

RULES OF PROCEDURE

UNIFIED DEVELOPMENT ORDINANCE BOARD OF ADJUSTMENT Charlotte, North Carolina

Effective June 27, 2023

Article I. GENERAL RULES

The Unified Development Ordinance Board of Adjustment (“Board” or “UDO 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, and by Local Act, North Carolina Session Law 1989, Chapter 220. The UDO 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.

All Board members shall thoroughly familiarize themselves with these laws.

Article II. 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 January 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.
- C.** 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.
- D.** 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.

Article III. CLERK TO THE BOARD

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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 IV. MEMBERS

The Board shall consist of five (5) regular members and three (3) alternate members. 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.

Article V. RULES OF CONDUCT FOR MEMBERS

- A.** All new and returning Board members shall take an oath of office before performing any duties of their office.
- B.** New Board members must complete a new member orientation before participating in and voting at any hearing.
- C.** Members of the Board must comply with City Council’s adopted resolutions and policies for appointed boards.¹ Violation of those policies, or the Rules stated herein, may subject the member to sanctions up to and including removal.
- D.** 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.
- E.** 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.

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

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- F. No Board member shall vote on any matter deciding an application or appeal unless the Board member has attended the public hearing or reviewed a transcript or recording of the public hearing on that application or appeal.
- G. 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.
- 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 appeal or variance. 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 VI. MEETINGS

A. Regular Meetings

Regular meetings of the Board shall be held the last Tuesday of each month, or in accordance with the Board's adopted calendar for the year, beginning at 9:00 a.m. in the Charlotte-Mecklenburg Government Center located at 600 East Fourth Street. Written notice of a meeting, with a list of variances and appeals 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

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 appeals, variances, 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

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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.

E. Voting at Hearings

All regular members must vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Article V or X. A majority vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the administration and/or enforcement of the UDO or to grant any variance from the provisions of the UDO. Vacant positions on the Board and members who are disqualified from voting shall not be considered "members of the Board" for calculation of the requisite majority 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 as follows: Roll call, hearing of cases, approval of minutes, reports of committees, unfinished business, and new business. 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 by 12:00 noon, Friday, 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.

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 VII. VARIANCES AND APPEALS

A. Types of Unified Development Ordinance Variances

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The Board shall hear all requests for variances from the UDO. In considering variances, it may hear those cases based upon alleged hardship resulting from strict enforcement of the UDO. For major watershed variances involving State-required watershed regulations, the Board has authority to deny the variance or recommend approval to the North Carolina Environmental Management Commission for approval. The Board may assume any other duties assigned by the City Council. The Board shall comply with UDO Section 37.8.A.

B. Types of Unified Development Ordinance Appeals

The Board shall hear and decide appeals of administrative decisions by staff, administrators, directors, and their designees in accordance with UDO Section 37.8.B. In considering appeals, the Board may hear those cases based upon an alleged improper or erroneous interpretation or application of the UDO.

C. Procedure for Filing Unified Development Ordinance Variances/Appeals

All applications for a variance or appeal shall be submitted to the Clerk to the UDO Board and accompanied by the required fee. Complete applications shall be submitted in accordance with the City's filing deadline calendar, if applicable. Applications will not be considered properly filed until deemed complete and accurate by the designated administrator. When a variance or an appeal is filed, the date and time of filing shall be stamped on the face of the application.

D. Required Time Within Which To File Appeal

1. Unified Development Ordinance Appeal

No appeal shall be heard by the Board unless the appeal application is filed by the owner or other party with standing within thirty (30) days of receipt of the written order, requirement, decision, or determination made by the administrative officer charged with the administration and/or enforcement of the UDO unless otherwise specified in UDO Section 37.8.B.2 & 6. Any other person who has standing to appeal under Section 37.8.B.3 has thirty (30) days from receipt from actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice of the administrative officer's determination given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the U.S. Postal Service.

2. Questions About Standing

If there is a question as to (a) whether the Appellant has legal standing as a person aggrieved or (b) whether the Appellant has received notice of the order, requirement or decision appealed, the City Attorney's Office shall provide an opinion to the Board.

Article VIII. HEARINGS

A. Scheduling of Hearings

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After receipt of an appeal or variance application, the Clerk to the UDO Board 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 Sections 37.8.A.9.a and 37.8.B.9.a.

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. Exchange of Evidence in Cases Under Certain UDO Articles

For appeals or requests for variances arising under UDO Article 20 (Tree Protection), Article 23 (Water Supply Watershed Protection), Article 24 (Drainage), Article 25 (Post Construction Stormwater Regulations), Article 26 (Surface Water Improvement & Management (SWIM) Buffers), Article 27 (Floodplain Regulations), Article 28 (Soil Erosion & Sedimentation Control) and the following additional requirements apply:

In order for any evidence to be considered by the Board in its deliberations, such evidence must be made known to all parties and all parties must have the opportunity to object to and rebut the same. Thus, at least seven (7) days before the hearing, the Applicant, the property owner if different from the Applicant, and City shall exchange a copy of any documentary evidence intended to be presented at the hearing. Documentary evidence not provided seven (7) days in advance may not be presented at the hearing except upon consent of all parties or upon a majority vote of the Board. In considering whether to allow presentation of documents not timely disclosed, the Board should alternatively consider a continuance to allow the opposing party an opportunity to review the evidence.

D. Administrative Materials

City 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 Board 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.

E. 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 UDO Administrator must receive a request for continuance and the reasons for the request in writing by 5:00 p.m. on Thursday before the Board's regularly-scheduled meeting on the last Tuesday of each month. Stated more generally, the receipt of the request for a continuance must be received in writing at least two full working days before the scheduled hearing.

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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 variance or appeal application was filed.

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.

If an Applicant appealing a UDO administrative decision raises matters at the hearing that were not stated in the notice of appeal, and another party would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.

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 a variance (a) fails to appear for the hearing or (b) appears and does not elect to proceed, then the case shall be heard as scheduled.

An appealing party's failure to appear at a scheduled appeal hearing without good cause shall constitute an abandonment of the appeal, and the appeal may be dismissed by the Board.

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F. Conduct of Hearings

The Applicant and any representatives, City and County staff, and all parties who have standing under UDO Section 37.8.B.3 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. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to 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 (UDO Administrator, Zoning Administrator, Floodplain Administrator, Stormwater Administrator, Soil & Erosion Administrator, Chief Urban Forester, Historic Districts Administrator, and Subdivision, Streets, and Infrastructure Administrator) or their designee shall give a preliminary statement of the case and present any evidence, exhibits, or additional witnesses. For appeals of administrative decisions, the administrator or staff person who made the decision (or their successor if the person is no longer employed) shall be present at the hearing to appear as a witness.
3. The Applicant and the Board may cross-examine or ask questions of City staff and City witnesses.
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.

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11. After Deliberation concludes, the Chairperson asks for a motion, as applicable to: grant a variance request, impose reasonable conditions on the granting of a request, grant a modified request, or deny a request; affirm, reverse, or modify a UDO interpretation or notice of violation; or affirm, reverse, or remand a decision made by City staff.
12. The Chairperson also asks for a second to that motion.
13. Board members vote and issue their decision.

G. Rehearing

The Board may not rehear a variance application that has been denied until two (2) years after the denial. Prior to that two-year period, it shall refuse to hear an appeal or application if it finds there have been no substantial changes in conditions or circumstances to the application.

Article IX. 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 findings of fact and conclusions of law to support its decision for a variance or appeal.

1. Appeals

The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, determination, or interpretation that ought to be made only upon finding an error in the application of the UDO on the part of the Administrative Officer rendering the order, requirement, decision, or determination. The Board shall have all the powers of the designated administrator or director or their designee who made the decision. A majority vote of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Administrative Officer.

2. Variances

The Board shall grant a variance upon a finding that:

- a) Unnecessary hardship would result from the strict application of the regulation;
- b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography;
- c) The hardship did not result from actions taken by the applicant or the property owner; and
- d) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

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A concurring vote of a majority of the Board shall be necessary to grant a variance. Where a variance is granted, the Board shall state in the record in detail any unnecessary hardship upon which the request for variance 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 a variance.

B. Time

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

C. Form and Appeal

Notification of the Board's decision shall be in compliance with UDO Section 37.8.A.14 or 37.8.B.13, as applicable, and any appeal of the decision shall comply with UDO Section 37.8.A.17 or 37.8.B.15, as applicable.

D. Minutes

The final decision of the Board on each appeal 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.

E. Public Records of Decisions

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

Article X. CONFLICTS

A. Unified Development Ordinance

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

B. Members

No member of the UDO Board 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:

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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 XI. AMENDMENTS

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.