

BOARD OF ZONING ADJUSTMENT

RULES OF PROCEDURE

RULE 1 - APPLICATIONS

- A. FILING. All applications for variances, special exceptions and appeals of a decision of an administrative officer shall be initiated by delivering a completed application package to the Secretary.
- B. FORMS. All applications for variances, special exceptions and appeals of a decision of an administrative officer shall be filed with the Secretary on forms provided by the Office of Zoning and Development.
- C. FEES. The Atlanta City Council shall establish all filing fees. The filing fees shall be contained on the Fee Schedule that is included in all application forms.
- D. SCHEDULE OF HEARINGS. No later than October 31st of each year, the Secretary shall publish a schedule of hearings to be held by the Board during the subsequent calendar year, including the closing dates by which the Office of Zoning and Development must receive applications and appeals to be heard and the corresponding hearing dates. Said schedule shall provide no less than 45 days and no more than 60 days between each closing date and the corresponding hearing date, in order to provide adequate and reasonable time for the affected Neighborhood Planning Unit(s) to review and comment upon each case.
- E. AMENDMENTS. Amendments to applications and appeals shall be filed with the Secretary of the Board. An application or appeal amendment which increases the quantity or degree, changes the type of application or appeal or changes/adds an applicant shall not be modified unless the request is re-advertised.
- F. APPEALS.
 - a) Appeal period, general. All appeals of the decision of an administrative officer must be filed within 30 days following the date of the decision from which the appeal arose.
 - b) Appeals of building permits. All applications for appeal of the Decision of an Administrative Officer to issue a building permit must be filed within 30 days following the date of posting of a notification as required by Section 16-30.004(2) of the 1982 Zoning Ordinance. The affidavit that is required to certify the posting of the sign, in accordance with Section 16-30.004(2)d. of the Zoning Ordinance, shall be filed within five calendar days of receipt of the building permit and shall bear the date stamp of the Clerk of the Council (a.k.a. "City Clerk"). The date stamp shall be conclusive proof that the affidavit was filed with the City, and of the date that the affidavit was filed. If an affidavit is not filed within five calendar days, then the Board shall determine as fact what date the required sign was posted. Said determination shall be on the regular BZA agenda and heard as any other matter before the BZA. The determination of the Board as to the time that the sign was posted shall be the basis for determining whether a timely appeal has been filed.
 - c) Limitation on Number of Appeals for Agenda. The agenda for any meeting of the Board is limited to two (2) Appeals. Following the closing date for each board meeting, the Secretary shall determine the total number of Appeals filed for said meeting. In

the event that more than two Appeals are accepted for any meeting, the Secretary, with the consensus of all parties involved, shall reschedule the appeal to the next available hearing date.

RULE 2 – REGULAR MEETINGS

- A. **TIME**. All regular hearings shall convene at 12:00 p.m., unless a different time for convening is specified in a notice or call of a hearing. The Secretary in conjunction with the Chairman may change the date of a regularly scheduled hearing if the new hearing date is advertised not less than 15 days prior to the originally scheduled hearing date.
- B. **NOTICES, ADVERTISEMENT, SIGNS**. The Secretary shall give public notice, notice to the party or parties filing an application, and notice to parties-in-interest of the hearing date for all submitted applications. Parties-in-interest are those individuals or entities which own property within a 300-foot radius of the parcel that is the subject of the application.
- a) Public notice shall be given by newspaper advertisement, by a sign posted on the property, and by mailed notices to all parties-in-interest not less than 15 days prior to the public hearing.
 - b) Notice shall be given by regular mail to the applicant or appellant and to owners of property, as shown on the county tax records, within 300 feet of any boundary of the subject property not less than 14 days prior to the hearing.
 - c) Every advertisement and letter of notice shall state the name of the applicant or appellant, the location of the property, the nature of the change and the date, time, and place of the public hearing.
- C. **CONSENT AGENDA**. The Board of Zoning Adjustment may use a consent agenda to approve non-controversial or routine matters by a single motion and vote. If a member of the Board or the general public wants to discuss an item on the consent agenda (at the beginning of the meeting), that item is removed from the consent agenda and considered during the meeting. The Board then approves the remaining consent agenda items. If an item is removed from the consent agenda, that item will be heard in the order in which it was received by the Secretary. Consent agenda items shall be separately recorded in the minutes.
- D. **QUORUM**. Three members shall constitute a quorum to hear any case pending before the Board. The affirmative vote of at least a majority of the quorum shall be required to constitute an action by the Board on any question or matter or matter of the case.

RULE 3 – HEARINGS

- A. ORDER OF HEARING CASES. The Board shall adopt the agenda for said meeting in the following order: requests for deferrals or withdrawals, consent items, new applications and previously deferred applications. The Board must vote to approve any change, in the order in which cases are heard, at the beginning of the hearing. If an applicant is not present when his/her case is called, the Board, in its discretion, may place that case at the end of the agenda. The following shall be the regular order of business which shall not be changed for any meeting except by unanimous vote of all members present at such meeting:
- a. Introduction of Board Members and Staff.
 - b. Introduction and rules for conduct of meeting; matters pertinent to the functioning of the board.
 - c. Adoption of agenda for meeting.
 - d. Summary consideration of requests for deferral or withdrawal of applications.
 - e. New Business (consent agenda & new cases)
 - f. Old Business (deferred cases)
 - g. Adjournment
- B. APPEARANCES, TESTIMONY. All persons appearing before the Board shall state their name, address and relationship to the case, and shall then state all facts and arguments relevant to the subject matter of the case. All statements shall be taken as though made under oath. Testimony is not required for cases on the consent agenda. Unless otherwise advised by the secretary, all applicants must attend the hearing.
- C. TIME LIMIT ON ARGUMENT. Each party shall have ten (10) minutes to present evidence to support their argument for approval or denial of an application. This time is cumulative and applies to the interested party and all other individuals on the same side of the case. The Board may take a vote to allow additional time for argument. If a party is granted additional time, the opposing side shall be granted the same amount of additional time. The testimony of any City of Atlanta employee or city official shall be subject to the 10-minute time limitation. If a case has been deferred more than once, the applicant and any opposing party shall have 2 minutes to present evidence to support their argument for an additional deferral, denial or withdrawal.
- D. ORDER OF ARGUMENT. Each case shall proceed as follows:
- a) Variances and Special Exceptions.
 - i) A sounding of the summary of the application.
 - ii) Opening statement and argument by the applicant.
 - iii) Statements of parties supporting the application.
 - iv) Statement and argument of parties opposing the application.
 - v) Rebuttal by applicant or appellant, which shall be limited to matters covered by the opposition.
 - vi) The applicant may save part of his or her time for rebuttal. The applicant or any party supporting the applicant may use this time for rebuttal.
 - b) Appeals.
 - i) A sounding of the summary of the appeal.
 - ii) Opening statement and argument by appellant.
 - iii) Opening statement and argument by the administrative official from whose decision the appeal arose.
 - iv) Statement and argument of parties opposing the appeal.

- v) The appellant may save part of his or her time for rebuttal, which shall be limited to matters covered by the opposition. Interested parties from the public will be allowed to speak during this rebuttal time.

RULE 4 -- DECISIONS, RECONSIDERATION

A. FORM, PROCEDURE.

- a) Motions. All actions by the Board shall begin with a motion by any Board member, which is properly seconded by any other Board member. Any such motion must include the adoption of the findings of fact and conclusions of the Office of Zoning and Development, unless the motion is contrary to the Office's recommendation. If a motion is made which is contrary to the recommendation from the Office of Zoning and Development, that motion must include the rejection of the conclusions of the Office of Zoning and Development and state the Board's independent conclusions, but may be based on the Office of Zoning and Development findings as well as the Board's independent findings.
- b) Reconsideration of Board Action. Any action taken by the Board may be reconsidered on a motion made immediately following the announcement of the vote on such action and prior to the commencement of the following case on the agenda; with the exception of the last case on the agenda in which such motion shall be made prior to the adjournment of the meeting.
- c) Reconsideration of Case. If an applicant feels that the Board took an action on an application that was based on an erroneous finding of material fact, that applicant may petition the Board to reconsider the case. Any Petition for Reconsideration must be delivered to the Secretary within ten (10) business days from the date of the hearing.
 - (i) The Petition for Reconsideration shall be in writing and shall state with particularity the erroneous finding of material fact made by the Board. The applicant must provide supporting documentation provided however, no new information may be considered.
 - (ii) Under that circumstance, the case must be advertised on a subsequent agenda as a case for reconsideration.
 - (iii) A Motion to Grant the Petition for Reconsideration may only be made by a member of the Board who voted on the prevailing side in the original vote.
 - (iv) The Board shall then vote on whether it will rehear the case. If the Board votes to rehear the case, the application shall be set for a full rehearing at a later date. The caption for the application shall be re-advertised and a sign shall be posted on the subject property no later than 15 days prior to the full rehearing. However, the applicant shall not be required to reappear before the affected NPU, and the NPU's previous recommendation shall be used at the rehearing.
 - (v) Successive Petitions for Reconsideration are prohibited. No matter that has been reconsidered may be reconsidered a second time. The Board may not reconsider a denial of a petition for Reconsideration.
- d) Abstention. If a board member abstains from a vote, he or she shall state, on the record, the reasons for the abstention.

- B. LACK OF A CLEAR MAJORITY VOTE. When the number of Board members voting to approve an application is the same as the number of Board members voting to deny, the Board shall defer the hearing of that application to a date on which the full membership of the Board will be present to participate in the action.

RULE 5 – EVIDENCE

- A. ADMISSIBILITY, FORM. Oral statements and documentary evidence submitted to the Board shall be received when in a form commonly relied upon by reasonably prudent persons in the conduct of their affairs even if the Rules of Evidence applied in the trial of civil non-jury cases in the Superior Courts of Georgia would preclude consideration in the form tendered. Such Rules of Evidence may be used as guides in considering objections. The receipt or exclusion of evidence shall be ordered by the presiding officer in such a manner that hearings will be expedited without substantial prejudice to the interest of any party. Irrelevant, immaterial or unduly repetitious evidence need not be received. The rules of privilege recognized by the law shall be given effect.
- B. DOCUMENTS, COPIES. Documentary evidence may be received in the form of copies of excerpts, provided the original is made available to the Board for comparison upon request, and shall become a part of the record of the case. Whenever an original is submitted, complete and accurate copies may be furnished to the Secretary for filing as substitutes for originals in the record after thirty (30) days following the decision of the Board on any case. Supplemental documents for all applications (variances, special exceptions and appeals) shall be submitted to the Secretary at least seven (7) business days prior to the scheduled date of the hearing. The applicant or person submitting the documents must provide the Secretary with six (6) copies of all materials. For virtual hearings, supplemental documents must be submitted electronically to the Secretary by 10:00 am the day of the hearing. However, in the event that the Board does not receive pertinent information related to a case, the Board may choose to defer the case to the next available agenda.
- C. OFFICIAL NOTICE. Official notice of technical, scientific or community facts within the specialized knowledge of the Board may be taken.
- D. PROCEDURAL RULINGS, APPEAL. All questions which may arise during a hearing which are not otherwise resolved by applicable law or rule shall be decided forthwith by the Chairman subject to appeal by any member to be decided by a vote on the question, “shall the ruling be sustained?”
- E. VOTING. No member who does not feel properly acquainted with the evidence presented in an application or appeal shall vote to decide such a case. In the event that the Board does not receive pertinent information related to a case, the Board may choose to defer the case to the next available agenda.
- F. RECORD. There shall be an official record maintained by the Secretary, as custodian, for each case. This record shall consist of all oral, documentary, or other evidence of any kind received by the Board and may also include: (1) the record(s) of any case(s) previously before the Board involving the same property and substantially similar or otherwise related issues; (2) a certified copy of the Rules of Procedure; and (3) A certified copy of the Zoning Ordinance of the City of Atlanta.

RULE 6 – DEFERRAL, DENIAL, WITHDRAWAL

- A. DEFERRALS. Applications and appeals that have been advertised for public hearing and which appear on the agenda of the Board of Zoning Adjustment may be deferred or postponed on a motion of any Board member or on the request of the filing party only for good cause and with the consent of the majority of the Board. The length of such postponement or deferral is at the discretion of the Board. In order for the Board to consider a request for deferral, it shall be made in writing prior to the hearing for which the case is scheduled, or by the applicant at the scheduled hearing before any statements are presented and immediately after the case is sounded. If a case has already been deferred one or more times by the Board, the applicant or the applicant's representative must appear at the scheduled hearing to request another deferral. The Board shall deem any requests for deferral subsequent to the first request as the withdrawal of the application or appeal, unless the Board determines that extraordinary circumstances warrant another deferral.

If the public hearing is held virtually and connectivity (recording, streaming) is lost, the Board shall wait 10 minutes for the connection to reestablish. If the feed does not reestablish after 10 minutes, all cases listed on the agenda shall be deferred to the next available hearing.

If an applicant/appellant loses their connection and cannot be reconnected to the hearing, the Chairperson will call for a motion to move that application to the end of the meeting agenda. OZD staff will continue to attempt to contact the appellant to resolve connectivity issues. Where the applicant/appellant cannot be reconnected during the hearing, the Board shall defer that particular application until the next available hearing.

If a person speaking in support or opposition of an application loses their connection during a hearing and cannot be reconnected, the Chairperson will call for a motion to move that application to the end of the meeting agenda and OZD staff will continue to attempt to contact the speaker. Where the speaker cannot be reconnected during the hearing, the Board shall defer that particular application until the next available hearing.

- B. DENIAL. If the Board of Zoning Adjustment votes to deny an application with prejudice, it shall not hear any applications on the same subject property which contain requests that are substantially the same as that which was denied for a period of one (1) year after such action is taken. Said waiting period shall not apply when the Board votes to deny an application without prejudice.
- C. WITHDRAWAL. Withdrawal of an application must be communicated to the Secretary of the Board prior to the public hearing for that application or directly to the Board during the public hearing for the application. Upon receiving such a communication, the Board may dispose of the application by voting to deny the application without prejudice. If an application is denied without prejudice, the applicant may resubmit the same request, or any substantially similar request, at any time in a new application.
- D. SUCCESSIVE APPEALS AND APPLICATIONS.
- a) Appeals of the Decision of an Administrative Officer. Appellant may request permission from the Board to withdraw an appeal either by written request to the Secretary prior to the hearing or by direct request to the Board at the time of the

hearing. In the request to withdraw, the appellant shall state the reasons for the request. The Board may grant permission to withdraw by a majority vote. If the appellant appeals again to the Board to hear substantially the same issue affecting the same property within twelve (12) months, the appeal may not be withdrawn a second time and failure to pursue the appeal shall result in the automatic denial of the appeal by the Board.

If an appeal is denied by a majority vote of the members, the Board will not hear subsequent appeals on the same property by the same appellant when the ultimate objective is the same or similar to the previously denied appeal.

- b) Applications for Variances and Special Exceptions. The Board shall not be required to hear an application for a Variance or a Special Exception on a property that was the subject matter of an application within the last twelve months. The Board may, by majority vote, enforce this rule and refuse the rehearing of such an application.

RULE 7 – ANNUAL MEETING, BOARD OFFICERS AND ADMINISTRATION

- A. ANNUAL MEETING. An annual organizational meeting of the Board of Zoning Adjustment shall be held by June 1st of each year. The date, time and place of such meeting shall be specified in a written or electronic format sent by the Secretary at least five (5) days prior to the date of such annual meeting. The annual meeting shall be devoted only to the election of officers, the consideration of rule changes, and such other business shall be specified in the notice. No public hearing on proposed variances, special exceptions or appeals shall be held during such annual meeting.
 - a) A Chairman and a Vice-Chairman shall be elected to serve for one (1) year. The Zoning Administrator of the City of Atlanta shall appoint a Secretary to the Board, who shall be confirmed by the Board. The election of the Chairman and Vice-Chairman shall begin with a nomination by a Board member. Board members may not nominate themselves for a position. If a new Chairman and Vice-Chairman are elected, the new officers shall assume their duties immediately.
- B. CHAIRMAN DUTIES. The Chairman shall preside at all meetings of the Board, shall issue subpoenas for the Board and for any party to an appeal, and shall carry out all customary duties of a Chairman. The Chairman shall issue subpoenas only when the Board determines by majority vote that said subpoenas are required in order to provide a party, a City Department or Office, or other persons determined by the Board to be aggrieved their due process right to a fair and meaningful opportunity to be heard, and only on such terms and conditions as may be established by the Board.
- C. VICE-CHAIRMAN DUTIES. The Vice-Chairman shall assume all of the duties of the Chairman when the Chairman is unable to be present at a public hearing. If both the Chairman and the Vice-Chairman are not present at a public hearing, the remaining Board members shall vote to elect a temporary presiding officer for that hearing.
- D. SECRETARY DUTIES. The Secretary shall prepare all correspondence, documents and writings for the Board and for the Chairman; shall distribute to the members all notices, agendas and supporting documents concerning hearings and cases.

- a) The Secretary shall receive, identify and preserve all exhibits presented to the Board for consideration on any matter pending before the Board, and shall maintain proper files for all matters relating to the business and affairs of the Board. The Secretary shall cause and supervise the Office of Zoning and Development’s analysis of each application and shall transmit all findings and recommendations to the Board of Zoning Adjustment.
- b) The Secretary shall represent the Director of the City of Atlanta Office of Zoning and Development at all Board of Zoning Adjustment public hearings. In this capacity, the Secretary shall inform the Board of the Office’s official position on each application, interpret and explain the zoning processes of the City of Atlanta, and interpret the Zoning Ordinance of the City of Atlanta.
- c) The Secretary shall perform such other duties pertaining to the business and affairs of the Board as are periodically assigned by the Chairman. The Secretary shall cause video recordings to be made of the entire proceeding at every regular and special hearing of the Board.

RULE 8 – CONFLICTS OF INTEREST

A. DISQUALIFICATION – BOARD MEMBERS. No member shall knowingly vote or participate in the hearing or deliberation of any case where the member:

- a) Has a financial interest in the subject matter of the case, or is a party to the case, individually or as a fiduciary, regardless of whether that financial interest is held in the name of the member, the spouse of the member, or a minor child of the member;
- b) or the spouse of the member, or a person related within the third degree to either of them (calculated according to the civil law system) or the spouse of such a person: is a party to the proceedings, or an officer, director or trustee of a party; is known by the member to have a financial interest that could be substantially affected by the outcome of the proceedings; or is likely to be a material witness at the hearing.

Any Board member who is disqualified shall be counted in determining a quorum. Board action shall be determined by the affirmative vote of the majority of qualified members unless the qualified members and all parties agreed on the record to full participation by all disqualified members.

B. APPEARANCES – BOARD MEMBERS. No member of the Board shall appear for, represent, discuss or advise any party in or with respect to any case pending before the Board in which such member shall sit. A member may inform any person on any matter of practice or procedure of the Board and may direct persons to appropriate staff members to obtain information regarding applications pending before the Board.

C. SECRETARY. The Secretary shall not appear for or represent any party, except the Director of the Office of Zoning and Development, for any matter pending before the Board. The Secretary shall not act as private or personal counsel for any party with respect to any case pending before the Board.

RULE 9 – RESIGNATION

- A. RESIGNATION. No resignation by any member shall be effective unless it is delivered in writing to the President of the Atlanta City Council with copies to the Board Chairman and the Secretary.

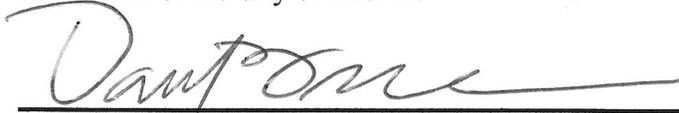
RULE 10 – SPECIAL MEETINGS

- A. CALL PURPOSE. The Chairman, when necessary for the conduct of the business and affairs of the Board, may convene special meetings.
- B. NOTICE. Written notice setting out the date, time, place and purpose of a special meeting shall be mailed to each member not less than five (5) days prior to a meeting date. Such notice may be waived by unanimous vote when all members of the Board attend a special meeting.

RULE 11 – GENERAL PROVISIONS

- A. GOVERNING LAWS. The provisions of applicable State law shall govern the Board Laws, the Ordinance creating the Board that was approved March 6, 1975, as amended, the Zoning Ordinance of the City of Atlanta, other applicable law of the City of Atlanta and the Rules of Procedure of the Board of Zoning Adjustment.
- B. AMENDMENTS TO RULES. The Board shall have the right to amend these rules at any regular or special meeting, provided that the amendments are approved by a majority of the Board. Any amendment (s) to these rules shall be presented to the entire Board in writing at a regular or special meeting preceding the regular or special meeting at which the vote is taken. The rules shall become effective at the next regularly scheduled meeting of the Board of Zoning Adjustment.
- C. FILING OF RULES AND AMENDMENTS. A copy of these rules and a copy of each amendment to these rules shall be certified by the Chairman and filed with the Clerk of the City Council.
- D. COPIES OF RULES. A copy of these rules and of the Ordinance creating this Board, and any amendments thereto, shall be made available, upon request, to the public.

I hereby certify that this is a true and correct copy of the Rules of Procedure of the Board of Zoning Adjustment of the City of Atlanta, adopted at the special called meeting of the Board held on July 23, 2020. These rules shall become effective at the next regularly scheduled meeting of the Board of Zoning Adjustment. I further certify that a true and correct copy of these Rules of Procedure was filed with the Municipal Clerk pursuant to the requirement of the Code of Ordinances of the City of Atlanta.



Chairman, Board of Zoning Adjustment

7/23/2020.

Date