

ZONING TEXT AMENDMENT: BOARD OF ADJUSTMENT MEMBER AND QUORUM CHANGES (P24-088-ZTA)

CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

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PROJECT SUMMARY

- Project Name & Case #:
 - Board of Adjustment Member and Quorum Changes
 - P24-088-ZTA
- Applicant:
 - City of Hendersonville
- Zoning Ordinance Articles Amended:
 - Sec. 10-1. Establishment of board of adjustment and qualifications of members.
 - Sec. 10-6. Quorum and voting.
 - Sec. 10-8-2. Preliminary site plan.
 - Section 10-8-3. Evidentiary hearings on applications for special use permits.
- Planning Board - Legislative Committee Meeting
 - December 17th, 2024



Summary of Amendment Petition:

City staff is proposing changes to the Board of Adjustment's membership structure, reducing the number of regular members from ten to five while increasing the number of alternates to four. This would bring the total number of appointees to nine, while also lowering the number of members required to establish a quorum. Additionally, staff recommends that the approval threshold for variance requests be set at four-fifths of the board, in alignment with state legislation.

AMENDMENT ANALYSIS – AMENDMENT OVERVIEW

The board of adjustment is responsible for the following according to I60D-302:

- Hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of the Zoning Ordinance or the Subdivision Ordinance.
- Hear and decide requests for variances from the requirements of the Zoning Ordinance.
- Review applications for conditional use permits and to issue conditional use permits in accordance with the provisions of the Zoning Ordinance.
- Make interpretations of the Official Zoning Map and to pass upon disputed questions of lot lines or district boundary lines and similar questions as arise in the administration of the Zoning Ordinance.
- Enter, at reasonable times, upon private lands and make examinations or surveys as necessary for the performance of its official duties.
- Request City Council to hold public hearings on matters within the purview of the Board.
- Hear and decide any other matter as required by the provisions of the Zoning Ordinance and the Code of the City of Hendersonville.
- Adopt rules consistent with the Zoning Ordinance or General Statutes governing the organization of the Board and proceedings before the Board.

Given the Board of Adjustment's important responsibilities, staff has proposed a text amendment aimed at addressing attendance challenges and ensuring that applicants can have their applications heard in a timely manner.

Over the past three years, attendance at Board of Adjustment meetings has steadily declined. In 2022, an average of 8 members attended each meeting. In 2023, that number dropped to 7, and in 2024, it further decreased to 6 members per meeting.

This decline is particularly problematic when the board needs to hear variance applications. Currently, our ordinance requires 7 members to be present and able to vote. We recently had to cancel meetings for two consecutive months because we lacked the necessary quorum to hear a variance request.

To address this issue, city staff has proposed practical solutions, including reducing the total number of board members to 5 and changing the threshold for approving variance requests to 4/5ths of the board. This means that if all 5 members are present, at least 4 out of 5 members would need to vote in favor of the variance for it to be approved.

ZONING TEXT AMENDMENT – NONCONFORMING STRUCTURES

The following language is recommended for addition / ~~deletion~~.

ARTICLE X. BOARD OF ADJUSTMENT

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 a~~Alternate 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.

PUBLIC INPUT / RECOMMENDATION

Legislative Committee of the Planning Board – December 17th, 2024

Planning Board Members Present: Donna Waters, Peter Hanley, Bob Johnson, and Jim Robertson

The Legislative Committee reviewed the text amendment and expressed minimal concern. One member disagreed with staff regarding the need to lower the variance threshold, but the other members were supportive.

GENERAL ZONING TEXT AMENDMENT STANDARDS	
1) COMPATIBILITY	<p><u>EXISTING CONDITIONS</u> The existing board membership and quorum requirements makes it very difficult to get enough members to hold meetings, resulting in applicants having to wait several months to have their applications heard.</p>
	<p><u>GEN H COMPREHENSIVE PLAN GOALS</u> (Chapter IV) Vibrant Neighborhoods: N/A Abundant Housing Choices: N/A Healthy and Accessible Natural Environment: N/A Authentic Community Character: N/A Safe Streets and Trails: N/A Reliable & Accessible Utility Services: N/A Satisfying Work Opportunities: N/A Welcoming & Inclusive Community: N/A Accessible & Available Community Uses and Services: N/A Resilient Community: N/A</p>
	<p><u>GEN H COMPREHENSIVE PLAN GUIDING PRINCIPLES</u> (Chapter IV) Mix of Uses: N/A Compact Development: N/A Sense of Place: N/A Conserved & Integrated Open Spaces: N/A Desirable & Affordable Housing: N/A Connectivity: N/A Efficient & Accessible Infrastructure: N/A</p>
2) Changed Conditions	<p>Whether and the extent to which there are changed conditions, trends or facts that require an amendment -</p>
	<p>As development and redevelopment increases in Hendersonville, the board of adjustment receives more applicants as there are requests for special use permits and variances.</p>
3) Public Interest	<p>Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare -</p>
	<p>Staff has worked to craft revisions to this ordinance that will help the board of adjustment run more smoothly, thereby creating a more efficient board.</p>
4) Public Facilities	<p>Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment</p>

	This amendment will have no impact on public facilities.
5) Effect on Natural Environment	Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife -
	There is no impact on the natural environment.

DRAFT ADOPTED PLAN CONSISTENCY AND TEXT AMENDMENT REASONABLENESS STATEMENT

The petition is found to be [consistent] with the City of Hendersonville Gen H 2045 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The petition aligns with the City's adopted plan's policy guidance to provide efficient government services.

We [find/do not find] this proposed zoning text amendment petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

DRAFT [Rationale for Approval]

- *Changing the number of members on the Board of Adjustment will assist with ensuring applications will be heard in a timely manner.*

DRAFT [Rational for Denial]

- *Decreasing the number of board members will adversely impact the Board of Adjustment and the City operations.*