



**MOORE COUNTY BOARD OF COMMISSIONERS  
SPECIAL MEETING, TUESDAY, FEBRUARY 26, 2019, 10:00AM  
COMMISSIONERS' MEETING ROOM, HISTORIC COURTHOUSE**

**Call to Order** – *Chairman Frank Quis*

**Invocation** – *County Manager Wayne Vest*

**Pledge of Allegiance** – *Vice Chairman Catherine Graham*

**Items of Business:**

- I. **Amendment to Board of Adjustment Bylaws** – *Misty Leland, County Attorney*
- II. **Appointment of Alternate Member to Board of Adjustment** – *Laura Williams, Clerk*

**Adjournment**

**Agenda Item: I.**  
**Meeting Date: 2/26/2019 Special Mtg.**

**MEMORANDUM TO THE BOARD OF COMMISSIONERS:**

**FROM:** Misty Randall Leland, County Attorney  
**DATE:** 2/22/2019  
**SUBJECT:** Amendment to Board of Adjustment By-Laws  
**PRESENTER:** Misty Randall Leland, County Attorney  
**REQUEST:**

Approve the attached amendment to the Board of Adjustment By-Laws

**BACKGROUND:**

The North Carolina General Assembly enacted Session Law 2013-126 in 2013 to clarify and modernize statutes regarding Boards of Adjustment. This amendment of the Board of Adjustment By-Laws reflects the changes made by the state legislature and makes the Board of Adjustment By-Laws congruent with N.C.G.S. §160A-388 and §153A-345.1, specifically as to majority and notice requirements. Because our Board of Adjustment rarely meets, the By-Laws have not been updated.

**IMPLEMENTATION PLAN:**

None

**FINANCIAL IMPACT STATEMENT:**

None

**RECOMMENDATION SUMMARY:**

Make a motion to approve the attached Board of Adjustment By-Laws.

**SUPPORTING ATTACHMENTS:**

None

BY-LAWS AND RULES OF  
PROCEDURE BOARD OF  
ADJUSTMENT MOORE  
COUNTY  
NORTH CAROLINA

I. GENERAL RULES

The Zoning Board of Adjustment shall be governed by the terms North Carolina General Statutes §153A-345.1 and §163A-388 of Chapter 153A, Article 18, Part 3 of the General Statutes of North Carolina and by the Zoning Ordinance of Moore County.

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II. MEMBERSHIP

- A. Members of the Moore County Board of Adjustment are appointed by the Moore County Board of Commissioners and shall serve at the pleasure of the Board.
- B. Board of Adjustment members should have basic knowledge of the County Zoning Ordinance and law, particularly land-use law.
- C. Board of Adjustment membership shall be restricted to residents of Moore County.
- D. If the Board of Commissioners does not zone the entire territorial jurisdiction of the County, each designated zoning area shall have at least one resident as a member of the Board of Adjustment.
- E. Terms:
  - 1. No member may serve more than two consecutive terms without stepping down from the Board for one three year term.
  - 2. The length of one term is three years.
  - 3. Terms will be staggered so that no more than fifty percent of the members' terms expire at one time.
  - 4. If a vacancy occurs before a term expires, the replacement appointment shall be for the balance of the unexpired term, at which time the person who filled the unexpired term would be eligible for appointment for no more than two consecutive terms as stated in Section E1.
- F. Composition: The Board of Adjustment shall be made up of five members and two alternate members.

III. OFFICERS AND DUTIES

- A. Chairman: A chairman shall be elected by the full membership (including alternate members) of the Board of Adjustment. His term of office shall be for one year and until his successor is elected. Beginning on July 1, he shall be eligible for re-election. 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 that time. The chairman shall appoint any committees found necessary to investigate any matters before the Board.
- B. Vice Chairman: A vice chairman shall be elected by the Board from among its regular members in the same manner and for the same term as the chairman. He

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.

- C. Secretary and Assistant Secretary: A secretary and assistant secretary shall be appointed by the chairman of the Board, either from within or outside its membership, to hold office during the term of the chairman and/or until a successor secretary shall have been appointed. The secretary shall be eligible for reappointment. The secretary, subject to the direction of the chairman and the Board, 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 on such cases, and, generally, supervise the clerical work of the Board. The secretary shall keep a permanent volume of 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 and actions taken 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. If the secretary is chosen from outside the membership of the Board, he shall not be eligible to vote upon any matter. The Assistant Secretary shall assume all duties and responsibilities of the Secretary in times of absence or vacancy.

#### IV. ALTERNATE MEMBERS

Alternate members of the Board shall be called upon to attend only those meetings and hearings at which one or more regular members are absent or unable to participate in the hearing of a case because of financial or other interest. Regular members, upon receiving notice of a special meeting which they cannot attend, or upon learning that they will be unable to participate in a meeting, shall promptly give notice to the secretary of the Board that they are unable to attend or to participate. On receiving such notice, the secretary shall, by the most expeditious means, notify an alternate member to attend. Assignments shall be rotated between the alternate members. At any meeting which they are called upon to attend, alternate members shall have the same powers and duties as regular members.

Except at the election of officers, at no time shall more than five members participate officially in any hearing or meeting.

#### V. RULES OF CONDUCT FOR MEMBERS

Members of the Board shall be removed for cause, including, but not limited to, a violation of the rules stated below.

- A. Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite of continuing membership on the Board.
- B. No Board member shall take part in the hearing, consideration or determination of any case in which he is personally or financially interested.

- C. No Board member shall vote on any matter deciding on an application or appeal unless he has attended the public hearing on that application or appeal.
- D. No Board member shall discuss any case with any party thereto prior to the public hearing on that case.
- E. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto prior to its determination of that case. Violation of this rule shall be cause for dismissal from the Board.
- F. Members 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 rule on the objection.

VI. MEETINGS

- A. Regular Meetings: Meetings will be scheduled as appeals for variances and interpretations are submitted to the Planning Department. Scheduled meetings will occur at 4:00 p.m. on the fourth Wednesday of each month as needed.
- B. Special Meetings: Special meetings of the Board may be called at any time by the Chairman or by a majority of the Board. At least 48 hours written notice of the time and place of special meetings shall be given, by the secretary or by the Chairman, to each member of the Board, and as required by the Open Meetings Law.
- C. Cancellation of Meetings: Whenever there are no appeals, applications for exceptions or variances, or other business for the Board, or whenever so many regular and alternate members notify the secretary of inability to attend that a quorum will not be available, the chairman may dispense with a regular meeting by giving written or oral notice to all members not less than 24 hours prior to the time set for the meeting.
- D. Quorum: -A quorum in all matters except variance requests shall consist of a majority~~four-fifths~~ of the members of the Board. A quorum for variance requests shall consist of four-fifths of the members of the Board.
- E. Voting: All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section V. The required vote to decide appeals and applications shall be provided in Section VII, d, 4 and shall not be reduced by any disqualification. In all other matters, the vote of a majority of the members present and voting shall decide issues before the Board.
- F. Conduct of Meeting: All meetings shall be open to the public. The order of business at a regular meetings shall be as follows:

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1. Roll call
2. Reading of minutes of previous meeting
3. Hearing of cases
4. Reports of committees
5. Unfinished business
6. New business
7. Consideration and determination of cases heard

VII. APPEALS AND APPLICATIONS

- A. Types of appeals: The Board shall hear and decide all appeals from and review any order, requirement, decision or determination made by the Building Inspector and/or Zoning Administrator. It shall also hear and decide all matters referred to it or upon which it is required to pass by the Zoning Ordinance of Moore County. In deciding appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of the ordinance and those based upon alleged hardship resulting from strict interpretation of the ordinance.
- B. Procedure for Filing Appeals: No appeal shall be heard by the Board unless notice thereof is filed within 30 days after the interested party or parties receive notice delivered via personal delivery, electronic mail, or first-class mail of the order, requirement, decision or determination by the Building Inspector and/or Zoning Administrator. The applicant must file his application for a hearing with the Zoning Administrator. All applications shall be made upon the form furnished for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.
- C. Hearings:
  1. Time: After receipt of notice of appeal, the Board chairman shall schedule the time for a hearing, which shall be at a scheduled or special meeting within 45 days from the filing of such notice of appeal.
  2. Notice: Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.  
The Board shall give public notice of the hearing in a newspaper published in Moore County by advertisement at least 10 days, but

~~no more than 25 days, prior to the date of the hearing. Such notice shall be published at least once weekly for two consecutive weeks during said period. The Board shall mail notices of the hearing to the parties to the action appealed from, and to such other persons as the Zoning Administrator shall direct, at least ten days prior to the hearing.~~

~~Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal and the time and place of the hearing.~~

3. Conduct of Hearing: Any party may appear in person or by agent or by attorney at the hearing. The order of business for hearing shall be as follows:
  - a. The chairman, or such person as he may direct, shall give a preliminary statement of the case;

- b. The applicant shall present an opening statement in support of the application;
  - c. Persons opposed to granting the application shall present an opening statement against the application;
  - d. The applicant shall present evidence in support of the application.
  - e. Persons opposed to granting the application shall present evidence against the application.
  - f. Both sides will be permitted to present rebuttals to opposing testimony.
  - g. After all of the evidence has been presented, both the applicant and opposing parties shall be allowed to make closing statements, if they so desire. There shall be only one closing statement on behalf of the applicant, and one closing statement on behalf of those opposing the application.
  - h. The chairman shall summarize the evidence which has been presented, giving the parties opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a court of law. The Board may view the premises before arriving at a decision. All witnesses before the Board shall be placed under oath and the opposing party may cross-examine them.
  - i. Rules for addressing the Board of Adjustment are as follows:
    - i. Each speaker must be sworn in.
    - ii. Each speaker will be limited to speaking one time, except in the cases of rebuttal and in purposes of explanation, in reference to the requested action, but will be allowed to answer questions by the board if there are any questions. When finished, the speaker will ask the board if there are any questions. The speaker shall answer all questions and be seated.
    - iii. Each speaker will confine himself or herself to testimony related to the specific case before the Board and shall avoid irrelevant comments and personalities.
4. Rehearing:  
An application for a rehearing may be made in the same manner as provided for an original hearing. 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. The application for rehearing shall be denied

by the Board if from the record it finds that there has been no substantial change in facts. If the Board finds there has been a substantial change in facts, it shall thereupon treat the request in the same manner as any other application.

D. Decisions:

1. Time: Decisions by the Board shall be made not more than seven days from the time of the hearing.
2. Form: Written notice of the decision in a case shall be given to the applicant by the secretary as soon as practicable after the case is decided. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the secretary and the chairman upon approval of the minutes by 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. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the Board finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. Where a conditional use permit is granted, 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 or a conditional use permit.
3. Expiration of Permits: Unless otherwise specified, any order or decision of the Board granting a conditional use permit or a variance shall expire if a building permit or certificate of occupancy for such use is not obtained by the applicant with six months from the date of the decision.
4. Voting at Hearings: The concurring vote of four-fifths of the members of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are not qualified alternatives available to take the place of such members. ~~reverse any order, requirement, decision or determination of the Zoning Administrator, to decide in favor of the applicant any matter which Board is required by ordinance to pass, or to grant a variance from the ordinance provisions.~~

No member of the Board may be excused from voting except when immediate personal or financial interest precludes impartial consideration of issues involved. In all other cases a failure to vote

by a member who is present at the meeting place or has withdrawn without being excused by a majority vote of the remaining members shall be counted as an affirmative vote.

5. Public Record of Decisions

The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

VIII. AMENDMENTS

- A. These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four members of the Board, provided that such amendment be presented in writing at a scheduled or special meeting preceding the meeting at which the vote is taken.
- B. The Board of Commissioners must approve the by-laws and rules of procedure and all amendments. The Board of Commissioners can amend or revise the by-laws and rules of procedure without approval of the Board of Adjustment

IX. Reports

- A. The Board of Commissioners shall be provided a monthly report in writing detailing variance requests and Board of Adjustment decisions.

**Agenda Item: II.**  
**Meeting Date: 02/26/19 Special Mtg.**

**MEMORANDUM TO THE MOORE COUNTY BOARD OF COMMISSIONERS:**

**FROM:** Laura M. Williams, Clerk  
**DATE:** 02/22/2019  
**SUBJECT:** Appointments / Board of Adjustment  
**PRESENTER:** Laura Williams

**REQUEST:**

Appoint new alternate member to the Moore County Board of Adjustment.

**BACKGROUND:**

There is currently one alternate member vacancy on the Board of Adjustment.

**IMPLEMENTATION PLAN:**

Clerk will make notification of appointment and update records.

**RECOMMENDATION SUMMARY:**

Make a motion to appoint an alternate member to the Moore County Board of Adjustment for a three-year term expiring February 28, 2022.