

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 18 June 2008

SUBJECT: Approval of Revised Zoning Board of Adjustment Bylaws

ATTACHMENT(S): Draft Bylaws

SUMMARY OF REQUEST:

Revised Zoning Board of Adjustment (ZBA) bylaws were first brought before this Board at its regularly scheduled May 5th, 2008 meeting. At this time the Board had concerns about potential conflict of interests and members of the ZBA reviewing decisions of other boards they may also serve on.

To answer these concerns, County Attorney Russ Burrell created an Ethics Ordinance which was presented to this Board and adopted at its June 3rd meeting. As this Board's concerns regarding the ZBA bylaws have been hopefully alleviated by the Ethics Ordinance, attached for your review are the revised bylaws for the Zoning Board of Adjustment (ZBA). No changes have been made to the document since this Board reviewed them at their May 5th meeting.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

The Board is requested to approve the Revised Bylaws of the Zoning Board of Adjustment which were recommended to the Board by the ZBA at their March 26, 2008 meeting.

SUGGESTED MOTION:

I move the approval of the Zoning Board of Adjustment Bylaws as presented.

**BYLAWS AND RULES OF PROCEDURE FOR THE
HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT**

- I. **CREATION.** The Henderson County Board of Commissioners created the Henderson County Zoning Board of Adjustment (hereinafter referred to as "ZBA") as a board of adjustment and appellate body to review the Land Development Code in Henderson County. The ZBA was created in accordance with NCGS §§ and 153A-345. The powers and duties of the ZBA have also been described in Henderson County Code 200A-273. The Board of Commissioners subsequently appointed members to the board.
- II. **PURPOSE.** The purpose of the ZBA is to perform all duties of a county board of adjustment prescribed by law and to serve as the appellate body for specific ordinances as defined by local ordinance, specifically those delineated in Henderson County Code 200A-273.
- III. **ACCORDANCE WITH APPLICABLE LAW.** No part of these bylaws is intended to conflict or supersede state or local law. In any case of conflict, state law or local ordinance shall be binding.
- IV. **MEETINGS.**
 - A. Open-Meetings Law. It is the public policy of North Carolina and Henderson County that the hearings, deliberations, and actions of this Board be conducted openly. Except as allowed by NCGS 143-318.11 each meeting of the Board shall be open to the public and any person is entitled to attend such a meeting. The public's right to attend such meeting does not necessarily entitle the public to participate in the meeting.
 - B. Regular Meetings. The Board shall hold regular meetings on the last Wednesday of each month at 4:00 p.m. in the Board of Commissioner's Meeting Room located at 100 North King Street, Hendersonville, North Carolina. A schedule of the regular meetings of the Board shall be kept on file with the secretary of the Board and the Clerk to the Henderson County Board of Commissioners. The Board shall have the authority to change the schedule of regular meetings, and/or to change the date of a particular regularly scheduled meeting without the necessity of approval of the Board of Commissioners. If the Board changes the schedule or location of regular meetings, the secretary shall forward a copy of the new schedule to the Clerk to the Board of Commissioners at least seven (7) days prior to the first meeting held pursuant to the new schedule. If a particular regularly scheduled meeting date is changed, the secretary shall comply with the notice provisions of section D below, Special Meetings.
 - C. Public Input. Public input at all Board meetings that are not quasi-judicial in nature may be limited to 3 minutes per speaker at the discretion of the Chairman.
 - D. Special Meetings. The chair of the Board or the majority of the members of the Board may at any time call a special meeting of the Board by signing a notice stating the time and place of the meeting and the subjects to be considered. Such notice must be:
 - i. Posted on the bulletin board in the front lobby of the Henderson County Courthouse,
 - ii. Posted on the bulletin board for the County Administration Building,
 - iii. Mailed or delivered to each newspaper, wire service, radio station and television station which has filed a written request for notice with the secretary,
 - iv. Mailed or delivered to any entity or person that has requested to be on the Board's sunshine list as prescribed by law; and
 - v. Delivered to all members of the Board at least 48 hours before the meeting.
 - vi. Only the business that is specified in the notice of the meeting may be transacted during a special meeting.
- V. **MEMBERSHIP.** As described in Henderson County Code 200A-273, the Board shall have five regular members and five alternate members appointed by the Board of Commissioners. Members shall be citizens of Henderson County and shall serve without pay.

- A. Term. All members shall serve overlapping three-year terms.
- B. Alternate members. Alternate members shall serve in the absence of any regular member and while serving shall have and exercise all the powers and duties of a regular member of the Board. Alternate members may serve on individual matters based on a regular member's temporary disqualification. Alternate members shall be required to attend regular Board meetings on a rotating basis and may be requested to attend in the absence of a regular member. If all regular members are present, alternate members of the Board shall only be permitted to participate and vote on administrative matters regarding the workings of the ZBA; they shall not be permitted to vote or participate on cases before the Board except when needed to stand in the stead of a regular member.
- C. Vacancies. Any vacancy in the membership shall be filled for the unexpired term in the same manner of the initial appointments.
- D. Duties. Duties of the Board will be those duties as prescribed by Chapter 200A-273 of the Henderson County Code and as stated in Part 3 of Article 18 of Chapter 153A of the North Carolina General Statutes. In addition to those duties mentioned above, the Board shall also perform other duties as assigned by the Henderson County Board of Commissioners.

VI. OFFICERS

A. Required Officers

1. PRESIDING OFFICER. The presiding officer of each meeting of the Board shall be the chair of the Board. In situations where the chair is unavailable or unable to participate in the meeting or any particular matter before the Board, the vice-chair shall preside. In the event that neither the chair nor the vice-chair is available, the members of the Board, by affirmative vote of the majority, may appoint an acting chair who shall have all powers of the chair while acting as presiding officer.
2. SELECTION OF THE CHAIR AND VICE-CHAIR. The chair shall be selected by majority vote of the Board unless the Board of Commissioners indicates to the Board that the Board of Commissioners will appoint said chair, in which case the appointment shall be made by the Board of Commissioners. The vice-chair shall be elected by a majority vote of the Board.
3. POWERS AND DUTIES OF THE CHAIR AND VICE-CHAIR. The chair shall preside at all meetings of the Board but shall also have the right to engage in discussion and vote on any matter before the Board unless otherwise excused. The chair shall have the power to call a special meeting, rule on procedural matters during a meeting, call a brief recess of a meeting at any time, and adjourn a meeting in an emergency. At any other time, adjournment shall be by motion, duly approved. The vice-chair shall have all powers and perform all the duties of the chair in his or her absence.
4. DUTIES OF THE SECRETARY. The staff person assigned to the Board shall serve as the secretary of the Board and shall perform the following:
 - i. The secretary shall insure that all meetings of the Board are properly noticed.
 - ii. The secretary shall maintain the sunshine list which is a list of those persons or entities that have filed a written request indicating a desire to receive notice of all special meetings of the Board.
 - iii. The secretary shall take and record the actions of the Board and draft minutes of the meetings accordingly. Minutes, draft orders, agenda items or other Board documents shall be made available to Board members one week prior to their next regularly scheduled meeting whenever reasonably possible. The secretary shall also forward a copy of the minutes as they are approved to the Clerk to the Board of Commissioners.
 - iv. The secretary shall be responsible for maintaining an accurate list of members of the Board, submitting to the Clerk to the Henderson County Board of Commissioners a monthly attendance report for its members and notifying the Clerk to the Henderson County Board of Commissioners of any resignations of any of its members, or any other change in membership of the Board.
 - v. The secretary shall ensure all required documentation and evidence is kept as required by statute.

- B. Schedule for Elections. Elections shall take place annually at the regularly scheduled meeting in January for Chair and Vice-Chair.
 - C. Attendance. All regular members of the board are expected to attend the regular and/or special meetings of the Board. Any member not able to attend must notify the zoning administrator or secretary in advance of the meeting so that alternate members may be contacted as appropriate. Any regular member who has three unexcused absences within a 12 month period or three unexcused absences to scheduled meetings by an alternate member within a 12 month period shall be reported to the Henderson County Board of Commissioners for possible replacement.
- VII. RULES OF CONDUCT. This Board shall follow these rules of procedure for the conduct of its meetings other than quasi-judicial proceedings:
- A. The Chairperson will preside over the meetings and will be responsible for their conduct.
 - B. The Chair can make motions and vote on all matters.
 - C. The Chair can speak on any matter before the Board.
 - D. No motion needs to be seconded.
 - E. Informal discussion of any subject, without a motion being made, is allowed.
 - F. If a proposal is perfectly clear, a vote can be taken without a motion having been made.
 - G. After a general discussion has been held without a motion, action can be agreed upon by unanimous consent without taking a vote at all.
 - H. On important and or complex issues, a clearly stated motion should be made in order to assure that everyone understands what is being voted upon.
 - I. If desired, at the discretion of the Chair, the Board can revert to the more detailed and formal requirements of *Robert's Rules of Order* at any meeting by a vote of a simple majority of those in attendance.
- VIII. REPORTS.
- A. Annual Report. The Board shall make a report to the Henderson County Board of Commissioners at least annually. This report must be submitted no later than July 1st of each year. The Board shall also make reports to the Board of Commissioners as needed or as requested.
 - B. Public Records Law. The Board shall abide by North Carolina's Public Records Law NCGS §§ Chapter 132
 - C. Public Records of Quasi-Judicial Proceedings. As per Henderson County 200A- 273, Zoning Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating that fact. Final disposition of *appeals* shall be by order indicating the reasons of the Zoning Board of Adjustment therefore, all of which shall be public records.
- IX. QUASI-JUDICIAL PROCEEDINGS. Such proceedings shall be ruled by North Carolina General Statute, case law, and the Henderson County Code and the Rules established by the Board of Commissioners.
- A. Areas requiring quasi-judicial proceedings. The Board has the authority to determine the rights of a person or entity under certain County Ordinances. Such matters include but are not limited to hearings on appeals and reviews of any order, requirement, decision or determination made by a zoning administrator and/or watershed administrator and hearings on applications for permits or variances. Matters concerning such rights may only be determined by the Board after conducting a quasi-judicial proceeding.
 - B. Purposes and Objectives. The purpose of these procedures is to provide an orderly method by which the Board can hear and decide all quasi-judicial proceedings. The Board's objectives when conducting such proceedings are (1) to conduct all proceedings in a fair and efficient manner, (2) to base all decisions on competent and relevant evidence, (3) to ensure that the applicable Ordinance is being enforced and administered in a fair and efficient manner, and, when applicable and allowed by Ordinance, (4) to provide the citizens of Henderson County an administrative

avenue to contest and appeal decisions made pursuant to the Ordinance which adversely affected them.

- C. Notice. Notice shall be established by NCGS 143-318.12 and Henderson County 200A-338.
 - D. Rules of Procedure. Each quasi-judicial proceeding must be conducted in substantial conformity with the following rules: Quasi Judicial Procedures described in Henderson County Code 200A-338 and the Henderson County Board of Commissioners procedures for quasi-judicial proceeding.
 - E. Decisions. In accordance with Henderson County Code 200A-273 the concurring vote of 4/5 of the members of the Zoning Board of Adjustment shall be necessary to reverse any order, requirement or determination of the *Zoning Administrator*, or to decide in favor of the *applicant* on any matter upon which it is required to pass under this chapter, or to effect any variation of this chapter. On all *appeals*, applications and other matters brought before the Zoning Board of Adjustment, said Board shall inform those making *appeal* or application of its decisions and the reasons therefore. Such notification shall be in writing.
 - F. Written Findings. Within 45 days of the conclusion of a quasi-judicial proceeding the Board must issue a written decision unless otherwise specified by state statute and Henderson County Ordinances. The written decision should contain critical findings of fact based on sworn testimony or other competent evidence, conclusions drawn by the board and a clear statement of the decision made by the Board. Such decisions may include conditions established by the Board.
 - G. Minutes and Maintenance of Records. The secretary shall be responsible for maintaining all records associated with quasi-judicial proceedings, including but not limited to the application, notices of the meeting, the minutes and all documentary evidence presented during the proceedings. The minutes for quasi-judicial proceedings shall be taken in detail with detailed summaries of all evidence or testimony presented and statements made by members of the Board. The secretary may take the minutes as a verbatim transcript.
 - H. Appeal. In accordance with NCGS 153A-345 each decision of the Board is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court must be filed with the clerk of the superior court within 30 days after the decision of the Board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the Board at the time of its hearing on the case, whichever is later.
- X. **DUTY TO VOTE**. It is the duty of each member, including the chairman, to vote unless otherwise excused. The Board may excuse members from voting on any matter involving their own financial interest or official conduct, when a member has indicated an inability to be impartial in any quasi-judicial matter before the Board, or when a member has not attended the quasi-judicial hearing(s) at which an appeal or application was presented. When excused from voting on a particular matter such member shall not participate in the discussion of the Board on such matter. Proxy voting is not permitted on any matter before the Board. Votes to abstain shall be counted as votes in the affirmative.
- XI. **NON-QUASI JUDICIAL ACTION BY THE BOARD**.
- A. Quorum. A four-fifths of the Board shall constitute a quorum for regular business. The number required for a quorum shall not be affected by vacancies. Alternate members shall serve in the stead of regular members for the purposes of quorum and in quasi-judicial actions. No action of the Board may be taken at any meeting where less than a quorum is present. Once a quorum has been established, it will not be defeated if members leave.
 - B. Motions. Action of the Board may be taken upon a motion made by any member, including the chair. A motion shall be adopted if approved by the affirmative vote of a majority of the members present and not excused after full discussion of the motion by the members.
 - C. Minutes. Minutes shall be kept of all meetings of the Board. The secretary of the Board shall present such minutes to the Board for approval. Minutes of the meetings of the Board shall be public records. The secretary shall be responsible for sending a copy of all approved minutes to the Clerk to the Board of Commissioners.

D. Staff Support. County Staff shall be assigned to the ZBA, acting as the liaison between the ZBA, County Departments, and the Board of Commissioners and shall have the charge of correspondence, minutes, notifying members of meetings and other information.

XII. AMENDMENTS. The board may amend these bylaws by a four-fifths vote of the Board at a regular meeting; provided however, that amendments shall not be voted on until such proposed amendments have been submitted in writing to the members of the Board at a regular meeting preceding the vote. Amendments to the bylaws shall not be effective until they are approved by the Henderson County Board of Commissioners.

APPROVED AND SUBMITTED this the 28th day of March, 2000.
HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT

BY:  Vice Chairman

APPROVED BY THE HENDERSON COUNTY
BOARD OF COMMISSIONERS on the

_____ day of _____, 2000.

BY: William L. Moyer, Chairman