

RULES OF PROCEDURE

ZONING BOARD OF ADJUSTMENT Charlotte, North Carolina

As Amended July 27, 2021

Article I. GENERAL RULES

The Zoning Board of Adjustment shall be governed by the terms of Chapter 160D, Article 1, of the General Statutes of North Carolina, the Zoning Ordinance of the City of Charlotte adopted January 29, 1962, as amended, by Local Act Session Law 1989, Chapter 220, and House Bill 239 of North Carolina. All Board members shall thoroughly familiarize themselves with these laws.

Article II. OFFICERS AND DUTIES

- A.** The officers of the Board of Adjustment shall consist of a Chairperson and a Vice-Chairperson.
- B.** A Chairperson shall be elected by a majority vote from the full membership of the Board. The Chairperson's term shall be for one year, and/or until a successor is elected, beginning on January 1st, and the Chairperson shall be eligible for re-election. The Chairperson shall decide upon 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 Chairperson shall appoint any committees found necessary to investigate any matters before the Board.
- C.** A Vice-Chairperson shall be elected by the Board from among its members in the same manner and for the same term as the Chairperson. The Vice-Chairperson shall serve as acting Chairperson in the absence of the Chairperson and at such times the Vice-Chairperson shall have the same powers and duties as the Chairperson.
- D.** In the absence of both the Chairperson and Vice-Chairperson, the Zoning Board shall select its presiding officers from those present.
- E.** In the event the office of Chairperson becomes vacant, the Vice-Chairperson automatically becomes the Chairperson as of the date of the vacancy. In the event the office of Vice-Chairperson becomes vacant, the Zoning Board shall elect a new Vice-Chairperson.

Article III. CLERK TO THE BOARD

A Clerk shall be appointed to serve as Staff Assistant to the Board by the City of Charlotte Zoning Administrator. The Clerk, subject to the direction of the Chairperson and Zoning Administrator, shall keep all records, conduct all correspondence of the Board, arrange for all public notices required to be given, notify members of pending meetings and their agenda, notify parties to cases before the Board of its decision, and shall generally execute the clerical work of the Board, including maintaining a permanent volume of the minutes of every meeting of the Board. These minutes shall constitute the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of members of the Board upon any resolution or upon the final determination of any question, indicating the names of members absent or failing to vote.

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Article IV. MEMBERS

The Zoning Board shall consist of five (5) regular members and three (3) alternate members. Alternate members of the Board shall be called on to attend 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 or other interest. Assignments shall be rotated among the alternate members. At any meeting that they are called to attend, alternate members shall have the same powers and duties as regular members.

Article V. 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 Board meetings is required and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board.
- C. No Board member shall take part in the hearing, consideration or determination of any case in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed *ex parte* communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter, , as further outlined in Section X.B.
- D. No Board member shall vote on any matter deciding an application or appeal unless the board member has attended the public hearing on that application or appeal.
- E. No Board member shall discuss any case with any parties prior to the public hearing on that case. A Board member shall not participate in or vote on any matter in which the board member has had undisclosed *ex parte* communications prior to the public hearing on the case.
- F. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties prior to its deliberations on that case.
- G. No Board member shall participate in or vote on any matter in which the board member has a fixed opinion, which is not susceptible to change, prior to hearing the matter
- H. If any objection is raised to a member's participation and that member does not recuse, the remaining members, excluding any member subject to the objection, shall by majority vote rule on the objection.

Article VI. MEETINGS

A. Regular Meetings

Regular meetings of the Board shall be held per the Board's adopted calendar for the year beginning at 9:00 a.m. in the Charlotte-Mecklenburg Government Center located at 600 East Fourth Street. Notice of a meeting, with a list of variances and

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appeals to be considered at such meetings, shall be mailed to each member at least five (5) days in advance of the scheduled meeting.

B. Special Meetings

Special meetings of the Board may be called at any time by the Chairperson. Notice of the time and place of special meetings shall be given at least forty-eight (48) hours prior to the meeting by the Clerk or by the Chairperson to each member of the Board.

C. Cancellation of Meetings

Whenever there are no appeals, applications for exceptions or variances, or other business for the Board, or whenever so many regular and/or alternate members notify the Clerk of the inability to attend that a quorum will not be available, the Chairperson may dispense with a regular meeting by giving written or oral notice to all members prior to the time set for the meeting.

D. Quorum

Four (4) members of the Board shall constitute a quorum.

E. Voting at Hearings

All regular members must vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section V above. A majority vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with enforcement of the Zoning Ordinance or to affect any variation from the provisions of the Zoning Ordinance. Vacant positions on the Board and members who are disqualified from voting 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.

F. Conduct of Meetings

All meetings shall be open to the public, subject to these rules. The order of business at the regular meetings shall be as follows: Roll call, hearing of cases, consideration and determination of cases heard, approval of minutes, reports of committees, unfinished business, and new business. The Board shall have the discretion to modify the order of the meeting as necessary.

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G. Confirmation of Attendance at Meetings

A Board member shall confirm attendance with the Board's Clerk by 12:00 noon, Friday, preceding a regularly scheduled meeting. For a special meeting, a Board member must confirm attendance with the Board's Clerk at least one and a half work days before the special meeting. For example, if the special meeting is scheduled for Wednesday, then the Board member must confirm attendance by 12:00 noon, Monday.

If the Clerk has not received confirmation from a Board member by the deadlines stated above, then the Clerk shall be authorized to have an alternate member sit at the meeting. If it is necessary to replace the Board member with an alternate, then that shall be noted as an absence for the Board member. If there is any dispute as to the implementation of this rule, the facts involved or the notation of absence, then the Board member may bring the matter to the Board for review. The Board member bringing the matter shall not be permitted to vote on the matter.

Article VII. VARIANCES AND APPEALS

A. Types of Zoning Variances

The Board shall hear and decide all requests for variances from the Zoning Ordinance and any other applicable ordinances. It shall also hear and decide all matters referred to it upon which it is required to pass by the Code of Ordinance for the City of Charlotte. In considering variances, it may hear those cases based upon alleged hardship resulting from strict enforcement of the Ordinance. The Board shall comply with the City of Charlotte Zoning Ordinance Code Section 5.108.

B. Types of Zoning Appeals

The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator or Zoning Administrator's designee. It shall also hear and decide all matters referred to it upon which it is required to pass by the Code of Ordinance for the City of Charlotte. In considering appeals, it may hear those cases based upon an allegedly improper or erroneous interpretation of the Ordinance. The Board shall comply with the City of Charlotte Zoning Ordinance Code Section 5.109.

C. Types of Historic District Commission Appeals

The Board shall hear and decide all appeals regarding the issuance or denial of a Certificate of Appropriateness by the City of Charlotte Historic District Commission.

D. Procedure for Filing Zoning Variances/Appeals and Priority for Agenda

The variance or appeal to the Board must be filed thirty-one (31) days before the scheduled Board meeting, counting the day of the Board meeting as the thirty-first day. When a variance or an appeal is filed, the date and time of filing shall be written on the face of the application.

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E. Deadlines for Historic District Commission Appeals and Priority for Agenda

A Record on Appeal shall be compiled and certified by the City of Charlotte Historic District Commission before it is submitted to the Board. No audio recording of a hearing before the City of Charlotte Historic District Commission shall be accepted by the Board. Only written transcripts as set forth in City of Charlotte Zoning Ordinance Code Section 10.213(2) shall be submitted with the Record on Appeal.

The Record on Appeal of the City of Charlotte Historic District Commission must be submitted to the Board at least twenty-one (21) days before the scheduled Board meeting, counting the day of the Board meeting as the twenty-first day. Any Record on Appeal received less than twenty-one (21) days prior to the scheduled Board meeting shall be placed on the agenda for the next meeting.

Any memorandum of law shall be submitted to the Board at least seven (7) days before the scheduled Board meeting, counting the day of the Board meeting as the seventh day. No memorandum of law shall be submitted less than seven (7) days before the scheduled Board meeting.

F. Required Time Within Which To File Appeal

1. Zoning Appeal

No appeal shall be heard by the Board unless application is filed by the owner or other party within thirty (30) days of receipt of the written order, requirement, decision, or determination made by the administrative officer charged with the enforcement of the Zoning Ordinance. Any other person with standing to appeal has thirty (30) days from receipt from the source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice of the administrative officer's determination given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the U.S. Postal Service.

2. Historic District Commission Appeal

No appeal shall be heard by the Board unless an application is filed within thirty (30) days of receipt of the written notice of the issuance or denial of the Certificate of Appropriateness by the City of Charlotte Historic District Commission as set forth in City of Charlotte Zoning Ordinance Code Section 10.213. In the absence of evidence to the contrary, written notice of the Historic District Commission's determination given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the U.S. Postal Service. However, the filing of an appeal before the expiration of the right of appeal shall not require the Board to hear an appeal prior to the expiration of the right of appeal and prior to compliance with Section VII.E.

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3. Questions About Standing

If there is a question as to (a) whether the Appellant has legal standing as a person aggrieved or (b) whether the Appellant has received notice of the order, requirement or decision appealed, then the City Attorney's Office shall provide an opinion to the Board.

G. Continuances

1. Procedure to Properly File a Request for a Continuance

If an Applicant, owner of property named in the application, or party named in the application wishes to request a continuance, then the office of the Zoning Administrator must receive a request for continuance and the reasons for the request in writing, or have such request received in the mail at the City of Charlotte Planning Commission, addressed to the attention of the Zoning Administrator by 5:00 p.m. on Thursday before the regularly scheduled hearing on the last Tuesday of each month. Stated more generally, the receipt of the request for a continuance must be received in writing at least two full working days before the scheduled hearing.

Upon receipt of such a properly filed request for a continuance, the Zoning Administrator or Zoning Administrator's designee shall have the authority to continue the case to the next meeting if the Applicant establishes to the satisfaction of the Zoning Administrator that there is just cause for granting a continuance. If the Zoning Administrator or Zoning Administrator's designee grants a continuance, then that shall be conclusive. If the Zoning Administrator or Zoning Administrator's designee denies a request for a continuance, then the Applicant may request a continuance from the Board based on just cause, but the Applicant must be prepared to have the variance request or appeal heard if the Board denies the request. Three (3) votes of the Board shall be required in order to grant a continuance.

If the Applicant wishes to file a second request for a continuance, or any subsequent request for a continuance, then the applicant must properly comply with the same procedure as stated above. However, the Zoning Administrator or Zoning Administrator's designee shall not have authority to grant a second request for a continuance. The Zoning Administrator or Zoning Administrator's designee shall have the authority to request sufficient information from the Applicant either justifying or corroborating such a request for a continuance and the Applicant is expected to provide the information to the Zoning Administrator or Zoning Administrator's designee before the day of the scheduled hearing. The Applicant or the Applicant's representative must appear before the Board at the scheduled hearing to request a continuance from the Board. The Zoning Administrator or Zoning Administrator's designee shall be given an opportunity to report on the information provided by the Applicant to support the granting of the continuance and the Zoning Administrator or Zoning Administrator's designee shall have the right to make a recommendation on the request.

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Three (3) votes of the Board shall be required in order to grant a continuance. The Board shall not grant the continuance unless there are exceptional, extenuating reasons justifying a continuance which shall be stated in the minutes. In appearing before the Board, the Applicant must be fully prepared to have the Board decide to proceed to hear the case if the request for continuance is denied.

2. Additional Grounds for Continuance

The Board may continue a hearing that has been convened without further advertisement.

If a hearing is set for a certain date and a quorum of the Board is not present, the hearing shall be continued until the next regular Board meeting without further advertisement.

If an Applicant appealing a Zoning Administrator's decision raises matters at the hearing that were not stated in the notice of appeal, and another party would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.

The Board does retain authority for some extraordinary situations to grant a continuance to hear the case pursuant to the standard set forth in Section G.1.

3. Failure To Properly File A Request For A Continuance

If an Applicant seeking a variance (a) fails to appear for the hearing or (b) appears and does not elect to proceed, then the case shall be heard as scheduled.

If an Applicant appealing a Zoning Administrator's Interpretation (a) fails to appear for the hearing or (b) appears and does not elect to proceed, then the Board shall not have jurisdiction to hear the appeal if the hearing is more than thirty (30) days after the date of the decision.

If an Applicant appealing a notice of zoning violation (a) fails to appear for the hearing or (b) appears and does not elect to proceed, then the Board shall not have jurisdiction to hear the appeal if the hearing is more than thirty (30) days after the date of the notice of zoning violation.

If an Applicant appealing the issuance or denial of a Certificate of Appropriateness by the City of Charlotte Historic District Commission (a) fails to appear for the hearing or (b) appears and does not elect to proceed, then the Board shall dismiss the appeal.

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Article VIII. HEARINGS

A. Notice of Hearings

Notice of the time and place of each hearing shall be given in accordance with North Carolina General Statutes Section 160D-406(b).

B. Time

After receipt of notice of an appeal or variance application, the Zoning Administrator shall schedule the time for a hearing, which shall be at the next available regularly scheduled meeting or at a special meeting.

C. Administrative Materials

City staff shall transmit to the Board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the Board prior to the hearing if at the same time they are distributed to the Board, a copy is also provided to the applicant and to the property owner if that person is not the applicant. The administrative materials may be provided in written or electronic form.

Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board at the hearing.

D. Conduct of Hearing

All parties with standing have the right to participate fully in the hearing and may appear in person or by agent or by attorney at the hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive, as allowed by the Board. Objections regarding jurisdictional and evidentiary issues may be made to the Board. The Board Chair shall rule on any objections, and the Chair's rulings may be appealed to the full Board. The order of business for each hearing shall be as follows:

1. All witnesses before the Board shall be placed under oath.
2. City staff shall give a preliminary statement of the case and present evidence and exhibits. For appeals of administrative decisions, the administrator or staff person who made the decision (or his or her successor if the person is no longer employed) shall be present at the hearing to appear as a witness.
3. Applicant and the Board may cross examine or ask questions of City staff.
4. The Applicant shall present the evidence and arguments in support of his/her application.
5. City staff and the Board may cross examine or ask questions of the Applicant.
6. Persons in favor of or opposed to granting the application shall present evidence and arguments for or against the application.
7. Board members may ask questions of any of the witnesses.
8. Both sides shall be permitted to present rebuttals to opposing evidence and arguments.

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9. If there are facts within the special knowledge of a member of the Board or acquired by their personal inspection of the premises, they may be properly considered. However, they must be revealed at the public hearing and made a part of the record so that the Applicant will have an opportunity to meet them by evidence or argument and the reviewing Board may judge their competency and materiality.
10. The Chairperson closes the public hearing portion of the case.
11. The Chairperson asks for a motion to: grant or deny a variance request; affirm, reverse, or modify a Zoning Interpretation or notice of violation; or affirm, reverse, or remand a decision made by the City of Charlotte Historic District Commission.
12. The Chairperson also asks for a second to that motion.
13. Board members vote and issue their ruling.

E. Rehearing

The Board may not rehear a variance application that has been denied until two (2) years after the denial. Prior to that two-year period, it shall refuse to hear an appeal or application if it finds there have been no substantial changes in conditions or circumstances to the application.

Article IX. DECISIONS

A. Time

Decisions of the Board on each variance and appeal shall be made within a reasonable time, generally by its next regular meeting.

B. Form and Appeal

Notification about the decision shall be in compliance with City of Charlotte Ordinance Section 5.110 and any appeal of the decision shall be in compliance with City of Charlotte Ordinance Code Section 5.113.

C. Minutes

The final decision of the Board on each appeal shall be shown in the record of the case and recorded in the minutes. Such records shall show the reason for the determination, with a summary of the evidence introduced and the findings of fact made by the Board. Where a variance is granted, the records shall state in detail any practical difficulty or unnecessary hardship upon which the appeal was based and which the Board finds to exist. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a variance as an exception.

D. Public Records of Decisions

The decisions of the Board, as recorded in the minutes, shall be a public record filed and available for inspection at the Planning Commission located at 600 East Fourth Street during normal business hours of 8:00 AM to 5:00 PM.

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E. Expiration of Permits

Unless otherwise specified by the Board, any decision of the Board granting a variance shall automatically expire if a permit or a certificate of occupancy pertaining to the need for the variance is not obtained within two (2) years from the date of the meeting of the Board at which the Board rendered its decision.

Article X. CONFLICTS

A. Zoning Ordinance

If there is a conflict between the Zoning Board Rules of Procedures and the City of Charlotte Zoning Ordinance the Zoning Ordinance shall prevail.

B. Members

No member of the Zoning Board shall seek to influence a decision, participate in any action or cast a vote involving any matter that is before the Zoning Board of Adjustment which may result in a private benefit to themselves, their relatives or their business interest. In applying this rule the following procedure shall govern:

1. A Board member who determines there exists a conflict of interest, shall declare the existence of a conflict and shall refrain from any deliberation on the matter and shall leave any chamber in which such deliberations are to take place.
2. Appointed Boards. - Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
3. A Board member who believes there may exist a conflict of interest shall declare his/her possible conflict and may ask for a determination by the Zoning Board. A majority vote of the Zoning Board shall determine whether or not a conflict of interest exists.
4. A challenge of the existence of a conflict of interest or a challenge of an undisclosed conflict of interest may be presented to the Zoning Board by any interested party. The Zoning Board shall hear all evidence and shall, by majority vote, make the final determination as to the existence of a conflict of interest.
5. Withdrawal from participation in any matter is necessary only in those specific cases in which a conflict arises. There shall be no attempt to exclude entire categories of considerations because of the business or profession with which a member is associated.

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6. Quasi-Judicial Decisions. - A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

Article XI. 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.

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6/5/52

Amended 12/7/72

Amended 5/13/76

Amended 6/12/78

Amended 3/27/79

Amended 5/28/85

Amended 6/2/87

Amended 9/27/88 (Procedure for Filing appeals & Priority for Agenda)

Amended 4/20/90 (Form and Appeal, corrected reference to City of Charlotte Code § 23-1406.1.)

Amended 1/29/91 (Article IV, Regular Meeting – time changed)

Amended 2/20/91 (Article IV, Quorum, Article V Appeals, Section 2(c), Article VII, Section 4)

Amended 3/26/91 (Article V, added Section 4)

Amended 9/18/91 (Article II, Section 2 and Article VII)

Amended 1/1/92 (Article IX, Section B)

Amended 7/25/95 (Article VII, Section 6, corrected wording to Code § 5.111 and deleted word building in front of permit)

Amended 8/29/95 (Name change of meeting room, Name change of Department, reference to Zoning Code adopted 1/1/92)

Amended 10/28/97 (Article IV, Section 1)

Amended 6/30/98 (Article IV, added Section 6)

Revised October 31, 2006 (Recodified, Article X in its entirety)

Amended September 27, 2016 (Modified Article VII-added new Section C and E, modified Section F, and renumbered existing sections; VIII.C-modified language; updated language and verbiage)

Amended 7/27/2021