

AMENDED AND RESTATED RULES OF PROCEDURE

BOARD OF ADJUSTMENT CITY OF WILMINGTON, NORTH CAROLINA

I. GENERAL RULES

- A. The Board of Adjustment shall be governed by the terms of Article 19 of Chapter 160A of the General Statutes of North Carolina and by the terms of Article 2 of Chapter 18 of the Wilmington City Code. All members of the Board shall thoroughly familiarize themselves with these laws.
- B. The Board of Adjustment, when sitting as the Building Appeals Board, shall be governed by the provisions of Part 6 of Article 19 of Chapter 160A of the North Carolina General Statutes, by Chapter 16 of the Wilmington City Code and, except as otherwise specified herein, by the Rules of Procedure of the Board of Adjustment.

II. OFFICERS AND DUTIES

- A. Chairman. A Chairman shall be elected by majority vote of the Board from among its regular members. The term of office shall be one year and until a successor is elected, and he shall be eligible for reelection. The Chairman 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 Chairman shall appoint any committees found necessary to investigate any matters before the Board.
- B. Vice Chairman. A Vice Chairman shall be elected by the Board from among its regular members in the same manner and for the same term as the Chairman. He shall serve as acting Chairman in the absence of the Chairman, and at such times he shall have the same powers and duties as the Chairman.
- C. Temporary Chairman. If both the Chairman and Vice Chairman are absent from a scheduled meeting of the Board of Adjustment, the members present shall elect by a majority vote a temporary chairman to preside over the scheduled meeting in the same manner as the Chairman or Vice Chairman. Should the Chairman or Vice Chairman arrive at a scheduled meeting at which a temporary chairman has been elected, the temporary chairman shall relinquish all duties with regard to presiding over the meeting to the Chairman or Vice Chairman at the earliest point in the meeting at which such transition may orderly proceed.
- D. Secretary. The Manager of the Planning Office, or his designee, hereinafter called "Secretary", shall serve as Secretary of the Board of Adjustment. The Secretary, subject to the direction of the Chairman and Board, shall advise the Board on technical aspects of Chapter 18 of the Wilmington City Code (Land Development Code), shall advise the Board regarding specific aspects of the appeal or request, shall keep all records,

shall conduct all correspondence of the Board, shall arrange for all public notices required to be given, notify parties to cases before the Board of its decision on 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 question, indicating the names of members absent or failing to vote. The Secretary shall not be eligible to vote upon any matter.

III. ALTERNATE MEMBERS

- A. The Board shall at all times consist of five (5) regular members and four (4) alternate members. Alternate members of the Board shall be called upon to attend all scheduled meetings in which regular members are present. Alternate members shall be available in the event regular members are absent or unable to participate in the hearing of a case because of financial or other conflict of interest. Regular members, on receiving notice of a meeting which they cannot attend or upon learning that they will be unable to participate in a meeting, shall promptly give notice to the Secretary that they are unable to attend or to participate. On receiving such notice, the Secretary shall, by the most expeditious means, notify an alternate member to replace the regular member during the hearing of the item. Assignments shall be rotated between the alternate members. At any meeting which they are called upon to replace a regular member, alternate members shall have the same powers and duties as regular members.
- B. At no time shall more than five members participate officially in any meeting or hearing.

IV. RULES OF CONDUCT FOR MEMBERS

- A. City Council's policy for Boards and Commissions shall govern the conduct of the Board of Adjustment members.
- B. Members of the Board may be removed for cause, including violation of the rules stated below.
- C. Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite of continuing membership on the Board.
- D. No Board members shall take part in the hearing, consideration or determination of any case in which he is personally or financially interested.
- E. 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 or reviewed the minutes or other record of such public hearing.

- F. No Board member shall discuss any case 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 any other member of the Board, or the Secretary prior to the hearing.
- G. Members of the Board will not express individual opinions on the proper judgment of any case with any parties thereto prior to its determination of that case. Violation of this rule shall be cause for dismissal from the Board.
- H. Board members shall not participate in or vote on any quasi-judicial matter in a manner that would violate the affected persons constitutional rights to an impartial decision maker. Impermissible conflicts 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. If an objection is raised to a member's participation and that member does not recuse himself, the remaining members shall by majority vote rule on the objection.

V. MEETINGS

- A. **Regular Meetings.** Regular meetings of the Board of Adjustment shall be held on the third Thursday of every month to consider appeals concerning interpretation, administration, and enforcement of the Land Development Code by the City Manager or his designee, appeals from the Historic Preservation Commission, requested variances, or any other matter that the Board may be required to consider as provided in the Wilmington City Code or the General Statutes of North Carolina.

Meetings of the Building Appeals Board shall be called as necessary for the Board to transact business and carry out its legal functions. Meetings of the Building Appeals Board, when necessary, shall be scheduled to begin immediately following the regular meetings of the Board of Adjustment.

- B. **Special Meetings.** The Chairman may call special meetings of the Board of Adjustment at the request of the City Manager or his designee to consider an appeal from a ruling of the City Manager or his designee, an appeal from the Historic Preservation Commission or to consider an application for a variance. The Chairman or Secretary shall cause public notice of the meeting to be given as provided in Section 18-8 of the Wilmington City Code and Section VI. D. of these Rules.

The Chairman may call special meetings of the Board of Adjustment to consider administrative matters. The Chairman or Secretary of the Board shall cause public notice of the meeting to be given as provided in Section 143-318.12 of the North Carolina General Statutes.

The Chairman or Secretary of the Board of Adjustment shall cause written notice of any

special meeting to be mailed to each member of the Board of Adjustment no less than forty-eight (48) hours in advance thereof.

No special meetings shall be called for the Building Appeals Board. However, meetings of the Building Appeals Board may be scheduled immediately following special meetings of the Board of Adjustment.

- C. **Recessed and Adjourned Sessions.** Any duly called regular or special meeting of the Board of Adjustment may be adjourned or recessed to a later date or time upon concurring vote of a majority of a quorum of the Board. The time and place of the adjourned or recessed session must be set and announced at the meeting that is adjourned or recessed. No item may be considered in the recessed or adjourned session that could not have been considered at the meeting recessed or adjourned from.
- D. **Quorum.** A quorum shall consist of three (3) members of the Board.
- E. **Conduct of Meetings.** All meetings shall be open to the public, subject to these Rules. The order of business shall be as follows: (a) approval of minutes of previous meetings; (b) unfinished or continued cases; (c) new cases; (d) staff reports; (e) reports of Committees; and (f) Board administrative business. The consideration and determination of business before the Board, shall be conducted in public.

VI. APPEALS AND OTHER APPLICATIONS TO BOARD OF ADJUSTMENT

- A. **Types of Applications.** The Board shall hear and decide all appeals from and review any order, requirement, decision or determination made by the City Manager or his designee interpreting, administering and enforcing the Land Development Code. The Board may hear appeals based upon an alleged improper or erroneous interpretation of the Land Development Code and the appeal of decisions of the Historic Preservation Commission in the nature of certiorari. The Board shall hear and decide requests for variances based upon the appropriate standard as set forth in the Land Development Code. It shall also hear and decide all matters referred to it or upon which it is required to pass by the Land Development Code.
- B. **Procedure for Filing Applications.** No application for an appeal shall be heard by the Board unless notice thereof specifying the grounds is filed in accordance with the provisions of the Land Development Code. All applications for an appeal or variance shall be made upon the form furnished for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed. A list of all adjoining property owners with their current mailing address shall be submitted with the appeal application. Hearings on timely filed and completed applications will be set for the third Thursday of the month that is closest in time to thirty (30) business days following the date of filing the notice of appeal or application for a variance.

- C. **Fees.** No application for a variance or notice of appeal shall be considered as having been completed until there has been paid to the City of Wilmington a filing fee in the amount listed in the City's fee schedule to cover the cost of providing notice and such further investigation or verification of the application as is necessary.
- D. **Notice.** The Secretary shall give public notice of the hearing by all of the following means:
- (1) by publishing notice of the hearing once a week for two (2) successive calendar weeks in a newspaper of general circulation in the city;
 - (2) by mailing a notice of the hearing to the parties to the action at least one (1) week prior to the hearing;
 - (3) by mailing a notice of the hearing to the residents of all properties adjoining any portion of the property which is the subject of the application at least one (1) week prior to the hearing.

All such notice shall state the location of the building or lot, the general nature of the application, and the time and place of the hearing.

- E. **Conduct of Public Hearing.** Any person may appear in person, by agent or by attorney at the hearing. 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 order of business for hearing shall be as follows: (a) all witnesses testifying before the Board shall be placed under oath, unless waived; (b) the Chairman, or such person as he shall direct, shall give a preliminary statement of the case; (c) the applicant shall present evidence in support of his application; (d) persons opposed to granting the application shall present evidence against the application; (e) all persons participating in the hearing shall have the opportunity to ask questions of adverse witnesses and to inspect any evidence presented; (f) both sides will be permitted to present rebuttals to opposing testimony; (g) persons participating in the hearing may summarize the evidence presented. The Board may view the premises before arriving at a decision. Hearings on the appeal of decisions of the Historic Preservation Commission are based on the record of the proceedings before the Commission.
- F. **Rehearings on Variances.** An application for a rehearing on a variance request may be made after six (6) months of its previous hearing in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence or conditions in the case. The application for rehearing shall be denied by the Board if from the record it finds that it has been less than six (6) months since the last hearing and/or there has been no substantial change in facts, evidence or conditions. If the Board finds that there has been substantial change, it shall thereupon

treat the request in the same manner as any other application.

G. **Decisions.**

- (1) **Time.** Decisions by the Board shall be made not more than thirty-five (35) days from the close of the hearing. However, the close of the hearing shall be determined by the Chairman after the presentation of all facts of the application has been submitted.
- (2) **Form.** Written notice of the decision in a case shall be given to the applicant by the Secretary within ten (10) calendar days after the Board's order is filed in the Planning Division Office or any successor office. The final decision of the Board shall be shown in the order of the Board, which is signed by the Secretary and the Chairman. Such order shall consist of findings of fact setting forth the decision of the Board, such findings of fact being based on evidence presented at the hearing.

In addition, all records shall contain a summary of the evidence presented at the hearings on which the Board relied in making the findings of fact set forth therein. The Board's decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination of the City Manager or his designee appealed from. Where a variance is granted, the record shall state in detail the facts supporting findings required to be made prior to the issuance of such variance. 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. Appeals of decisions of the Historic Preservation Commission are based on the record of the proceedings before the Commission.

- (3) **Expiration of Variance.** Any order or decision of the Board granting a variance shall expire if a building permit for such use is not obtained by the applicant within twenty-four (24) months from the date the order or decision is filed in the Planning Division office or any successor office. The Board may grant an extension to a variance as set forth in the Land Development Code.
- (4) **Voting at Meetings.** The concurring vote of four-fifths of the members of the Board of Adjustment shall be required:
 - (a) to reverse any order, requirement, decision or determination of the City Manager or his designee concerning interpretation, administration and enforcement of the Land Development Code;
 - (b) to decide in favor of the applicant a request for a variance;
 - (c) to decide in favor of the applicant any other matter that the Board is required by ordinance or State law to consider;

(d) to continue the public hearing of any item described in a, b or c where evidence has been received by the Board.

The concurring vote of a majority of a quorum is necessary for the Board to take any other action. For the purposes of voting at meetings, 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 supermajority if there are no qualified alternates available to take the place of such members.

- (5) **Continuance of Certain Items.** Where a quorum is not present with regard to any item requiring a four-fifths majority vote of the Board of Adjustment, that item may be continued until the next regular meeting of the Board of Adjustment. Subject to approval by the unanimous vote of all members present and eligible to vote with regard to a particular item, any duly called meeting may be adjourned or recessed to a time and place certain in order to secure the attendance of the required number of eligible members of the Board with respect to the item.
- (6) **Public Record of Decisions.** The decisions of the Board, as filed in its minutes, shall be a public record available for inspection at all reasonable times.

Written notice of the decision in a case shall be filed by the Secretary with the City Clerk of Wilmington as soon as practicable after the case has been decided.

VII. APPEALS TO BUILDING APPEALS BOARD

- A. **Type of Appeals.** The Board shall hear and decide appeals from all decisions of the Hearing Officer rendered pursuant to Division 2 of Article V of Chapter 16 of the Wilmington City Code and Article VI of Chapter 16 of the Wilmington City Code.
- B. **Procedure for Filing Appeals.** No appeal shall be heard by the Board unless notice thereof is filed on an application form furnished for such purpose with the Planning Office in accordance with Sec. 16-252 of the Wilmington City Code. The matter will be set for hearing in the manner provided for appeals to the Board of Adjustment.
- C. **Fees.** No notice of appeal and application shall be complete unless the appellant has paid the filing fee as set forth in the City's fee schedule, said fee to cover the cost of providing notices and performing such further investigation as is necessary.
- D. **Notice.** The Secretary shall give public notice of the hearing in the same manner as for appeals to the Board of Adjustment, specified in Sec. VI. D. of these Rules, except it shall not be necessary to notify any persons by mail, except parties, unless such person has requested such notification.

- E. **Conduct of Hearing.** Any party may appear in person, by agent or by attorney at the hearing. The following order for conducting the hearing shall be observed as closely as possible:

1. Statement of the Case (by or at direction of Presiding Officer.)
 - a. Name of the person appealing the Order
 - b. Address of the subject property
 - c. Legal description of property (Map, Block and Lot Number)
2. Reading of the Appeal (particular attention shall be made to the reasons for the appeal).
3. Swearing of Witnesses - All persons who will present evidence concerning the case should be sworn in or affirmed.
4. Testimony by the Minimum Housing Inspector in support of his Complaint and Notice of Public Hearing.
5. Testimony by the Hearing Officer in support of his Findings of Fact and Order.
6. Other evidence in support of Findings of Fact and Order.
7. Testimony by the Property Owner or Occupant - The property owner or occupant shall be allowed to comment on the evidence and facts used by the Hearing Officer in formulating his Findings of Fact and Order.
8. Other evidence against the Order of the Hearing Officer - The property owner or occupant, representative, legal counsel or parties in interest opposed to the Order of the Hearing Officer shall be allowed to testify or present evidence against the Order.
9. Rebuttals and questioning of opposing witnesses - Both sides will be permitted to present rebuttals and question opposing witnesses.
10. Summary of Evidence - Participants may summarize the evidence which has been presented for the Board

F. **Taking Evidence.**

1. The Board is not bound by all the rules of evidence followed in judicial proceedings but Findings of Fact should be supported by competent and material evidence. The Board shall not consider unsworn testimony in making Findings of Fact. Findings of Fact shall not be based upon hearsay evidence or opinion

testimony. The most reliable and substantial evidence available should be presented to show relevant facts. Whenever there is a doubt as to the admissibility of evidence, the Board shall let the matter into the record. When the Board excludes certain evidence, the proponent of the evidence shall be afforded the opportunity to include in the record a statement as to what the evidence would have shown if it had been admitted.

2. The Board may base its findings, at least partly, on facts that are commonly known or on facts that are within the specialized knowledge of the Board, even though no evidence is presented in support of these facts. Any judicially noticed facts should be indicated as such in the findings.
3. The Board may visually inspect the subject property and consider the information gained from the inspection.

G. **Decisions.**

1. **Mandates of the Board.** The Board may reverse or affirm wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Hearing Officer. The Board shall have the power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of Article V or Article VI of Chapter 16 of the City Code, to adapt the application hereof to the necessities of the case to the end that the spirit of Chapter 16 shall be observed, public safety and welfare secured, and substantial justice done.
2. **Voting.** The concurring vote of four-fifths of the members of the Board shall be necessary to reverse or modify any decision or order of the Hearing Officer. The concurring vote of a majority of a quorum is necessary for the Board to take any other action.
3. **Form of Decision.** The decision of the Board shall take the form of an Order of the Board's conclusions stating reasons for the decision of the Board. A copy of the Order shall be contained in the minutes of the Board, signed by the Chairman and attested to by the Secretary.
4. **Time.** Decisions of the Board shall be made not more than twenty-five (25) days from the close of the hearing, which shall be determined by the Chairman after presentation of the case as set forth in E., above.
5. **Continuance of Certain Items.** As provided in Sec. VI. G.(5) of these Rules.
6. **Public Record of Decisions.** As provided in Sec. VI.G.(6) of these Rules.

VIII. ANNUAL REPORT TO CITY COUNCIL

- A. The Board shall prepare and submit to the City Council a report of its activities for the year then ending. 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.

IX. AMENDMENTS

- A. These Rules may, within the limits allowed by law, be amended at any time by the affirmative vote of four-fifths of the 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.

Approved by the Board of Adjustment at a regular meeting held on November 21, 2024 and by City Council on December 3, 2024.

ATTEST:



Linda Painter, Planning Director and
Secretary to the Board