

DURHAM BOARD OF ADJUSTMENT RULES OF PROCEDURE

August, 2018

SECTION 1: ORGANIZATION

1.1 Purpose

The function of the Board of Adjustment (“the Board”) is to hold quasi-judicial public hearings in order to determine requests made by property owners in the City and County of Durham for special use permits, variances, appeals of administrative interpretations, and any other matters delegated to the Board under State law and local law and ordinance. **(As amended, 12/05)**

1.2 Membership/Participation

The Interlocal Agreement agreed to by the Durham City Council and the Durham Board of Commissioners establishes a merged Board of Adjustment to hear cases from both the City and the portions of the County outside the City. The merged Board has 7 regular members and 3 alternate members (“alternates”). When an alternate is seated to hear a case, the alternate is a member for purposes of these rules. Cases are heard at public hearing by 7 members (or as few as 5, if 7 are not present), who vote on all cases whether the property is located inside or outside the Durham City limits. The 7 regular members are seated first at hearings. Alternates are seated when regular members are absent, tardy, excused early from the hearing, not eligible to vote due to a conflict of interest, or regular member seats are vacant. Regular and alternate members who are not present at the call to order are considered tardy. Nonseated regular or alternate members do not participate in discussions, ask questions, or vote in hearings. However, both regular and alternate members are seated and may vote at work sessions and during the consideration of business other than cases at public hearings. **(As amended, 12/05)**

1.3 Alternates

- a. Alternates prepare themselves for hearings in the same manner as regular members and are subject to the same attendance policies as regular members. The order in which they are called to sit is determined through a pre-arranged schedule prepared by the Clerk.
- b. Alternates who were present for the initial hearing and presentation of evidence in a case will be seated at subsequent hearings of that case prior to members/alternates who were not present.

1.4 Term

The terms of Board members, except for the initial terms of members appointed to the initial merged Board in 1994, are 3 years. Terms begin and end on June 30th. A member's term may be continued beyond 3 years if a successor member has not been appointed. A Board member may also serve successive terms. A successor, if appointed late, is considered to have started on the June 30th the term should have started. **(As amended, 12/05)**

Note: Although terms are not limited in the Interlocal Agreement, the **City** has a policy of limiting successive terms **to two**, and the **County to three**.

1.5 Vacancies

Vacancies are filled by the body that appointed the departing member in accordance with the Interlocal Agreement. If the departing member resigns or is removed mid-term, the appointee serves the balance of replaced member's term. **(As amended, 12/05)**

Note: Under the Interlocal Agreement, members who resign mid-term are replaced with alternates from the jurisdiction that appointed the departing member. In addition, when vacancies arise after members complete full terms, the City and County have a policy of giving the respective alternates they have appointed first consideration for nomination to regular membership. **(As amended, 12/05)**

1.6 Removal

Members may be removed from the Board by the appointing governing body for cause, which includes violation of **SECTION 2: CONDUCT OF MEMBERS**. It is requested that, prior to taking action, the appointing body notify a member being considered for removal of the reasons for removal and give such member an opportunity to respond. **(As amended, 12/05)**

1.7 Officers/Term

- a. The officers of the Board consist of a Chair and Vice Chair. The Chair presides at all hearings/meetings, excuses members from hearings as provided in these Rules, makes other decisions provided for in these Rules, and determines all issues, or a process for deciding such issues, not governed by these Rules. The Vice Chair serves as Chair in the Chair's absence or incapacity.

- b. Officers must be regular members of the Board. They are elected by majority vote of all members present at the hearing in June each year and take office in July. They serve a term of 1 year or until their successors are elected. Officers are eligible for re-election. **(As amended, 9/11)**
- c. A vacancy in the office of the Chair is filled by the Vice Chair for the balance of the Chair's term. The Board shall elect a Vice Chair at its earliest possible meeting.

Section 1.8 Deleted in its entirety (As amended, 9/11)

1.8 Materials

The Clerk of the Board shall provide to every new Board member the current ordinances applicable to land development and to the Board's operation and a notebook containing the Board's Rules of Procedure, the City-County Interlocal Agreement, the County Ethics Policy, the booklet "The Board of Adjustment" by the Institute of Government, and the last annual report of the Board. The Planning key leader shall provide an orientation for each regular and alternate Board member after appointment. **(As amended, 12/05)**

1.9 Clerk/Staff to the Board

The Clerk of the Board and the primary staff person (the "key leader") shall be employees of the City-County Planning Department. Requests to the staff during a meeting that could interfere with the Board's activities should be made through the Chair.

1.10 Rules of Procedure

The Board, by majority vote, shall adopt Rules of Procedure. These Rules may be amended by majority vote provided that the general substance of such amendment is presented in writing at a meeting preceding the meeting at which the amendment is adopted. The Rules may be suspended for good cause by a vote of 4/5 of a majority of members eligible to vote on the matter being considered. **(As amended, 12/05)**

1.11 Annual Report

The City-County Planning Department shall prepare a report of the Board's activities for the past fiscal year (July 1 - June 30) and shall submit it to the Board in July of each year. The report shall include a summary of the number of cases of each type heard (use permits, variances, appeals, and boundary interpretations), their disposition, the number of hearings and meetings held by the Board, members' attendance, the composition of the Board, the officers for the year, the date new members began their terms, and any other matters the Board requests the staff to include. This report shall be approved by a majority of the Board and shall be presented to the governing bodies by September.

SECTION 2: CONDUCT OF MEMBERS

Members must observe the following rules concerning their conduct. Failure to do so shall be reported by the Chair to the governing body responsible for the member's appointment. If there is a question concerning whether a member has or has not followed these rules, the matter shall be determined by a majority vote of all members of the Board.

2.1 Attendance

- a. Board members, including alternates, must faithfully attend meetings and perform their duties. In accordance with the Interlocal Agreement, members and alternates must attend at least 75% (typically nine (9)) of the yearly meetings/hearings of the Board, including work sessions, and may be removed for failure to meet this standard. The Board Clerk shall keep a record of attendance. When a Board member has missed three (3) of the hearings/meetings held within any twelve (12) month period, the governing body shall be notified. In addition, under County policy, County-appointed members are obligated to resign if they are absent from more than 50% (typically, six (6)) of the meetings of a year, calculated year to year from the date of first appointment. **(As amended, 05/07)**
- b. The "designated alternate" has a special obligation to remain throughout a day's hearings. If all three alternates are present at a meeting, the Chair may choose to excuse an alternate after the roll call if it is clear that they will not be needed to fill in for members who must leave early, or who have a conflict of interest, or who otherwise cannot hear a case. **(As amended, 12/05)**

- c. Board members may request to be excused by the Chair from a meeting or hearing when an important conflict exists. In such cases, the member shall inform the Board at the beginning of the meeting/hearing. The member shall be counted as absent unless (s)he attends at least 3 hours of a meeting, assuming such meeting is at least 3 hours long. Frequent requests to be excused after 3 hours are not encouraged. The Chair may refuse to excuse a member when the member's absence would leave fewer than 7 members to hear a case or where circumstances otherwise warrant the member's remaining. **(As amended, 12/05)**

2.2 Reporting Absences

Members, including alternates, who are unable to attend a meeting, must give the Clerk at least 2 business days' advance notice (by Friday morning of a Tuesday meeting) and indicate the general reason for being absent. **Earlier notification is encouraged.** At the meeting/hearing, the Clerk will inform the Board of the absence and the member's reasons. **(As amended, 12/05)**

2.3 Taxes

All members must be current in payment of their local property taxes at the time of their appointment and throughout their term.

2.4 Ethics Policy

Members shall observe applicable state statutory requirements, and, in addition, the Ethics Policy adopted by the Board of Commissioners, as provided in the Interlocal Agreement, as well as these Rules. **(As amended, 12/05)**

2.5 Conduct Outside of Hearings

- a. Board members shall not discuss any case with, or receive any information from, any parties or other interested persons outside the public hearing on a case. This does not include information received or solicited from the Chairman, the City or County Attorney's office, or the staff or Clerk to the Board. In addition, it does not include site visits to the properties for which applications have been made, as long as Board members do not discuss the merits of the case or matter with persons at the site. **(As amended, 12/05)**
- b. Board members shall not express opinions concerning a case before that case is heard, except for opinions regarding procedural or scheduling issues.

- c. Board members shall keep in mind that they serve as impartial, quasi-judicial decision-makers, and shall avoid the appearance of impropriety.

2.6 Disqualification From Hearing or Voting

- a. **Conflict of Interest/Bias.** A Board member shall not participate in a vote when a member has an impermissible conflict of interest. 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 entity;
 - 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. **(As amended, 12/05)**

A member with a potential conflict of interest or bias in a hearing matter shall, preferably at least two business days prior to the day of the meeting, consult with the Chair and, if necessary, with the Planning Director and/or Board attorney regarding the potential conflict. The member may excuse himself on account of the potential conflict, or may ask the Chair to make a determination. The Chair shall announce any recusals prior to the hearing affected by such recusals. **(As amended, 5/04)**

- b. **Disclosure of facts or prior knowledge.** Prior to or during a hearing, Board members should disclose pertinent facts they are aware of through site visits or through other prior knowledge if such facts or knowledge may affect a member's opinions regarding the case. Other than this type of disclosure, a member seated for a hearing should not testify in a hearing. **(As amended, 12/05)**
- c. **Testifying.** If a member is personally or financially involved in the subject property or property within the notification area, and wishes to testify or be heard in the matter, (s)he should consult with the Chair, recuse him/her self before the hearing (see "a" above) and not take part in the hearing of any case being heard on the same date. Members are discouraged from testifying even in cases in which they are financially involved. (A member with such an interest would, of course, have to recuse him/herself whether or not the member testifies.) **(As amended, 12/05)**

- d. **Voting.** No Board member shall vote in any final determination of the merits of a case unless that member was present for the hearing of the case or has reviewed the taped recording of the hearing and all evidence submitted. This prohibition shall not apply to procedural issues, extensions, continuances, decisions to appeal, or other similar issues. **(As amended, 12/05)**

SECTION 3: MEETINGS, NOTICE, AGENDA (As amended, 12/05)

3.1 Public Hearings

The Board shall regularly hold public hearings for the disposition of cases on the fourth Tuesday of each month at 8:30 a.m. in City Hall. Hearings may be rescheduled by the Chair if a scheduled public hearing cannot be held because of a holiday, weather, lack of a quorum or other unusual circumstance. The Board may hold additional public hearings if necessitated by a heavy caseload. Such hearings must be approved by the Chair with at least two weeks advance notice given to members. An emergency public hearing may be called without two weeks notice if the Chair determines that a case is urgent and/or unusual circumstances require its immediate resolution, assuming that the public notice required by Ordinance can be given.

3.2 Other Meetings

The Board may hold other meetings as necessary for training, work sessions, or the conduct of business. Such meetings shall be set by the Chair, with at least two weeks notice given to members, unless the meeting is an emergency meeting regarding matters that need immediate resolution in which case at least 48 hours advance notice shall be given. For all meetings, a written or oral agenda for the meeting shall be given to each member.

3.3 Public Access/Hearing Tapes (As amended, 12/05)

- a. All meetings, hearings, records, and minutes of the Board shall be open to the public. Notice of all public hearings shall be advertised in the newspaper, except for “special” public hearings, which shall be advertised in accordance with the open meetings law. Meetings shall also be advertised in accordance with the open meetings law.
- b. Any interested party may get a duplicate tape of a hearing by providing the materials necessary to the Clerk, and such copy shall generally be provided within 4 working days of the request.

3.4 Notice of Public Hearings

In addition to newspaper notice of public hearings, the Planning Staff shall post one or more signs on the premises for which the application has been made, and, if necessary, at nearby locations that are easily visible to properties near the subject property. First-class letter notice for the first date at which a case is to be heard shall be given to all property owners as required by law. Applicants may be required to furnish information or materials for mailed notice, and affidavits that they have provided the same, if required by ordinance or Planning policies. Inadequate notice should generally result in a delay of the applicant's hearing date. **(As amended, 12/05)**

3.5 Mailing of Agenda/Staff Report

- a. An agenda for each meeting and hearing, consisting of a listing of cases and other business, and the order in which they will be heard, shall be prepared by the Clerk and shall be mailed to all members, applicants, and interested persons who requested an agenda no less than 10 days prior to the hearing, except for emergency meetings/hearings. For meetings in which cases will not be heard, the agenda will be delivered or orally transmitted, as appropriate, no less than 2 days prior to the meeting.
- b. At the same time the agenda is mailed, the Clerk shall mail staff reports to all Board members and to persons who have requested a staff report for a particular case. These reports shall include: a map of the location of the property, existing land use and zoning of the property and surrounding property, factual information regarding the findings under the Ordinance, a listing of all relevant Ordinance sections, and the application submitted by the applicant. This report shall be made available to the general public at the same time it is mailed to members.

3.6 Setting of Agenda/Order of Business (As amended, 12/05)

- a. Use permits, variances, appeals of decisions of administrative officials, and any other matters requiring hearing shall be placed on the agenda by filing of necessary applications within the deadlines shown on the Board's annual calendar, or, if such deadlines are not met, by the staff's determination that special circumstances apply. The Clerk shall place business and procedural matters on the agenda after verification with the Chair. If a member requests to the Chair (or Vice Chair in the Chair's absence) prior to the mailing of the agenda that a matter be included on the agenda it shall be included if the Chair approves. **(As amended, 12/05)**

- b. Items may be added to the agenda at a meeting/hearing by approval of a majority of the Board.
- c. The order of business at public hearings shall be as follows, unless varied by majority vote:
 - a. Call to Order
 - b. Roll Call (includes requests for members to identify conflicts or early departures)
 - c. Adjustments to the Agenda **(As amended, 12/05)**
 - d. Explanation of Quasi-Judicial Procedure for Cases by Chair
 - e. Swearing In of Witnesses
 - f. Hearing and Determination of Each Case
 - g. Approval of Summary Minutes for Previous Meeting(s)
 - h. Approval of Written Findings for Prior Decisions
 - i. Old Business
 - j. New Business
 - k. Adjournment

SECTION 4: HEARING PROCESS; WRITTEN DECISIONS; TRANSMITTAL

4.1 Quorum/Voting (As amended, 4/98, 12/05, 4/16)

Five (5) seated members constitute a quorum for public hearings and meetings. An applicant in a case shall have the right to a rescheduled hearing if fewer than seven (7) members are seated for a hearing. Voting for each jurisdiction is as follows:

County Cases, sites located outside of the Durham City Limits:

- a) Variances: A vote to approve a variance must receive a 4/5 majority vote from the Board — for example, six (6) Board members out of seven (7).
- b) Use Permits and Appeals: A vote to approve a use permit or uphold an administrative decision requires a *simple* majority vote — for example, four (4) Board members out of seven (7).

City Cases, sites located within the Durham City limits:

- a) All city cases require a 3/5 majority vote to approve a request for a special use permit, variance or uphold an administrative decision — for example, five (5) out of seven (7). See City Charter § 93.

For purposes of voting, vacant positions on the Board and members who are disqualified from voting due to an impermissible conflict as defined in Rule 2.6(a) 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 at the hearing. See GS 160A-388(e)(1) and 153A-345.1.

City example: If there are 2 vacant regular member positions and 1 regular member is absent and 1 alternate member is in attendance at the hearing, then the number of members of the Board for calculation of the requisite majority would be 6. In order to approve a special use permit, variance, or uphold an administrative decision in this situation 4 affirmative votes would be required ($3/5 \times 6 = 3.6$, round up to 4).

Other votes, including determinations regarding whether to appeal to the appellate courts, and determinations regarding whether to comply with, or seek a stay of a judicial order, require only majority approval unless otherwise specified in these rules. Where 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. In the case of abstention or failure to vote by a Board member who is seated and has not been excused under these Rules, the member's vote shall be counted in the affirmative. **(As amended, 12/05, 04/16)**

4.2 Parliamentary Procedures

Consideration of cases and other business shall be in accordance with the Board's Rules of Parliamentary Procedures, Section 5, which are adopted and incorporated into these Rules.

4.3 Process for Determining Cases

- a. A vote on a request for a variance, special use permit, or an appeal of an administrative interpretation shall be in the form of a motion to approve the request **(As amended, 12/05, 4/16)**. See Rule 4.1 above for the number of votes needed to approve a request.
- b. If an applicant withdraws a request, the case is closed. A new application and fee must be submitted if the request is thereafter reviewed.
- c. Cases continued by the Board for lack of information or for necessary actions to be taken by the applicant shall be to a date certain. If the applicant does not submit the information or take the actions by the continuance date, the Board shall either continue the case again or dismiss the case without

prejudice to the applicant's right to initiate a new application. The Board shall not grant multiple continuances without good cause.

- d. A written explanation of the quasi-judicial nature of the hearing that explains, among other things, the right to ask questions and to object to evidence shall be available to all persons attending the hearing. **(As amended, 12/05)**
- e. The Chair, prior to the swearing in of witnesses, shall briefly explain the nature of a quasi-judicial hearing and shall call attention to the written explanations available.
- f. Board members with a conflict of interest or bias who do not become aware of the conflict until the time of the hearing should excuse themselves prior to the start of the hearing. At the same time, all members, including alternates, who have special knowledge about a case, should disclose it so that the parties may address such information in their cases. **(As amended, 12/05)**
- g. Evidence shall be presented as follows: 1) staff report; 2) applicant's evidence; 3) opponent's evidence; 4) rebuttal (if requested).
- h. The Chair shall rule on any objections or requests from participants in the hearing regarding the procedure of the hearing or evidence presented.
- i. The Chair must recognize speakers and Board members before they may be heard. **(As amended, 12/05)**
- j. The Chair shall allow every speaker to be heard, but may limit and/or cut off evidence or testimony that is irrelevant, repetitive, incompetent, or hearsay.
- k. The Chair shall allow direct and cross-examination and presentation of rebuttal evidence if such are requested. **(As amended, 12/05)**
- l. The Board may limit the length of a public hearing or set a time for adjournment by majority vote. **(As amended, 12/05)**
- m. After all evidence has been presented; the Chair may ask the parties if there is additional relevant information that has not been presented that would make a continuance in order. **(As amended, 12/05)**

4.4 Written Decisions; Findings; Transmittal and Filing

- a. A written decision shall be issued for every case. Such a decision shall include: the pertinent ordinance sections that were met or were not met. In the case of denials and contested approvals, subsidiary factual findings relating to the evidence heard by the Board shall also be included. Approvals shall include any conditions that the Board placed upon the permit. The Chairman, Planning key leader, and the Board Clerk shall sign each decision. **(As amended, 12/05)**
- b. In addition to the vote that determines the outcome of a case, the Board shall vote on a written decision including factual findings for all denials and for contested approvals in which the Board deems such findings necessary. A majority of the Board members who voted on the prevailing side shall vote on the content of the decision. (For example, if **in a City case**, a motion to approve receives a 4-3 vote, resulting in denial, then the majority of those voting to deny, in this case, 2 of 3 members, must approve the written decision supporting the denial. If, in a contested **City** case, a motion to approve receives a 6-1 vote, a majority of 6 members, or 4, must approve the written decision. **(As amended, 12/05, 4/16)**)
- c. Written factual findings may be approved at the same meeting or at a later meeting, which shall generally be the next scheduled meeting. A party may submit proposed findings to the staff and/or Board for incorporation into the written decision. Proposed findings may also be the subject of emails shared amongst Board members prior to the final vote on the wording of the decision. Where absences result in the inability to get majority approval of findings at the next scheduled meeting by the members necessary for consideration of such findings, absent members may be polled by phone, with confirmation in writing. Any such approvals rendered by phone, email, or mail shall be recorded in writing and added to the Board's minutes. **(As amended, 12/05)**
- d. For denials, the members voting for denial shall discuss what sections of the ordinance were not met and the factual information that was relevant to their decision to deny. For contested approvals, members shall discuss the factual information that was relevant to the decision to approve.
- e. The written decision for each case shall be hand delivered, or sent by first class mail, certified mail, return receipt requested, to the applicant and to any person on the opposing side who has filed a written request with the Clerk or with the Chair of the Board. Other persons may, by request, receive a copy by first class mail. The Clerk shall maintain a file of all decisions. A decision shall be considered "filed" at the time it is placed in the Clerk's file.

The Clerk shall also transmit a copy of every decision concerning property within the City to the City Clerk's office, and a copy of every decision concerning property within the County to the County Clerk's office. **(As amended, 12/05)**

4.5 Reconsideration/Reopening

Except as may be specifically provided by ordinance, substantive decisions on the merits of a request cannot be reconsidered and decided cases cannot be reopened following the approval of a written decision. If criteria for a change in circumstances are met, the case may be submitted as a new case under the zoning ordinance. **(As amended, 12/05)**

4.6 Extensions (Amendment added April, 1996, revised April, 1999)

The Board may not grant extensions to Minor Special Use Permits.

4.7 Procedures Ensuring Expedited Review of First Amendment Activities (Added April, 1999)

When an applicant appeals an administrative decision or requests a special use permit or variance regarding a protected First Amendment activity, and other applicable law does not provide that the activity may be initiated or continued during the pendency of the Board of Adjustment's decision-making, the Board shall expedite its process for hearings and final decisions. The following procedures shall apply:

- a. The time between the point the applicant submits a completed application and fee and the point a final written decision is approved by the Board and mailed to the applicant shall not exceed three months. If necessary, in order to comply with this deadline, hearings may be scheduled more quickly than normal, and polling of members, following the procedures of 4.4.c *infra*, may approve written decisions.
- b. If the applicant requests judicial review, the Board shall stipulate to the granting of a writ of certiorari within five working days of legal receipt of notice of the petition for certiorari, except in cases where improper procedure or process or other procedural defects raise jurisdictional issues.

- c. The Planning staff on behalf of the Board shall file the official record within fifteen working days of date the Board legally receives notice that the writ of certiorari has been granted. Where the appealing party has not provided a written transcript of the hearing, the record may include a recording of the proceeding, which recording shall be replaced by a transcript prior to the hearing.
- d. The Board will stipulate to expedited scheduling of court hearings on the review of the Board's decision, including motions for summary judgment, to the end that, if desired by the appealing party, a court hearing concerning the Board's decision will be available within 60 days of the date a petition for certiorari is served on the Board of Adjustment. **(As amended, 12/11/01)**

SECTION 5: PARLIAMENTARY PROCEDURES **(Changed from Attachment A to Section 5 in September, 2002)**

The Durham Board of Adjustment shall observe the following parliamentary procedures. Seated members may suspend these procedures by a 4/5 vote. Deviations from these procedures shall not be grounds for voiding a vote unless the deviation is called to the attention of the Chair at the same meeting when it occurs and members by majority vote agree that as a result of the deviation a previous vote should be voided.

5.1 Authority of Chair

If a situation is not covered by these Rules, the Chair shall determine the appropriate procedure, which procedure may be changed by a majority vote of seated members.

5.2 Motions

- a. Formal decisions including but not limited to approval of Rules of Procedure, all actions concerning cases, selection of officers and recommendations concerning ordinance changes shall be made by motion, which, except as provided below, must be seconded. The mover may withdraw the motion at any time before it is voted on. Only one substantive motion and friendly amendment to such motion may be considered at a time.
- b. Motions may be made to approve a request, or to approve with conditions. If the request is for a special use permit, variance, or for reversal of an administrative decision, a vote to grant the request must be approved as provided in 4.1. Other votes, such as procedural matters need only be approved by a majority of those voting, a quorum being present, unless otherwise specified in these Rules. **(As amended 12/05, 4/16)**

- c. Friendly amendments are the norm in Board proceedings, and all amendments to a motion must be offered as friendly amendments. A motion proposing a friendly amendment does not need a second. A friendly amendment is valid only when accepted by the maker of the original motion and, once accepted, it becomes a part of the original motion. An unlimited number of friendly amendments are allowed. If a friendly amendment is not accepted by the motion maker it may be offered as a subsequent motion after the vote on the first motion has occurred, assuming that only one substantive vote has then occurred on the case.
- d. **Motions to continue are encouraged if additional information would be useful in determining the case** or if there are other reasons a continuance is advisable. A motion to continue may be made at any time and takes precedence over substantive motions/amendments on the table. It requires a simple majority of seated members for approval. When the matter is reopened after continuance, any substantive motions on the table at the prior meeting will still be on the table. A motion to adjourn is not in order if there are motions/amendments pending on a case that has not been continued. **(As amended, 12/05)**

5.3 Voting/Consideration of Cases

- a. For a vote to occur the Chair may call for a vote or a member may call the question and the Chair must agree.
- b. Cases may be voted on more than once if the votes are taken at the same meeting or at a subsequent meeting that is a continuance of a prior meeting concerning the case. Examples of situations in which additional votes may need to be taken are 1) cases in which a first vote has not resulted in sufficient votes to approve, where the addition of conditions could result in approval; 2) approved cases in which, after consideration, it appears necessary to either add conditions or clarify conditions. **(As amended, 12/05)**
- c. Before a vote, motions as they may have been amended shall, upon request, be restated by the Chair, the Clerk, or a member who proposed either the motion or amendments to such motion, unless the motion was made immediately prior to the vote. The restatement shall include all conditions that are proposed. **(As amended, 12/05)**

- d. Voting on cases shall be by roll call. Votes on other matters may be taken by ayes and nays, by a show of hands, or in any other reasonable fashion determined by the Chair.
- e. **Because decided cases cannot be reopened, the granting of continuances when information is lacking is encouraged.** After debate but prior to the first vote on a case the Chair shall ask applicants and opponents if there is any information that has not been presented that is relevant, or if there is any information that needs to be clarified. If it appears that additional information would be relevant but cannot be presented at the hearing, a motion to continue is in order. **(As amended, 12/05)**

SECTION 6: Deleted in its entirety (As amended, 12/05)

History of Rules of Procedure

The Durham Board of Adjustment Rules of Procedure was originally adopted February 26, 1996 to be effective March 26, 1996.

Revisions:

- April, 1996**
- July, 1996**
- September, 1997**
- April, 1998**
- April, 1999**
- September, 1999**
- October, 2000**
- December, 2001**
- October, 2002**
- May, 2004**
- December, 2005**
- May, 2007**
- September, 2011**
- April, 2016**
- August, 2018**