

**BOARD OF ADJUSTMENT
RALEIGH, NORTH CAROLINA**

RULES OF PROCEDURE

Adopted February 14, 1951; Amended December 10, 1951, September 13, 1954, April 1961, February 10, 1975, August 7, 1978, June 13, 1988, amended April 10, 1989 and May 14, 1990, April 14, 1997, July 12, 1999, January 10, 2005, August 13, 2012, September 10, 2012, January 21, 2014.

I. General Rules

- A. Under authority of the General Statutes of North Carolina, 160A-388 and the Unified Development Ordinance (“UDO”) of the City of Raleigh, North Carolina, Article 10.1.3A.4, the City of Raleigh Board of Adjustment (“Board”) hereby adopts these general rules for the hearing of matters coming before the Board.
- B. The Board’s specific approval authority is established in Article 10.1.3.B of the UDO, and it shall not have power to vary requirements of any other section of the UDO, or other local laws or the General Statutes of North Carolina.

II. Officers and Duties

- A. Elections for Chairperson, Vice Chairperson and Secretary will be held at the first regular meeting in July of each year.
- B. Chairperson - The Chairperson shall be elected by a majority vote of the membership of the Board from among its regular members. His/her term of office shall be for one year and until a successor is elected and the Chairperson shall be eligible for re-election. Subject to these rules, the Chairperson shall decide upon all points of order and procedure, unless directed otherwise by a majority of the Board in session at the time. The Chairperson or a duly-authorized member of the Board shall sign the written decision of the Board. The Chairperson shall appoint any committees found necessary to investigate any matter before the Board.
- C. Vice Chairperson - The Vice Chairperson shall be elected by the Board from among its regular members in the same manner and for the same term as the Chairperson. He/she shall serve as acting Chairperson in the absence of the Chairperson, and at such times he/she shall have the same powers and duties of the Chairperson.
- D. Secretary - The Secretary shall be elected by the Board from within its membership, to hold office during the term of the Chairperson and until a successor secretary shall have been appointed. The Secretary shall be eligible for

re-election. The Secretary, subject to the direction of the Chairperson, shall coordinate with the Clerk to the Board to keep all records, conduct all correspondence of the Board, arrange for all public notices required to be given, and generally supervise the clerical work of the Board, including the Clerk's preparation of the minutes to be reviewed and approved by the Board. The minutes will 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.

III. Members

- A. Membership on the Board shall be by appointment by the Raleigh City Council and the Wake County Board of Commissioners.
- B. Members of the Board may be removed for cause, which shall be defined as dishonorable conduct that has compromised the integrity of the Board.
- C. Faithful and prompt attendance at all meetings of the Board and conscientious performance of the duties required as members of the Board shall be considered a prerequisite of continuing membership on the Board. Board members may obtain excused absences from the Chairperson, and unexcused absences by a Board member for 3 consecutive meetings shall be grounds for that Board member's removal.
- D. No Board member shall take part in the hearing, consideration, or determination of any case in which he/she is personally or financially interested.
- E. No Board member shall vote on any matter deciding an application or appeal unless he/she shall have attended the public hearing on that application or appeal. If a matter is continued to a subsequent date following a public hearing, a Board member who was not present at the public hearing may vote on the matter if the member has reviewed the minutes of the proceeding.
- F. 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.

IV. Meetings

- A. Regular meetings of the Board shall be held on the second Monday of each month at 1:00 p.m., in Room 201 of the Raleigh Municipal Building; provided, however, meetings may be held at some other convenient place and time in the City if directed by the Chairperson in advance of the meeting.

- B. Special meetings of the Board may be called at any time by the Chairperson. At least 48 hours notice of the time and place of special meetings shall be given by the Secretary or the Chairperson to each member of the Board, to anyone who is required to receive notice under these rules or the UDO and the Clerk to the Board.
- C. A quorum shall consist of four members of the Board. However, the concurring vote of four members of the Board present at the hearing of a particular case shall be necessary to grant a variance; all other matters or appeals shall be decided by majority vote.
- D. Conduct of Meetings. All meetings shall be open to the public, subject to the provisions of N.C. Gen. Stat. § 143-318.11 pertaining to closed sessions of public bodies. The order of business at regular meetings shall be as follows:; (a) hearing of cases, beginning first with any unfinished business before moving to new business; (b) consideration and approval of Board minutes (c) any report from the Board's counsel; and (d) any other matters properly before the Board. The Chairperson in his/her discretion may modify the order of business at a particular hearing.

V. Appeals and Applications

- A. Procedure for Filing Applications. No appeal shall be heard by the Board unless notice thereof is filed within **30 days** after the interested party or parties receive notice of the order, requirement, decision or determination by the administrative official.

No application shall be considered by the Board unless a completed application is received in accordance with the Filing Calendar maintained by the Planning and Development Department. .

All applications for hearing shall be filed with the Planning and Development Department, which shall act as Secretary for the Board in receiving this notice. All applications shall be made upon the form furnished for that purpose, and all required information shall be provided thereon before an appeal or any application shall be considered as having been filed.

Any person with standing may appeal any order or act of the Chief Zoning Official or an administrative official pertaining to enforcement of the UDO. Any such appeal of an administrative decision shall be filed with the City Clerk.

- B. Fees. No application or notice of appeal shall be considered as having been completed until there has been paid to the City of Raleigh a filing fee to cover the cost of providing notice and such further investigation or verification of the application as is necessary.

C. Hearings. (This Section Amended August 13, 2012, September 10, 2012)

1. Time. After receipt by the appropriate City official of the completed notice of appeal or application, the Clerk to the Board shall schedule the time for a hearing, which shall be either at the next regularly scheduled meeting or at a special meeting.
2. Notice. The Board shall give public notice of the hearings by all of the following means:
 - (a) By publishing or advertising notice to the parties of the action at least **10 days** but no more than 25 days prior to the hearing.
 - (b) By making an attempt to notify by mail all property owners of parcels of land abutting the parcel of land that is the subject of the hearing and to any other persons entitled to receive notice under the UDO.
 - (c) By posting notice of the hearing at a prominent place or places on the property which is the subject of the action at least **10 days** prior to the hearing.

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.

If applicant does not bring the plaque to the hearing or otherwise return it to the Planning Department within three days of the hearing, a **\$45.00** replacement fee will be assessed against the applicant.

3. Conduct of Hearing. Any party with standing may appear in person or by attorney at the hearing. The order of business for each hearing shall be as follows:
 - (a) The Secretary or such person as the Chairperson shall direct and shall call the case as advertised on the official agenda.
 - (b) A member of the City of Raleigh Planning and Development Department shall make a statement regarding the manner in which the application relates to the UDO.
 - (c) The applicant or the applicant's attorney shall present the arguments in support of his/her case or application.

- d) Persons with standing opposed to granting the application, or their attorneys, shall present the argument against the application.
 - e) Both sides will be permitted to present rebuttals to opposing testimony at the discretion of the Chairperson.
 - f) Witnesses may be called and competent evidence may be submitted.
 - g) Any presentation on behalf of either an applicant or a party with standing who are not natural persons must be made by an attorney.
4. Postponement. Requests for postponing or continuing the hearing for good cause on a particular appeal or application may be made to the Chairperson or to the Board.
5. Withdrawal. An application or appeal will be considered to have been withdrawn under the following circumstances: (a) The applicant submits a written request to withdraw the application or appeal; (b) The property owner, if different than the applicant, submits a notarized request to withdraw the application or appeal; (c) The Board requests the applicant to furnish additional information within a specified period of time, and such information is not furnished by the applicant within the time period allowed; (d) Without prior notification to the Chairperson or Clerk to the Board, applicant does not appear at the scheduled hearing to testify regarding the merits of the application; or (e) The applicant appears at the scheduled hearing and requests that the application be withdrawn. The Chairperson has authority to determine whether an application or appeal has been withdrawn or may be considered withdrawn.
6. Rehearing. A Motion for a Rehearing may be made by the applicant or any party with standing by filing the appropriate application form with the Planning and Development Department within **10 days** after the Board votes on the Application and announces its decision in the original case. Only one Motion for Rehearing may be filed for any case.

Upon receipt of a Motion for a Rehearing in proper form, the Clerk to the Board will schedule the Motion for consideration by the Board at its next regularly scheduled meeting after proper advertising in accordance with these rules and the UDO. All the evidence presented on a Motion for Rehearing shall be limited to new evidence that was not submitted to the Board during the hearing of the original application. Such evidence may include evidence of changes in circumstances or conditions since the hearing on the original application.

At the conclusion of the presentation of the evidence, the Board will determine whether to grant the rehearing. If rehearing is granted, the rehearing will ordinarily be held at the same meeting at which the Motion is considered, although the Board may set the rehearing at a later scheduled meeting of the Board.

7. Refiling. Except as provided in Section V.C.6 hereunder, once the Board has made its decision in a case, any applicant shall be prohibited from submitting the same request for the subject property for a period of one year from the date of the previous application.
8. Review. A review proceeding will be scheduled in the following situations: (a) When a review proceeding is made a condition of the issuance of a variance or a special use permit; or (b) When evidence is presented to the Board that a variance or special use permit has been procured by fraud, misrepresentation or other misconduct. During the review, the Board shall consider evidence presented by persons with standing, or their attorneys, and after the hearing, the Board may modify, discontinue, or continue the variance or special use permit.
9. Appeals. An appeal from a decision by the Board must be made to the Superior Court of Wake County within 30 days of the decision being delivered to the applicant.

(See North Carolina General Statute 160-388)

D. Decisions (This Section Amended August 13, 2012)

1. Time. Decisions by the Board shall be made as soon as practicable after the hearing. The Board will ordinarily vote on the application and announce its decision at the same meeting at which the hearing takes place. The final decision of the Board is made when the decision is entered in the minutes of the Board and those minutes are approved.

In considering an application for a special use permit for an adult establishment, unless an applicant or his representative consents to a longer period, the Board shall mail to or personally serve the applicant with the final decision of the Board as entered in the Board's minutes no later than ninety (90) days after the applicant files a completed application with the Clerk to the Board.

2. Form. Written notice of the decision in a case shall be given to the applicant in accordance with the notification requirements in section 10.2.1.C.6 of the UDO after the minutes setting out the Board's final decision are approved. The record shall show the reasons for the decision

with a summary of the evidence introduced in the findings of facts made by the Board.

- (a) Variances. Where a variance is granted, the record shall state any unnecessary hardship upon which the variance request was based and which the Board finds to exist. The record shall state what, if any, conditions and safeguards are imposed by the Board in connection with a granting of a variance.
- (b) Special Use Permits. Where a special use permit is granted, the record shall state any facts supporting findings required to be made prior to the issuance of a permit. The record shall also show any conditions imposed on the issuance of the permit by the Board. If a special use permit is denied by the Board, the record shall show the reasons for denial of the permit.
- (c) Interpretations. The decision may reverse or affirm wholly or partly or modify the order, requirements, decision, or determination appealed from.

3. Expiration of Permits. Unless otherwise specified, any order or decision of the Board granting a variance or a special use permit shall expire if a grading permit, building permit or certificate of occupancy for such use is not obtained by the applicant within the time specified in the UDO. This time period shall begin on the date of approval by the Board.

E. Special Rules for Appeal to Superior Court of a Board decision on an application for a Special Use Permit for an Adult Establishment (This section added April 14, 1997).

1. Unless good cause exists to contest a Petition for Certiorari, the Board shall stipulate to Certiorari in any appeal of a decision granting or denying a special use permit for an adult establishment no later than five (5) business days after the petitioner requests such a stipulation.
2. The Board shall transmit the Record to the court no later than five (5) business days after receiving the order allowing Certiorari.
3. Notwithstanding the provisions of any local rule of the reviewing court which allows for a longer time period, the Board shall file its brief within fifteen (15) days after it is served with the petitioners brief. If the petitioner serves his brief by mail, the board shall add three (3) days to this time limit, in accordance with G.S. 1A-1, Rule 5. If the local rule is subsequently amended to provide for a shorter time period for the filing of any brief, then the shorter time period shall control.

F. Extensions of Time (This section amended August 13, 2012)

1. The Chairperson shall have the authority in his/her discretion to grant an extension of time for an applicant to file a completed application pursuant to Rule V.A., even if the deadline for hearing the application at the Board's next regularly scheduled meeting has passed.
2. The Board shall have the authority in its discretion to grant an extension of time for an applicant to file an appeal pursuant to Rule V.A., from an order, requirement, decision or determination by the Chief Zoning Official or an administrative official, even if the time for filing such an appeal has expired. An applicant may file a request for an extension of time pursuant to this rule with a completed application. If the Board grants the extension of time, the application can be considered at the same meeting. A request pursuant to this rule may be approved by a simple majority of those members voting.
3. For good cause shown, the Board shall have the authority in its discretion to grant an extension of time pursuant to Rule V.D.3 for an applicant to obtain a grading permit, building permit or certificate of occupancy in order to prevent a Special Use Permit or variance from expiring. A request pursuant to this rule must be filed with the Planning and Development Department before the expiration of the approval as stated in the UDO. If the expiration of the Special Use Permit or variance is stayed by an appeal to the Superior Court, for the purposes of this rule the time period as stated in the UDO shall recommence when the City of Raleigh provides written notification to the applicant following a final decision in the case. Any request made pursuant to this rule shall be advertised at least (10) days prior to a meeting and listed on the Board's agenda, but no other notice shall be required. A request pursuant to this rule may be approved by a simple majority of those members voting.