



PLANNING
Town of Chapel Hill
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RULES OF PROCEDURE

BOARD OF ADJUSTMENT

Chapel Hill, North Carolina

Adopted September 2, 1987

Amended January 5, 2005, March 11, 2009, June 5, 2013, January 7, 2015,
March 2, 2016, April 12, 2017, and December 7, 2017.

I. GENERAL RULES

The Board of Adjustment shall be governed by the terms of Chapter 160A, Article 19, Part 3 of the General Statutes of North Carolina, by Section 5.11 of the Charter of the Town of Chapel Hill, and by the Land Use Management Ordinance of the Town of Chapel Hill. All members of the Board shall thoroughly familiarize themselves with these laws.

II. OFFICERS AND DUTIES

- A. **Chair**. The Chair shall be a regular member elected by a majority vote of the full membership of the Board (including alternate members). The Chair's term of office shall be one year, and/or until a successor is elected, beginning at the board's September meeting. The Chair shall be eligible for reelection. 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 matter before the Board.
- B. **Vice Chair**. The Vice Chair shall be a regular member elected by the Board in the same manner and for the same term as the Chair. The Vice Chair shall serve as acting Chair in the Chair's absence, and at such times the Vice Chair shall have the same powers and duties as the Chair.
- C. **Staff Liaison**. A Staff Liaison shall be provided to the Board and shall be subject to all direction of the Chair, shall keep all records, shall conduct all correspondence of the Board, shall keep arrange for all public notices of the Board. The Staff Liaison shall keep official action minutes and a sufficient electronic recording of meetings that may be used to generate transcripts for judicial review, as necessary. A record of all important facts pertaining to each meeting and hearing shall be retained, including 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. The Staff Liaison shall not be eligible to vote on any matter.

- D. **Clerk**. A Clerk may be appointed by the Staff Liaison to perform such tasks as the Staff Liaison may assign and assist in performing the clerical work of the Board. The Clerk shall not be eligible to vote on any matter.

Elections. Every September, the board shall elect a Chair and Vice-Chair to serve a one-year term. No one shall serve as an officer for more than two consecutive full terms. Following a one-year absence, an individual is eligible to serve again as an officer on the same board or commission.

III. MEMBERS

- A. **Regular Members**. There shall be ten (10) regular members of the Board, seven (7) to be appointed by the Town Council and three (3) to be appointed by the Orange County Board of Commissioners. The term of membership shall be three years. No regular member shall serve more than two complete consecutive terms.
- B. **Alternate Members**. Alternate members may be appointed by the County Board of Commissioners and the Town Council. They shall be encouraged to attend all meetings of the Board. Alternate members shall be called by the Chair to participate in the consideration and voting on a case only when substituting for a regular member who is absent or unable to participate in hearing because of financial or other interest. Any alternate member who is sitting in the stead of a regular member shall have the same powers and duties as a regular member. While all alternate members may take an active part in all public hearings, at no time shall more than ten (10) members participate in the voting on any case before the Board. Alternate members, whether or not sitting in the stead of a regular member, shall be allowed to participate and vote in all other matters before the Board.

IV. RULES OF CONDUCT FOR MEMBERS

- A. Members of the Board may be removed for cause, including violations of the rules stated below.
- B. Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board. Any regular or alternate Board member who is absent for more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a Board member. Absence due to sickness, death in the immediate family, or other emergencies of like nature shall be recognized as excused absences and shall not affect a member's status on the Board, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.
- C. No Board member shall take part in the hearing, consideration, or determination of any case in which he or she is personally or financially interested, per the Ethics Guidelines for Town Advisory Boards and Commissions.

- D. No Board member shall vote on any matter that decides an application for a variance or an appeal unless he or she has attended the public hearing before the Board of Adjustment on that matter.
- E. No Board member shall discuss any case with parties thereto before the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from any other member of the Board, its Staff Liaison, or its Clerk before the hearing.
- F. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto before that case is determined. Violation of this rule shall be cause for dismissal from the Board.

V. MEETINGS

- A. **Regular Meetings.** Regular meetings of the Board shall be held on the first **Thursday** of each month at 6:30 – 10:30 p.m. in the Council Chamber of the Town Hall; provided that meetings may be held at any other convenient place in the Town if the Chair so directs before the meeting and adequate notice to the public is given.

The Staff Liaison shall make a schedule of the Board's regular meetings available to the public, such as a posting to the Town website.

- B. **Special Meetings.** The Chair may call special meetings of the Board at any time. At least forty-eight (48) hours written notice of the time and place of special meetings shall be given by the Staff Liaison to each member of the Board and to each news organization and person requesting such notices, and shall be made available to the public by the Staff Liaison.
- C. **Cancellation of Meetings.** If there are no applications for appeals or variances, or other business for the Board, or if so many regular and alternate members indicate that they cannot attend that a quorum will not be available, the Chair may dispense with a regular meeting by giving written or oral notice to all Board members not less than twenty-four (24) hours before the time set for the meeting. The Staff Liaison shall post a notice of meeting cancellation at the regular meeting location.
- D. **Quorum.** A quorum of the board, necessary to meet, shall consist of six (6) members. The Chair shall not call a meeting to order until a quorum is present, except that where there is hope of there being a quorum, the Chair shall call the meeting to order simply to adjourn. Whenever during a meeting a quorum ceases to be present, the Board must generally adjourn the meeting. However, if no question is raised about the lack of a quorum, the Board may continue debate, but may not vote on any action except to adjourn.
- E. **Hearing Deferrals and Continuances.** Once a case has been scheduled for hearing, the Board generally will expect that the case will be heard. At the Board's discretion, a case may be continued one time for good cause at the request of the applicant or the property owner if the property owner is not the applicant.

In variance cases requiring a 4/5 vote of the 10-member board, when fewer than the full 10 members are present, the board will defer hearing an application, at the applicant's request.

Should the applicant in any variance choose to proceed without a full complement of the Board, Town Staff will advise the applicant of the potential consequences of such a decision. Any decision to proceed shall be reflected on the record.

In cases requiring six votes for a decision, when fewer than the full 10 members are present, the board may choose to defer one time hearing an application upon request of the applicant or the property owner if the property owner is not the applicant.

- F. **Voting**. All members present and participating in consideration of an issue must vote on any motion pertaining to that issue unless they have been disqualified from voting, as determined by the Board of Adjustment, per the Town Ethics Guidelines for Town Advisory Boards and Commissions (attached), for one or more of the reasons listed in Section IV. Failure of a present and participating member to signify a vote on a motion shall be deemed a vote in favor of a motion. The required vote to decide applications for appeals and variances shall be as provided in Section VI.D.3. The required vote shall not be reduced by any disqualification unless there are no qualified alternates to take the place of such members. In all other matters the vote of a majority of the members present shall decide issues before the Board.
- G. **Conduct of Meetings**. All meetings shall be open to the public. The order of business at regular meetings shall be as follows:
- 1) Call to order;
 - 2) Announcements
 - 3) Petitions;
 - 4) Approval of Minutes;
 - 5) Hearings, consideration, and determination of cases;
 - 6) Reports;
 - 7) Adjournment.

VI. APPEALS AND VARIANCES

- A. **Types of Applications**. The Board shall hear and decide the following applications:
- 1) To hear and decide appeals from any decision or determination made by the Town Manager in the performance of his or her duties in the enforcement of the Chapel Hill Land Use Management Ordinance;
 - 2) To hear and decide appeals from any decision of the Planning Commission in granting or denying the site plan approval or of the Community Design Commission in granting or denying final plan approval or of the Historic District Commission in granting or denying a Certificate of Appropriateness;
 - 3) To hear and decide requests for variances from regulations of the Land Use Management Ordinance;

- 4) To make interpretations of the Zoning Atlas, including disputed questions of zoning district boundary lines or lot lines, and similar questions as they arise in the administration of the Land Use Management Ordinance; and
- 5) To hear and decide any other matter as required by the provisions of the Town Code of Ordinances.

B. **Procedure for Filing Applications.** No appeal shall be heard by the Board unless an application for such appeal is filed within thirty (30) days of the filing of the decision being appealed or the delivery of any required notice of the decision, whichever is later.

All applications for an appeal or a variance shall be filed with the Board's Staff Liaison. All applications shall be made on the form furnished for that purpose, and all information required thereon shall be complete before an application can be accepted as filed.

C. **Hearings.**

- 1) **Time.** The Secretary shall refer all applications for a variance or for an appeal to the Board of Adjustment for a hearing at its first available regular meeting scheduled at least twenty-one (21) days after acceptance of the application.
- 2) **Notice.** The Staff Liaison shall cause public notice of the hearing of a case to be published in a newspaper generally circulated in the Town of Chapel Hill once a week for two (2) successive weeks, with the first notice to be not less than ten (10) nor more than twenty-five (25) days prior to the date of the hearing. The Staff Liaison shall mail notices of the hearing to the applicant and to owners of property adjacent to a property for which a variance is being sought or a decision is being appealed at least fourteen (14) days before the date of the hearing.

Such notice shall state the location of a property for which a variance is being sought or a decision is being appealed, the general nature of the question involved in the application, and the time and place of the hearing.

- 3) **Conduct of the Hearing.** Any party to a case may appear in person, by agent, and/or attorney at the hearing. The order of business for each hearing shall be as follows:
 - a. Swearing in of witnesses;
 - b. Introduction of the case by the Staff Liaison;
 - c. Presentation of evidence and arguments on support of the application by the applicant and other persons supporting the application;
 - d. Presentation of evidence and arguments against the application by persons opposed to the application;
 - e. Rebuttals to testimony; and

- f. Summary of evidence by the Chair, provided that in cases where no evidence is presented in opposition to an application, the Chair may forego this step and the Board may rely on and refer to the evidence presented by an applicant in the Board's resolution.

Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a court of law. The Board may view the premises before the hearing, but the facts indicated by such inspection shall be disclosed at the public hearing and made part of the record. All witnesses before the Board shall be placed under oath, and the opposing party may cross-examine them.

- 4) **Rehearing.** The Board may vote to have a rehearing on a variance or appeal case after a decision has been made if substantial new evidence is presented. Should the Board find that there is new evidence, then the rehearing will follow procedures as a new application.
- 5) **Testimony.** Witnesses testifying in hearings before the Board in cases where the Board is receiving evidence will be heard, but the Chair may limit evidence or testimony that is irrelevant, repetitive, incompetent, or hearsay.
- 6) **Time Limits on Summations in Cases and on Presentations in Certiorari Hearings.** Parties and Attorneys presenting arguments in certiorari hearings where the Board is not hearing evidence shall be limited to 30 minutes each, provided Board members acknowledge that they have reviewed and are familiar with the record of evidence and proceedings submitted for the Board's consideration prior to the Hearing.
- 7) **Time Limits on Summations in Cases Where Evidence is Presented.** Parties and Attorneys presenting summations in cases where the Board has received evidence and the presentation of evidence has been closed, shall be limited to 15 minutes each.
- 8) **Exceptions to Time Limits.** In all cases, for good cause shown, the Board may extend these time limits. Time spent in response to questions from Board members or other parties to a hearing shall not count toward a party's allowed time.

D. **Decisions.**

- 1) **Time.** The Board shall take final action on an application within thirty-five (35) days after adjournment of the hearing on the application.
- 2) **Form.** In the case of applications for appeal, the Board's final decision shall be to reverse or affirm, wholly or partly, or modify the decision being appealed. In the case of applications for a variance, the Board's final action shall be to grant the variance, motion to grant a variance subject to conditions, or deny the variance. If a motion to grant a variance fails to pass by the required vote (See 3, below), the variance shall be deemed to have been denied.

The Board's final decision shall be shown in the record of the case as entered in the minutes approved by the Board. Such record shall show the reasons for the determinations, with a summary of the evidence introduced and the findings of fact made by the Board. When a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship on which the application for the variance was based and which the Board finds to exist. The record shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a variance.

A separate record of the decision on each case shall be prepared, filed in the Planning Department, and furnished to the parties as specified in Subsection 4.

- 3) **Required Vote.** The concurring 4/5 vote of eight (8) members of the 10-member Board shall be necessary to grant a variance from the regulations of the Land Use Management Ordinance. The concurring vote of six (6) members of the Board shall be necessary to decide any other quasi-judicial matter or to determine the outcome of an appeal made in the nature of certiorari. The concurring vote of a majority of those members present shall be necessary to conduct routine business of the board.
- 4) **Notice and Public Record of Decisions.** The Staff Liaison shall give written notice of the decision in the case to the applicant and to every aggrieved party who has filed a written request for such notice with the Staff Liaison when the hearing is held. Such notice may be delivered by personal service or by certified mail, return receipt requested. A copy of the decision shall also be filed in the Planning Department, as specified in the Land Use Management Ordinance. The decision shall be a public record, available for inspection at all reasonable times.

VII. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than eight (8) members of the Board, provided that such amendment be presented in writing at a regular or special meeting prior to the meeting at which the vote is taken.

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**PLEDGE TO FOLLOW ETHICS GUIDELINES
FOR
ADVISORY BOARDS AND COMMISSIONS**

Ethics Guidelines for Town Advisory Boards and Commissions

Members of advisory boards and commissions shall not discuss, advocate, or vote on any matter in which they have a conflict of interest or an interest which reasonably might appear to be in conflict with the concept of fairness in dealing with public business. A conflict of interest or a potential conflict occurs if a member has a separate, private, or monetary interest, either direct or indirect, in any issue or transaction under consideration. Any member who violates this provision may be subject to removal from the board or commission.

If the advisory board or commission member believes he/she has a conflict of interest then that member should ask the advisory board or commission to be recused from voting. The advisory board or commission should then vote on the question on whether or not to excuse the member making the request. In cases where the individual member or the advisory board or commission establishes a conflict of interest, then the advisory board or commission member shall remove themselves from the voting area.

Any advisory board or commission member may seek the counsel of the Town Attorney on questions regarding the interpretation of these ethics guidelines or other conflict of interest matters. The interpretation may include a recommendation on whether or not the advisory board or commission member should excuse himself/herself from voting. The advisory board or commission member may request the Town Attorney respond in writing.

Advisory board and commission applicants shall agree to comply with the ethics guidelines as stated above.

I, _____ pledge to comply with the ethics guidelines for advisory boards and commissions as adopted by the Chapel Hill Town Council.

Advisory Board or Commission _____

Applicant's Signature

Date

The above Ethics statement was subscribed and sworn to before me this the ____ day of _____, 2017.

Notary Public

My Commission Expires _____