



RESOLUTION AMENDING AND ADOPTING RULES
FOR THE TRANSACTION OF BUSINESS

WHEREAS, Section 11-52-80 of the Code of Alabama, 1975 provides that Zoning Boards of Adjustment shall adopt rules for transaction of business, and

WHEREAS, the Tuscaloosa Zoning Board of Adjustment wishes to amend its former rules of procedure to amend its rules of procedure by amending its monthly scheduled meeting date and providing for rules regarding requests for specially set meetings.

NOW, THEREFORE, BE IT RESOLVED BY THE TUSCALOOSA ZONING BOARD OF ADJUSTMENT:

That the following Rules for Transaction of Business be, and they are hereby, adopted:

RULES FOR TRANSACTION OF BUSINESS

TUSCALOOSA ZONING BOARD OF ADJUSTMENT

JULY 22, 1986

1. POWERS, DUTIES, AND COMPOSITION

The powers, duties, and composition of the Tuscaloosa Zoning Board of Adjustment shall be as specified in Section 11-52-80 of the Code of Alabama, 1975, as amplified in the Zoning Ordinance of Tuscaloosa.

2. ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

The Board shall elect a Chairman and Vice-Chairman for a term of one year. The election shall be held each year in the month of January or, if there is no meeting in January, at the next meeting after January.

In the event of the Chairman's term ends or the chairman resigns or is no longer able continue his office for any reason, then the Vice-Chairman shall fill the unexpired term of the office of Chairman and the Commission shall elect a new Vice-Chairman for the remainder of the unexpired term of Vice-Chairman.

3. MEETINGS

A regular meeting of the Zoning Board of Adjustment shall be held on the fourth Monday of each month at 5:00 p.m. in the Council Chamber at City Hall, provided that the meeting date may be postponed by the Chairman or Acting Chairman if the Secretary reports that a quorum will not be present on the fourth Monday, and further provided that no regular meeting shall be held in any month in which no petitions have been received. If the volume of petitions or other circumstances so dictate, the Chairman may call additional meetings.

4. SPECIALLY SET MEETINGS

If the volume of petitions or if such other circumstances dictate, the Chairman may call such additional meetings as may be warranted and necessary. Should a petitioner or petitioners request a supplemental, special or emergency meeting of the Zoning Board of Adjustment (this is in addition to the regular monthly meeting), the granting of any supplemental, special or emergency meetings shall be within the sole and exclusive discretion of the Board. Upon filing a petition for a supplemental, special or emergency hearing, each petitioner, or multiple petitioners if any, shall likewise submit an administrative fee of \$500.00 payable to the City of Tuscaloosa as costs for each supplemental, special or emergency hearing. The five regular members of the Board or a supernumerary member if a regular member is unavailable shall be promptly notified of the filing of each petition. A simple majority vote of the five Board Members shall constitute the needed majority to hear a petition. If multiple petitions are filed, each separate petition shall require a separate vote of the Board to hear each petition. Should the Board affirmatively vote to hear a petition, no portion of the administrative fee shall be subject to a refund. Should a majority of the Board decline to hear a petition, the petitioner shall be promptly notified of the Board's decision and the \$500.00 administrative fee shall be refunded.

5. QUORUM AND USE OF SUPERNUMERARIES

Four members shall be a quorum to conduct a meeting, and the concurring votes of four members shall be necessary to approve any petition or to reverse any order or determination of an administrative official on appeal to the Board. Although four members shall constitute a quorum, it is the Board's policy to conduct meetings with five or more members present if possible. On or before the day of a meeting, the Secretary shall contact the regular members by telephone or by other means to ask if they will be present at the meeting. If, by noon on the meeting day, all regular members have not declared their intention to attend, the Secretary shall contact Supernumerary members in order of seniority for the purpose of securing the attendance of at least five members.

6. TIME WITHIN WHICH APPEALS TO BE TAKEN

An appeal from a decision or order of the Zoning Officer of Tuscaloosa shall be filed in the office of the Community Planning and Development Department within thirty (30) days of such decision or order.

7. FORMS REQUIRED

Every appeal or petition shall be submitted on the form provided for that purpose, and shall include all of the data required in said form, so as to supply all the information necessary for a clear understanding and informed decision by the Board. In addition, for any variance from or special exception to a zoning requirement pertaining to a dimensional requirement or the site, a scaled site plan and/or building elevation produced by a registered land surveyor, professional engineer, or architect shall be required.

8. DOCKET

Each case filed in the proper form with the required data shall be numbered serially, and shall be placed on the docket. The docket numbers shall begin anew on January 1st of each year, and shall be hyphenated with the number of the year. Cases shall come before the Board in regular order as docketed, unless the Chairman, for appropriate reasons, allows a case to be heard out of order.

9. NOTICE OF PUBLIC HEARING

Notice of any petition or appeal to be heard by the Zoning Board of Adjustment shall be published one time in a newspaper of general circulation not less than seven (7) days in advance of the hearing date. Notice shall also be mailed not less than five (5) days before the hearing date by the Secretary to the petitioner and to the owners of record of property abutting or directly facing the property in question, as their names and addresses appear in the records of the County Tax Assessor. In addition to the above measures, the Secretary may employ supplemental notification procedures to ensure that interested parties are aware of pending cases, but the failure of any such notification procedures shall not invalidate any lawful action or decision of the Zoning Board of Adjustment.

10. CONDUCT OF HEARINGS

The Chairman or, in his/her absence, the Vice-Chairman, shall preside at the meetings. In the event that neither the Chairman nor Vice-Chairman is present, an Acting Chairman shall be elected from among the members present. As each case is called, the petitioner or his spokesman shall be given first opportunity to speak. A spokesman for the opposition, if any, shall be permitted to speak next. The Chairman, at his discretion, may then allow such further statements by the petitioner and opponents as he may deem necessary and appropriate until he rules that all relevant issues have been fully aired. Each side shall proceed without interruption by the other. The Chairman may rule out of order any abusive or irrelevant statements.

Standing Motion To Approve; In regard to every Petition or every request in a Petition requiring a vote by the Board, as the case may be, there shall be a Standing Motion to "Approve the Request" thereby eliminating the necessity for a Motion or Second for each such matter. In response to said Standing Motion the Board members, when polled by the Chair, may vote "Yes" to approve the request or "No" to deny the request. Provided; however, prior to the vote thereon any member may recommend conditions to be placed upon the Standing Motion To Approve the Request; which, if there appears to be unanimity thereon, the Chair will read into the record as a condition(s) upon the Standing Motion to Approve the Request. If there does not appear to be unanimity in regard to said condition(s) or at the request of any Board member, the Chair will call for a vote by the Board thereon. Provided further, the Board may also utilize such "Standing Motion To Approve" in regard to any other parliamentary actions including but not limited to, approval of minutes, granting continuances, placing conditions upon variances or special exceptions, declaring recesses, adjournments, amending the agenda, amending the rules, points of personal privilege, recommendations to staff or other governmental bodies, procedural matters and any action otherwise authorized by these Rules, Law or Ordinance.

Representative Capacity. Any person wishing to speak on behalf of another person, group or entity shall provide written authorization to the chairperson from the person, group or entity being represented. Immediate family members (defined for this purpose as spouse, parent, or child) do not have to provide such written authorization when speaking on behalf of another immediate family member."

11. CONTINUANCES

The Board may, on its own motion, continue the hearing on any case to such future date as it may determine; and it may give consideration to written requests from petitioners or remonstrators for such continuances. After the mailing of any notification to surrounding property owners, a petitioner or developer may only request to have the scheduled hearing on the petition postponed by appearing at the hearing in person to request a continuance. In the event that a case is continued owing to the absence of a petitioner, the case shall not be docketed for a later meeting until the petitioner has paid an additional filing fee. No case shall be continued for more than one month, except with the unanimous consent of the Board members present.

12. AUTHORITY OF PLANNING AND DEVELOPMENT SERVICES AND OFFICE OF THE CITY ATTORNEY STAFF TO PREPARE DOCUMENTS AND LETTERS FOR THE BOARD

City Staff, who are assigned to assist the Board in the performance of their duties, are permitted, authorized and directed by the Board to prepare, draft and distribute notices, correspondence, letters, approvals, denials and such other documents as requested and directed by the Board. The dissemination of any such notice, correspondence or other document prepared by Staff, consistent with the direction of the Board, shall be deemed promulgated by the Board. A representative of the City Attorney's Office is statutorily authorized to represent, advise and defend the Board pursuant to Ala. Code § 11-44B-11(f) (1975). Anytime the law requires a final decision of the Board to be in writing, including without limitation cases involving wireless telecommunication facilities, the Board's vote at a hearing shall be merely a preliminary decision and the written final decision of the Board shall be prepared by the Office of the City Attorney and such writing shall become the final written decision of the Board when it is signed by the Chairman of the Board or when the Board formally votes to adopt it as the final decision of the Board, whichever occurs first.

13. TIME WITHIN WHICH RECONSIDERATION BARRED

No case which has been decided adversely against the petitioner shall again be placed on the docket for consideration by the Board within a period of six (6) months from the date of the decision previously rendered except with the consent of a majority of the Board. The reasons for the foregoing rule include the facts that repeatedly hearing the same Petition could impede the Boards transaction of other business, it could adversely impact other petitioner's opportunity for a full hearing, it would be unfair to those in opposition to have to repeatedly attend meetings, it would undermine the credibility of the Board's initial decision and finally to do so without justification would set an undesired precedent.

Any petitioner requesting that the Board waive the bar against reconsideration within six (6) months must demonstrate to the Board that there are valid reasons for the waiver, which must include the following:

- An equitable (fairness) issue exists wherein such a delay would adversely impact the Petitioner, through no fault of the petitioner, in a manner different from other Petitioners.

- The Petitioner has made significant modifications in the design or plan that addresses the reason(s) for the adverse decision by the Board."

14. DISCRETIONARY DEFENSE OF AN APPEAL FROM A DECISION OF THE ZONING BOARD OF ADJUSTMENT TO A COURT OF PROPER AND COMPETENT JURISDICTION

If the appeal attacks, relates to and or affects a third party or entity and where the

outcome of the appeal does not adversely affect the City and the City does not otherwise have an interest in the appeal as determined by the City Attorney, the City Attorney may file such pleadings and transcripts as required by Ala. Code § 11-52-81 (1975), in such Court of proper and competent jurisdiction and decline to take a position on said appeal.

15. EXPIRATION OF EXCEPTION OR VARIANCE BY NON USE

In any case involving construction under a City residential building permit, any order or variance granted by the Board of Adjustment shall expire unless such building permit is obtained from the Building Inspector within 180 days from the date of granting of such order or variance by the Board, and unless construction of the structure or structures under said building permit is completed within fifteen (15) months from the date of the granting of the order or variance by the Board.

In any case involving construction under a City commercial building permit, any order or variance granted by the Board of Adjustment shall expire unless such building permit is obtained from the Building Inspector within 365 days from the date of granting of such order of variance by the Board, and unless construction of the structure or structures under said building permit is completed within twenty four (24) months from the date of the granting of the order or variance by the Board.

In any case where the Board grants a permit or variance not involving construction under City building permit, the order of the Board shall expire unless the premises for which such permit or variance was granted are put to the use so granted within six (6) months from date of granting such permit or variance by the Board. In the event that the petitioner can provide written documentation that a government entity has prolonged the time in which a City Building permit may be obtained, then at the discretion of Planning and Development Services, the time limit may be extended administratively.

The Board in its discretion, upon proper showing in writing, may grant extensions or renewals of such time limits.

16. USE VARIANCES NOT TO RUN WITH THE LAND

Unless the Board expressly rules otherwise in a particular case, any variance authorizing a use normally prohibited at the location in question shall be temporary, and shall lapse at such time as the person to whom the variance was granted ceases to use the property for the purpose, and on the terms, specified in the variance.

17. DUTIES OF SECRETARY; MINUTES

The Secretary of the Zoning Board of Adjustment shall be a properly qualified official appointed by the City for that purpose. The Secretary shall be custodian of the minutes or synopsis and conduct all official correspondence. An accurate minute record or synopsis shall be kept of all proceedings and actions of the Board. The minute record or synopsis shall be signed by the Chairman (or Vice-Chairman if applicable) and attested by the Secretary.

ADOPTED, this the 22nd day of July, 1986
AMENDED, this the 25th day of June, 2002
AMENDED, this the 23rd day of January, 2007
AMENDED, this 22nd day of October, 2007
AMENDED, this the 23rd day of May, 2011
AMENDED, this the 25th day of November, 2013
AMENDED, this the 27th day of January, 2014
AMENDED, this the 7th day of May, 2014
AMENDED, this the 24th day of August, 2015
AMENDED, this the 27th day of June, 2016
AMENDED, this the 27th day of February, 2017
AMENDED, this the 26th day of June, 2017

TUSCALOOSA ZONING BOARD OF ADJUSTMENT

Robert Ennis, Chairperson

ATTEST:

Philip O'Leary
Secretary