



GREENSBORO
NORTH CAROLINA

PLANNING

**BOARD
OF
ADJUSTMENT**

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**RULES  
AND  
REGULATIONS**

ADOPTED BY BOARD OF ADJUSTMENT 12/21/2015

**CITY OF GREENSBORO**  
**BOARD OF ADJUSTMENT**  
**RULES AND REGULATIONS**

**1. GENERAL RULES**

The Greensboro Board of Adjustment (also referred to as the "Board") shall be governed by the applicable terms of Part 3 of the General Statutes of North Carolina, City Charter, Chapter 160A, Article 19 and by the City of Greensboro Code of Ordinances and these Rules and Regulations, which shall be effective upon enactment by the Board.

**2. OFFICERS AND DUTIES**

**A. APPOINTMENTS**

Members of the Board of Adjustment shall be appointed for designated terms. The Board shall consist of seven regular members and two alternate members. Regular members and alternate members will serve a term of 3 years. Regular members may not serve more than 2 full consecutive terms unless otherwise expressly stated.

**B. ELECTIONS**

Chair. Annually, at the regular meeting of the Board held in the month of June, a Chair shall be elected by the full membership of the Board of Adjustment from among its regular members. The Chair's term shall be one year (unless earlier terminated as a result of death, resignation or removal) and until a successor is elected, beginning on July 1, and the Chair shall be eligible for re-election. The Chair shall decide on 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 Chair shall appoint any committees found necessary to investigate any matters before the Board.

Vice Chair. A Vice-Chair shall be elected by the Board from among its regular members in the same manner and for the same term as the Chair (unless earlier terminated as a result of death, resignation or removal). The Vice-Chair shall serve as acting Chair in the Chair's absence, and at such times shall have the same powers and duties as the Chair.

Other Officers. Should the Chair and Vice-Chair be absent at any meeting, the Board shall elect a temporary Chair to serve at the meeting.

Executive Secretary. The Planning Director of the City of Greensboro or his designee shall serve as Executive Secretary of the Board of Adjustment. The Executive Secretary, subject to the direction of the Chair of the Board, shall keep or cause to have kept, all

records, shall prepare all correspondence of the Board for the signature of the Chair, shall arrange for all required public notices, shall notify Board members of pending meetings and their agenda, shall notify parties to cases before the Board of its decision on such cases, and shall generally supervise the clerical work of the Board. The Executive Secretary shall keep in a permanent volume the minutes of every meeting of the Board. The minutes shall record all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board and the votes of all Board members thereon and on the final determination of any questions brought before the Board for a vote, indicating the names of members absent or failing to vote. Copies of all correspondence and other documents pertaining to the Board of Adjustment shall be maintained in chronological order by the Executive Secretary in a separate file.

### **3. ALTERNATE MEMBERS**

Alternate members of the Board shall be called on to participate in those meetings and hearings at which one or more regular members are absent or are unable to participate in hearing a case because of financial, personal or other conflict interest. Regular members, on receiving notice of a meeting they cannot attend or upon learning that they will be unable to participate in a meeting, shall promptly notify the Executive Secretary that they are unable to attend or participate. Alternate members shall have the same powers and duties as regular members. To the extent practicable, the alternates, when called upon to participate because of a regular member's absence, shall alternate their participation between each meeting as needed.

When an alternate member attends a meeting and is called on to participate because of a regular member's absence, that alternate member shall retain his "regular" status should the absent regular member enter the meeting after the public hearing has been opened. The regular member who appears after the opening of the hearing will take on "alternate" status for the duration of that meeting. If an alternate member is called on to participate in the Board's consideration of an item from which a regular Board member has been excused due to conflict or otherwise, then the alternate shall relinquish his seat upon conclusion of that matter.

### **4. RULES OF CONDUCT FOR MEMBERS**

- A.** Members of the Board may be removed by the City Council for cause, including violation of the Rules and Regulations stated herein. The Board of Adjustment may, by a majority vote of the remaining regular and alternate members, request that a position be vacated for cause and a replacement be made by the City Council.
  
- B.** 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 consecutive regular meetings without being excused by the Board, the Chair or Vice-Chair may notify such member in writing of such member's absences, and if such member fails to attend the next regular meeting, the Board of Adjustment may, by a majority vote of the remaining regular and alternate members, request that the position be vacated and a replacement be made by the City Council.

- C. 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 in which such member has a separate, private or monetary interest, or in any matter in which the member has a fixed opinion that cannot be altered by the presentation of evidence, either direct or indirect. In applying this rule the following procedure shall govern:

Any Board member who determines that a conflict of interest exists shall declare the existence and nature of such conflict. The remaining regular members of the Board present, by majority vote, may then excuse said member from participating in deliberations on said matter. If such member is excused by a majority vote of the remaining members, an alternate shall be called by the Chair to replace him/her. If no alternate is available, the seat shall be declared vacant for the purposes of the vote of the particular matter at issue.

- D. No Board member shall discuss any case which will be heard by that Board member 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 the Executive Secretary or Zoning Administrator. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto prior to the determination of that case. If a Board member discusses a case with any party thereto prior to the public hearing on that case, such member is to fully identify and disclose the content of such discussions to the Board prior to the public hearing on that case.

## 5. MEETINGS

- A. **Regular Meetings**

Regular meetings of the Board shall be held on the fourth Monday of each month at 5:30 P.M. in the City Council Chamber of the Melvin Municipal Office Building, unless otherwise specified by the Board.

- B. **Special Meetings**

Special meetings of the Board may only be called by the Chair. At least forty-eight (48) hours notice of the time and place of special meetings shall be given by the Chair to each member of the Board.

- C. **Cancellation of Meetings**

Whenever there are no appeals, applications for variances, or special exceptions, or other business for the Board, or whenever so many regular and alternate members notify the Executive Secretary of their inability to attend, that a quorum will not be available, the Chair may dispense with a regular meeting and continue all matters to the next regular meeting or, if otherwise appropriate, a special meeting.

**D. Quorum**

All meetings shall be duly convened only when a quorum is present. A quorum shall consist of four (4) members of the Board.

**E. Voting**

A majority vote is required for all matters except a variance. The Board shall not vote on an appeal from a decision, order, requirement or determination of the Zoning Administrator, special exception, or application for an interpretation, when there are less than four (4) voting members present. An affirmative vote of four (4) members is required.

A 4/5 vote shall be necessary to grant a variance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

The Chair votes as any other board member.

**F. Conduct of Meetings**

All meetings shall be open to the public. The order of business at regular meetings, unless otherwise approved by the Board, shall generally be as follows:

1. Determination of Quorum
2. Approval of Minutes of Previous Meetings
3. Swearing in of City Staff
4. Hearing of Cases (Swear in Hearing Participants)
  - a. Old Business
  - b. New Business
5. Board/Staff Discussion
6. Adjournment

**6. APPEALS, APPLICATIONS, PUBLIC HEARINGS**

**A. Appeals**

Any party aggrieved by a decision or an order of the Code Enforcement Officer concerning questions of the Land Development Ordinance upon which the Board of Adjustment is authorized to act may appeal to the Board of Adjustment. Such appeal shall be filed in the Office of the Planning Director within thirty (30) days from the date such decision or order was issued.

Any appeal of a decision from the Historic Preservation Commission must be filed within fifteen (15) days of the Commission's decision.

Other Codes of Ordinance's requirements (other than described above) may have varying amounts of appeal times associated to them. The fee for filing any appeal shall be as set by City Council. Unless such appeal is filed, the decision or order of the Code Enforcement Officer shall be final.

**B. Filing Deadline**

The deadline for filing any application addressed to the Board shall be 5:00 P.M. on the 30th day prior to the regular meeting of the Board at which such application is to be presented.

**C. Agenda**

An agenda, map and other such material as may be appropriate shall be mailed to Board members, applicants and adjoining property owners within 150 feet of the property, and other such persons as the office of the Planning Director may deem appropriate, at least ten (10) calendar days prior to the meeting.

**D. Hearings**

All hearings shall be conducted in accordance with Robert's Rules of Order. All witnesses shall be sworn and testimony shall be that which is relevant to the matter.

Cross examination and rebuttal, both in an informal manner, shall be allowed. Should an appellant fail to appear for the hearing of his appeal at the time and place specified in the notice for such hearing and should such appellant fail to notify the office of the Planning Director or in some other manner request a continuance of the hearing of his appeal, such appeal shall be dismissed unless the Board votes to continue the matter until the next meeting.

**E. Re-Hearings**

Within ninety (90) days of the Board's original decision an applicant may request one re-hearing on any matter upon the filing of a request for re-hearing and paying a fee as set by City Council. A re-hearing may be allowed by the Board if the Board finds the applicant has presented new evidence which was not available or able to be discovered at the time of the original hearing. Such re-hearings will then be held at the next meeting of the Board of Adjustment. It is the policy of the Board to require a substantial showing of new evidence prior to granting such a rehearing. Only one re-hearing may be had by an applicant on the same question. An application for a re-hearing does not extend the time for filing an appeal of the decision of the Board of Adjustment to the Courts.

**F. Interpretation**

In any case where the Board finds that an interpretation of any provision of an ordinance upon which it is being asked to act may have broad application beyond any specific case that may be before the Board, the Board may continue such case until the next regular meeting in order to receive additional evidence before arriving at an interpretation.

**G. Evidence**

All oral evidence presented to the Board shall be presented under oath or affirmation.

## **H. Notice of Hearing**

### **(1) In Cases of Interpretation and Requests for Variances or Special Exceptions.**

**Newspaper Notice.** Notice shall be published in one edition of a newspaper qualified under N.C.G.S. 1-597 at least ten (10) calendar days preceding the date of the proposed hearing before the Board of Adjustment. The notice shall contain a short statement of the section to be interpreted or the variance or special exception requested, the name or names of the applicants and the address or location of the property.

**Notice by Mail.** Notice by first class mail shall be given to all property owners within 150 feet of the specific property involved. Notices shall be mailed at least ten (10) calendar days, but not more than twenty-five (25) days, prior to the meeting date.

In all cases, within that same time period, the City shall also prominently post a notice of the hearing on the site that is the subject of the hearing near an adjacent street or highway right-of-way.

## **I. Actions of the Board**

When acting in administrative review, in granting special exceptions and in granting variances, the Board shall be guided by the terms of the Code of Ordinances of the City of Greensboro. Should the Board grant a variance or special exception, unless otherwise specified, the applicant shall commence construction, operation or installation within twelve (12) months of the date of issuance, or the variance or special exception becomes null and void.

## **J. Re-Application after a Denial by the Board**

The Board shall not be required to hear an appeal or application previously denied if it finds that there has been no substantial change in conditions or circumstances bearing on the appeal or application. When the Board has ruled adversely upon a request for an interpretation of an ordinance, no applicant may re-apply for an interpretation of the same ordinance unless the Board finds, in its opinion, that different factual circumstances exist to warrant a re-application.

## **K. Format of the Public Hearing**

- (1) The Chair will read the case from the agenda.
- (2) Planning and other City Staff will explain the facts of the matter to the Board and, where appropriate, present graphic displays for the purpose of acquainting the Board with the action being requested.
- (3) The proponents will present sworn or affirmed evidence.
- (4) The opponents will present sworn or affirmed evidence.
- (5) The Chair shall permit rebuttal and cross-examination.

- (6) The Board may ask questions of the proponents and opponents.
- (7) The Board will render its decision.

**L. Continuance**

The Board may continue the public hearing or delay voting on any matter to a subsequent meeting upon showing of good cause.

It is this Board’s policy, when less than seven (7) board members are seated, an applicant has the option of requesting, prior to the hearing of the matter a continuance for any variance request. If the applicant chooses to exercise this option, the request will be placed on the agenda of the next regularly scheduled board meeting.

**M. Regulation of Speakers Time**

Each side shall be allowed a total of twenty (20) minutes to present evidence. If there is only one speaker, such speaker may be allowed the full twenty (20) minutes. The Board, in its discretion, may modify this rule.

**7. AMENDMENTS**

These rules may, within the limits allowed by law, may be amended at any time by an affirmative vote of not less than four (4) members of the Board of Adjustment, provided that such amendments be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

**8. MISCELLANEOUS**

- A.** Paragraph headings and captions are for convenience and reference only and shall not be interpreted to alter or amend the substance of a paragraph.
- B.** When used herein, pronouns shall be interpreted so that the masculine shall include feminine and the neuter and the singular shall include the plural and vice versa.

This is to certify that the above rules were hereby amended at a regular meeting duly held on the 21<sup>st</sup> day of December 2015.

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Chair, Board of Adjustment

ATTEST:

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Executive Secretary, Board of Adjustment