

**PLANNING & INSPECTIONS DEPARTMENT**  
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**AGENDA**  
ORANGE COUNTY  
BOARD OF ADJUSTMENT  
ON-LINE MEETING  
April 12, 2021  
7:00 p.m.

- 1. CALL TO ORDER**
- 2. CONSIDERATION OF ADDITIONS TO AGENDA**
- 3. APPROVAL OF MINUTES**

NOTE: MINUTES ARE STILL BEING COMPLETED FROM THE LAST 2 MEETINGS AND ARE NOT READY FOR ACTION AT THIS TIME

**4. PUBLIC CHARGE:**

*The Board of Adjustment pledges to the citizens of Orange County its respect. The Board asks its citizens to conduct themselves in a respectful, courteous manner, both with the Board and with fellow citizens. At any time should any member of the Board or any citizen fail to observe this public charge, the Chair will ask the offending person to leave the meeting until that individual regains personal control. Should decorum fail to be restored, the Chair will recess the meeting until such time that a genuine commitment to this public charge is observed. All electronic devices such as cell phones, pagers, and computers should please be turned off or set to silent/vibrate.*

*The Board of Adjustment is a quasi-judicial administrative body established in accordance with the provisions of local regulations and State law to perform specified functions essential to the County's planning program. Action(s) taken by the board are based solely on competent, substantial, and material evidence presented during a previously scheduled and advertised public hearing on a specific item. As detailed within Section 2.12.2 of the UDO the Board chair reserves the right to exclude evidence and testimony that*

*is deemed: 'incompetent, irrelevant, immaterial, or unduly repetitious' and therefore fails to reasonably address the issues before the Board of Adjustment. While it should be noted there is no time limit on the presentation of evidence, the Chair asks that the presentation of evidence be consistent with established policies, rules of procedure, and acceptable levels of decorum to ensure a fair and equitable hearing for all parties.*

## **5. CHAIR/VICE-CHAIR COMMENTS**

## **6. INTRODUCTION OF NEW MEMBERS**

- Nathan Robinson
- Beth Bronson

**7. CASES:** There are no cases under review.

**8. REVIEW OF REVISED RULES OF PROCEDURE – County Attorney and Staff**

## **9. ADJOURNMENT**

**IF UNABLE TO ATTEND THIS MEETING, PLEASE CALL THE PLANNING DEPARTMENT at (919) 245-2597**

**ORANGE COUNTY  
BOARD OF ADJUSTMENT  
AGENDA ITEM ABSTRACT**  
Meeting Date: April 12, 2021

**Agenda  
Item No.**     8

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**SUBJECT:** REVIEW of Updated Rules of Procedure – Board of Adjustment

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**DEPARTMENT:** Planning and Inspections                      **PUBLIC HEARING: (Y/N)**                     

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<b>ATTACHMENTS:</b>	<b>INFORMATION CONTACT:</b>
1. Revised Rules of Procedure – Orange County Board of Adjustment	James Bryan, Staff Attorney (919) 245-2319 Michael D. Harvey, Planner III (919) 245-2597

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**PURPOSE:** To receive, discuss, and take action on a revised *Rules of Procedure* document governing the operation of the Orange County Board of Adjustment. Review of this item will occur during a virtual meeting. An email is being sent providing log in instructions for the April 12 meeting.

**BACKGROUND:** All advisory boards operate under a ‘rules of procedure’ document outlining its basic operation including, but not limited to: the date/time of meetings, the election and term of officers (i.e. chair and/or vice-chair), member tenure, attendance, conduct of meetings, etc.

**ISSUE:** In July 2019, the North Carolina General Assembly adopted legislation that entailed the first major recodification and modernization of city and county development regulations since 1905. The effort was several years in the making, beginning in 2013 when the endeavor was initiated by the Zoning and Land Use Section of the NC Bar Association.

Additional background information on these amendments can be accessed within a blog post by staff of the School of Government at UNC-Chapel Hill: <https://canons.sog.unc.edu/chapter-160d-and-other-zoning-legislation/>

As part of the County’s process to update existing land use regulations, modifications are necessary to update the rules of procedure for the Board of Adjustment to reflect changes in applicable State law references.

The County Attorney’s office has also been working on a process to update rules and procedure document(s) for all advisory boards in an effort to establish uniformity in scope, organization, and policy.

Attached in the final version of the updated document for the Board to review and approve. The Attorney and staff will be available at the meeting to answer questions.

**RULES OF PROCEDURE**  
**ZONING BOARD OF ADJUSTMENT**  
**ORANGE COUNTY, NORTH CAROLINA**

**I. General Rules**

Amended 6/11/90 A. The Orange County ~~Zoning~~ Board of Adjustment shall be governed by the terms of Article 18, Part 3 of Chapter 153A and, when effective, Chapter 160D of the General Statutes of North Carolina and by the ~~Zoning Ordinance- Unified Development Ordinance~~ of Orange County, North Carolina, adopted ~~February 6, 1967~~ 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 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. The Chair shall swear in all witnesses who are to testify at a hearing.

Amended 6/11/90 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. ~~Secretary~~ Clerk to the Board  
A ~~Secretary~~ 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 ~~secretary~~ Clerk to the Board shall have been appointed. The ~~Secretary~~ Clerk to the Board shall be eligible for reappointment. The ~~Secretary~~ 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 ~~Secretary~~ 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

**Commented [JB1]:** Revised nomenclature to align with the General Statutes which refers to a 'clerk to the board'. (see 160A-388(f) or 160D-4-6(f))

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 ~~Secretary~~Clerk to the Board is chosen from outside the membership of the Board, the ~~Secretary~~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 6/11/90 Alternate members of the Board shall attend all meetings and hearings of the Board unless otherwise notified. A regular 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 ~~Secretary~~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 shall designate an~~ alternate member ~~to~~shall have all the powers and duties of a regular member.

**Commented [JB2]:** This proposal addresses the question of which alternate assumes the position.

### IV. Members

Amended 6/11/90 A. Membership on the ~~Zoning~~ Board of Adjustment shall be governed by the terms of ~~Article 18, Part 3 of Chapter 153A~~160D-302 of the General Statutes of North Carolina as well as the Orange County Advisory Board Policy.

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.<sup>1</sup>

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.<sup>2</sup>

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 pre-requisite 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.

<sup>1</sup> This is an existing provision in Section 1.8.2 of the UDO. As part of the 160D update, this section of the UDO is being deleted due to redundancy with the County's General Advisory Board Policy. The proposed addition to the Board's Rules of Procedure is the only instance where 'procedures' differ from the general advisory board policy.

<sup>2</sup> NCGS 160D-309, the provision of the Statute addressing the operation of the Board of Adjustment, has added an oath of office requirement for the Board.

HF. 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 Secretary/Clerk to the Board prior to the hearing.

IG. 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.

JH. Each member of the Board shall be thoroughly familiar with the provisions of the Zoning Ordinance/Unified Development Ordinance.

Amended  
6/11/90

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

Amended  
6/11/90

LJ. ~~Except at the election of officers, a~~ At no time shall more than five members (including alternate members) officially participate or vote in any meeting or hearing.

**Commented [JB3]:** It is problematic to have alternate members being able to vote at one particular time. Also, alternate participation (without voting) was once an issue—this would clarify that.

V. Meetings

Amended  
6/12/78  
6/11/90  
2/3/10

A. Regular Meetings

Regular meetings of the Board shall be held on the second Monday of each month at ~~7:30 p.m.~~ 7:00 p.m. in the ~~Orange County West Campus Office Building at 131 W. Margaret Lane, Hillsborough, North Carolina; Whitted Human Services Center Complex at 300 West Tryon Street in Hillsborough, North Carolina~~ provided, that if the Chair so directs, meetings may be held at any other place in the County. ~~However, when such a meeting coincides with a county or state holiday, then the meeting shall be cancelled.~~ Meetings will adjourn at ~~10:30 p.m.~~ 10:00 p.m. unless otherwise voted.

- Commented [JB4]:** By practice this has moved to 7:00pm. The rule should reflect practice.
- Commented [JB5]:** By practice this has moved to the Whitted Building. The rule should reflect practice.
- Commented [JB6]:** If start is moved earlier, then it would be consistent to move this earlier as well.

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 ~~Secretary~~ 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 ~~Secretary~~ Clerk to the Board of inability to attend that a quorum will not be available, the ~~Secretary~~ Clerk to the Board may dispense with a ~~regular~~ meeting by giving written or oral notice to all members prior to the time set for the meeting.

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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.

- Commented [JB7]:** A Special Meeting may be dispensed if quorum is not expected.
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Amended  
1/11/99

D. Quorum

A quorum of the Board, necessary to conduct any business of the Board shall, consist of four members.

~~The concurring vote of four of the members of the Board shall be necessary in order:~~

**Commented [JB8]:** Vote is already covered in Section VID 3

- a) ~~To reverse any order, requirement, decision or determination of any administrative official charged with enforcement of this ordinance, or~~
- b) ~~To decide in favor of the applicant any matter upon which it is required to pass by this ordinance, or~~
- e) ~~To effect any variation in this ordinance.~~

~~A simple majority of those present shall be necessary to conduct routine business of the Board.~~

Amended  
6/11/90

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. ~~roll call; reading of the Public Charge;~~
- b. ~~reading approval of minutes of previous meetings;~~
- c. hearing of cases;
- d. ~~reports of committees;~~
- e. ~~unfinished business;~~
- fd. ~~consideration and determination of past cases; and, new business; and~~
- eg. ~~consideration and determination of cases heard previously other business.~~

Amended  
6/11/90

~~F. Failure of the appellant to appear, without notice of cancellation by 7:45 p.m. on the day of the hearing shall result in a 60-day delay before the hearing can be rescheduled.~~

**VI. Appeals and Applications**

**A. Types of Appeals**

The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the ~~Zoning Officer~~Planning Director. It shall also hear and decide all matters referred to it or upon which it is required to pass by the ~~Zoning Ordinance~~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

**B. Procedure for Filing Appeals**

No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the decision, determination or directive was made by the ~~Zoning Officer~~Planning Director and record of that action filed in the office of the ~~Zoning Officer~~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 ~~Secretary~~Clerk to the Board, or with the ~~Zoning Officer~~Planning Director, who shall act as ~~Secretary~~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. ~~Any resident of the area of zoning jurisdiction may appeal from any order or act of the Zoning Officer pertaining to enforcement of the Zoning Ordinance.~~

**C. Hearings**

Amended  
6/11/90

**1. Time**

After receipt from the ~~Zoning Officer~~Planning Director or ~~Secretary~~Clerk to the Board of the completed notice of appeal or application, the ~~Secretary~~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.

Amended  
6/11/90

**2. Notice**

The Board shall give public notice of the hearing as required by the North

**Commented [JB9]:** By practice this is roll call not done.

**Commented [JB10]:** By practice there is a reading of the public charge.

**Commented [JB11]:** By practice this is not done. Seems improbable that there would be a committee established, and if so can be added ad hoc.

**Commented [JB12]:** This seems unnecessary given the nature of the board. There is rarely any additional business, let alone unfinished business.

Would be more accessible to simply have an 'other business' section.

**Commented [JB13]:** By practice consideration and determinations are made concurrent with hearings.

**Commented [JB14]:** This terminology is inconsistent with the UDO.

**Commented [JB15]:** By practice staff schedules.

Such an open rule allows flexibility, but does have some potential for concern.

Carolina Open Meetings Law and as specified in the Orange County Zoning Ordinance 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 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 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 shall summarize the evidence which has been presented, giving the parties an opportunity to make objections or corrections. ~~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.~~

### 4. Denial and Rehearings

When the Board of Adjustment shall have denied an application for a Special Use Permit, the Board of Adjustment 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 rehearing 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.

**Commented [JB16]:** Problematic; see unauthorized practice of law.

**Commented [JB17]:** Relocated from elsewhere.

**Commented [JB18]:** By practice this is not done.

It may be helpful for a summary to be presented. However, it may be overly cumbersome for the Chair to do so.

This could be worded like (a) above to allow for the Chair to direct others.

Recommend having staff provide summary and retain opportunity for parties to object or correct.

**Commented [JB19]:** Relocate. The summary would seemingly be the final item.

Amended  
6/11/90

D. Decisions

~~When the Board of Adjustment shall have denied an application for a Special Use Permit, the Board of Adjustment 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.~~

~~4. Time~~

~~Decisions by the Board shall be made not more than thirty-six (36) days from the date of the hearing.~~

**Commented [JB20]:** Relocated. Seems more appropriate to be included with section on "rehearings"

Amended  
6/11/90

2. Form

~~Written notice by registered or certified mail of the decision in a case shall be given the applicant by the Zoning Officer within five (5) working days of the Board's actions. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board. The record shall show the reasons for the decision, with a summary of the evidence introduced and the findings of fact made by the Board. 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.~~

**Commented [JB21]:** This is problematic. It creates an additional obligation without any true benefit. The board needs to have an order reduced to writing—that's the critical element to any decision. It also muddles both the Board's duties and the County staff duties which is already defined in the UDO.

**Commented [JB22]:** This can be left ambiguous or be specified to indicate who must reduce it to writing.

Best practice would be to have drafts prepared by the Parties and Staff, then having it finalized at the meeting for the board to vote on. However, this may not be possible where there are cumbersome edits that may take additional time. Then the question is whether to allow the Chair to execute those revisions or require it to come back to the board for a vote. Giving the Chair authority is quicker, but creates additional room for disputes.

Amended  
6/11/90

3. 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).

4. Public Record of Decisions

The ~~minutes and orders decisions~~ of the Board, ~~as filed in its minutes,~~ shall be a public record, available for inspection at all reasonable times.

**VII. Amendments**

Amended  
6/12/78

- 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.