

**BYLAWS OF THE  
CITY OF HENDERSONVILLE  
BOARD OF ADJUSTMENT**

**ARTICLE I  
Name**

The name of this Board shall be the City of Hendersonville Board of Adjustment ("Board").

**ARTICLE II  
Purpose**

The purpose of the Board shall be to direct the economic growth and physical development of the planning jurisdiction of the City of Hendersonville as provided in N.C.G.S. § 160A-360 and to guide such development in such a manner as to assure the prosperity, health, safety and general welfare of the City and its communities.

**ARTICLE III  
Powers and Duties**

The Board shall have those powers and duties set out in the Statutes of North Carolina and ordinances of the City of Hendersonville and those powers not inconsistent therewith as set forth herein.

**ARTICLE IV  
Delegation of Duties; Secretary**

The Board may delegate duties or functions to staff members as needed to carry out its assigned duties. The Board shall appoint a secretary, who shall keep the minutes and do other tasks as assigned by the Board. The Secretary shall:

- A. Attend all regular and special meetings and hearings, as well as any committee meetings, and keep a record thereof, which shall be transcribed in the minute book of the Board;
- B. Send notices of all meetings of the Board required to be sent by law, under these bylaws, or as directed by the Chair;
- C. Have charge of all books, papers and records of the Board, and shall attend to all correspondence of the Board.

**ARTICLE V**  
**Members**

Section 1. Composition. The Board shall be composed of ten regular members and two alternates. Subject to the provisions of N.C.G.S. §§ 160A-362 and 160A-388, or any successor statutes, the members shall be chosen as follows: Seven regular members and one alternate, each of whom shall be a resident of the City of Hendersonville, shall be appointed by the City Council of the City of Hendersonville. Three regular members and one alternate, each of whom shall be a resident of the extraterritorial jurisdiction of the City of Hendersonville, shall be appointed by the Henderson County Commission.

Section 2. Term of Office. Members shall serve three-year terms as provided by the City of Hendersonville Zoning Ordinance.

Section 3. Vacancies. Vacancies shall be filled as soon as deemed advisable by the applicable appointing authority.

Section 4. Removal of Members. Any member of the Board may be removed by the applicable appointing authority for inefficiency, neglect of duty, malfeasance, or conflict of interest.

**ARTICLE VI**  
**Office of the Board Chair**

Section 1. The only elected officer of the Board shall be a Chair.

Section 2. Nomination and Election

A. Nominations. Nominations for Board Chair shall be made from among the regular members of the Board.

B. Election. The Chair shall be elected annually by a majority vote of all regular members eligible to vote, and shall assume office at the close of the meeting.

Section 3. Term. The Chair shall be elected for a term of one year or until a successor is elected and assumes office. There shall be no limit to the number of terms the chair may serve.

Section 4. Vacancy in Office. A vacancy in the office of Chair shall be filled by the Board not later than seventy days after the occurrence of the vacancy, by vote of regular members attending the meeting at which the vote is taken. The Board may appoint any of its regular members as a Chair pro tem to preside at any meeting at which the Chair is absent or during which there is no appointed Chair.

## Section 5. Duties

The Chair shall:

- A. Preside at meetings of the Board;
- B. Provide general supervision of the conduct of the affairs of the Board and assigned staff members;
- C. Advise the Zoning Administrator of member concerns;
- D. Appoint any committees and committee chairs;
- E. Perform such other duties as determined by the Board, the bylaws, policies and procedures adopted by the Board from time to time.

## **ARTICLE VII**

### **Meetings**

#### Section 1. Regular and Special Meetings.

A. Regular meetings of the Board shall be held at 1:30 p.m. on the second Tuesday of each month at a time and place designated by the Board, except when otherwise decided by the Board, with due notice to the press. If a day scheduled for a regular meeting is a holiday for which the offices of the City of Hendersonville are closed, the regular meeting shall be held on the following Tuesday.

B. Special meetings of the Board may be called at any time by the Chair provided that at least forty-eight hours written notice of the time and place of a special meeting be given, to each regular and alternate member of the Board and to the secretary. In addition, members of the press shall be notified of each meeting in accordance with law. Special meetings may include Board retreats and like meetings held to conduct internal business of the Board.

#### Section 2. Quorum.

Seven members of the Board (including alternates) eligible to vote on any issue, shall constitute a quorum for purposes of that issue. Notwithstanding the foregoing, a quorum shall not be necessary to do any of the following:

- A. Set a date, time or place for any subsequent meeting.
- B. Discuss general internal Board business, but in no case may the Board without a quorum hear or discuss the merits of any matter brought or to be brought before the Board as part of a public hearing.
- C. Appoint a Chair pro tem for the meeting.

### Section 3. Voting.

A. Except as otherwise provided in these bylaws, including the policies and procedures attached hereto, a majority of all regular and alternate members eligible to vote shall be necessary to transact any official business.

B. Except as otherwise provided herein: Any regular member in attendance at any meeting shall be eligible to vote on all matters brought before the Board at that meeting. If nine regular members attend the meeting the one alternate in attendance shall be eligible to vote, and if both alternates are in attendance the Chair may select one alternate to be eligible. If at least five but no more than eight regular members attend the meeting then both alternate members in attendance shall be eligible to vote. The Chair may empower alternates to be eligible to vote at any portion of a meeting where a regular member is absent or excused, including any public hearing.

### Section 4. Records.

The Board shall keep minutes and records of all proceedings, including resolutions, transactions, findings and determinations; shall record the number of votes for and against each question presented; and shall indicate whether any member is absent or abstains from voting. All such records shall be filed in the office of the Board Secretary immediately following the meeting at which they occurred.

### Section 5. Absences.

Subject to the ordinances of the City of Hendersonville, any regular member of the Board who misses more than three consecutive regular meetings or more than half the meetings in any calendar year (not including meetings postponed for reasons other than lack or predicted lack of a quorum) shall by that fact no longer be a member of the Board.

### Section 6. Open Meetings and Public Hearings.

Board meetings and public hearings shall be open to the public as required by N.C.G.S. Chapter 143 Article 33C.

### Section 7. Order of Business.

The order of business at regular meetings shall be as follows:

Roll call; determination of quorum

Approval of Minutes of previous meeting

Hearing of cases

Other business

Adjourn

## **ARTICLE VIII**

### **Committees**

Section 1. Membership. The Chair of the Board shall form and appoint any committees, and shall designate one member as Chair thereof.

Section 2. Meetings.

A. Committees shall meet at such times and places as designated by the Chair of the committee.

B. A majority of the members of a committee shall constitute a quorum.

C. All reports of committees shall be made in writing, and the original copy thereof shall be filed and become part of the records of the Board.

## **ARTICLE IX**

### **Parliamentary Authority**

Robert's Rules of Order, Modern Edition, most current revision, shall govern the proceedings of the Board in all cases to which they are applicable and in which they are not inconsistent with these bylaws, the North Carolina General Statutes, or the Ordinances of the City of Hendersonville.

## **ARTICLE X**

### **Amendment**

These Bylaws be amended or rescinded from time to time by a vote of a majority of regular members of the Board. Any proposed amendment may be read at any meeting. Final vote thereon, shall take place, if at all, not earlier than ten days nor later than seventy days following the initial reading.

## **ARTICLE XI**

### **Employment of Attorneys at Law**

Subject to budgetary limitations, the Board may employ attorneys at law assistance in the

prosecution of its purposes. Any such counsel, including any counsel whose representation of the Board may be funded by the City of Hendersonville or by any other entity, shall nevertheless be independent of the directives of any person or entity other than the Board.

## **ARTICLE XII**

### **Governing Law, Construction and Definitions**

These bylaws, including any policies and procedures adopted hereunder, shall be, so far as reasonable, construed to be in harmony with the statutes and case law of the State of North Carolina and the ordinances of the City of Hendersonville. Where such construction is unreasonable these bylaws shall be subject to and superseded by such statutes, case law and ordinances.

For purposes of all hearings the Board takes official notice of all Hendersonville City Ordinances including specifically the Zoning Ordinance, and of the Zoning map, the Thoroughfare Plan and the Land Development Plan, all without the necessity of any person or entity requesting such notice. Persons may refer to these documents without having them entered into evidence.

As used in the Bylaws, Policies and Procedures the following words have the indicated meanings:

“Appeal” means an appeal from the ruling of the Zoning Administrator.

“Application” shall mean any matter brought before the Board for ruling upon quasi-judicial hearing, including any appeal.

“Board” shall mean the City of Hendersonville Board of Adjustment

“City” shall mean the City of Hendersonville, a municipal corporation.

“Entity” shall mean an individual human being, unincorporated association, limited liability company, corporation, partnership, or governmental body.

“Final Vote” shall mean any vote legally sufficient to carry the will of the Board into effect. An initial vote may be a final vote.

“Person” shall mean an individual human being.

“Initial Vote” shall mean the first full vote resulting in an initial decision of the board, not including a final written decision including findings of facts and conclusions of law.

“Zoning Administrator” shall mean either the Zoning Administrator for the City or the designee of such person, but in any case being an employee of the City.

## **ARTICLE XIII**

### **Preservation**

If any court of competent jurisdiction declares any of these bylaws, policies or procedures to be

invalid or unenforceable, the remaining the remaining bylaws, policies and procedures shall remain nevertheless in full force and effect.

#### **ARTICLE XIV**

##### **Repeal of Previous Bylaws, Rules and Policies**

All bylaws, rules, policies and procedures heretofore adopted by the Board are REPEALED by the adoption of these Bylaws, Policies and Procedures.

**APPENDIX I  
POLICIES AND PROCEDURES**

1. Board Policies

- A. Policies shall be adopted by a majority vote of the entire Board, not including alternates.
- B. Policies may be amended or rescinded from time to time by a vote of a majority of regular members of the Board. Any proposed amendment may be read at any meeting. Final vote thereon, shall take place, if at all, not earlier than ten days nor later than seventy days following the initial reading.
- C. Policies may be suspended temporarily by a majority vote of those present, for reasons declared clearly and specifically and placed upon the minutes.

2. Administration

The secretary shall house all official books, papers and records of the Board and shall be responsible for all official correspondence relative to hearings, meetings, resolutions and decisions of the Board, if any such delegation of duties is not specifically set forth in the Bylaws.

3. Filing appeals and other applications.

- A. Matters to come before the Board shall be filed with the Zoning Administrator between 8:00 a.m. and 4:30 p.m., except on weekends and holidays
- B. All appeals shall be filed not later than ten days after the appellant has received notice of the action that is appealed. Notice will be adjudged to have been received on the earliest of any of the following dates:

- (1) in the case of hand delivery, on the date of delivery to the appellant or any person reasonably adjudged to be capable of forwarding it in a timely manner to the appellant or any director, officer or manager of the appellant.

- (2) in the case of delivery sent return receipt requested, on the date of signing of the return receipt unless the appellant can demonstrate to the Board's satisfaction that such person was neither an appellant nor any person capable of forwarding it in a timely manner to the appellant or any director, officer or manager of the appellant.

- (3) in the case of any other delivery sent through the U.S. mails, three days after the date of deposit in the U.S. mails, sufficient postage prepaid, and upon the credible sworn



statement of the sender or any designee that the notice was so deposited and was not returned.

(4) in the case of any nationally or regionally recognized private courier, on the date shown to have been delivered on a standard receipt or delivery form issued by the courier.

(5) in the case of delivery by electronic mail, on the date of delivery indicated on an electronic delivery receipt form to an electronic address designated by the appellant to receive such notice, accompanied by a printed version of the receipt introduced by the credible sworn statement of the sender or any designee that the electronic receipt is genuine.

C. No application for a variance shall be accepted for Board action within one year of Board action on an application on the same, or substantially the same tract of property, unless the Board finds and resolves that either:

(1) substantial land use, economic or social changes affecting the property have occurred in the interim; or

(2) the new application differs significantly from the original application. For purposes of this Policy, "differs significantly" shall mean:

(a) that the issue is substantially different from an issue that was or might have been raised in the original application; or

(b) that the new application contains any other difference that the Board finds to constitute a significant change from the original application.

Applications made by governmental agencies shall not be subject to this policy nor shall governmental applications affect the filing of subsequent non-governmental applications under this provision.

#### 4. Docket procedures

A. The filing deadline for docketing cases for any Board meeting shall be 4:30 p.m. on the day that is 20 days before the Board meeting; however, no more than eight cases shall be docketed for public hearing at any regular meeting of the Board.

B. The agenda of cases to be considered at any Board meeting shall be posted in the office of the Board not less than three days before such meeting.

## 5. Public hearings

A. Public hearings shall be held in the main auditorium of the City of Hendersonville Operations Center or such other place as the Chair from time to time designates.

B. Cases set for public hearing on a given day shall be heard in the order in which they appear on the agenda unless the Chair directs otherwise.

C. The Chair shall rule on any matter of law before the Board, including the admissibility of evidence and the competence of any witness. In addition, the Chair may limit testimony by an examination of a witness for reasonable cause. On motion of the Chair or any Board member, the Chair's ruling may be reversed by an affirmative vote of six members of the board present for the entirety of the hearing to that point and eligible to vote on the application. In these bylaws and policies, a member may be absent from the meeting for a very brief period, as determined by the Chair under all the circumstances, and still be present for "the entirety of the hearing."

D. Evidence, competence and the like. Rulings of the Chair or the Board on the admissibility of evidence, the competence of witnesses and like matters shall not be strictly bound by the North Carolina Rules of Evidence; however, these rules shall be a guide to rulings on such matters, which rulings shall be made with the intention of preserving both the credibility of the evidence and the public policies of the State of North Carolina with respect to judicial and quasi-judicial hearings.

E. Within a reasonable time before the public hearing, any person who has the right to introduce evidence may subpoena witnesses. Subpoenas may be issued by the Board Chair. If the Board Chair is not reasonably available, any member may issue a subpoena.

F. Each person who testifies at any public hearing shall first furnish his name and address to the Board.

G. Each matter in the public hearing shall be heard in the following order. In each case after testimony is presented the witness may be cross examined.

- (1) The Chair of the Board, or other presiding officer, shall read the notice of the hearing.
- (2) The Zoning Administrator shall present a summary of the history of the application and contents of the file. The entire file shall be made part of the record of the case without the necessity of a motion by any person.
- (3) The applicant, or the applicant's designee may make a statement giving reasons for the request.

- (4) Other persons in favor of the application shall be heard.
- (5) Those persons neither in favor of nor opposed to the application, may be heard.
- (6) The Zoning Administrator or other representative of the City may present evidence.
- (7) Those persons opposed to the application shall be heard.
- (8) The Chair may, in his discretion, allow rebuttal and surrebuttal testimony and examination.
- (9) The Chair shall close the hearing, after which no testimony shall be allowed.
- (10) For good cause the Chair may continue the hearing.

H. Following the public hearing, the Board may take any of the following actions:

- (1) Approve the application as submitted or modified.
- (2) Deny the application.
- (3) Close the hearing and defer action on the case to a subsequent meeting, subject to its bylaws and procedures.

I. The following may appear before the Board to present or oppose an application:

- (1) Individual persons representing their own interests, if deemed by the Board to have a sufficient interest in the application.
- (2) Individual persons representing groups of persons of whom they are a member, if the group is deemed by the Board to have a sufficient interest in the application.
- (3) Individual employees or members of an association, corporations, partnership, or limited liability company, or any officer or director thereof, if the entity so represented is deemed by the Board to have a sufficient interest in the application.
- (4) Any official representing a governmental body, if the government so represented is deemed by the Board to have a sufficient interest in the application. The City, whose zoning ordinances are necessarily the subject of every application, shall be deemed to have a sufficient interest to appear before the board at every hearing.
- (5) Persons possessing a current valid license to practice law in North Carolina may represent any of the persons or entities mentioned above.

No person, group or entity may be represented by more than one person at any one hearing. This provision is not intended to limit the number of witnesses called.

J. No licensed attorney not appearing on his or her own behalf may both (1) offer testimony and (2) question any witness or argue (or both) at any one hearing.

K. The burden of proof in each case shall be as follows:

(1) In the case of an appeal, on the appellant.

(2) In any other case, on the applicant.

## 6. Decisions

A. Decisions of the Board shall require an affirmative vote of seven board members or alternates present at the entire hearing and eligible to vote. Votes taken more than seventy days after the close of the public hearing shall be accompanied by a declaration for the minutes, articulating clearly and specifically the reasons for the delay.

B. Written decisions containing findings of fact and conclusions of law may be approved at any time within seventy days after the initial vote. Any written decision presented to the board for final vote more than seventy days after the initial vote shall be accompanied by a written statement articulating clearly and specifically the reasons for the delay.

C. The final vote, if approving the written decision, shall be held on the following issue: "Do the findings of fact, conclusions of law and ruling contained in the written decision accurately reflect the sense of those who voted with the decision reached in the initial vote?" Subject to the Board's bylaws and procedures, this final vote may be approved by a majority of those members attending the meeting at which the final vote is held and eligible to vote.

If upon an attempted final vote no majority can be reached upon the issue, the Chair shall request of the members who voted with the decision reached in the initial vote to indicate as clearly as possible for the minutes, if in the Chair's opinion they did not do so at the time of the initial vote, the criteria of the ordinance, met or unmet, upon which they based their vote, and the facts adduced at the hearing that support their conclusions.

## 7. Public Records

A. The Board shall conform to N.C.G.S. Chapter 132 regarding public records.

B. Board public records are located in the offices of the Zoning Administrator. Regular office hours are from 8:00 a.m. to 5:00 p.m. business days. The official custodian of the public records shall be Board Secretary.

## 8. Ethics

A. A member of the board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts 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. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote and rule on the objection.

B. Every member sitting at any hearing shall announce before the beginning of testimony of the first witness any contacts concerning the application that are not already included in the file. The announcement or inclusion in the record will include the name of the person or persons with whom the contact occurred and the substance of the entire contact; *provided*, however, that no member need announce such general contacts concerning the hearing itself as may be general to all members in their capacity as members.

## 9. Reconsideration and Rehearing

A. No appeal, application, or other matter acted upon by the Board may be reconsidered or reheard (other than as directed by a court of competent jurisdiction), except upon motion by a member of the Board who voted with the prevailing side. The motion must be seconded by any member of the Board either for reconsideration or rehearing.

B. Motions for reconsideration shall be at the meeting, whether regular or special, immediately following the initial vote.

*Provided*, however, that a motion for reconsideration based on (1) presence or absence of subject matter jurisdiction or (2) a timely and credible allegation of an unreported conflict of interest may be made at any time before (1) the running of the time to file a petition for certiorari, if no such petition is filed within that time, or (2) the ruling of a superior court judge on a timely filed petition for certiorari based in whole or any part on either or both of the objections listed above.

## 10. Judicial Review

Petitions for judicial review of any ruling of the Board shall be in accordance with N.C.G.S. § 160A-388 or its successor statute, Hendersonville Zoning Ordinance § 10-10 or its successor.

Read, approved and adopted by the Board of Adjustment of the City of Hendersonville, North Carolina, in a meeting duly called, noticed and held in Hendersonville, North Carolina this 13th day of November 2012.

The following Board members voted AYE:

*Ray Wolsky*  
*De Balla*  
*John H. Dehn*  
*Kevin Blaney*  
*Bob Wood*  
*Jay Angel*  
*Perry Malt*

*Handwritten*  
*B.F. Cuy*  
*J. Malt*

The following Board members voted NAY:

These bylaws shall become effective upon their adoption.

*Jay Angel*  
\_\_\_\_\_  
Jay Angel, Chair

ATTEST:

*Terri Swann*  
\_\_\_\_\_  
Terri Swann, Secretary