

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND ARTICLE X – BOARD OF ADJUSTMENT, SECTIONS 10-1, 10-6, 10-8-2, AND 10-8-3 OF THE CITY OF HENDERSONVILLE ZONING ORDINANCE TO MODIFY MEMBERSHIP OF THE BOARD OF ADJUSTMENT.

WHEREAS, The City of Hendersonville has authority pursuant to N.C.G.S. 160D-302 to appoint a Board of Adjustment; and

WHEREAS, Ordinarily, N.C.G.S. 160D-406 requires the concurring vote of a four-fifths majority of the Board of Adjustment to grant a variance, however, Session Law 1983-161 permits the City of Hendersonville to authorize the Board of Adjustment to decide matters upon a vote of seven members; and

WHEREAS, The authority conferred upon the City of Hendersonville by Session Law 1983-161 is permissive and not mandatory; and

WHEREAS, Currently the Board of Adjustment is comprised of ten seats; and

WHEREAS, Due to the availability of willing and able Board of Adjustment members, it is often difficult to get seven or more members available for a meeting; and

WHEREAS, the City now desires to amend the size and membership of the Board of Adjustment.

NOW, THEREFORE, BE IT ORDAINED by City Council of the City of Hendersonville, North Carolina that:

SECTION 1. This Ordinance shall be known as “An Ordinance to Amend the Size and Membership of the Hendersonville Board of Adjustment.”

SECTION 2. Article X. Board of Adjustment is hereby amended as follows:

Sec. 10-1. Establishment of board of adjustment and qualifications of members.

A board of adjustment is hereby established. Said board of adjustment shall consist of ~~ten members~~ five regular members and five alternate members. ~~seven~~ Four regular members and four alternate members of the board of adjustment shall be citizens of the City of Hendersonville and shall be appointed by city council. ~~and three~~ One regular member and one alternate members of the board of adjustment who reside in the city's area of extraterritorial jurisdiction shall be appointed by the Board of Commissioners of Henderson County.

Terms shall be three years; however, city council and the Henderson County Board of Commissioners may appoint members for a lesser term in order to achieve a balanced system of overlapping terms. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the board of adjustment. Notwithstanding the foregoing, the city council may remove any member of the board of adjustment for the exhibition of a pattern of conduct that materially impairs or seriously threatens the ability of the board of adjustment to carry out its designation functions.

~~The three m~~Members appointed to the board of adjustment by the board of county commissioners as representatives of the City of Hendersonville's Extraterritorial Jurisdiction shall have equal rights, privileges and duties with other members of the board in all matters pertaining to the regulation of the zoning ordinance in the city and its extraterritorial jurisdiction.

~~City council or the county board of commissioners, as appropriate, may appoint~~
aAlternate members ~~to~~shall serve on the board of adjustment in the absence of any regular members. Alternate members shall be appointed for the same term and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board of adjustment and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

Sec. 10-6. Quorum and voting.

In accordance with G.S. 160D-406(i), ~~T~~he concurring vote of ~~seven~~ four-fifths majority ~~of the members~~ of the board of adjustment shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board of adjustment and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board of adjustment for the calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

A member of any board of adjustment exercising quasi-judicial functions pursuant to this article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process 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 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.

Sec. 10-8-2. Preliminary site plan.

The application for a special use permit shall be accompanied by ~~seven copies of~~ a preliminary site plan showing the following:

Sec. 10-8-3. Evidentiary hearings on applications for special use permits.

Once the administrative officer is in receipt of a complete application and ~~seven copies of~~ a complete site plan, the administrative officer will schedule the application for an evidentiary hearing before the board of adjustment.

SECTION 3. The membership of the Board of adjustment is amended as follows:

Name	Residence	Current Status	Amended Status
Reid Barwick	City	Regular Member	Regular Member
Libby Collina	City	Regular Member	Regular Member
Laura Flores	City	Regular Member	Regular Member
Rhona Reagan	City	Regular Member	Regular Member
Kyle Gilgis	City	Regular Member	Alternate
Brett Werner	City	Regular Member	Alternate
Steven Collins	City	Regular Member	Alternate
[Vacant]	City	[New Position]	Alternate
Charles Webb	ETJ	Regular Member	[To be determined by Henderson County]
Ernest Mowell	ETJ	Regular Member	[To be determined by Henderson County]
Mark Russell	ETJ	Regular Member	[To be determined by Henderson County]

Nothing contained herein shall amend the existing terms of Board of Adjustment members above.

SECTION 4. The City Council requests that the Henderson County Board of Commissioners make appointments to the City of Hendersonville Board of Adjustment consistent with this Ordinance.

SECTION 5. If any provision of this ordinance or its application is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provisions or application, and to this end the provisions of this ordinance are severable.

SECTION 6. It is the intention of the City Council and it is hereby ordained, that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Hendersonville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

SECTION 7. This Ordinance shall be effective upon its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina on this ____ day of _____ 202__.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney