



AGENDA
Regular Board of Adjustment Meeting
March 18, 2021 - 6:30 PM
Virtual Meeting

Meeting Information- *This meeting will be held virtually. All who wish to view the meeting may do so by visiting: <https://www.facebook.com/HuntersvilleNCTownGovernment>. No Facebook account is required to view the meeting. If you wish to provide a public comment please contact Tracy Barron at tbarron@huntersville.org by 3 pm on the day of the meeting. You may submit your public comment in writing or by joining the virtual meeting via computer or telephone.*

- 1. Roll Call, Determination of Quorum**
- 2. Approval of Minutes**
 - 2.A. Consider approval of the February 9, 2021 Minutes of the Meeting
 - 2.B. Consider approval of the February 25, 2021 Minutes of the Meeting
- 3. Hearing of Cases**
- 4. Other Business**
 - 4.A. Consider approval of the Rules of Procedure amendments
- 5. Adjourn**



**Minutes of the Meeting
Regular Board of Adjustment Meeting
February 9, 2021 - 6:30 PM
Virtual Meeting**

Meeting Information- *This meeting will be held virtually. All who wish to view the meeting may do so by visiting: <https://www.facebook.com/HuntersvilleNCTownGovernment>. No Facebook account is required to view the meeting. If you wish to provide a public comment please contact Tracy Barron at tbarron@huntersville.org by 3 pm on the day of the meeting. You may submit your public comment in writing or by joining the virtual meeting via computer or telephone.*

1. Roll Call, Determination of Quorum

Quorum was determined, and Chairman Cecil called the meeting to order.

Regular Members in attendance: E. Cecil, Chairman, S. Genenbacher, and B. Welch

Alternate Members present: J. Bradshaw, J. Loucks and P. Jacobson all were called upon to serve as Voting Members.

Regular Members absent: D. Brewer, J. Kluttz, and T. Primiano (all absent due to technical difficulties), and W. Smith

2. Approval of Minutes

2.A. Consider approval of the January 12, 2021 Minutes of the Meeting

J. Bradshaw made a Motion to Approve. S. Genenbacher seconded the motion. The motion passed unanimously (6-0).

3. Hearing of Cases

4. Other Business

4.A. Discussion of the Rules of Procedure updates

Chairman Cecil led a review and there was discussion related to the proposed amendments to the Rules of Procedure. Jacob Glass, Town Staff Attorney was present for the discussion.

Under Item III.B. Attendance there is clarifying text to indicate that Alternate members are also subject to the rules of attendance.

Under Item IV.A. there has been an addition to clarify the practice that is already in place to be in compliance with state statutes.

Under Item IV.E. there was discussion as to why the quorums are outlined as they are. J. Glass provided confirmation that this is in keeping with the state statute requirements. Staff commented that when the

quorum for a meeting only meets the minimum vote requirement for an approval that the applicant is notified and given the opportunity to defer the hearing to the following month when a full quorum may be available.

There were no adjustments or changes to the proposed amendments as noted in the attached copy.

5. Adjourn

J. Bradshaw made a Motion to Adjourn. J. Loucks seconded the motion. The motion passed unanimously (6-0).



**Minutes of the Meeting
Special Board of Adjustment Meeting
February 25, 2021 - 6:30 PM**

1. Roll Call, Determination of Quorum

Quorum was determined, and Chairman Cecil called the meeting to order.

Regular Members in attendance: E. Cecil, Chairman, S. Genenbacher, B. Welch, and J. Kluttz (arrived at 6:38 pm)

Alternate Members present: J. Bradshaw, J. Loucks and P. Jacobson who was called upon to serve as a Regular Member.

Regular Members absent: W. Smith, T. Primiano, and D. Brewer

2. Approval of Minutes

3. Hearing of Cases

4. Other Business

4.A. Discussion of the Rules of Procedure updates

Chairman Cecil conducted a review of the proposed amendments and edits to the Rules of Procedure.

Regarding Item III. B – Attendance; discussion was had regarding the role of Alternate members during the meeting and the Boards desire to include alternates in discussions and to be allowed to ask questions.

E. Sloop, Town Attorney referenced NCGS 160d.302(a) related to why Alternate members may only participate when acting as a regular member, given that this is a quasi-judicial hearing.

Chairman Cecil commented that from his research there are various municipalities that exclude Alternates from participating in their rules of procedure and various that do not indicate exclusion, thereby leaving the door open for inclusion.

Discussion was had related to how this has been handled previously and what the process is for adjustments to the formation of the Board members. Staff related that the voting requirement of 4/5 dictated the need for alternates to ensure that a quorum and 4/5 vote could be met.

Historically the Town Attorney only attended when there was something that could be more

controversial being heard. If a decision was appealed, allowing the Alternates to be involved always gives the opposing counsel the option to use their participation as a defense. For that reason, Town counsel is recommending that we avoid that potential litigation.

Related to the addition of “The Chair may treat extenuating circumstances and emergency situations as exceptions to the Attendance Rule.” Town counsel recommended the addition of the specification of Attendance and a change from Chairman to Board.

J. Bradshaw expressed concern about this change to the Board and the following statement to “indicate the general reason for being absent.” Both requirements tend to require the member to share personal information, possibly with the entire Board.

Item IV. D Quorum – the Board proposed that a quorum of six members always be required.

Item IV. E Voting – the Board proposed the four/fifths requirement be of the present voting members as their quorum. E. Sloop stated that four/fifths must be of the seven regular members, which would require six votes to pass; and something other than a variance is a vote by majority which would be four votes to pass.

J. Kluttz asked if the applicant may request a continuance. E. Sloop confirmed that an applicant may request a continuance at any time. The Board must then vote to grant the continuance. This includes if the applicant wanted the entire Board to hear the item versus only the quorum.

The proposed statement, “Where a majority approval is not otherwise defined in these Rules it means a majority of those members present and voting at a meeting where a quorum is present,” was agreed was unnecessary and shall be stricken.

Item VI Adoption of By-laws and Amendments, “These Board of Adjustments, by a majority vote of all members present, shall adopt Rules of Procedures.” E. Sloop recommended that the subsequent sentence clarify the statement “not less than (4) four members.” J. Bradshaw agreed with the recommendation.

There was no further discussion or question related to the balance of the proposed amendments.

S. Genenbacher made a Motion to Continue the March 2, 2021 meeting. B. Welch seconded the motion. The motion passed 6-1 with J. Bradshaw opposed.

4. New Business

Chairman Cecil brought up new business related to Emergency COVID-19 Act which indicates that quasi-judicial hearings may be held remotely if three criteria are met, 1)if the issue arises during the emergency, 2)the applicant would have to agree and 3)all due process rights are provided.

The question was raised if a member not able to attend due to COVID-19 would be able to participate remotely. The determination is that the regular member would now become an Alternate and would not participate and would not vote. Any adjustments to this would be determined by discussion of the Item III Attendance rules of procedure.

5. Adjourn

S. Genenbacher made a Motion to Adjourn. J. Loucks seconded the motion. The motion passed unanimously.

**Town of Huntersville
Board of Adjustment
March 18, 2021**

To: Town Board

From: Tracy Barron, Exec Asst

Date: March 18, 2021

Subject: Consider approval of the Rules of Procedure amendments

EXPLAIN REQUEST:

Consider approval of the Rules of Procedure amendments

ACTION RECOMMENDED:

Consider approval of the Rules of Procedure amendments

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

1. BOA ROP Change 3-12-21 TB

**RULES OF PROCEDURE
BOARD OF ADJUSTMENT
TOWN OF HUNTERSVILLE, NORTH CAROLINA**

I. GENERAL RULES

The Board of Adjustment (hereinafter referred to as the “Board”) shall be governed by the terms of Chapter 160DA, Article 319, Part 3 of the North Carolina General Statutes and by the Town of Huntersville Zoning Ordinance and Code of Ordinances. All members of the Board shall thoroughly familiarize themselves with these laws. The Board, being a public body, shall at all times conduct meetings in conformity with the applicable Open Meetings Law statutes. The members of the Board shall also act as the Watershed Review Board.

II. OFFICERS AND DUTIES

A. Appointments

The Board shall consist of seven (7) Regular members and three (3) Alternate members. The Regular membership shall consist of six (6) members who reside within the corporate limits, and one (1) extraterritorial member. The number of Regular members appointed who reside in the extraterritorial zoning jurisdiction (“ETJ”) shall at a minimum meet the requirement of N.C.G.S. §160DA-30762 for proportional representation, but shall in no instance be less than one (1). The Alternate membership shall consist of at least two (2) members who reside within the corporate limits, with the remaining Alternate member residing in either the corporate limits or the ETJ.

Regular and Alternate members shall be appointed by the Town of Huntersville Board of Commissioners (hereinafter referred to as “Town Board”) to terms of office of three (3) years. Members of the Board shall be limited to three (3) consecutive terms, unless waived; however, may be reappointed after remaining off the Board for at least one (1) year.

If vacancy on the Board occurs by reason of death, resignation, change of residence, Town Board removal, or any other reason, the seat shall be filled by the Town Board in an expeditious manner for the duration of the unexpired term. The Town Board may appoint certain members for less than three (3) years so that the terms of all members shall not expire at the same time.

The Town of Huntersville Planning Department shall be responsible for maintaining a current list of Board members, including the effective date of their appointment and expiration date of their term. The Planning Department shall keep the Town Board informed, at least sixty (60) days prior to the expiration date, as to when any term is to expire.

At the regular Board meeting held in the month of July~~January~~, or at the first regular meeting held after July~~held each calendar year~~, the Board shall elect a Chairman and Vice Chairman from their Regular membership. All Regular and Alternate members shall be allowed to vote. Office holders, however, shall be limited to Regular members. Terms of office shall be one (1) year. Persons may be reelected to the same office for successive terms.

B. Duties

The Chairman shall decide upon all points of order and procedure subject to these Rules unless directed otherwise by a majority of the Board in session at the time. The Vice Chairman shall serve as acting Chairman in the absence of the Chairman, and at such times, he shall have the same powers and duties as the Chairman. In the event of the absence of both the Chairman and the Vice Chairman from a Board of Adjustment meeting, the Regular members present may elect a temporary Chairman for that meeting and proceed with the order of the business. The Chairman, or any member acting as Chairman is authorized to administer oaths to witnesses (who may either swear or affirm) in any matter coming before the Board.

C. Secretary

A staff member of the Town of Huntersville Planning Department shall be the recording Secretary to keep Minutes of Regular and Special Board meetings. The Secretary shall keep in a permanent volume the Minutes of every meeting of the Board. The Minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of the Board upon a resolution of upon the final determination of any question, indicating the names of members absent or failing to vote. The Minutes of the Board of Adjustment shall be kept at the office of the Town of Huntersville Planning Department. The Secretary is authorized to administer oaths to witnesses (who may either swear or affirm) in any matter coming before the Board.

III. RULES OF CONDUCT FOR MEMBERS

A. Removal

Members of the Board may be removed by the Town Board for cause, including violation of the Rules stated herein.

B. Attendance

In order for the Board to carry out its duties and responsibilities, it is necessary for all members to attend the meetings. All voting Board members are expected to participate in discussions and ask questions. ^[ES1] If any Regular or Alternate member is absent for three (3) ~~consecutive~~ regular meetings within any twelve (12) month period such member may be removed by the Town Board, and a replacement made for the unexpired portion of the term. The Chair may treat extenuating circumstances and emergency situations as an exception to the Attendance Rule. ~~Alternate members may be removed by the Town Board for repeated failure to attend or participate in meetings when requested as set forth herein.~~ The Board may make a recommendation to the Town Board regarding removal of a member for duly cited causes and the request must be in writing, and signed by the Chairman of the Board.

~~All The Regular~~ members, on receiving notice of a meeting they cannot attend or upon learning that they will be unable to participate in a meeting, shall promptly notify the Secretary that they are unable to attend or participate and indicate the general reason for being absent ^[ES2]. The

Alternates, when called upon to participate because of a Regular member's absence or recusal shall alternate their participation. The order in which they are called to sit shall be determined through a pre-arranged schedule prepared by the Secretary. Alternate members shall have the same powers and duties as Regular members.

The Alternate members are encouraged ^[ES3] to attend all meetings regardless of if they are voting. When an Alternate member attends a meeting and is called on to participate because of a Regular member's absence, that Alternate member shall retain their "Regular" status should the absent Regular member enter the meeting after the public hearing has been opened. The Regular member who appears after the opening of the hearing will take on "Alternate" status for the duration of that meeting. If an Alternate member is called on to participate in the Board's consideration of an item from which a Regular Board member shall be excused due to conflict or otherwise, the Alternate shall relinquish their seat upon conclusion of that matter.

C. Conflicts of Interest ^[ES4]

No member shall participate in or vote in any quasi-judicial matter 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, which he or she has an impermissible conflict, which includes the 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. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. If a member or Alternate member has an impermissible conflict of interest as described by this section, the member shall be excused from voting. the ~~The Membership~~ must disclose the conflict to the Board and remove themselves from the dais prior to the item being heard. They may return to the dais after the hearing is concluded. The Chairman may request disclosure of conflicts at the beginning of any hearing.

D. Discussion of Board Cases

Board members shall refrain from discussing upcoming matters of business with any parties, including other Board members, prior to the meeting at which such items are to be publicly discussed; however, members may receive and/or seek general technical information pertaining to the case from the Secretary, Town Manager, Town Attorney, or Planning staff prior to the Board meeting at which the case is to be heard.

IV. MEETINGS

A. Regular Meetings

Regular meetings of the Board shall be held on the second Tuesday of each month at a reasonable time at the Town Hall (typically 6:30 p.m.), provided that meeting may be held at any other conveniently located place in Huntersville if directed by the Chairman at least forty-eight (48) hours in advance of the meeting. The Secretary shall cause notice of change to the time or

place of a meeting to be given in compliance with N.C.G.S. § 143-318.12. Each member (including the Alternate members) shall be notified of each meeting by the Secretary.

B. Special Meetings

Special meetings of the Board may be called at any time by the Chairman provided that at least forty-eight (48) hours written notice of the time and place of the special meeting be given by the Secretary to each member of the Board including the Alternate members, and as may be required by the Open Meeting Law of North Carolina.

C. Cancellation of Meetings

Whenever there are no appeals, interpretations, applications for variances, or other business for the Board, or whenever so many Regular and Alternate members notify the Secretary of their inability to attend that a quorum will not be available, the Chairman may dispense with a regular meeting by having the Secretary give written or oral notice to all members prior to the time set for the meeting.

D. Quorum

A quorum consisting of six (6) members of the Board shall be required before any vote is taken for any matter coming before the Board, including, but not limited to a variance~~a variance~~. ~~A quorum consisting of four (4) members shall be required before any vote is taken for any other quasi-judicial matter, including matters when acting as the Watershed Review Board, an appeal, or to enter any other decision.~~

E. Voting

The concurring vote of four~~th~~th~~fifths~~^[ESS] ~~(six voting members)~~ of the Board shall be necessary to grant a variance, including a variance as the Watershed Review Board. Except in the case of a variance, including a variance as the Watershed Review Board, a majority of the members shall be required to decide any other quasi-judicial matter, or to determine an appeal, or to enter a decision, ~~other than a decision involving a variance, as the Watershed Review Board~~. ~~-~~ Vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter pursuant to Section III. C. 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. ~~-~~ No more than seven (7) Regular and Alternate members may vote on any matter for which a public hearing was held. The Chairman shall be able to vote on any matter, including making and seconding a motion. No Board members shall vote on any matter deciding an application or appeal unless he shall have attended the public hearing on that application. If, during the review of any matter, a board member's term ends or is otherwise no longer with the Board, a different board member may vote on the matter after fully reviewing any available transcript, video, or other information of the hearing. Every quasi-judicial decision shall be signed by the Chairman, or other duly authorized member of the Board, and is effective upon filing the written decision with the Secretary of the Board.

F. Conduct of Meeting

All meetings shall be open to the public. The order of business at regular meetings shall be as follows:

- (A) Roll Call, Determination of Quorum
- (B) Approval of Minutes of Previous Meetings
- (C) Hearing of Cases
- (D) Other Business
- (E) Adjourn

G. Continuation of Meeting

Meetings may be continued from one date to another upon majority vote provided that the reconvened meeting occurs no earlier than~~at least~~ forty-eight (48) hours thereafter, and such meeting is held in a conveniently located meeting site in Huntersville.

H. Variance

A variance may only be granted upon a showing that all four of the following provisions are met:

- (1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
- (4) 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.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

V. APPEALS, APPLICATIONS, PUBLIC HEARINGS

A. Types of Appeals

The Board shall hear and decide appeal decisions of administrative officials charged with enforcement of the Zoning Ordinance, and may hear appeals arising out of any other ordinance that regulates land use or development.

B. Procedures for Filing Appeals

No appeal shall be heard by the Board unless a completed Notice of Appeal is filed with the Town Clerk to the Board of Adjustment ^[ES6] within thirty (30) days from receipt ^[ES7] the date of the order, decision, determination, or interpretation is made or rendered by an administrative officer, and any such fees shall be paid upon filing the Notice of Appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. ^[ES8] All notices shall be made upon the form furnished by the Town for that purpose, and all information required thereon shall be completed, including a statement for the grounds for appeal, before an appeal shall be considered as having been filed.

C. Public Hearing Mandate

A public hearing conducted by the Board shall be required to:

- (1) Decide all appeals and interpretation
- (2) Grant any variance to the terms of the Ordinance and,
- (3) Hear and decide all other matters referred to it or upon which it is required to pass by the Zoning Ordinance.

D. Public Hearing Date

After receipt of a completed application for an interpretation or variances, or Notice of Appeal, the Board shall hear the case on the first regular meeting which is at least 31 days following the date of such submittal of a completed application or Notice of Appeal, unless postponed by planning staff with the consent of the applicant prior to notice of hearing being mailed as provided in the Town of Huntersville Zoning Ordinance, as amended.

E. Conduct of Hearing

Any public hearing shall be conducted in a *quasi*-judicial manner. Any party may appear in person, by agent, or by attorney at the hearing. All persons presenting evidence before the Board shall be placed under oath by the Chairman or acting Chairman, or Secretary, and the opposing party may cross examine them. The Chairman may rule on the admissibility of evidence. The order of business for public hearing shall be as follows:

- (1) Persons giving testimony shall be placed under oath;
- (2) The Chairman may establish reasonable procedures to assure that the hearing is conducted in a fair, impartial, and efficient manner.
- (3) The Chairman, or such person acting as Chairman shall direct planning staff to give a preliminary statement of the case;
- (43) The applicant shall present the argument in support of their application;
- (54) Persons opposed to granting the application shall present the evidence against the application;
- (65) Other persons in favor of granting the application shall present the evidence for the application;
- (76) Both sides will be permitted to present rebuttals to opposing testimony;
- (7) ~~The Chairman, or their designee, shall summarize the evidence which has been presented giving parties the opportunity to make objections or corrections;~~
- (8) Voting ^[E9] b Board members may ask questions of any witness.
- (98) The Chairman shall close the period for public discussion. The Board shall publicly discuss the case without further input from the public. Board members, however, may seek input, clarification, etc. from persons eligible to give evidence who are seated in the audience on any piece of evidence heretofore presented. Cross examination and rebuttals may be made only on any such new evidence presented;
- (109) The Board shall render a decision and findings of fact on the matter based on substantial, competent, material evidence in record or, if it so chooses, continue the public hearing to a publicly stated date, time and location ~~no earlier than~~ at least forty-eight (48) hours thereafter. No further notice of a continued hearing need be made unless a period of six (6) weeks or more elapses between hearing dates.

F. Rehearings

An application for a rehearing may be made in the same manner as provided for in the original hearing. All applications for rehearing shall be made within thirty (30) days after the decision of the Board has been filed in its office. 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 a substantial change in the facts, evidence, or conditions in the case. The application for hearing shall be denied by the Board if, from the record it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that there has been a substantial change it shall there upon treat the request in the same manner as any other application. The Board of Adjustment shall not be required to hold a public hearing to determine whether a rehearing of the case shall be conducted. Said determination shall, however, require a four-fifths (4/5) vote of the Board of Adjustment.

G. Decisions

(1) Time

Decisions by the Board of Adjustment shall be made within thirty-one (31) days from the date the hearing was officially closed.

(2) Form

Written notice of the decision in a case shall be sent by first class mail to the applicant and to every aggrieved party who has filed a written request for such a notice with the Secretary or the Chairman when the hearing is held within five (5) working days after the case is decided. The final decision shown in the record of the case shall be entered in the Minutes of the Board. Such record shall show the reasons for the determination with a summary of the evidence introduced, and the findings of fact made by the Board.

VI. ADOPTION OF ~~BY LAWS~~RULES OF PROCEDURE AND AMENDMENTS

These Rules shall at all times be consistent with all oOrdinances of the Town of Huntersville and laws of the State of North Carolina. Should any provisions of these Rules be inconsistent with such oOrdinances or laws of the State of North Carolina, said oOrdinances and laws shall control.

The Board of Adjustment, by a majority vote of all Regular and Alternate mMembers present, shall adopt the Rules of Procedure. These Rules may, within the limits allowed by law, be amended at any time by an affirmative vote of a majority of all Regular and Alternate members present, not less than four (4) members of the Board, and^[ES10] provided that such amendment be presented in writing at a regular or special meeting before the meeting at which the vote is taken.

Adopted, as amended, this _____ day of XXXAugust 2021016.

|
Chairman

~~Joseph R. Kluttz, III,~~

ATTEST:

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~~Tracy Barron~~~~Michelle V. Haines~~, Secretary