

Rules of Procedures
Board of Adjustment
Greenville, North Carolina
(rev. 2, Sep 2014)

1. GENERAL RULES

- 1-1. The Board of Adjustment is composed of a group of citizens appointed by the Greenville City Council or Pitt County Board of Commissioners.
- 1-2. The Board of Adjustment shall be governed by the terms of Chapter 106A, Article 19, Part 3, of the General Statutes of North Carolina and applicable ordinances of the City of Greenville.

2. MEMBERSHIP, TERMS

- 2-1. Membership, terms and operation of the Zoning Board of Adjustment shall be governed by Chapter 160A, Article 19, part 3, of the General Statutes of North Carolina and by Title 9, Chapter 4, Article S (Zoning) of the Greenville City Code, as amended.
- 2-2. The Board of Adjustment shall consist of seven (7) regular and four (4) alternate members. Six (6) of the regular members and three (3) of the alternate members shall reside within the corporate limits of the City of Greenville and appointed by the City Council; one (1) of the regular members and one (1) alternate member shall reside within the extraterritorial jurisdiction (ETJ) of the City of Greenville and appointed by the Pitt County Board of Commissioners.
- 2-3. When a regular member's term expires or reaches the maximum term limits or resigns prior to the expiration of the appointed term, the next numbered alternate member shall be elevated to the regular member vacant position and shall continue to serve as a regular member. A citizen appointed to fill a vacancy or unexpired term shall be designated as the respective alternate position.

3. OFFICERS AND DUTIES

- 3-1. Chairman. The Chairman shall be elected by majority vote of the full membership of the Board. The Board member having seniority will be given first consideration for nomination. Should that person decline said nomination, the nominees will then be chosen from the remaining regular Board members. The term of office shall be for one (1) year and begin on **June 1** or until a successor is elected; and he/she shall be eligible for re-election. Subject to these rules, the Chairman shall decide upon all points of order and procedure, 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 matter before the Board. The Chairman shall have a vote on all matters before the Board.

- 3-2. Vice Chairman. A Vice Chairman shall be elected by the Board from among its regular members in the same manner and for the same terms as the Chairman. The Vice Chairman shall serve as Acting Chairman in the absence of the Chairman, and at such times, shall have the same powers and duties as the Chairman.
- 3-3. Secretary. A staff member of the City shall serve as Secretary to the Board. The Secretary, subject to the direction of the Chairman, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all public notices required to be given, shall notify members of pending meetings and their agendas, 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 Secretary shall keep in a permanent volume the minutes of every meeting of the Board. These shall show 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 questions.

4. RULES OF CONDUCT

- 4-1. Members of the Board may be removed for cause, including violation of the rules stated below.
- 4-2. Regular and alternate members are expected to attend all regular meetings of the Board of Adjustment. When any member has missed three (3) or more consecutive regular meetings or fails to attend seventy-five percent (75%) of all regular meetings, the Chairman of the Board of Adjustment shall notify the City Council or the Chairman of the Board of County Commissioners of that members attendance. (Refer to Title 2, Chapter 3 of the City Code). Appointments shall be made in accordance with Section 3-1 of these Rules of Procedure. Absence due to sickness, death, or other emergencies of the like nature shall be recognized as excused absences by the Chairman, and shall not affect the member's status. Members may request a leave of absence. Leave of absence requests shall be forwarded to City Council or to the Chairman of the Board of County Commissioners for approval.
- 4-3. No member of the board of adjustment shall participate in either the discussion or vote on any special use permit, variance or appeal from an administrative officer's decision in any manner that would violate the affected persons' constitutional right to a fair and impartial decision maker. Prohibited conflicts include but are not limited to a member having a fixed opinion prior to hearing the matter and not willing to consider changing his or her mind; and undisclosed ex parte communications with the person before the board, any witnesses, staff or other board members. Decisions on either a request for recusal by a member or objections by a person appearing before the board shall be decided by a simple majority vote.
- 4-4. No Board Member shall take part in the hearing, consideration, or determination of any

matter in which that Board Member is involved or has a financial or personal interest. Personal interest shall be defined as having a family member involved in the project under consideration, a neighborhood association involvement where a Board Member is on the governing body of such association, or where the Board Member is involved in a conflict or dispute with the applicant on a matter unrelated to the application. If a Board Member has such a conflict, he shall declare the conflict and request to be excused from voting on the issue. A majority vote of the remaining members present shall be required to excuse the member.

- 4-5. No Board member shall vote on any matter deciding an application or appeal, unless he shall have attended the public hearing on that application or appeal.
- 4-6. No Board member shall discuss any case with any parties in interest 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 members of the Board. (VIOLATION OF THIS RULE SHALL BE CAUSE FOR DISMISSAL.)

5. MEETINGS

- 5-1. Regular Meetings. Regular meetings of the Board shall be held the fourth Thursday of each month except in November and December when the Board will met on the third Thursday of the month at 7:00 p.m. in the Council Chambers of City Hall; provided that meetings may be held at some other time, date, or convenient location in the City, if directed by the Chairman of the Board and publicly advertised as required by law.
- 5-2. Special Meetings. Special meetings of the Board may be called at any time by the Chairman or by any three (3) regular members of the Board. Notice shall be given as required by law. If a special meeting is called in order to hear an appeal or application, the need for convening a special meeting must be based on all of the following:
 - (a) The need has not been created by the applicants own actions;
 - (b) The need has been created by unusual or unexpected circumstances that cannot be handled at the next regular meeting of the Board.
- 5-3. Quorum. A quorum shall consist of six (6) members of the Board. It shall be mandatory that a quorum be present for the Board to pass upon any question relating to an appeal from an order, requirement, decision, or determination of the Building Inspector or an application for a variance or special use permit.
- 5-4. Voting. The concurring vote of four-fifths (4/5) of the full membership of the Board shall be necessary to grant any variance. A majority of the members shall be required to decide requests for special/conditional use permits, appeals from zoning officer decisions or appeals from the Historic Preservation Commission. Full membership of the Board shall be defined as seven (7) members, except it shall not include vacant positions or

disqualified members, e.g. if six (6) members are present and one member is disqualified, then five (5) members shall constitute full membership for voting purposes on the issue before the Board and not negate the Board's quorum. A majority of the Board shall be required to pass the findings of fact.

- 5-5. Conduct of Meetings. All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) roll call; (b) approval of minutes of previous meetings; (c) hearing of cases; (d) reports of committees; (e) unfinished business; and (f) other business.

6. HEARINGS ON APPLICATIONS

- 6-1. Notice. The Board shall give public notice of a hearing by all of the following means:

- (a) By publishing or advertising notice of the hearing in a newspaper of general circulation in the City of Greenville once a week for two (2) successive calendar weeks, said notice to be published the first time no later than ten (10) days prior to the date established for such public hearing.
- (b) By posting a sign on the property which is subject to the action at least seven (7) days prior to the hearing.
- (c) By mailing notices not less than 10 days or more than 25 days prior to the hearing to the person or entity whose appeal, application or request is the subject of the hearing; the owner of the property if the owner did not initiate the hearing; owners of all parcels abutting the parcel that is the subject of the hearing; and anyone else who has been given the right of notice in the zoning or unified development ordinance. Before an application is considered as being complete, the petitioner shall be required to furnish the Planning and Community Development Department with the names and mailing addresses of the owners of all properties located abutting the parcel from the tax records maintained by Pitt County. Where the property is bounded by a street, alley, stream or similar boundary, the land owner across such boundary shall also be considered as an adjoining land owner. All such notices shall state the location of the building or lot, the general nature of the question involved, and the time and place of the hearing.

- 6-2. Conduct of Hearing. (1). Any party may appear in person or by agent or by attorney at the hearing. The order of business for each hearing shall be as follows: (a) A representative of the city shall give the preliminary statement of the case; (b) the applicant and those who wish to speak on his behalf shall present the argument in support of his 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) a representative of the city shall present the department's views and recommendations on behalf of the citizens of the City of Greenville. 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, in its discretion, view the premises and obtain additional facts in the matter before arriving at a determination of the case.

(2). Hearsay evidence as defined by the NC Rules of Civil Procedure are not admissible and may not be considered. Any testimony or written documentation that falls within a recognized exception to the hearsay rule may be admitted and considered by the Board.

(3). All testimony received by the Board shall be under oath. Affidavits or unsworn documents are not admissible for consideration of the truth of the matter for which they are asserted.

6-3. Decision. (1). The decision shall be made within a reasonable time as provided in this Rules of Procedure unless a different time is provided by statute or ordinance. The Board acts in a quasi-judicial role.

(2). In that, all decisions must be made based upon competent, material and substantial evidence in the record.

(3). The decision shall be reduced to writing and signed by the chair. The decision shall show the contested facts and the board's application of the facts to the applicable standards.

(4). A separate record of each case shall be prepared and filed in the Planning and Community Development Department.

(5). Notice and Public Record of Decisions. The secretary shall give written notice of the decision in the case to the appellant and/or the applicant and to every aggrieved party who has filed a written request for such notice with the secretary or the Chairman of the Board when the hearing is held. Such notice may be delivered either by personal service or by registered mail or certified mail, return receipt requested. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the Chairman. The decision shall be a public record, available for inspection at all reasonable times.

6-4. Re-Hearings. An application for a rehearing may be made in the same manner as provided for an original hearing. The application may be submitted by the original petitioner or by an aggrieved party. Evidence in support of a rehearing shall initially be limited to that which is necessary to enable the Board to determine at least one (1) of the following:

1. New facts or evidence is available for which there was no capacity of being obtained at the previous meeting and that will substantially change the conditions

of the case.

2. Procedural rules which substantially changed the conditions of the case were not followed. However, no harmless error shall be grounds for granting a rehearing. A harmless error is one which would not have changed the outcome of the matter, or for which refusal to rehear does not deny a substantial right.

The application for a rehearing shall be denied if the Board in its records does not find at least one (1) of the two (2) conditions stated above to be true. A vote of a simple majority of the Board members present is required to grant an application for a rehearing. If the Board finds that a rehearing is in order, the burden of proof shall be on the person requesting the rehearing.

7. APPEALS AND APPLICATIONS

- 7-1. Types of Appeals. The Board shall hear and decide all appeals from decisions of administrative officials who are authorized to enforce zoning or unified development ordinances, appeals arising from the interpretation of any other ordinance regulating land use or development, and appeals of decisions of the Historic Preservation Commission.
- 7-2. Procedures for Filing Appeals. No appeal shall be heard by the Board unless notice thereof is filed within thirty days (30) days after the receipt of written notice of the decision. Notice may be served by hand delivery, electronic mail or first-class mail. It shall be conclusively presumed that all who have standing have constructive notice of the decision from the date when a sign is posted on the affected property with the words "Zoning Decision" or Subdivision Decision" in letters at least 6 inches high and containing the name and number of person to contact concerning the decision. The person serving the decision shall file prepare a certification of service noting the date and manner in which the notice was served and filed with the **City Clerk**. The sign must remain at least 10 days.
- 7-3. Filing of Appeal. Appeals must be filed in writing with the **City Clerk** within the time requirements and stating the grounds for the appeal.
- 7-4. Standing. All persons who meet the requirements of NCGS §160A-393(d) plus the city including but not limited to 1) persons having an ownership interest in the property affected by the decision; 2) has an option to purchase or contract to purchase the property which is the subject of the decision; 3) was an applicant before the decision making board/commission; 4) any person who would suffer special damages as a result of the decision; 5) an incorporated or unincorporated association to which owners or lessees of property in a designated area affected by the decision. All applications shall be made upon the form furnished for that purpose and all required information shall be provided by the applicant before an appeal or an application shall be considered as having been filed.

- 7-5. Fees. No application or notice of appeal shall be considered as having been completed until the filing fee set by the City has been paid.
- 7-4. Time of Hearing. After receipt of the completed notice of appeal from the applicant, the Secretary shall schedule a hearing at the next regular meeting or at a special meeting held in accordance with Section 5-2 of these Procedures, within thirty-six (36) days from the filing of such completed notice of appeal.
- 7-5. Notice. The Board shall give public notice of a hearing by all of the following means:
- (a) By publishing or advertising notice of the hearing in a newspaper of general circulation in the City of Greenville once a week for two (2) successive calendar weeks, said notice to be published the first time no later than ten (10) days prior to the date established for such public hearing.
 - (b) By posting a sign on the property which is subject to the action at least seven (7) days prior to the hearing.
 - (c) By mailing notices to the owners of all properties located within one hundred (100) feet of any portion of the property which is the subject of the action at least seven (7) days prior to the hearing. Before a notice of appeal is considered as being complete, the petitioner shall be required to furnish the Planning and Community Development Department with the names and mailing addresses of the owners of all properties located within one hundred (100) feet of the property which is subject to the action. (Where the property is bounded by a street, alley, stream or similar boundary, the land owner across such boundary shall also be considered as an adjoining land owner.) All such notices shall state the location of the building or lot, the general nature of the question involved, and the time and place of the hearing.
- 7-6. Conduct of Hearing.
- (1). Administrative Decisions. An appeal from a zoning official shall be conducted in the same manner as a hearing on application for special or conditional use permit including notice, receipt of evidence, conduct of hearing and decision. The official who made the decision shall be present as a witness. The appellant can present matters outside of the appeal but if any person or other party to the proceedings would be prejudiced by such presentation, the board will continue the hearing. The Board may affirm, reverse or modify the decision of the administrative official.
 - (2). Appeals from the Historic Preservation Commission. Appeals from decisions of the Historic Preservation Commission are in the nature of certiorari. The appeal will be based on the record from the Commission and raised in the appeal as provided in NCGS §160A-393(k). **Any briefs must be submitted to the Board and cross served not less**

than seven (7) days before the appeal hearing.

(3). Procedures for Appeals from Historic Preservation Commission. Any briefs must be submitted to the Board and cross served to the other parties not less than seven (7) days prior to the hearing. The Appeals Hearing is limited to the issues raised on appeal and filed with the Clerk's Office. There are no witnesses or additional evidence from what was presented before the HPC. Appellant presents argument first; addresses issues raised in appeal. Time 20 minutes. Secretary to Board will be time keeper. Will note 2 minutes remaining, then 1 minute and will call time. Appellant must stop at that point. The Board may ask questions of the Appellant. After completion, the Appellee presents argument. Time 20 minutes. Secretary to Board will be time keeper. Will note 2 minutes remaining, then 1 minute and will call time. Appellee must stop at that point. The Board may ask questions of the Appellee concerning the argument. Once the Appellee is finished, the Appellant may present a rebuttal limited to matters raised in Appellee argument. Time limit 10 minutes. Secretary to Board will be time keeper. Will note 2 minutes remaining, then 1 minute and will call time. Appellant must stop at that point. After the rebuttal, the hearing is closed. The Board may discuss issues in any brief submitted or matters brought up during the argument. The Board may take up to 36 days to make a final decision on the appeal. A decision may be made at the next meeting. To affirm, reverse or modify a decision from the HPC, the Board must voted by a majority to either affirm, reverse or modify.

7-7. Stays of decision.

(1). Appeals from notices of violations or other enforcement orders. Decisions are stayed pending the appeal, except when the official who made the decisions files with the Board of Adjustment a certification in the form of an affidavit stating the facts and the basis for the opinion that that a stay would cause imminent peril to life or property or the transitory nature of the property that enforcement would be difficult if stayed.

(2). Appeals from conditional or special use permits. An appeal by either the applicant or others with standing shall not stay the decision of the Board, either granting or denying the permit, pending the appeal. An appellant may request the Board to issue a stay pending the decision on the appeal. The Board must hear the application for a stay within a reasonable period of time.

7. GENERAL MATTERS

8-1. Expiration of Permits. Unless otherwise specified, any order or decision of the Board granting a special use permit shall expire if a building permit or certificate of occupancy for such use is not obtain by the applicant within six (6) months from the date of the decision, where the City Council authorizes such in the ordinances. Permits for variances shall run with the land or until the conditions under which the variance was granted have changed.

- 8-2. Annual Report. The Board shall prepare and submit in January of every year a report of its activities for the year then ending to the City Council. Such report shall contain a statement of the number of cases heard and a summary of the actions taken, along with any other matters which the Board deems appropriate for inclusion in such report.
- 8-3. Amendments. These rules may, within the limits allowed by law, be amended at any time by affirmative vote of not less than seven (7) members of the entire Board, provided that such amendment be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

These rules shall become after hearing and notice and majority vote by the members.

/s/ Scott Shook
CHAIRMAN

/s/ Michael Dail
SECRETARY