

ASHEVILLE BOARD OF ADJUSTMENT
RULES OF PROCEDURE

I. GENERAL RULES

A. *Authority:*

1. The Board of Adjustment for the City of Asheville shall be governed by North Carolina General Statute Section 160A-388.
2. Unless provided for by these rules, Roberts Rules of Order shall govern all points of order and procedure.

II. OFFICERS

- A. *Chair:* The Chair shall be elected by a majority vote of the membership of the Board from among its members. The term of office shall be for one (1) year, and/or until his/her successor is elected, beginning on July 1st of each year. The Chair shall be eligible for re-election for an additional one year term only. The Chair shall appoint any committees deemed necessary by a majority vote of the Board to investigate any matter before the Board.
- 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 Chair in the absence of the Chair, and at such times, shall have the same powers and duties as the Chair, and shall be eligible for re-election for an additional one year term only.
- C. *Secretary:* A Secretary 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 who shall be eligible for reappointment. The Secretary, subject to the direction of the Chair, shall: (1) keep all records; (2) prepare all correspondences of the Board; (3) arrange for all required public notices to be given; and (4) take minutes at each Board meeting which shall be kept in a permanent volume. The minutes shall reflect all important facts pertaining to each meeting and hearing, every motion acted upon by the Board, and all votes of members of the Board upon any motion or upon the final determination of any question, indicating the names of members absent or failing to vote.

III. MEMBERS

- A. *Removal:* Members of the Board may be removed for cause by the Asheville City Council. Cause shall include but not be limited to violation of any rule of procedure.

- B. Attendance: Faithful attendance at 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.
- C. Conflict of Interest:
1. No member of the Board may participate in or vote on any matter in a manner that would violate the affected person's constitutional rights to an impartial decision maker.
 2. No member of the Board may participate in a hearing before the Board if the member has an impermissible conflict which includes but is not limited to: 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.
 3. No Board member shall discuss any case with any of the parties thereto prior to the public hearing on that case. Provided, however, members may receive and/or seek information pertaining to the case from any other member of the Board or its Secretary.
 4. No member of the Board shall vote on any matter involving an application or appeal unless the member attended the public hearing on that application or appeal.
 5. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto prior to its determination of that case.

IV. MEETINGS

- A. Regular: The Secretary shall schedule a regular meeting of the Board, consisting of five (5) regular or alternate members, on the fourth Monday of each month at 2:00 p.m. in the North Conference Room located on the first floor of the City Hall Building. Provided however, meetings may be held at some other convenient time and place in the City if directed by the Secretary in advance of the meeting. In the event that five (5) members are not present at a meeting, a quorum shall consist of three (3) members who may pass upon any administrative matter properly before it; provided however, that the Board shall not pass upon any question relating to an appeal from a decision, order, requirement, or determination of the Zoning Administrator or for an application for a variance, when there are less than four (4) members present.

- B. Special: Special meetings of the Board maybe called at any time by the Chair or Secretary. At least forty-eight (48) hours written or oral notice of the time and place of special meetings shall be given by the Secretary to each member of the Board, the local press and to each person who has submitted a written request for notice.
- C. Cancellation: Whenever there are no appeals, applications for variances or other business before the Board, or whenever so many regular and alternate members notify the Secretary of inability to attend, that a quorum will not be available, the Secretary shall cancel the meeting by giving written or oral notice to all Board members, the local press and to each person who has submitted a written request for notice. Additionally, notice of the cancellation shall be posted on the door of the North Conference Room.

V. VOTING

- A. Required: All members, including the Chair, shall vote on all issues unless the member has been disqualified for one or more of the reasons listed in Section III above.
- B. Four-Fifths Requirement: The concurring vote of four-fifths of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of the Unified Development Ordinance of the City of Asheville (UDO), or to grant a variance to an applicant.
- C. Recusal: If an objection is raised to a member's participation in a hearing and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.
- D. Amendments to Rules of Procedure: The Rules of Procedure for the Board maybe adopted by an affirmative vote of not less than three (3) members of the Board. Additionally, all amendments must be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

VI. APPLICATIONS

- A. Types: The Board shall hear and decide all applications for appeals from any order, requirement, decision or determination made by the Zoning Administrator/designee. It shall also hear and decide all matters referred to it or upon which it is required by Ordinance to consider.
- B. Application Procedure: All applications for appeals shall be processed as follows:

1. No appeal shall be heard by the Board unless an application furnished by the Board's Secretary, giving notice of appeal along with the filing fee as specified in the City's Fees and Charges Manual, is filed with the Secretary to the Board within sixty (60) days for permanent uses or signs, and forty-eight (48) hours for all temporary or mobile uses, after the interested party or parties receive notice of the order, requirement, decision or determination of the City, unless a different time period is otherwise provided by law.
2. In order to be heard at the next regularly scheduled meeting, the completed application along with all necessary plans and filing fees shall be provided to the Secretary to the Board at least twenty (20) days prior to the next regularly scheduled meeting of the Board.

VII. HEARINGS

- A. *Scheduling*: After receipt of the notice of appeal, the Secretary shall schedule the time for a hearing which shall be at a regular or special meeting within a reasonable time frame from the filing of such notice of appeal. Once a matter is scheduled for a hearing, pursuant to a filed notice of appeal, the date shall not be changed except by the Board for good cause shown.
- B. *Notice*: Except as provided for in Section IV B., the Board shall give public notice of its hearings in accordance with the UDO, as amended from time to time. All such notices shall state the location of the building or lot, the general nature of the question/request involved and the time and place of the hearing.
- C. *Conduct of Hearing*: Any party may appear at the hearing. The order of business for hearings shall be as follows:
 1. The Chair, or such person as the Chair shall direct, shall give a preliminary statement of the case. Additionally, unless waived by all parties to the proceeding, all witnesses before the Board shall be placed under oath.
 2. The applicant shall present the argument in support of his/her application, including witnesses and documentary evidence.
 3. Persons opposed to granting the application shall present the argument against the application, including witnesses and documentary evidence, if any.
 4. Both sides will be permitted to cross-examine opposing witnesses. Additionally, rebuttals maybe allowed subject to the discretion of the Board.
 5. At the conclusion of the evidence, the Chair may summarize the evidence which has been presented, giving the parties the opportunity to make objections or corrections. Additionally, the Board may, in its discretion, view

the premises and obtain additional facts in the matter before arriving at a determination of the case.

- D. Re-Hearings: An application for a rehearing may be made in the same manner as provided for in 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:
1. There has been a material and substantial change in the facts, evidence or conditions in the case; and
 2. Such newly discovered evidence could not have been, with reasonable diligence, discovered and/or produced at the prior hearing.
 3. The application for rehearing shall be denied by the Board if from the record it finds that: (a) there has been no material and substantial change in facts, evidence or conditions; or (b) the applicant, with reasonable diligence, could have discovered and/or produced the new evidence at the prior hearing. If the Board grants the application for a rehearing, it shall thereupon treat the request in the same manner as any other application.
- E. Decisions: Written decisions made by the Board shall be served within a reasonable time from the conclusion of the hearing. The Secretary will serve the written decision upon:
1. The Applicant
 2. The Owner(s) of the subject property; and
 3. Other persons who have filed a written request for such notice, by certified mail return receipt requested, or hand-delivery.
- The final decision of the Board shall be by written order stating the reasons of the Board therefore, shall be entered in the minutes of the Board and signed by the Chair and the Secretary. Where a variance is granted, the record shall state in detail any practical difficulties or unnecessary hardships upon which the appeal was based and which the Board finds to exist. The Decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from. The Decision shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of any request.
- F. Public Record: The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.
- G. Expiration of Permits: Unless otherwise specified, any order or decision of the Board granting a variance shall expire if a zoning permit is not obtained by the applicant within twelve (12) months from the date of the oral decision.

VIII. APPEALS. Appeals from the Board may be taken to the Superior Court of Buncombe County by proceedings in the nature of certiorari within thirty (30) days after the date the Board's Decision is served, pursuant to North Carolina General Statute Section 160A-388(e), and Section 7-6-2(g) of the UDO.

Read, approved and adopted by the Board of Adjustment of the City of Asheville on the 28 day of December, 2011.

Patti McFarland
Secretary

Janet Whitcraft
Chair

12-28-2011
Date

12-28-11
Date