



Lenoir Board of Adjustment

Agenda • November 23, 2020

Meeting Information

Location

Virtual

Time

5:30 p.m.

Board Members

Sharon Bryant, Chairperson

Leah Hamilton, Vice-Chair

Lucy McCarl

James Bradshaw

Mac Martin

Tim Scobie

Jeff Church, Alternate

Welcome!

We are glad you have joined us for tonight's meeting. The Lenoir Board of Adjustment is a quasi-judicial board comprised of citizen members appointed by the City Council in accordance with G.S. 160A-388. The Board of Adjustment is tasked with hearing variance requests and appeals of land development decisions by administrative officials.

In order to grant a requested variance, a 4/5 majority of the Board must find that the requested variance satisfies four related standards established by state statutes – competent, material, and substantial evidence in the record must support findings that:

1. The ordinance creates an unnecessary hardship
2. The hardship is peculiar to the property
3. The hardship is not self-created, and
4. The requested variance meets the intent of the ordinances, upholds public safety, and achieves substantial justice.

Each decision of the Board will be reduced to writing and be signed by the Chair, and shall become effective upon delivery of the signed decision to the applicant, property owner, and to any person who has submitted a written request for a copy.

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the Clerk of Superior Court within 30 days of the effective date of the board's decision.

General Rules of Order

If you wish to appear before the Board, please fill out an Appearance Request Form and give it to the Recording Secretary. Anyone who wishes to appear before the Board must be sworn in prior to delivering testimony or entering other evidence into the record. When the Chairperson recognizes you, state your name and address and speak directly into the microphone. ROBERT'S RULES OF ORDER govern the conduct of the meeting.

OPENING SESSION

- Determination of a Quorum
- Call to Order
- Consideration of January 27, 2020 Minutes

New Business

1. Review updated Rules of Procedure

ADJOURNMENT

MINUTES
BOARD OF ADJUSTMENT MEETING
January 27, 2020
5:30 PM
905 WEST AVENUE, 3RD FLOOR

MEMBERS PRESENT:

Sharon T. Bryant, Jeff Church, Mac Martin, Leah Hamilton, Lucy McCarl, Tim Scobie

MEMBERS ABSENT: James Bradshaw

STAFF PRESENT:

Jenny Wheelock, Hannah Williams, Lauren McKinney

A quorum was established and Chairperson Bryant called the meeting to order.

MINUTES:

Board Member Scobie moved approval of the meeting minutes of December 17, 2019. Board Member Church seconded the motion, which was voted upon and passed by unanimous vote.

NEW BUSINESS: VARIANCE APPLICATION V#2-19
140 Blowing Rock Blvd

Chairperson Bryant introduced the variance case for Aspen Dental at 140 Blowing Rock Blvd NE, which was tabled at the last meeting. Aspen Dental asked for a variance to Sec. 714.12 which states that no more than 50% of the off-street parking area shall not be located between the front facade of the principal building and abutting streets.

City Attorney, TJ Rohr reopened the evidentiary quasi-judicial hearing for V# 2-19 and explained the rules and procedures.

City Attorney, TJ Rohr requested that anyone wishing to provide testimony be placed under oath. Mark Banks and Jenny Wheelock were placed under oath.

Mark Banks, the applicant presented additional evidence requested by the Board. Mr. Banks stated no progress has been made obtaining the easement from the property owner of Taco Bell. Since the easement was not granted the additional three spaces are needed.

Mr. Banks explained by obtaining this variance Lenoir would be receiving a new building, sales and property tax, and ten new jobs. The applicant addressed the 4

revised standards/conditions for the variance justification and answered the Board's questions.

Jenny Wheelock, Planning Director stated the City of Lenoir parking code requires 3 parking spaces per 1,000 square feet and explained how it relates to this variance request. Mrs. Wheelock spoke about the two site plans provided to the Board at the last meeting; the alternate site plan would meet code.

Chairperson Bryant closed the public hearing.

Board Member Hamilton stated she is unable see how the hardship is self-created since Aspen Dental has their own parking requirements and chose a site that cannot meet the City of Lenoir parking requirements.

Board Member McCarl made a motion that we adopt the findings of facts recommended by the staff 1-4 and that we deny the application for the variance. The motion was seconded by Board Member Hamilton. Sharon Bryant, Tim Scobie, Jeff Church, Leah Hamilton, and Lucy McCarl were in favor, Mac Martin abstained.

ADJOURNMENT:

There being no further business to be brought before the Board, Chairperson Bryant adjourned the meeting at 6:30 p.m.

Sharon T. Bryant, Chair

Jenny Wheelock, Planning Director

**RULES OF PROCEDURE
ZONING BOARD OF ADJUSTMENT,
City of Lenoir, North Carolina**

I. GENERAL RULES

The Zoning Board of Adjustment shall be governed by the terms of Chapter 160D of the General Statutes of North Carolina, Article V, Division 5 of Chapter 2 of the Lenoir Code of Ordinances, "Board of Adjustment," and by Article XIII of the City of Lenoir's Zoning Ordinance, "Administration." All members of the Board shall thoroughly familiarize themselves with these laws. Having adopted these general rules, the Board must follow them and not adopt a special rule for a particular case.

II. OFFICERS AND DUTIES

- A. **Chairperson:** A chairperson shall be elected by the regular membership (not including alternate members) of the Board of Adjustment. The chairperson's term of office shall be two years and until his or her successor is elected, beginning in February, and he or she shall be eligible for re-election. Elections will be held at the regularly scheduled January meeting in each odd-numbered year, with nominations occurring on or before that meeting. The chairperson shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The Chairperson shall appoint any committees found necessary to investigate any matters before the Board.
- B. **Vice-Chairperson:** A vice-chairperson shall be elected by the Board from among its regular membership in the same manner and for the same term as the chairperson. The vice-chairperson shall serve as acting chairperson in the chairperson's absence, and at such times he shall have the same powers and duties as the chairperson. In the absence of both the chairperson and vice-chairperson, the highest-ranking immediate-past officer shall serve as acting chairperson. In the event that there are no prior officials in attendance, the Planning Director shall act as chairman, but shall have no voting privileges.
- C. **Secretary:** A secretary shall be provided by the Planning Department. The secretary shall be eligible for reappointment. The secretary shall keep all records, shall conduct all correspondence of the Board, shall arrange for all notices required to be given, shall notify members of pending meetings and their agenda, shall notify parties to cases before the Board of its decision on such cases, and shall generally supervise the clerical work of the Board. The secretary shall keep the minutes of every Board meeting in a permanent volume. The minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted on by the Board, and all votes of members of the Board on any resolution or on the final determination of any question, indicating the names of members who are absent or fail to vote, and shall be signed by the Planning Director and the Chairperson upon affirmative vote of the board to accept the minutes.

III. ALTERNATE MEMBERS

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Alternate members of the Board shall be called on to attend only those meetings and hearings at which one or more regular members are absent or are unable to participate in hearing a case because of financial or other interest. Regular members, on receiving notice of a special meeting that they cannot attend or on learning that they will be unable to participate in a particular case, shall give prompt notice to the Board secretary that they are unable to attend or to participate. On receiving such notice, the secretary shall, by the most expeditious means, notify an alternate member to attend. Assignments shall be rotated among the alternate members. At any meeting that they are called on to attend, alternate members shall have the same powers and duties as regular members. Alternate members may participate in hearings and discussions if they are present during a meeting in which their vote is not needed. However, on such occasions, they shall not introduce motions and shall not vote.

For the purposes of these Rules of Procedure, rules pertaining generally to all regular members shall be interpreted to also apply to alternate members. In the context of the conduct of meetings, references to regular members shall be interpreted include any alternate member participating in the meeting in the place of a regular member.

IV. RULES OF CONDUCT FOR MEMBERS

- A. Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members is expected.
- B. No Board member shall take part in the hearing, consideration, or determination of any case in which he or she has a fixed opinion of that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person (as defined in Sec.2-185 of the Lenoir Code of Ordinances), or a financial interest in the outcome of the matter.
- C. No Board member shall vote on any matter that decides an application or appeal unless he or she has attended the quasi-judicial hearing on that application or appeal.
- D. No Board member shall discuss any case with any parties thereto before the quasi-judicial hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from Planning Department staff before the hearing. Any information provided to one member will be provided to all members, as well as to the applicant and other interested parties, and staff should disclose any communication had with one board member to the rest of the board
- E. Members of the Board shall not express individual opinions on the proper judgement of any case with any parties thereto before that case is determined.

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V. MEETINGS

- A. **Regular Meetings:** Regular meetings of the Board shall be held on the 4th Monday of each month at 5 :30 p.m. in the joint City/County Council Chambers; provided that meetings may be held at any other convenient place in the city if the chairperson so directs before the meeting.
- B. **Special Meetings:** The chairperson may call special meetings of the Board at any time. At least 48 hours written notice of the time and place of special meetings shall be given, by either the secretary or the chairperson, to each member of the Board.
- C. **Cancellation of Meetings:** If there are no appeals, applications for variances, or other business for the Board, or if so many regular and alternate members notify the secretary that they cannot attend that a quorum will not be available, the Chairperson may dispense with a regular meeting by giving written or verbal notice to all members not less than 48 hours before the time set for the meeting. In the event of severe inclement weather or other emergency situation, either forecast or existent, which is so severe as to create unsafe conditions for travel (snow, severe rain/wind storm, flash flooding, tornadoes, etc.), the Chairperson may cancel or postpone a regular or special meeting by giving notice to the Planning Director prior to the meeting. The Planning Director will attempt to provide notice to all members, applicants with business before the board, and other attendees expected to attend. When possible, notice of the canceled meeting and any rescheduled meeting date shall be posted on the City website, as well as in the location where the meeting was to be held. When business is before the Board, the meeting will be rescheduled to provide for notice requirements to be met; or business will be postponed until the next regular meeting.
- D. **Quorum:** A quorum shall consist of 4 members of the Board.
- E. **Voting:** All members present and voting may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section IV. No more than six members shall vote on any issue. The concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the members present and voting shall be required to decide any other business before the board.

Vacant positions on the Board and members who are disqualified from voting shall not be considered members of the board for calculating requisite majority if there are no qualified alternates available to take the place of such members. When six members are present and voting, at least 5 affirmative votes are required to grant a variance. When only four members are present and voting, the minimum for a quorum, all four members must vote in favor to grant a variance.

- F. **Conduct of Meetings:** All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) call to order; (b) roll call; (c) approval of minutes of the previous meeting; (d) old business; (e) hearing of cases; (f) new business; (g) further

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business; (h) adjournment.

- G. **Conduct of Hearings:** All hearings must follow the quasi-judicial procedures outlined in N.C.G.S. 160D-406 and Secs. 1309-1318 in the Lenoir Zoning Ordinance. The order of proceedings in conducting each hearing before the board shall generally be as follows: (a) swearing in of applicant, staff, and all others who wish to provide testimony, (b) staff summary of request, opportunity for cross examination, (c) testimony by applicant, opportunity for cross examination, (d) testimony by others, opportunity for cross examination, (e) closing of the evidentiary hearing/Board deliberation (discussion of four standards)/entertainment of motions, (f) call for a vote.
- H. **Public Participation:** All meetings of the Board shall be open to the public. However, only the applicant, the City, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive, as allowed by the Board.
- I. **Objections:** Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the Board. The Chairperson shall rule on any objections, and the chairperson's ruling may be appealed to the full board.
- J. **Rehearings.** An application for a rehearing may be made in the same manner as an application for an original hearing. Evidence in support of the application shall initially be limited to what is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. The Board shall deny the application for rehearing if, from the record, it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that a change has occurred, it shall thereupon treat the request in the same manner as any other application.

K. Decisions.

1. **Time.** Decisions by the Board shall be made not later than 45 days from the time of the hearing.
2. **Form.** Every decision shall be based upon competent, material, and substantial evidence in the record. Each decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards as approved by the Board and reflected in the minutes, and be signed by the chairperson.
3. **Notice and Public Record of Decisions.** The Secretary shall cause the decision of the board to be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. A copy of the decision shall also be filed in the Planning Department. The decision shall be a public

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record, available for inspection all reasonable times.

VI. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of the majority of the regular members of the Board, provided that such amendment be presented in writing at a regular or special meeting before the meeting at which the vote is taken.

**RULES OF PROCEDURE
ZONING BOARD OF ADJUSTMENT,
City of Lenoir, North Carolina**

I. GENERAL RULES

The Zoning Board of Adjustment shall be governed by the terms of Chapter ~~160A, Article 19, Part 3160D~~ of the General Statutes of North Carolina, Article V, Division 5 of Chapter 2 of the Lenoir Code of Ordinances, "Board of Adjustment," and by Article XIII, ~~Section 1300 through 1315~~ of the City of Lenoir's Zoning Ordinance, "Administration," Caldwell County, North Carolina. All members of the Board shall thoroughly familiarize themselves with these laws. Having adopted these general rules, the Board must follow them and not adopt a special rule for a particular case. ~~Otherwise its actions are likely to be ruled void on the ground of arbitrariness.~~

II. OFFICERS AND DUTIES

- A. **Chairperson:** A chairperson shall be elected by the regular membership (not including alternate members) of the Board of Adjustment. The chairperson's term of office shall be ~~one-two~~ years and until his or her successor is elected, beginning in February, and he or she shall be eligible for re-election. Elections will be held at the regularly scheduled January meeting in each odd-numbered year, with nominations occurring on or before that meeting. The chairperson shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The Chairperson shall appoint any committees found necessary to investigate any matters before the Board.
- B. **Vice-Chairperson:** A vice-chairperson shall be elected by the Board from among its regular membership in the same manner and for the same term as the chairperson. The vice-chairperson shall serve as acting chairperson in the chairperson's absence, and at such times he shall have the same powers and duties as the chairperson. In the absence of both the chairperson and vice-chairperson, the highest-ranking immediate-past officer shall serve as acting chairperson. In the event that there are no prior officials in attendance, the Planning Director shall act as chairman, but shall have no voting privileges.
- C. **Secretary:** A secretary shall be provided by the Planning Department. The secretary shall be eligible for reappointment. The secretary shall keep all records, shall conduct all correspondence of the Board, shall arrange for all ~~public~~ notices required to be given, shall notify members of pending meetings and their agenda, shall notify parties to cases before the Board of its decision on such cases, and shall generally supervise the clerical work of the Board. The secretary shall keep the minutes of every Board meeting in a permanent volume. The minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted on by the Board, and all votes of members of the Board on any resolution or on the final determination of any question, indicating the names of members who are absent or fail to vote, and shall be signed by the Planning Director and the Chairperson upon affirmative vote of the board to accept the minutes.

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III. ALTERNATE MEMBERS

Alternate members of the Board shall be called on to attend only those meetings and hearings at which one or more regular members are absent or are unable to participate in hearing a case because of financial or other interest. Regular members, on receiving notice of a special meeting that they cannot attend or on learning that they will be unable to participate in a particular case, shall give prompt notice to the Board secretary that they are unable to attend or to participate. On receiving such notice, the secretary shall, by the most expeditious means, notify an alternate member to attend. Assignments shall be rotated among the alternate members. At any meeting that they are called on to attend, alternate members shall have the same powers and duties as regular members. Alternate members may participate in hearings and discussions if they are present during a meeting in which their vote is not needed. However, on such occasions, they shall not introduce motions and shall not vote.

For the purposes of these Rules of Procedure, rules pertaining generally to all regular members shall be interpreted to also apply to alternate members. In the context of the conduct of meetings, references to regular members shall be interpreted include any alternate member participating in the meeting in the place of a regular member.

IV. RULES OF CONDUCT FOR MEMBERS

~~A. Members of the Board may be removed for cause, including violation of the rules stated below.~~

~~B.A. _____ Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members is expected. shall be considered a prerequisite of continuing membership on the Board.~~

~~C.B. _____ No Board member shall take part in the hearing, consideration, or determination of any case in which he or she is personally or financially interested has a fixed opinion of that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person (as defined in Sec.2-185 of the Lenoir Code of Ordinances), or a financial interest in the outcome of the matter.~~

~~D.C. _____ No Board member shall vote on any matter that decides an application or appeal unless he or she has attended the public-quasi-judicial hearing on that application or appeal.~~

~~E.D. _____ No Board member shall discuss any case with any parties thereto before the public quasi-judicial hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from Planning Department staff ~~any other member of the Board, its secretary, or clerk~~ before the hearing. Any information provided to one member will be provided to all members, as well as to the applicant and other interested parties, and staff should disclose any communication had with one board member to the~~

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rest of the board

~~F.E.~~ Members of the Board shall not express individual opinions on the proper judgement of any case with any parties thereto before that case is determined. ~~Violation of this rule shall be cause for dismissal from the Board.~~

V. MEETINGS

A. **Regular Meetings:** Regular meetings of the Board shall be held on the 4th Monday of each month at 5 :30 p.m. in the joint City/County Council Chambers of City Hall; provided that meetings may be held at any other convenient place in the city if the ~~chairman~~ chairperson so directs before the meeting.

B. **Special Meetings:** The chairperson may call special meetings of the Board at any time. At least 48 hours written notice of the time and place of special meetings shall be given, by either the secretary or the chairperson, to each member of the Board.

C. **Cancellation of Meetings:** If there are no appeals, applications for ~~special use permits or~~ variances, or other business for the Board, or if so many regular and alternate members notify the secretary that they cannot attend that a quorum will not be available, the ~~Planning Director~~ Chairperson may dispense with a regular meeting by giving written or ~~oral verbal~~ notice to all members not less than ~~24~~ 48 hours before the time set for the meeting. In the event of severe inclement weather or other emergency situation, either forecast or existent, which is so severe as to create unsafe conditions for travel (snow, severe rain/wind storm, flash flooding, tornadoes, etc.), the Chairperson may cancel or postpone a regular or special meeting by giving notice to the Planning Director prior to the meeting. The Planning Director will attempt to provide notice to all members, applicants with business before the board, and other attendees expected to attend. When possible, notice of the canceled meeting and any rescheduled meeting date shall be posted on the City website, as well as in the location where the meeting was to be held. When business is before the Board, the meeting will be rescheduled to provide for notice requirements to be met; or business will be postponed until the next regular meeting.

D. **Quorum:** A quorum shall consist of ~~3~~ 4 members of the Board, ~~but the Board shall not pass on any question relating to an appeal from a decision, order, requirement, or determination of the Building Inspector or an application for a variance or request for a temporary manufactured home permit when fewer than 4 members are present.~~

E. **Voting:** All ~~regular~~ members present and voting may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section IV. No more than six members shall vote on any issue. The concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the members present and voting shall be required to decide any other business before the board. The required vote to decide appeals and applications shall be as provided in Section VI, D, 4, and shall not be reduced by any

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~~disqualification. In all other matters the vote of a majority of the members present and voting shall decide issues before the Board.~~

Vacant positions on the Board and members who are disqualified from voting shall not be considered members of the board for calculating requisite majority if there are no qualified alternates available to take the place of such members. When six members are present and voting, at least 5 affirmative votes are required to grant a variance. When only four members are present and voting, the minimum for a quorum, all four members must vote in favor to grant a variance.

F. Conduct of Meetings: All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) call to order; (b) roll call; (c) approval of minutes of the previous meeting; (d) old business; (e) hearing of cases; (f) new business; (g) further business; (h) adjournment.

G. Conduct of Hearings: All hearings must follow the quasi-judicial procedures outlined in N.C.G.S. 160D-406 and Secs. 1309-1318 in the Lenoir Zoning Ordinance. The order of proceedings in conducting each hearing before the board shall generally be as follows: (a) swearing in of applicant, staff, and all others who wish to provide testimony, (b) staff summary of request, opportunity for cross examination, (c) testimony by applicant, opportunity for cross examination, (d) testimony by others, opportunity for cross examination, (e) closing of the evidentiary hearing/Board deliberation (discussion of four standards)/entertainment of motions, (f) call for a vote.

~~**E. Public Participation:** All meetings of the Board shall be open to the public. However, only the applicant, the City, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive, as allowed by the Board.~~

H. Objections: Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the Board. The Chairperson shall rule on any objections, and the chairperson's ruling may be appealed to the full board.

~~VI. APPEALS AND APPLICATIONS~~

~~**A. Types of Appeals:** The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by a member of the Planning Department staff. It shall hear and decide all matters referred to it or on which the Zoning Ordinance of the City of Lenoir requires it to pass. In deciding appeals, the Board may hear both those based on an allegedly improper or erroneous interpretation of the ordinance, and those base on alleged hardship resulting from strict interpretation of the ordinance.~~

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~~B. **Procedure for Filing Appeals:** No appeal shall be heard by the Board unless notice thereof is filed within 30 days after the interested party or parties receive notice of the order, requirement, decision, or determination by the Planning Department staff. The applicant must file his application for a hearing with the Planning Director, who shall act clerk for the Board in receiving this notice. All applications shall be made on the form furnished for that purpose, and all information required thereon shall be complete before an appeal may be considered as having been filed.~~

~~C. **Hearings:**~~

- ~~1. **Time.** After notice of appeal is received, the Board chairperson shall schedule the time for a hearing, which shall be at a regular or special meeting within 36 days from the filing of such notice of appeal.~~
- ~~2. **Notice.** The Board shall give public notice of the hearing in a newspaper generally circulated in the Lenoir area by advertisement published at least one time no less than 7 days before the date of the hearing. The Board shall mail notices of the hearing to the parties filing the appeal, adjoining property owners, and such other persons as the Planning Director shall specify, at least 5 days before the hearing.~~

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

~~D. **Conduct of the Hearing.** Any party may appear in person, by agent, or by attorney at the hearing. The order of business for each hearing shall be as follows: (a) the chairperson, or such person as he or she shall direct, shall give a preliminary statement of the case; (b) the applicant shall present the evidence and arguments in support of his application; (c) person opposed to granting the application shall present the evidence and arguments against the application; (d) both sides shall be permitted to present rebuttals to opposing evidence and arguments; (e) the chairperson shall summarize the evidence that has been presented, giving the parties opportunity to make objections or corrections. Witness may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a court of law. The Board may view the premises before the hearing, but the facts indicated by such inspection shall be disclosed at the public hearing and made a part of the record. All witnesses before the Board shall be placed under oath, and the opposing party may cross-examine them.~~

~~E. **I. Rehearings.** An application for a rehearing may be made in the same manner as an application for an original hearing. Evidence in support of the application shall initially be limited to what is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. The Board shall deny the application for rehearing if, from the record, it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that a change has occurred, it shall thereupon treat the request in the same manner as any other application.~~

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F.J. _____ Decisions.

1. **Time.** Decisions by the Board shall be made not later than ~~30~~45 days from the time of the hearing.
2. **Form.** Every decision shall be based upon competent, material, and substantial evidence in the record. Each decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards as approved by the Board and reflected in the minutes, and be signed by the chairperson. The Board's final decision shall be shown in the record of the case as entered in the Board's minutes and signed by the secretary and the chairperson on approval of the minutes by the Board. Such record shall show the reasons for the determinations, with a summary of the evidence introduced and the findings of fact made by the Board. When a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the Board finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. When an appeal or temporary manufactured home permit is granted, the record shall state in detail any facts that support findings required to be made before such permit is issued. The record shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a variance or an appeal or temporary manufactured home permit. A separate record of the decision in each case shall be prepared, filed in the Planning Department, and furnished to the parties as specified in Subsection 5.
3. **Expiration of Permits.** ~~Unless otherwise specified, any order or decision of the Board granting a Variance, appeal, or temporary manufactured home permit shall expire if the applicant does not obtain a building permit or certificate of occupancy for such use within 6 months from the date of the decision.~~
4. **Voting at Hearings.** ~~The concurring vote of four-fifths of the Board members shall be necessary to reverse any order, requirement, decision, or determination of the Building Inspector, to decide in favor of the applicant any matter on which the Board is required by ordinance to pass, or to grant a variance from the ordinance provisions.~~
- 5.3. **Notice and Public Record of Decisions.** The Secretary shall cause the decision of the board to be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The secretary shall give written notice of the decision in the case to the appellant and/or applicant, and to every aggrieved party who has filed a written request for such notice with the secretary or the chairperson of the Board when the hearing is held. Such notice may be delivered either by personal service or by registered mail or certified mail, return receipt requested. A copy of the decision shall also be filed in the Planning Department, as specified in the zoning ordinance. The decision shall be a public record, available for inspection all reasonable times.

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~~VII.~~VI. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of ~~not less than 3 members of the~~ majority of the regular members of the Board, provided that such amendment be presented in writing at a regular or special meeting before the meeting at which the vote is taken.