

**RULES OF PROCEDURE  
FOR THE WAKE COUNTY BOARD OF ADJUSTMENT  
(Revised June 13, 2017)**

(1) Regular Meetings

The Board shall hold a regular meeting on the second Tuesday of each month, except that if a regular meeting day is a legal holiday, the meeting shall be held on the next business day. The meeting shall be held in Room 2700 of the Wake County Justice Center (unless noticed otherwise), located at 300 S. Salisbury Street, Raleigh, North Carolina and shall begin at 9:00 a.m.

(2) Special Meetings

The Chair of the Board may call a special meeting of the Board as necessary to dispose of matters before the Board with the concurrence of four (4) members of the Board by signing a written notice stating the time and place of the meeting and the subjects to be considered. The Clerk shall cause the notice to be delivered to the Chair and all other Board members and all petitioners and other interest persons at least ten (10) days before the meeting and shall cause a copy of the notice to be posted on the primary bulletin board at least ten (10) days before the meeting. Only those items of business specified in the notice may be transacted at a special meeting, unless a majority of the members present consent to transacting additional items of business.

(3) Organizational Meetings

On the second Tuesday in March, before the regular meeting, the Board shall meet at the regular meeting place. Newly appointed members of the Board shall take and subscribe the oath of office as the first order of business. At the board's April meeting, the Board shall elect a Chair and Vice-Chair from among its members. The County Attorney or his designated representative shall preside over elections for Chair and Vice-Chair of the Board.

(4) Public Hearings

All petitions and appeals from determinations of the Zoning Administrator shall be heard at public hearings. At the appointed time, the Chair or his designee shall call the hearing to order and then proceed over it. A quorum of at least four (4) members shall be required to hear and decide such petitions.

(5) Quorum

Three members of the Board of Adjustment shall constitute a quorum. For purposes of deciding petitions and appeals, however, a quorum shall be four (4) members, as required by law. When a regular member of the Board is absent, an alternate member shall assume his place. The number

require for a quorum shall not be affected by vacancies. It is the responsibility of each member to inform the Clerk to the Board as soon as feasible if he or she is unable to attend a meeting.

(6) Agenda

The Clerk to the Board shall prepare the agenda for the meeting. A request to have an item of business placed on the agenda must be received at least two (2) working days before the meeting. Any Board member may, by a timely request, have an item placed on the agenda.

The Agenda shall include all appeals from determinations of the Zoning Administrator, which have been filed no less than thirty (30) days before the next regular meeting and for which proper notice was given. Each agenda item shall include as much relevant background information on the subject as is available and feasible to reproduce. A copy of the agenda and attached materials shall be available for public inspection as soon as they are completed. Each Board member shall receive a copy of the agenda. Copies may also be available for members of the public.

The Board may, by majority vote, add an item that is not on the agenda so long as the item is not a petition, which requires notice to interested persons under the Wake County Zing Ordinance.

(7) Order of Business

Items shall be placed on the agenda to the “Order of Business” The Order of Business for each regular meeting shall be as follows:

- a. Approval of the minutes;
- b. Discussion/adjustment of agenda;
- c. Public hearings on petitions for appeals from determination of the Zoning Administrator, variances and special use approvals;
- d. Unfinished business;
- e. New business and informal discussion.

However, by general consent of the Board, items may be considered out to this order.

(8) Procedure for Hearing Petitions

In hearing petitions, the Board shall endeavor to comply with the following sequence:

- a. Introduction of the petition by the Zoning Administrator or his delegate;
- b. Evidence by the petitioner;
- c. Evidence by other proponents of the petition, if any;
- d. Evidence by opponents of the petition, if any;
- e. Rebuttal by petitioner, if any;
- f. Discussions by the Board;
- g. Determination by the Board.

Failure to comply with this sequence in hearing a petition, however, shall not invalidate any action taken by the board on a petition.

The following forms attached as appendices to these rules have been approved for use in filing petitions, and may be used in assisting the Board of Adjustment in its deliberations. These forms maybe updated and amended, as the Clerk to the Board deems administratively necessary or proper without formal approval of this board.

Appendix A: Forms to petition for appeal of Zoning Administrator's interpretation, to petition for a variance and to petition for special use approval.

Appendix B: Forms for providing notice to interest parties of hearings or applications for variances or special uses.

Appendix C: Sample Agenda of Board of Adjustment meeting.

Appendix D: Checklist forms for hearings on petitions for appeals from interpretations of the Zoning Administrator, for variances, and for special uses.

#### (9) Decisions on Petitions

All decisions on petitions to the Board must be rendered within thirty (30) days of the hearing, unless the Petitioner consents, expressly or by implication, to a continuance of the hearing or deferral of a decision to a later regular meeting. The petitioner may withdraw his consent by notifying the Chair in writing that he wants a decision rendered with thirty (30) days of his notice of withdrawal. Failure to timely approve a petition shall be deemed a denial without prejudice to the petitioner's rights to refile his petition, and shall be so recorded at the next regular meeting.

[Comment: Section 19-23-6 (B) of the UDO requires that the petitioner be notified of the time and place of a special use hearing by registered or certified mail or personal service sent at least ten (10) days before the hearing]

#### (10) Absence of the Petitioner from the Public Hearing

When a petitioner who has been sent proper notice of the hearing fails to attend, the Board may decide the appeal in the petitioner's absence. The Board upon a showing of hardship, inequity, or other good cause may reconsider appeals decided in the absence of the petitioner.

#### (11) Election of the Chair and Vice-Chair

The Chair and Vice-Chair of the Board shall be elected annually at the board's April meeting by all regular and alternate members and shall not be removed from the office of the Chair or Vice-Chair unless disqualified to serve a member of the Board by reason of excessive absenteeism, dereliction of duty or incapacity to perform the duties required.

(12) Powers of the Presiding Officer

The Chair shall preside at meetings of the Board. A member must be recognized by the Chair in order to address the Board. The Chair shall have the following powers:

- a. To administer oaths and affirmations to witnesses testifying before the Board;
- b. To rule motion in or out of order, including the right to rule out of order any motion patently offered for obstructive or dilatory purposes;
- c. To determine whether a speaker is unduly repetitious or has gone beyond reasonable standards of courtesy in his remarks, and to limit testimony on these grounds;
- d. To entertain and answer questions on parliamentary law or procedures to designate the County Attorney to perform this function;
- e. to call a brief recess at any time;
- f. to adjourn in an emergency;
- g. to appoint alternate members to vote in the place of regular members ;
- h. to excuse members from voting upon petitions in which they have conflicts of interest;
- I. To recommend to the County Commissioners that the appointment of any member or alternate member be terminated for excessive absenteeism if a member is absent from three or more consecutive meetings or from six regular meetings in any twelve-month period.

In the absence of the Chair, the Vice-Chair shall exercise all of these powers. In the absence of both the Chair and the Vice-Chair, the remaining members of the Board shall select an ad hoc Chair to serve for the duration of the meeting.

(13) Action by the Board

The Board shall proceed by motion. Any member, including the Chair and alternate members, may make a motion.

(14) Second is Required

A motion shall require a second.

(15) One Motion at a Time

A member may make only one (1) motion at a time.

(16) Substantive Motion

A substantive motion is out of order while another substantive motion is pending, with the exception of the exception of "friendly" amendments which modify rather than substantially alter the original motion.

(17) Alternate Members

One or all of the alternate members may be appointed to serve as a full member of the Board whenever the Presiding Officer so designates, with the consent of the regular members in attendance at a regular or special meeting. Regular members who plan to be absent from a regular meeting should attempt to contact alternates to serve in their stead, and should inform the Clerk to the Board of planned absences and communications with alternate members as far in advance of the meeting as possible. The Chair may appoint an alternate member to serve as a voting member at the beginning of the meeting for the entire meeting, or if more than one alternate is present and a total of more than five regular and alternate members are in attendance, the Chair may allow all members to participate by designating the five members to vote on each agenda item requiring four-fifths (4/5) approval of the Board. If the Chair fails to specify which members shall vote on any item, all regular members present will vote and alternate members will vote in order of seniority, with a total of five regular and alternate members voting on each item. Nonvoting members may participate fully in all other aspects of meetings.

(18) Adoption by Majority Vote

A motion shall be adopted by a majority of the vote's cast, a quorum being present, unless otherwise required by these rules, the laws of North Carolina, or the provisions of the Wake County Zoning Ordinance. Alternate members of the Board may vote only on matters of policy and procedure except when serving as full members hearing petition.

(19) Debate

The Chair shall restate the motion and then open the floor to discussion on it. The Chair shall preside over the debate according to these general principles:

- a. The introducer (the member who makes the motion) is entitled to speak first;
- b. A member who has not spoken on the issue shall be recognized before someone who has already spoken;
- c. To the extent possible, the debate shall alternate between opponents and proponents of the measure.

(20) Procedural Motions

In addition to the substantive proposals, the following procedural motions shall be in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority vote for adoption.

[Comment: While a substantive motion is out of order if another substantive motion is pending, under both Robert's Rules of Order (RRO) and these rules, several procedural motions can be entertained in succession without necessarily disposing of the immediately pending one. The order or priority established which procedural motions yields to which – that is, what procedural motions may be made and considered while another one is pending.]

In order of priority (if applicable), the procedural motions are:

- A. To adjourn. The motion may be made only at the conclusion of an action on a pending matter; it may not interrupt deliberation of a pending matter.  
[Comment: This motion differs from the RRO motion in several aspects. According to RRO, it is not debatable or amendable and can be made at any time, thus interrupting substantive deliberations. In view of the small number of members and the available procedures to limit debate, this rule allows debate and amendment of the motion to adjourn but allows the motion to adjourn only when action on a pending matter is over. The motion to defer consideration or to postpone to a certain time or day may be used if the Board wants to adjourn before completing final action of a matter.]
- B. To take a recess  
[Comment: RRO does not allow debate on this motion, but since the number of members is small and procedures to limit debate are available, this rule allows debate on the motion. As in RRO, the motion is in order at any time. Under these rules, the Chair also has the power to call a brief recess.]
- C. Call to Deviate from the agenda. The motion must be made at the first reasonable opportunity or it is waived.  
[Comment: This motion is patterned on the call for the orders of the day in RRO. It differs in that it may be debated and must be made when an item of business that deviates from the agenda is proposed or the right to insist on following the agenda is waived for that item.]
- D. To Suspend the Rules. The motion requires a vote equal to a quorum. A quorum consists of three (3) members except when hearing petitions, in which case four (4) members constitute a quorum.
- E. To divide a Complex Motion and consider it by Parts.  
[Comment: This motion is the same as the division of a question and consideration by paragraph in RRO except that it is debatable.]
- F. To defer Decision.  
[Comment: See Paragraph (9) above. A decision on a petition whose consideration has been deferred expires thirty (30) days thereafter, or at the next regular meeting of the Board if it should occur more than thirty (30) days later, unless the petitioner consents to deferral in excess of thirty (30) days or beyond the next regular meeting. If the Board has taken no action within thirty (30) days of the hearing and the petitioner has not consented to further deferral, the petition will be deemed to have been denied.]
- G. To continue a Hearing to a Certain Time or Day.  
[Comment: The Board may defer decision of a pending petition to the next regular meeting of the Board and is appropriate when more information is needed. This postponement may exceed thirty (30) days or the next regular meeting, whichever occurs later, only with the consent of the petitioner.]

H. Call of the Previous Question. The motion is not in Order until every member has had an opportunity to speak.

[Comment: This motion differs from the motion of the same name in RRO. The RRO motion is always in order, is not debatable or amendable, and requires a two-thirds (2/3) vote for adoption. Thus it may be used to compel an immediate decision on a proposal without any debate on the issue. Such a device may be necessary to preserve efficiency in a large assembly, but with a small Board, a minimum period of debate on every petition that comes before the board strikes a better balance between efficiency and effective representation by all Board members. Since every member will have an opportunity to speak, the debate may be ended by a majority vote.]

I. To Amend. An amendment to a motion must be germane to the subject matter of the motion. There may be an amendment to the motion and an amendment to an amendment, but not further amendments.

[Comment: This motion is identical to the motion of the same name in RRO.]

J. To Reconsider. A motion to reconsider a matter or a part of a matter must be made by a member who voted with the prevailing side. The motion may be made at the same meeting at which the original vote was taken or within two regular meetings thereafter; however, no official Board action may be taken on a matter under reconsideration unless notice has been given to interested persons entitled to notice under the Zoning Ordinance and unless it is established that no prejudice will result from reliance upon the Board's earlier ruling. The motion cannot interrupt deliberation on a pending matter but is in order at any time before adjournment.

#### (21) Renewal of Motion

A motion that is defeated may be renewed and redecided at any subsequent meeting so long as the matter remains pending and undecided before the Board.

#### (22) Withdrawal of a Motion

The introducer may withdraw a motion at any time before a vote.

[Comment: RRO provides that once the Chair for debate has stated a motion, it cannot be withdrawn without the assembly's consent. Such a procedure is unnecessary for a small Board.]

#### (23) Duty to Vote

Every regular member or alternate sitting as a regular member must vote unless excused by the Chair for conflict or interest. A member who wishes to be excused from voting shall so inform the Chair, who may excuse the member. If the Chair wishes to be excused from voting, he shall so inform the Vice-Chair who shall exercise the power to excuse him.

Abstentions shall be counted as affirmative votes.

(24) Executive Sessions

The Board may hold executive sessions as provided by law. It shall commence an executive session by a majority vote to do so and terminate an executive session in the same manner.

[Comment: No attempt is made to set for the particulars of compliance with the open meetings law, G.S. §143-318. ET seq. Minutes should be kept of all executive sessions. If the board takes no action in executive session, the minutes should simply state that the meeting was held and a particular topic was discussed.]

(25) Minutes

Written minutes shall be kept of all meetings of the Board.

(26) Reference to Robert's Rule of Order

To the extent not provided for in these rules and to the extent that the reference does not conflict with the spirit of these rules, the Board shall refer to Robert's Rules or Order, latest revision, for unresolved procedural questions.

[Comment: RRO was designed to govern a large legislative assembly, and many of its provisions may be inappropriate for small boards. Nevertheless, it is the best source of parliamentary procedure. Care should simply be taken to adjust RRO to meet the needs of small governing bodies.]

(27) Written Decisions

In accordance with G.S. §160A-388(e2)(1), each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The written decision may be approved by the board or by the board chair.

**INTRODUCING THE  
WAKE COUNTY  
BOARD OF ADJUSTMENT**

If the ideal zoning ordinance (regulations governing land uses) were adopted by the Commissioners – meeting the basic needs of the citizenry, but at the same time avoiding individual hardship – there would be no need for a Board of Adjustment. Since the ideal zoning ordinance does not exist, the Board serves to hear appeals from any decision of the Zoning Administrator, consider variance requests in hardship situations, and consider special use applications. Without the Board, appeals from decisions of the Administrator, variance requests, and special use applications would have to be heard by the Commissioners (zoning change or ordinance amendment) or by the courts (suit for writ of mandamus ordering the administrator to issue the permit.) The Board, by serving as the intermediary between the Administrator and the courts or Commissioners, greatly reduces the time and expense involved in hearing an appeal or considering a request for variance or special use.

The Board is a quasi-judicial body – the Board’s decisions are appeal able to Superior Court within 30 days after their decision is filed with the administrator – however, it is not intended that proceedings before it be conducted as formally as those before the courts. However, in order to protect the interests of the public and also the parties involved, the Board adhere to the following rules of procedure. (1) Introduction of the petitioner by the Zoning Administrator or his delegate; (2) Evidence by the petitioner; (3) Evidence by other proponents of the petition, if any; (5) Rebuttal by petitioner, if any; (6) Discussion by the Board; and (7) Determination by the Board. In addition to these rules, the presiding officer (Chair) has the following powers: (1) To administer oaths and affirmations to witnesses testifying before the Board; (2) To rule motions in or out of order, including the right to rule out of order any motion patently offered for obstructive or dilatory purposes; (3) To determine whether a speaker is unduly repetitious or has gone beyond reasonable standards of courtesy in his remarks and to limit testimony on these grounds; (4) To entertain and answer questions of parliamentary law or procedures or to designate the County Attorney to perform this function; (5) To call a brief recess at any time; (6) To adjourn in an emergency; (7) To appoint alternate members to sit in the place of absent regular members; and (8) To excuse members from voting upon petitions in which they have conflicts of interest.

The Wake County Board of Adjustment meets the second Tuesday of each month at 9:00AM. However, if the regular meeting day is a legal holiday, the meeting is held on the next business day. It is important to remember that the Board’s discretion is limited; that is, their duties and powers are set out in the general statutes and zoning code and they are limited and guided by these laws.