

## **RULES OF PROCEDURE**

### **UNIFIED DEVELOPMENT ORDINANCE ALTERNATIVE COMPLIANCE REVIEW BOARD Charlotte, North Carolina**

Effective October 1, 2024

#### **Article I. GENERAL RULES**

The Unified Development Ordinance Alternative Compliance Review Board ("Board" or "ACRB Board") shall be governed by the terms of Chapter 160D of the General Statutes of North Carolina, the Unified Development Ordinance ("UDO") of the City of Charlotte adopted August 22, 2022, effective June 1, 2023, a text amendment adopted June 17, 2024, and by Local Act, North Carolina Session Law 1989, Chapter 220. The Board has no jurisdiction to address or rule upon constitutional and federal and state statutory issues or any other legal issues beyond its statutory authority. The Commissions' responsibilities relate to zoning and other land use matters, as well as the visual quality and aesthetic characteristics of the City of Charlotte. All Board members shall thoroughly familiarize themselves with these laws.

#### **ARTICLE II. ALTERNATIVE COMPLIANCE REVIEW**

- A. The Alternative Compliance Review Board (ACRB), in accordance with these regulations, shall have the following powers and duties that include, but are not limited to the following:
  - 1. To hear, review, and decide on requests for alternative compliance.
  - 2. To adopt rules of procedure necessary for the administration of its responsibilities not inconsistent with these regulations.
- B. The Board has the authority to approve, approve with modifications, or deny requests for alternative compliance to select standards identified in Article 37.10 of the UDO for the applicable zoning districts.
- C. No standard may be waived in its entirety. Requests for alternative compliance which are approved, or approved with modifications, shall meet or exceed the intent of original standards for which the alternative compliance is being requested.
- D. Members shall not make a decisions on an application for alternative compliance if the Member has been excused for a conflict of interest or is not present for the entire meeting.
- E. Any calculation of a quorum shall not include any Member with a conflict of interest or who fails to be present for the entire meeting on a particular application for alternative compliance.
- F. All voting Members present shall provide a decision for approval, approval with modifications, or denial, on the application for alternative compliance, unless excluded per Article V of these Rules of Procedure. All voting Members present for the entire meeting and without conflicts of interest shall not abstain from providing a decision.

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#### **ARTICLE III. ALTERNATIVE COMPLIANCE REVIEW BOARD LIMITATIONS**

- A.** The ACRB has no jurisdiction with respect to alternative compliance which would allow the establishment of a use that is not otherwise permitted in the zoning district, would result in the extension or expansion of a nonconforming building, structure, or use, or would change the zoning district boundary or zoning district designation of the subject property.
- B.** The ACRB has no jurisdiction for conditional zoning districts and exception (EX) districts except if the request pertains to alternative compliance for specified minimum requirements of the zoning regulations that are not associated with specifically approved conditions of the plan.
- C.** The ACRB has no jurisdiction regarding the bonus provisions of Section 16.3.
- D.** The ACRB has no jurisdiction to address or rule upon constitutional and federal and state statutory issues or any other legal issues beyond its statutory authority.

#### **Article IV. OFFICERS AND DUTIES**

- A.** The officers of the Board shall consist of a Chairperson and a Vice-Chairperson.
- B.** A Chairperson shall be elected by a majority vote from the full membership of the Board. The Chairperson's term shall be for one (1) year, or until a successor is elected, beginning on October 1st, and the Chairperson shall be eligible for re-election. The Chairperson shall decide upon all points of order and procedure, in accordance with these Rules, unless directed otherwise by a majority of the Board in session at the time. The Chairperson shall appoint any committees found necessary to carry out the duties of the Board. If an office becomes vacant during a term, the ACRB shall elect one of its Members to serve the remaining portion of the unexpired term. Officers shall be eligible for reelection.
- C.** The Chairperson shall preside at all meetings and shall decide upon all points of order and procedure, in accordance with these Rules, unless directed otherwise by a majority of the Board in session at the time.
- D.** A Vice-Chairperson shall be elected by the Board from among its members in the same manner and for the same term as the Chairperson. The Vice-Chairperson shall serve as acting Chairperson in the absence of the Chairperson and at such times the Vice-Chairperson shall have the same powers and duties as the Chairperson. In the absence of both the Chairperson and Vice-Chairperson, the Board shall select its presiding officers from those present.
- E.** In the event the office of Chairperson becomes vacant, the Vice-Chairperson automatically becomes the Chairperson as of the date of the vacancy. In the event the office of Vice-Chairperson becomes vacant, the Board shall elect a new Vice-Chairperson.

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**Article V. CLERK TO THE BOARD**

A Clerk shall be appointed to serve as Staff Assistant to the Board by the City of Charlotte UDO Administrator. For purposes of these Rules of Procedure, the “UDO Administrator” shall include any designee. The Clerk, subject to the direction of the Chairperson and UDO Administrator, shall keep all records, conduct all correspondence of the Board, arrange for all public notices required to be given, notify members of pending meetings and their agenda, notify parties to cases before the Board of its decision, and shall generally execute the clerical work of the Board, including, but not limited to, maintaining a permanent volume of the minutes of every meeting of the Board. These minutes shall constitute 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.

**Article VI. MEMBERS**

- A.** Member is defined as both regular and alternate Members, hereinafter referred to as Members.
- B.** Board is defined as all voting members, both regular and alternate.
- C.** The Board shall consist of five (5) regular members and three (3) alternate members residing within the City of Charlotte or its jurisdiction. One alternate member shall be assigned by the Clerk to attend each regularly scheduled meeting. Assignments shall be rotated among the alternate members. When an alternate member is called to participate as a regular member because one or more regular members are absent or are unable to participate, alternate members shall have the same powers and duties as regular members.
- D.** Each member shall comply with the conflicts of interest standards in Section 35.7 of the UDO and Article V of these Rules of Procedure.

**Article VII. RULES OF CONDUCT FOR MEMBERS**

- A.** New Members must complete the ACRB orientation and all new and returning members shall take an oath of office before performing duties at ACRB meetings.
- B.** Members of the Board must comply with City Council’s adopted resolutions and policies for appointed boards.<sup>1</sup> Violation of those policies, or the Rules stated herein, may subject the member to sanctions up to and including removal.
- C.** Faithful attendance in accordance with the City Council Resolution on Boards is required and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board.

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<sup>1</sup> <https://www.charlottenc.gov/City-Government/Leadership/City-Council/Boards-and-Commissions>.

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- D.** No Board member shall take part in the hearing, consideration, or determination of any case in a manner that would violate affected persons' constitutional rights to an impartial decision-maker. Impermissible violations of due process include, but are not limited to, a member having 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, as further outlined in Article X.B.
- E.** No Board member shall vote on any matter deciding an application unless the Board member has attended the public hearing or reviewed a transcript or recording of the public hearing on that application.
- F.** No Board member shall discuss any case with any parties prior to the public hearing on that case. Any Board member who initiates or receives any such *ex parte* communication shall promptly notify the City Attorney's Office and Clerk to the Board prior to the public hearing and such communication shall be disclosed on the record at the public hearing. A Board member shall not participate in or vote on any matter in which the Board member has had undisclosed *ex parte* communications prior to the public hearing on the case.
- G.** When a conflict of interest exists, the Member with a conflict shall leave the room for the entire item review.
- H.** Board members shall not independently, by any available means, investigate, research, explore, or travel to the site or location to inquire about the circumstances for an Alternative Compliance. In the event of such an inquiry, members shall disclose any prior knowledge on the record at the public hearing.
- I.** Members of the Board shall not express individual opinions on the proper judgment of any case with any party prior to its deliberations on that case.
- J.** No Board member shall participate in or vote on any matter in which the Board member has a fixed opinion, which is not susceptible to change, prior to hearing the matter.
- K.** If any objection is raised to a member's participation and that member does not recuse, the remaining members, excluding any member subject to the objection, shall by majority vote rule on the objection.

#### **Article VIII. MEETINGS**

##### **A. Regular Meetings**

Regular meetings of the Board shall be held according to the published schedule. in the Charlotte-Mecklenburg Government Center located at 600 East Fourth Street. Written notice of a meeting, with a list of Alternative Compliance applications to be considered at such meetings, shall be provided to each member at least five (5) days in advance of the scheduled meeting.

##### **B. Special Meetings**

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Special meetings of the Board may be called at any time by the Chairperson. Written notice of the time and place of special meetings shall be given at least forty-eight (48) hours prior to the meeting by the Clerk or by the Chairperson to each member of the Board and shall comply with all provisions of N.C.G.S. §143-318.12.

#### **C. Cancellation of Meetings**

Whenever there are no alternative compliance requests or other business for the Board, or whenever so many regular and/or alternate members notify the Clerk of the inability to attend that a quorum will not be available, the Chairperson may dispense with a regular meeting by giving written or oral notice to all members and the public prior to the time set for the meeting.

#### **D. Quorum**

Four (4) members of the Board shall constitute a quorum. However, if only four (4) members are present for a hearing, the applicant may choose to continue their case until the next meeting where the full five (5) member Board is present. A quorum may be lost due to an ACRB Member's conflict of interest or failure to be present for the entire meeting on a particular alternative compliance request.

#### **E. Voting at Hearings**

All regular members must vote on any issue unless they have disqualified themselves. Vacant positions on the Board and members who are disqualified from voting shall not be considered "members of the Board" if there are no qualified alternates available to take the place of such members.

#### **F. Conduct of Meetings**

All meetings shall be open to the public and held in accordance with these Rules. The order of business at the regular meetings shall be according to the published agenda. The Board shall have the discretion to modify the order of the meeting as necessary.

#### **G. Confirmation of Attendance at Meetings**

A Board member shall confirm attendance with the Board's Clerk one week, preceding a regularly scheduled meeting. For a special meeting, a Board member must confirm attendance with the Board's Clerk at least one and a half business days before the special meeting. For example, if the special meeting is scheduled for Wednesday, then the Board member must confirm attendance by 12:00 noon, Monday.

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If the Clerk has not received confirmation from a Board member by the deadlines stated above, the Clerk shall be authorized to have an alternate member sit at the meeting, in which case the Clerk shall provide oral or written notice to the alternate member as soon as possible, but no later than twenty-four (24) hours prior to the meeting. If it is necessary to replace the Board member with an alternate, it shall be noted as an absence for the Board member. If there is any dispute as to the implementation of this rule, the facts involved or the notation of absence, the Board member may bring the matter to the Board for review. The Board member bringing the matter shall not be permitted to vote on the matter.

#### **Article IX. Attendance**

- A. The ACRB attendance policy shall be the same as the City Council's attendance policy for boards and commissions.
  - 1. Members are required to attend 65% of all regular and special meetings from the time their term begins, until the end of the calendar year, and each subsequent 2 calendar years thereafter. Members must attend 50% of each meeting in order to be counted present.
  - 2. Members may not miss three consecutive regular meetings.
  - 3. If a Member fails to meet either of the two requirements above, they will automatically be removed from the board per City Council's policy.
- B. All Members leaving prior to adjournment should be excused by vote of the Committee.
- C. If a Member leaves without being excused, their vote shall count in the affirmative.

#### **Article X. HEARINGS**

##### **A. Scheduling of Hearings**

After receipt of an alternative compliance application, Staff shall schedule the time for a hearing when all application requirements have been met and staff has been provided adequate time to review and prepare a staff report, in accordance with UDO Article 37.10.D

##### **B. Notice of Hearings**

Notice of the time and place of each hearing shall be given in accordance with N.C.G.S. § 160D-406(b).

##### **C. Administrative Materials**

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The notice of the evidentiary hearing, including the location of the property and a description of the Alternative Compliance being requested, shall be mailed to the applicant, to the property owner if different from the applicant, and to property owners of all parcels adjacent the parcel of land that is the subject of the hearing, and to any other persons entitled to mailed notice. In the absence of evidence to the contrary, the City may rely on the Mecklenburg County tax abstract to determine owners of property entitled to mailed notice. The notice shall be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. Notice of the hearing shall be prominently posted on the site or on an adjacent street or highway right-of-way.

The ACRB staff shall transmit all materials prepared for the quasi-judicial meeting including applications, reports, written materials, and any comments received relevant to the matter being considered to the ACRB members, the applicant, and the property owner if not the applicant, at the same time. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board at the hearing.

#### **D. Continuances**

##### **1. Procedure to Properly File a Request for a Continuance**

If an Applicant (or owner of property or other party named in the application) wishes to request a continuance, the receipt of the request for a continuance must be received in writing at least two full working days before the scheduled hearing.

Upon receipt of a properly filed request for a continuance, the UDO Administrator shall have the authority to grant an Applicant's first request for continuance and shall continue the case to the next meeting.

If the Applicant wishes to file a subsequent request for a continuance, they must comply with the same procedure above for initial requests. However, the UDO Administrator shall not have authority to grant a subsequent request for a continuance except when the subject property has changed ownership or legal representation since the time the Alternative Compliance application was filed.

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For all subsequent requests for a continuance, including a first request received after the required deadline, the UDO Administrator and the Chairperson shall review the request and have authority to grant the request for a continuance if: 1) the Applicant establishes to the satisfaction of the UDO Administrator and the Chairperson that there is just cause for granting a continuance; and 2) there is no objection to the continuance from any party. If any party objects to a continuance or the request for continuance is denied, the Applicant or the Applicant's representative must appear before the Board at the scheduled hearing to request a continuance from the Board. After hearing from all parties, a majority vote shall be required in order to grant a continuance. The Board shall not grant the continuance unless there are exceptional, extenuating reasons justifying a continuance which shall be stated in the minutes. In appearing before the Board, the Applicant must be fully prepared to have the Board decide to proceed to hear the case if the request for continuance is denied.

#### **2. Additional Grounds for Continuance**

The Board may continue a hearing that has been convened without further advertisement.

If a hearing is set for a certain date and a quorum of the Board is not present, the hearing shall be continued until the next regular Board meeting without further advertisement.

The Board does retain authority for some extraordinary situations to grant a continuance to hear the case.

#### **3. Failure To Properly File A Request For A Continuance**

If an Applicant seeking an Alternative Compliance (a) fails to appear for the hearing or (b) appears and does not elect to proceed, then the case shall be heard as scheduled.

### **E. Conduct of Hearings**

The Applicant and any representatives, City and County staff, and all parties who have standing under UDO Section 37.5 and 37.10 shall have the right to participate fully in the hearing and may appear in person or by agent or by attorney at the hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive, as allowed by the Board. The Chairperson shall rule on any objections, and the Chairperson's rulings may be appealed to the full Board. The order of business for each hearing shall be as follows:

1. All witnesses before the Board shall be placed under oath by the presiding officer.
2. The applicable Administrator or their designee shall give a preliminary statement of the case and present any evidence, exhibits, or additional witnesses.
3. The Applicant and the Board may cross-examine or ask questions of City staff and City witnesses.



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4. The Applicant shall present their evidence, witnesses, and arguments in support of their application.
5. City staff and the Board may cross-examine or ask questions of the Applicant and the Applicant's witnesses.
6. Persons in favor of or opposed to granting the application shall present competent, material, and substantial evidence that is not repetitive for or against the application.
7. The parties and Board members may ask questions of any of the witnesses.
8. The parties shall be permitted to present rebuttals to opposing evidence and arguments.
9. If there are facts within the special knowledge of a member of the Board or acquired by their personal knowledge of the premises, they may be properly considered. However, those facts must be revealed at the public hearing and made a part of the record so that the Applicant will have an opportunity to meet them by evidence or argument and the reviewing Board may judge their competency and materiality.
10. The Chairperson closes the hearing portion of the case and informs everyone that the Board has entered into Discussion and Deliberation.
11. After Deliberation concludes, the Chairperson asks for a motion, as applicable to: grant an Alternative Compliance request, impose reasonable conditions on the granting of a request, grant a modified request, or deny a request.
12. The Chairperson also asks for a second to that motion.
13. Board members vote and issue their decision.

#### **F. Rehearing**

If an alternative compliance request is denied by the ACRB, nothing precludes the applicant from pursuing alternative options through submitting a new request for alternative compliance, applying for a rezoning to an exception (EX) zoning district, or filing for a variance with the UDO Board of Adjustment.

## **Article XI. DECISIONS**

### **A. Rendering of the Board's Decision**

Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. The decision of the Board shall be based on standards in Article 37.10 of the UDO and findings of fact to support its decision for an Alternative Compliance Review.

Alternative compliance may be used for standards specified in Article 37.10 of the UDO.

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The concurring vote four-fifths (4/5's) of the board (i.e. at least four voting members) shall be necessary to grant an Alternative Compliance. Where an Alternative Compliance is granted, the Board shall state in the record in detail the criteria from the Alternative Compliance Standards outlined in the UDO upon which the request for an Alternative Compliance was based and which the Board finds to exist. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of an Alternative Compliance.

#### **B. Time**

Final written decisions of the Board shall be made within a reasonable time, generally by its next regular meeting.

#### **C. Minutes**

The final decision of the Board shall be shown in the record of the case and recorded in the minutes. Such records shall show the reason for the determination, with the findings of fact made by the Board and their application to the applicable standards.

#### **D. Public Records of Decisions**

The decisions of the Board, as recorded in the minutes, shall be a public record filed and available if requested electronically through an email, or for inspection upon request to the Planning Design & Development Department located at 600 East Fourth Street during normal business hours of 8:00 AM to 5:00 PM.

### **Article XII. JUDICIAL REVIEW**

- A. If a petition for review pursuant to N.C.G.S. §160D-406(k) is filed, then the petitioner must order from the court recorder and pay for the original transcript of the hearing for delivery to the clerk of the ACRB for the preparation of the filing of the record in superior court. If a court ultimately renders a decision in favor of the petitioner, then the City shall reimburse the petitioner for the cost of the transcript. In the event that the petitioner does not order the transcript and does not prevail on appeal, then the City shall request the court to make the costs of the original transcript part of the costs of the action or recover the costs in the nature of debt owed.
- B. Every quasi-judicial decision shall be subject to review by the Mecklenburg County Superior Court, in the nature of certiorari. Appeals shall be filed by the later of 30 days after the decision is effective or after a written copy of the decision is provided by personal delivery, email, or by first-class mail to the applicant, property owner and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. When first-class mail is used to deliver the decision, mail shall be deemed delivered on the third

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business day following deposit of the notice for mailing with the United States Postal Service.

#### **Article XIII. CONFLICTS**

##### **A. Unified Development Ordinance**

If there is a conflict between the ACRB Rules of Procedures and the City of Charlotte Unified Development Ordinance, the Unified Development Ordinance shall prevail.

##### **B. Members**

No member of the ACRB shall seek to influence a decision, participate in any action, or cast a vote involving any matter that is before the Board that is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member, anyone with whom the member has a close familial relationship, or the member's business interest. A Board member shall not vote on any agenda item if the landowner of the property subject to the item or the applicant for the agenda item is a person with whom the member has a close familial, business, or other associational relationship. For the purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild, and also includes the step, half, and in-law relationships. In applying this rule, the following procedure shall govern:

1. A Board member who determines there exists a conflict of interest, shall declare the existence of a conflict and shall refrain from any deliberation on the matter and shall sit in the audience.
2. A Board member who believes there may exist a conflict of interest shall declare their possible conflict and may ask for a determination by the Board. A majority vote of the remaining Board members, excluding the member subject to the potential conflict, shall determine whether or not a conflict of interest exists.
3. Any interested party or member of the Board may challenge the existence of a conflict of interest and shall state the reason for the challenge. If the named Board member does not recuse themselves, the remaining members of the Board, excluding the member subject to the objection, shall consider the challenge and shall determine by majority vote whether a conflict of interest exists.
4. Withdrawal from participation in any matter is necessary only in those specific cases in which a conflict arises. There shall be no attempt to exclude entire categories of considerations because of the business or profession with which a member is associated.

#### **Article XIV. AMENDMENTS**

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These Rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than three (3) 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.