A, Article 19; the current City of High Point Development Ordinance and all amendments thereto; other relevant policies established by the City Council; and by these Rules to the extent that they do not conflict with the law. These Rules are a public record, and are made available to the public.

Section 3. Organization of the Board

3.1. Membership

The Board shall be made up of five regular members (collectively, "the members").

3.1.1. City Members

Four members shall be residents of the City of High Point. These members shall be appointed by the City Council.

3.1.2. Extraterritorial Jurisdiction (ETJ) Member

One member shall be a resident of the City's ETJ, who is appointed by the Guilford County Board of Commissioners in accordance with NCGS 160A-362. The ETJ member has the same rights, privileges and duties as other regular members, and may participate in and vote on any matter, but shall be present and vote on all matters involving property located in the City's ETJ.

3.1.3. Alternate Members

The City Council may appoint alternate Board members to serve in the absence or temporary disqualification of regular members. Each alternate member attending a meeting and serving in the absence of a regular member has, and may exercise, all the powers and duties of a regular member.

3.1.4. Quorum

A quorum of the Board shall consist of a majority of the set membership for all matters except variances, which shall require a quorum of four members. A quorum may include alternate members who serve in place of regular members absent from the meeting, or disqualified from participation in a matter (recused).

3.2. Term of Office

Members serve a three-year term of office as described in the Development Ordinance. Members may be appointed to fill an unexpired term of a previous member. Member terms should be staggered such that a similar number of members are appointed or reappointed each year. The terms of all members shall not expire at the same time.

3.3. Officers

3.3.1. Election of Officers

Annually, at the end of the regular meeting in the month of June, the Board shall elect from its regular membership a Chair and Vice Chair. Nominations shall be moved and seconded, and any number of members may be nominated. Voting may be done by acclamation (if only one member is nominated), show of hands, voice, or by secret ballot following a motion and majority vote of the members. The newly elected Chair and Vice Chair shall assume their office on July 1.

3.3.2. Chair

The Chair's term of office shall be one year, ending on June 30, but shall be eligible for reelection. The Chair shall preside at all meetings, supervise the affairs of the Board, and subject to these rules shall decide all points of procedure unless otherwise directed by a majority of the members in session at the time. The Chair may call a special meeting as necessary.

3.3.3. Vice Chair

The Vice Chair's term of office shall be one year, ending on June 30, but shall be eligible for reelection. The Vice Chair shall preside at any meeting in the absence of the Chair, and shall exercise all duties of the Chair.

3.4. Staff Assistance

3.4.1. Secretary

A staff member of the Planning and Development Department, assigned and supervised by the Planning and Development Director (hereinafter, Director), shall serve as Secretary to the Board. The Secretary's primary duties are to prepare minutes of the meetings, maintain attendance and other official records of the Board, and to certify and file signed decisions of the Board, but may include other clerical and administrative duties as assigned by the Director.

3.4.2. Other Staff Support

The Director, or staff assigned by the Director, shall provide professional and technical support to the Board, which may include preparation of meeting materials, presentations and recommendations, conducting official correspondence, and other staff support as requested by the Board and determined appropriate by the Director.

3.5. Special Committees

Special committees may be established by a majority vote of the Board to assist the Board in studying specific issues. Special committee members shall be appointed by the Chair or a designated member. Special committees may contain persons who are not members of the Board. The BOA may not delegate its official powers and duties to a special committee.

3.6. Attendance

Persons accepting appointment to the Board have made a commitment to serve the citizens of High Point. Applicants coming before the Board deserve a full complement of members to be present to review and decide matters. Faithful attendance at meetings of the Board is expected.

3.6.1. Reporting Absences

A member who anticipates not being able to attend a meeting of the Board must contact the Secretary upon receipt of the agenda (or earlier, if

possible) and indicate the reason for the absence. In the event of an unforeseen emergency or illness, notification to the Secretary shall be given at the earliest practical time.

3.6.2. Approved Absences

Absences due to sickness, death in the family, or other emergencies of a similar nature shall be regarded as approved absences and shall not affect the member's status on the Board. Known work commitments, vacations or other non-medical conditions are not approved absences. In the event of a long illness or other situation resulting in a prolonged absence, the member may be replaced by the City Council.

3.6.3. Attendance Requirement

A regular member who misses three consecutive regular meetings, or 33 percent or more of the regular meetings held in a calendar year, loses status as a voting member until reinstated by the City Council, and may be replaced. Attendance records shall be periodically reviewed by the Planning and Development Director, who shall inform the member of any noncompliance with the attendance requirement.

3.6.4. Absence of Officers

In the absence of both the Chair and Vice Chair, the Board membership in attendance shall vote to determine an acting Chair for the meeting.

3.7. Vacancies

3.7.1. Filling Vacancies

A vacancy in the office of Chair shall be filled by the Vice Chair, succeeding to the office for the remainder of the unexpired one-year term of the Chair. A vacancy in the office of Vice Chair shall be filled by election of a new Vice Chair from the regular membership of the Board for the remainder of the one-year unexpired term of the Vice Chair. Member vacancies shall be filled by a new member appointed by the City Council to fill the remainder of the unexpired term.

3.7.2. Member Continuing Service Beyond Term

A member completing a term of office who has not been reappointed and for whose seat a new appointment has not been made by the City Council, may continue to serve until such time as he or she is reappointed,

a new appointment is made, or until he or she chooses to leave the Board.

3.8. Resignations and Removal

3.8.1. Resignation

A. A Board member who has chosen to resign before the expiration of his or her term, must notify the Director in writing (letter or email). This notice should include the date upon which the resignation is effective, which if possible should be at least thirty days from the date of the notice.

B. If a member of the Board appointed by the City Council no longer resides within the City Limits, or if an ETJ member moves outside the ETJ, the move constitutes a resignation effective upon the date of the move.

C. The Director shall promptly inform the City Clerk of any vacancy on the Board.

3.8.2. Removal

A. A Board member may be removed by the City Council for cause, including but not limited to violation of these Rules.

B. The Board may, by unanimous vote of the other regular and alternate members, recommend that a member be removed for cause and a replacement be appointed by the City Council, or the County Commissioners (ETJ member). Such a recommendation shall be communicated in writing by the Director to the City Council and, if appropriate, to the County Commissioners, and to the Board member in question.

Section 4. Meeting Structure

4.1. Open Meetings

It is the public policy of North Carolina that the hearings, deliberations, and actions of public bodies that administer the legislative, policy-making, quasi-

judicial, administrative and advisory functions of political subdivisions conducting the people's business, be conducted openly. Therefore, all official meetings of the Board, with a very few exceptions that are allowed by state law, shall be open to the public and any person is entitled to attend. The public's right to attend such meeting does not necessarily entitle the public to participate in the meeting. An official meeting means a meeting, assembly, or gathering together at any time or place, or the simultaneous communication by conference telephone or other electronic means, of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business that is within the jurisdiction, real or apparent, of the public body.

4.2. Regular Meetings

4.2.1. Date, Time and Place

Regular meetings of the Board shall be held on the second Thursday of each month at 4:00 p.m. Regular meetings may be established at some other time and date at the discretion of the Board due to holidays or other reasons. The meetings shall be held in City Hall (Municipal Building), or any other location within the City or its ETJ.

4.2.2. Meeting Schedule

Regular meetings for the calendar year shall be made available to the public in paper or electronic format, and posted on the principal bulletin board in the Planning and Development Department, and on the Department's website. Changes in the regular meeting schedule shall follow the notice requirements of North Carolina law.

4.2.3. Meeting Notice

Notices of meetings shall be provided in accordance with the notice requirements of North Carolina law.

4.3. Special Meetings

A special meeting of the Board may be called at any time by the Chair, or by a majority of the regular membership. Notice of the date, time and place of the special meeting, along with the purpose of the meeting, shall be given by the Director to each member at least 48 hours in advance of the meeting. Only those items of business specified in the notice may be transacted at a special meeting. The notice must be posted on the principal bulletin board of the Board,

located in the Planning and Development Department, and shall comply with all other applicable notice requirements of North Carolina law.

4.4. Continued Meetings

Any regular or special meeting may be continued to another specific date, time and place without additional public notice by a majority vote of the Board, in accordance with the deferral and continuance provisions of the Development Ordinance, as applicable, and these Rules.

4.5. Cancellation of Meetings

Whenever there is no business for the Board, the Director may recommend that the Chair cancel a meeting. The Chair may cancel any meeting for good cause, including a known lack of a quorum or severe weather, except that the Chair shall not cancel a meeting called by a majority of the regular members without the consent of a majority of the members. Notice shall be given by the Director, at least 24 hours before the time set for the meeting to be cancelled, to all members and to the press, applicants and other interested persons as determined appropriate. In the case of severe weather, notice of cancellation shall be given at the earliest practical time.

4.6. Agendas and Meeting Order of Business

4.6.1. Agendas

Meeting agendas and appropriate review materials and reports shall be prepared by the Director and distributed to all members. No business, old or new, may be considered by the Board unless such item properly appears on the agenda. However, a matter of business not subject to public notice requirements may be discussed or considered as a non-agenda item if approved for consideration by a majority vote of the members present.

4.6.2. Meeting Order of Business

The order of business at meetings shall be:

- Call to Order
- Approval of Minutes of Previous Meeting(s)
- Chair's Remarks and Instructions
- Unfinished Business (continued cases; items previously discussed for which action was held or delayed; or items brought forward from work sessions)

- Hearing Items
- New Business (other than hearing items)
- Committee Reports (if applicable)
- Announcements
- Adjournment

The order of agenda items may be changed by the Chair if there is no objection from the members present.

4.7. Hearings

4.7.1. Application Submittal

In accordance with the Development Ordinance, the Director shall establish specific submittal requirements and review schedules for the applications heard by the Board.

4.7.2. Attendance by Applicant

The Director shall notify the applicant of the date, place and time of the hearing in accordance with the public notification requirements of the Development Ordinance. The applicant, or a knowledgeable representative of the applicant, is expected to attend the hearing to support the application. This person(s) should be capable of addressing issues and answering questions. If no one is present to represent the application, the Board may, in its discretion, continue the hearing to its next regular meeting.

4.7.3. Type of Public Hearing

The Board follows a quasi-judicial hearing process, which requires all testimony to be sworn, and which requires the Board to conclude certain findings before approving a variance.

4.7.4. Hearing Procedure

The Board shall conduct its hearings in accordance with the quasi-judicial public hearing procedures of the Development Ordinance and as generally outlined below:

- Chair announces the item from the agenda
- Swear-in or affirm witnesses
- Hear staff presentation and recommendation
- Hear applicant testimony

- Hear testimony regarding the item from the public in attendance
- Allow rebuttal and/or cross examination of proponents or opponents
- Closing of testimony from the public by the Chair
- Deliberation and decision

Members of the Board may ask questions of staff, the applicant or any other person who has testified at any time prior to voting on the item.

4.7.5. Evidence

- A.** Although the Board is not bound by all the rules of evidence followed in judicial proceedings, evidence upon which decisions are based should be material (directly related to the matter and likely to influence the decision), substantial (of real value, worth or importance) and competent (having legal capacity or qualification).
- B.** In general, findings of fact should not be based on hearsay evidence. Hearsay is a statement not made at the hearing that the proponent seeks to have admitted as evidence of the truth of the matter asserted in that statement.
- C.** The Board, in order to make a reasoned decision, should not rely on the opinion testimony of laymen to support a finding that requires information from those with expertise in the matter.

4.8. Subpoenas

The Board, through the Chair, may subpoena witnesses and compel production of evidence. To request issuance of a subpoena, persons with standing under NCGS 160A-393(d) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas that he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions made by the Chair regarding subpoenas may be appealed to the Board.

4.9. Public Testimony

The Chair may limit repetitive testimony on any item, and may restrict anyone from making inappropriate or malicious remarks, or remarks not pertinent to the matter under consideration.

Section 5. Conducting Business

5.1. General Expectations of Members

- Be generally familiar with the laws and ordinances relating to the work of the Board, and with these Rules of Procedure;
- Be prepared for meetings by examining the information provided in the meeting packet and consulting staff with questions;
- Ask questions as appropriate during the hearing and actively participate in deliberations;
- Consider all information on each matter before the Board and make an informed decision; and
- Act in a fair, ethical and consistent manner.

5.2. General Conduct of Members

Members of the Board participating in a hearing and making a decision are expected to act in accordance with the following.

5.2.1. No Prejudice

Members shall consider the application/request without prejudice.

5.2.2. No Commitment Prior to Review

Members shall take no public position on an application or on any proposed condition prior to the meeting at which the application is heard.

5.2.3. No Deliberation or Formulation of Decision Prior to Meeting

Members shall refrain from deliberation with other members or formulation of a judgment or decision prior to the meeting at which the application is heard.

5.2.4. No Ex-Parte Communication

No Board member shall, in any manner, discuss any variance or administrative appeal application with the applicant, other Board members, or any other parties prior to the Board's deliberations on the matter during the hearing. The Board's quasi-judicial procedures are designed to ensure that all information and discussions regarding the matter under consideration take place during the Board's hearing, so that all parties hear the same testimony at the same time, and so that persons giving testimony can be questioned in person by the Board and by

opposing parties. Any communication regarding a pending application that does occur outside of the hearing must be fully disclosed by the member or members involved before the start of the appropriate hearing. Members may, however, seek or receive explanatory information or clarification pertaining to the application from the Director or the Planning and Development Department staff prior to the hearing. Any such explanation or clarification shall be provided by the Director or the Planning and Development Department staff to all Board members.

5.2.5. Acknowledgement of Relationship or Association With An Applicant or Other Party

Members should, prior to or at the beginning of the public hearing, disclose any past or present close familial, business or associational relationship with an applicant or other party to the matter.

5.3. Violation of Due Process / Conflict of Interest

A member shall not participate in or vote on any matter that has a direct, substantial and readily identifiable financial impact on the member, nor participate in or vote on any matter in a way that would violate the applicant's or an affected person's constitutional right to an impartial decision maker.

Adhering to the General Conduct of Members contained in these Rules can avoid situations that can affect impartiality and therefore present a conflict of interest, or the appearance of a conflict of interest.

Members are encouraged to consult the Director or designated staff regarding situations that may be considered a conflict of interest or a perceived conflict of interest. If a member has a conflict of interest regarding any matter before the Board, he or she should inform the Director as soon in advance of the meeting as possible, to allow time for an alternate member to be contacted to participate in his or her place.

5.3.1. Recusal (Excuse from Participation)

If a member realizes at the meeting that he or she may have a conflict of interest concerning a matter on the agenda, a request for recusal must be made immediately before the start of the hearing, and must be voted on (recognized) by the Board for the record. A member with a recognized conflict of interest relative to any matter shall not participate in the

hearing, deliberation or voting on the matter. A member in recusal shall physically vacate his or her seat while the matter is being considered. If there is a challenge to a member's participation in a matter due to an alleged conflict of interest, the member shall be given the opportunity to request recusal, or to refute the allegation. The remaining members of the Board shall then by majority vote decide the issue.

5.4. Motions

The Board shall proceed in all matters by motion. Any member, including the Chair, may make or second a motion. A motion may be amended by any member, subject to the agreement of the person who made the motion. A motion may be withdrawn by the person making the motion at any time before a vote. Unless withdrawn, all seconded motions must be voted upon. A motion that does not receive a second fails automatically and is not voted upon.

5.4.1. Substantive Motions

Substantive motions are non-procedural motions that result in final disposition of the matter under consideration. For the Board, these motions are:

- Approval as submitted (no changes to the application)
- Approval as amended (with specific conditions or additions stated as a part of the motion)
- Denial

All substantive motions are debatable, and require a majority vote of members present to approve. Variances require a super-majority four-fifths vote to approve. While a substantive motion is pending, meaning that it has been seconded but not voted upon, a **substitute motion** regarding the same item may be introduced. If seconded, the substitute motion shall be voted upon first. If the substitute motion is approved, the original motion is automatically deemed denied. If the substitute motion fails, then the original motion is voted upon, or another substitute motion can be made. Only one substitute motion can be under consideration at a time.

5.4.2. Procedural Motions

Procedural motions in the collective provide a structure for conducting the business of the Board, and promote propriety of behavior. Below are procedural motions that are commonly used in meetings of the Board.

- Approval of minutes
- Postpone consideration (to a date and time certain, with reasons stated)
- Take a recess (a short break)
- Call the question (to end discussion among Board members)
- Refer to committee (where an appropriate committee exists)
- Re-open public testimony (after the Chair has closed it)
- Reconsider (re-open a case decided at the same meeting)
- Adjourn
- Excuse from participation (recuse) (voluntary - exclusion from participation in a particular matter)
- Remove from participation (involuntary - when an objection to participation is raised by another Board member or a party to the matter and is found to be valid by the Board)
- To consider an item not on the meeting agenda (if not subject to public notice requirements)
- To change the order of agenda items (when the Chair does not have unanimous consent)

All procedural motions are open to debate with the exception of a motion to recess, adjourn or call the question, which are voted on immediately. All motions require a majority vote of the members present.

5.5. Deliberation

When a motion is introduced and seconded, the Chair should state the motion for the purpose of clarity and understanding, and then open the floor for discussion by the Board members. The member who introduced the motion is entitled to speak first, and all members should be given the opportunity to speak if they are so inclined. Any member may move to call the question when it appears that deliberations are concluded, or there is an impasse. A majority vote will then end deliberations. A vote is then taken on the original motion.

5.6. Decisions

Provided a quorum is present, all decisions of the Board shall be made by a majority of the members present, except for variances which require a four-fifths majority (4 of 5 members) to approve.

5.6.1. Qualification to Vote

No Board member shall vote on any matter before the Board unless that member shall have attended the previous deliberations on such matter, or shall otherwise have the approval of the Chair to vote on such matter. The Chair's approval shall be contingent on the assurance by the member that the member has read or reviewed all material distributed to the Board related to the matter, including any material presented by the applicant during the previous deliberations and the minutes of any meeting at which the matter was discussed.

5.6.2. Voting

- A.** No member attending the presentation on a matter shall be excused from voting except for cause by majority vote of the Board.
- B.** A failure to vote by a member who is physically present at the meeting, or who has withdrawn without having been excused or recused by the Board, shall be recorded as an affirmative vote.
- C.** A tie vote constitutes disapproval of a motion.
- D.** A failure to reach a four fifths majority for approval of a variance application constitutes a denial of the application.
- E.** The method of voting shall be decided upon by the Chair, and may be by show of hands, "yes" or "no", or roll call. Any member may motion for a roll call vote on a particular matter, which shall require a majority vote to conduct.

5.6.3. Form of Decisions / Order of the Board

All decisions of the Board of Adjustment shall be communicated to the applicant, landowner (if different from applicant), and to others who have made a written request for a copy prior to, or at the hearing. The decision shall be set forth in a written Order of the Board, prepared by the Director, reviewed by the Board members who participated in the decision, and signed and dated by the Chair. Each Order shall reflect the Board's determination of contested facts related to the application and the Board's application of its determination of the contested facts to the applicable standards. The Order of the Board shall be delivered by

personal delivery, electronic mail, or by first class mail, and the date of filing certified by the Secretary or other designee of the Director.

5.6.4. Public Availability of Decisions

The Director shall make all decisions available to the public in the offices of the Planning and Development Department during normal business hours.

5.6.4. Expiration of Decisions

Administrative appeal decisions do not expire. Variance decisions are valid for 12 months or for another specific period of time set by the Board at the time of approval. If the applicant fails to commence development pursuant to the variance within that time, the variance becomes null and void.

Section 6. Record Keeping

The minutes of all meetings and other records of the Board, shall be maintained by the Secretary or other designee of the Planning and Development Department Director. Minutes of meetings shall be prepared by the Secretary or designee and should be transmitted to the Board prior to the next regular meeting. Minutes are not official until approved by the Board, at which time it becomes the official public record of the Board's actions.

Minutes shall include the following:

- Date, time and place of the meeting
- Names of members in attendance and names of absent members
- Names of staff members in attendance
- Names and addresses of applicant(s) and others that spoke on each matter
- A summary of evidence presented to the Board on each matter
- A summary of the discussion on each matter
- The wording of each motion or resolution, including who made the motion and who seconded
- All votes of the Board

All application records and supporting materials shall be kept electronically by the Director in accordance with North Carolina records retention rules.

Section 7. Rehearing of Denied Applications

The Board has no legal authority or jurisdiction to hear the same matter a second time. Therefore, if an applicant desires to submit a second application regarding a previously denied request, he or she must first appear before the Board to present evidence that there has been a substantial change in the application, relevant ordinance provisions, evidence or material site conditions in the matter that presents new issues, hence allowing a second application to be heard as an entirely new proceeding. If the Board determines no substantial change exists, it shall deny a rehearing on the matter. If the Board determines that there has been such a change, it shall thereupon treat a subsequent application in the same manner as any other application.

Section 8. Appeals

An appeal regarding a decision of the Board of Adjustment shall be made to the Superior Court of North Carolina within thirty days of the receipt by the appealing party of the Order of the Board. The appeal shall be in the nature of certiorari.

Section 9. Amendment of the Rules of Procedure

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of a majority of members present, provided a quorum of members exists, and provided that the amendment to be voted on was presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

Appendix A. Selected Development Ordinance References

Section 2.2.4. Board of Adjustment (BOA)

Contains general information regarding powers and duties, composition and rules of procedure

Section 2.3.6. Public Notification

Provides information regarding public notice requirements

Section 2.3.7. Quasi-judicial Public Hearing Procedures

Contains general information regarding conducting a quasi-judicial hearing

Section 2.3.9. Action by Decision-Making Body

Contains general information when an application is subject to a decision by the BOA, HPC or P&Z

Section 2.3.13. Deferral and Continuance

Information regarding deferring an application prior to hearing, and continuance of an application before the decision-making body

Section 2.3.14. Withdrawal

How and when an application can be withdrawn

Section 2.4.2. Review Procedures Subject to Decision-Making Body Review and Decision - Appeal

Consult this section for information regarding application and review procedures for administrative appeals to the BOA

Section 2.4.15. Review Procedures Subject to Decision-Making Body Review and Decision – Variance

Consult this section for information regarding application and review procedures for variances