

RULES OF PROCEDURE

BOARD OF ADJUSTMENT ORANGE COUNTY, NORTH CAROLINA

I. General Rules

- Amended 6/11/90
4/12/22
1/11/23
- A. The Orange County Board of Adjustment shall be governed by the terms of Chapter 160D of the General Statutes of North Carolina and by the Unified Development Ordinance of Orange County, North Carolina, adopted April 5, 2011, and as amended. All Board members shall be thoroughly familiar with these laws.

II. Officers and Duties

- Amended 2/12/68
6/12/78
6/11/90
4/12/22
- A. Chair
- The Chair shall be elected by majority vote of the membership of the Board from among its members.

The term of office shall be for one year, and until a successor is elected, beginning on July 1, and the Chair shall be eligible for re-election. Subject to these rules, the Chair shall decide upon all points of order of the Board in session at the time.

The Chair shall appoint any committees found necessary to investigate any matter before the Board.

- Amended 6/11/90
4/12/22
- B. Vice Chair
- A Vice Chair shall be elected by the Board from among its members 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. Clerk to the Board

A Clerk to the Board shall be appointed by the Chair of the Board, either from within or outside its membership, to hold office during the term of the Chair and until a successor Clerk to the Board shall have been appointed. The Clerk to the Board shall be eligible for reappointment. The Clerk to the Board acting as clerk to the board, subject to the direction of the Chair and the Board, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all public notices required to be given, and shall generally supervise the clerical work of the Board. The Clerk to the Board shall keep in a permanent volume the minutes of every meeting of the Board. These shall be and 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. If the Clerk to the Board is chosen from outside the membership of the Board, the Clerk to the Board shall not be eligible to vote upon any matter. The Chair may appoint an Acting Clerk to the Board in the Clerk to the Board's absence.

III. Alternate Members

Amended
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4/12/22
1/11/23

Alternate members of the Board shall attend all meetings and hearings of the Board unless otherwise notified. A regular Board member, on receiving notice of a meeting which he or she cannot attend or upon learning that he or she will be unable to participate in a meeting, shall promptly give notice to the Clerk to the Board of the Board that he or she is unable to attend or unable to participate.

Where, because of the inability of a regular member to serve or to participate, the attendance of an alternate member is necessary to make quorum as defined by Section V-D below, the Chair, or any member acting as Chair, shall designate an alternate member to have all the powers and duties of a regular member.

IV. Members

Amended
6/11/90
4/12/22

- A. Membership on the Board of Adjustment shall be governed by the terms of 160D-302 of the General Statutes of North Carolina as well as applicable parts of the Orange County Advisory Board Policy where it specifies the Board of Adjustment.
- B. In cases where an individual is appointed to serve the unexpired portion of a Board member's term, the appointment shall be for the time period of the unexpired term only and shall not be counted as a regular term for that member.
- C. All members appointed to the Board of Adjustment shall, before entering their duties, qualify by taking an oath of office as required under NCGS 153A-26.
- D. Members of the Board may be removed for cause.
- E. 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.
- F. No Board member shall take part in the hearing, consideration or determination of any case in which that member is personally or financially interested.
- G. No Board member shall vote on any matter deciding an application or appeal unless that member has attended the public hearing on that application or appeal.
- H. 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 seek information pertaining to the case from any other member of the Board and its Clerk to the Board prior to the hearing.

I. 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.

J. Each member of the Board shall be familiar with the applicable provisions of the Unified Development Ordinance associated with matters before them.

Amended
6/11/90
4/12/22

K. At any meeting, which an alternate member is called upon to participate within, shall have the same powers and duties as regular members.

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6/11/90
4/12/22

L. , At no time shall more than five members (including alternate members) officially participate or vote in any meeting or hearing.

V. Meetings

Amended
6/12/78
6/11/90
2/3/10
4/12/22
1/11/23

A. Regular Meetings

Regular meetings of the Board shall be held as indicated on the published Board of Adjustment Calendar Orange County Whitted Building at 300 West Tryon Street in Hillsborough, North Carolina or an alternate time or meeting location directed by the Chair.

When such a meeting coincides with a county or state holiday, then the meeting shall be cancelled.

Meetings will adjourn at 10:00 p.m. unless otherwise voted upon by the Board.

B. Special Meetings

Special meetings of the Board may be called at any time by the Chair. At least forty-eight (48) hours written notice of the time and place of special meetings shall be given, by the Clerk to the Board or by the Chair, to each member of the Board.

C. Cancellation of Meetings

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

2. Inclement Weather or Similar Consideration Meetings may also be canceled whenever there may be additional considerations which make a meeting unsafe or infeasible.

Such determination may be made by the Chair upon good cause or by the Clerk to the Board where the cause is closure of County offices or facilities. Upon such a cancellation, either the Chair or the Clerk to the Board may

dispense with a meeting by giving written or oral notice to all members prior to the time set for the meeting.

Amended 1/11/99
4/12/22 D. Quorum
A quorum of the Board, necessary to conduct any business of the Board shall, consist of at least four Board members.

Amended 6/11/90
4/12/22 E. Conduct of Meetings
All meetings of the Board shall be conducted in compliance with the North Carolina Open Meetings Law, North Carolina General Statutes 143-319.9 et seq. The Board shall give public notice of its meetings also as provided in the Open Meetings Law. The order of business at regular meetings shall be as follows:

a. reading of the Public Charge;
b. approval of minutes;
c. hearing of cases;
d. consideration and determination of past cases; and,
e. other business.

VI. Applications for Appeal

A. Types of Appeals

The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Planning Director. It shall also hear and decide all matters referred to it or upon which it is required to pass by the Unified Development Ordinance of Orange County, North Carolina. In deciding appeals, it may hear both those based upon an allegedly improper and erroneous interpretation of the ordinance and those based upon alleged hardship resulting from the strict interpretation of the ordinance.

Amended 6/11/90
4/12/22 B. Procedure for Filing Appeals
No appeal shall be heard by the Board unless notice thereof is filed as required by the UDO within thirty (30) days after the decision, determination or directive was made by the Planning Director and record of that action filed in the office of the Planning Director. No appeal shall be considered by the Board unless a completed application is received. All applications for hearings shall be filed with the Clerk to the Board, or with the Planning Director, who shall act as Clerk to the Board 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 an application shall be considered as having been filed.

C. Hearings

Amended
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4/12/22

1. Time

After receipt from the Planning Director or Clerk to the Board of the completed notice of appeal or application, the Clerk to the Board shall schedule a time for a hearing, which shall be heard at either a regularly scheduled meeting or at a special meeting.

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4/12/22

2. Notice

The Board shall give public notice of the hearing as required by the North Carolina Open Meetings Law and as specified in the Orange County Unified Development Ordinance.

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.

3. Conduct of Hearing

Any party may appear in person 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 Board may, in its discretion, view the premises and obtain additional facts in the matter before arriving at a determination of the case. The order of business for each hearing shall be as follows:

- (a) the Chair, or such person as the Chair shall direct, shall give a preliminary statement of the case;
- (b) the applicant shall present the arguments in support of his case or 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) the Chair, or such person as the Chair shall direct, shall summarize the evidence which has been presented, giving the parties an opportunity to make objections or corrections.

1/11/23

4. Administration of Oaths

The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

5. Denial and Re-hearings

When the Board has denied an application for a Special Use Permit, the Board shall not receive another application for the same or similar petition affecting the same property or a portion thereof until the expiration of a one-year period, extending from the date of denial.

An application for a rehearing may be made 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 substantial change in the facts, evidence, or conditions in the case.

A re-hearing shall be denied by the Board if in its judgment there has been no substantial change in the facts, evidence, or conditions in the case. If the Board finds that there has been such a change, it shall thereupon treat the request in the same manner as any other application.

Amended
6/11/90
4/12/22

1. Form

The Board's decisions to approve or deny any application shall be reduced to writing in the form of an Order. Such Order shall include the reasons for the Board's decision and signed by the Chair.

Amended
6/11/90
4/12/22

2. Voting at Hearings

Required voting on matters before the Board shall be in accordance with applicable State statutes and the provisions of the Orange County Unified Development Ordinance (UDO).

3. Public Record of Decisions

The minutes and orders of the Board shall be a public record, available for inspection at all reasonable times.

VII. Amendments

Amended
6/12/78
4/12/22

- A. These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four-fifths (4/5ths) 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.