

**FORSYTH
COUNTY**

Adopted December 4, 2018

2019

The Zoning Board of Appeals is a quasi-judicial board that is appointed by the Board of Commissioners. The ZBA is tasked with holding a public hearing on all appeals of administrative decisions and all variances; with the exception of variance requests that would simultaneously apply to four (4) or more existing or proposed lots or units within a single subdivision, or for variance requests that were filed and scheduled to be considered simultaneously and pertaining to the same property with another application in which the authority to hold the public hearing rests with either the Planning Commission or Board of Commissioners. The ZBA does have decision making authority; however their decisions may be appealed to the Board of Commissioners.

Zoning Board of Appeals By-Laws

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Section I. Powers and Procedures.

- A. **Powers.** The powers of the Forsyth County Zoning Board of Appeals (hereafter referred to as the “Zoning Board of Appeals”) are established in Chapter 6, Article III of the Forsyth County Unified Development Code (hereafter referred to as the “Unified Development Code”). In the event of any change or modification to the Unified Development Code by the Forsyth County Board of Commissioners that pertains to or affects the powers of the Zoning Board of Appeals, the Powers section of these Bylaws shall be deemed automatically amended.
- B. **Procedures.** The procedures the Zoning Board of Appeals shall follow during the consideration of all appeals of administrative decisions, variances and water violation penalties and the administration thereof, are established in these By-Laws, Chapter 8 and other applicable chapters of the Unified Development Code. In the event of any change or modification to the Unified Development Code by the Forsyth County Board of Commissioners that pertains to or affects the Procedures of the Zoning Board of Appeals, the Procedures section of these Bylaws shall be deemed automatically amended.

Section II. Organization.

A. **Appointment, Attendance and Dismissal.**

- 1. **Appointment.** The Zoning Board of Appeals shall consist of one (1) member representing each of the commissioners' districts. The Forsyth County Board of Commissioners shall appoint the members. Any vacancy occurring during the unexpired term of office of any member shall be filled by appointment for the remainder of the term.
- 2. **Attendance.** All members of the Zoning Board of Appeals are expected to attend all Board meetings. If any member of the Zoning Board of Appeals fails to attend a total of six (6) Board meetings with or without cause in a calendar year, the County Manager or designee shall notify the Forsyth County Board of Commissioners in writing. Upon such notice, the Forsyth County Board of Commissioners may declare the member's office vacant and promptly fill such vacancy.
- 3. **Dismissal.** The Forsyth County Board of Commissioners may by majority vote remove any member of the Zoning Board of Appeals for cause upon proper notice and hearing.

- B. **Salary.** The members shall be compensated one hundred dollars per Zoning Board of Appeals meeting attended.

Section III. Meetings.

A. **Adoption and Modification of Meeting Calendar.**

- 1. **Adoption of Meeting Calendar.** At its first regular meeting of the calendar year, the Zoning Board of Appeals shall adopt an annual calendar which establishes meeting dates and times; provided however that the Zoning Board of Appeals shall not be required to meet if there is no business to transact. The calendar shall be posted on the Forsyth County Web site by the Department of Planning and Community Development.

2. Calendar Modifications. Changes to the annual calendar shall be made by majority vote of the Zoning Board of Appeals and shall take effect immediately; provided however that said modifications do not conflict with the public notice requirements as established by pertinent Georgia law and the Forsyth County Unified Development Code.

B. Agenda. The Department of Planning and Community Development staff shall prepare and publish all meeting agendas. All matters to be considered by the Zoning Board of Appeals shall appear on the published agenda.

1. Limitation on Applications.

- a. Variance hearings shall be limited to fifteen (15) new applications per meeting.
- b. Appeals of Administrative Decision hearings shall be limited to five (5) new applications per meeting.
- c. Appeals of Administrative Water Penalty Decision hearings shall not have a limitation per meeting.

C. Quorum. A quorum shall consist of three (3) members of the Zoning Board of Appeals and shall be required for all meetings.

D. Code of Conduct. Each member of the Zoning Board of Appeals shall uphold the Constitution, laws, and regulations of the United States, State of Georgia, and Forsyth County, including all pertinent provisions within the Forsyth County Code of Ethics. The following rules shall also be followed by each member of the Zoning Board of Appeals:

1. Conflict of Interest. When a member of the Zoning Board of Appeals feels he or she may have a conflict of interest on a particular application, the member shall immediately undertake those disclosure and abstention actions as are required under of the Forsyth County Code of Ethics. A member with a conflict of interest or that has otherwise recused himself or herself in order to avoid the appearance of impropriety shall not participate in the public hearing or discussion and shall not vote on the issue. The member must disclose the nature and extent of such interest at the public hearing. However, when the conflict results from the member being the actual applicant or affected property owner before the Zoning Board of Appeals, the member may participate from the podium in a capacity that is equivalent to that of any other citizen presenting his or her case before the Zoning Board of Appeals. If the vacation of a member due to conflict of interest will eliminate a quorum, then the Zoning Board of Appeals shall continue the hearing to the next Regular Meeting/Public Hearing.

2. Responsibility to Remain Impartial. Members of the Zoning Board of Appeals shall not decide how they will vote prior to the public meeting and shall otherwise avoid the appearance of premature decision making on any matter before the Zoning Board of Appeals. A Zoning Board of Appeals member should not reveal his or her decision on a case until after the conclusion of the public hearing.

3. Meetings with stakeholders regarding pending applications. In order to avoid the appearance of impropriety, the Zoning Board of Appeals hereby establishes the following protocols regarding meeting with stakeholders involving pending applications:

- i. **Review of Administrative Decisions.** Members of the Zoning Board of Appeals will refrain from meeting privately with interested stakeholders involving contested administrative decisions which will be coming before the ZBA for a decision. This rule shall not work to prevent such meetings with staff, commission members, or the county attorney.
- ii. **Variance applications.** Members of the Zoning Board of Appeals shall be entitled to meet privately with stakeholders, either for or against, pending variance requests. If a ZBA member meets with a stakeholder regarding a pending variance request, that ZBA member must make him or herself available, on equal terms, with any other stakeholder or interested party, and shall also disclose such private meetings at the public hearing on the subject variance application. This rule shall have no application with respect to meetings with staff, commission members, or the county attorney.

E. **Types of Meetings.** The Zoning Board of Appeals shall hold work sessions and regular public hearings in conformance with the provisions below.

1. **Work Sessions.** The Zoning Board of Appeals will typically hold a Work Session on Tuesday at 6:30 p.m., immediately prior to the Regular Meeting/Public Hearing, or as otherwise specified in the adopted annual calendar. The meeting is typically held in the Department of Planning and Community Development’s Conference Room (Suite 100). The meeting shall be open to the public; however, there shall be no opportunity for public comment during the work session. The Department of Planning and Development shall advertise said meeting on the Forsyth County Web site. The Department of Planning & Community Development will also notify the media in accord with the requirements of the Open Meetings Act. The meeting shall be led by the presiding officer and will follow the agenda prepared by the Department of Planning & Community Development staff.

2. **Regular Meetings/Public Hearings.** The Zoning Board of Appeals will typically hold a Regular Meeting/Public Hearing on the 1st Tuesday of every month at 7:00 p.m. in accordance with the adopted annual calendar, or as modified. The meeting shall be held in the Board of Commissioners Meeting Room (Suite 220). The meeting shall be open to the public. The Department of Planning & Community Development shall advertise said meeting on the Forsyth County Web site and in accordance with procedures as established in Chapter 8 of the Forsyth County Unified Development Code, the Open Meetings Act, and the Georgia Zoning Procedures Law when required. The meeting shall be led by the presiding officer and will follow the agenda prepared and published by the Department of Planning & Community Development. The Zoning Board of Appeals shall confine discussion to the matters contained on the agenda.

a. **Rules of Procedures.** To the extent necessary to consider items requiring Zoning Board of Appeals action, the order of agenda for a Regular Meeting/Public Hearing shall be as follows, unless amended by majority vote. Upon approval of a motion to do so by the majority of members present the presiding officer may allow any agenda item to be called out of sequence.

- (1) **Call meeting to order.**
- (2) **Pledge of Allegiance.**

- (3) **Adopt or amend minutes from the past meeting.**
- (4) **Announcements.**
- (5) **Review of meeting procedures.** The Chairman will announce the meeting procedures.
- (6) **Old business.**
- (7) **New business.**
- (8) **Public Hearings for Variance Requests.** Public hearings for variance applications shall follow the procedures set forth in Section 8-3.4 of the Unified Development Code. The order of presentation for each public hearing shall be as follows:
 - (a) Motion to open the public hearing.
 - (b) Staff shall announce the application.
 - (c) Applicant, or authorized representative, shall have the opportunity to present testimony, information, or documents in support of the application.
 - (d) Any person or persons in support of the application shall have the opportunity to present testimony, information, or documents.
 - (e) Any person or persons in opposition to the application shall have the opportunity to present testimony, information, or documents.
 - (f) Presiding officer may provide the applicant, or authorized representative, time to present rebuttal testimony, information, or documents.
 - (g) The Zoning Board of Appeals may request additional information if necessary.
 - (h) Motion to close the public hearing; no additional unsolicited public comments will be accepted.
 - (i) The Zoning Board of Appeals will discuss the application and may ask questions of staff, applicant or other involved parties.
 - (j) Motions for approval, approval with conditions, denial, or continuance shall be made and considered in conformance with the procedures established in Chapter 8 of the Forsyth County Unified Development Code.
- (9) **Public Hearings for Appeals of Administrative Decisions.** Public hearings for appeals to administrative decisions shall follow the procedures set forth in Section 8-3.4 of the Unified Development Code. The order of presentation for each public hearing shall be as follows:
 - (a) Motion to open the public hearing. Each sides' presentation (the County and the Applicant) shall be limited to forty-five minutes per side, unless

request is made for a longer presentation period *prior* to the start of the hearing, with an explanation provided to the Board as to the reason needed for more time. Any additional time granted to one side shall be deemed automatically granted to the other side. It is within the Board's discretion to grant additional time and/or to continue, postpone or specially set any hearing.

- (b) Staff shall announce the application,
- (c) Applicant, or authorized representative, shall have the opportunity to present testimony, information, or documents in support of the application. Oral testimony by the Applicant (and cross examination by the County) shall be elicited by way of direct examination, cross examination, re-direct and re-cross, as applicable. The hearing officer shall rule on any objections.
- (d) County staff, or authorized legal counsel, shall have the opportunity to present testimony, information, or documents in support of the administrative action. Oral testimony by the County (and cross examination by the Applicant) shall be elicited by way of direct examination, cross examination, re-direct and re-cross, as applicable. The hearing officer shall rule on any objections.
- (e) Any person or persons in support of the application shall have the opportunity to address the Board.
- (f) Any person or persons in opposition to the application shall have the opportunity to address the Board.
- (g) Presiding officer may provide the Applicant, the County, or authorized representatives of either, a period of no more than ten minutes per side to present rebuttal testimony, information, or documents to comments made by citizens as allowed in Section 2(a)(8)(e-f). The time anticipated in this sub-paragraph shall be in addition to the forty-five minutes referenced for the case-in-chief.
- (h) The Zoning Board of Appeals may request additional information if necessary.
- (i) Presiding officer shall provide the County and the Applicant an opportunity for a brief closing statement of no more than five minutes each. The time anticipated in this sub-paragraph shall be in addition to the forty-five minutes for the case-

in-chief.

- (j) Motion to close the public hearing; no additional unsolicited public comments will be accepted.
 - (k) The Zoning Board of Appeals will discuss the appeal and may ask questions of staff, applicant or other involved parties at any time during the hearing or after the hearing.
 - (l) Motions to affirm, reverse, or modify the action or decision appealed shall be made and considered in conformance with the procedures established in Chapter 8, Article VII, of the Forsyth County Unified Development Code.
 - (m) The Board may in its discretion appoint a hearing officer to conduct the hearing and rule on any objections; provided that, the Board will decide the appeal.
- (10) **Public Hearings for Appeals of Forsyth County Administrative Water Penalty Requests.**
- (a) A representative of the Forsyth County, Georgia, Department of Water and Sewer or the Department of Finance (individually or collectively, "Department"), as appropriate, will present evidence in support of the administrative penalty ("Administrative Penalty")-being challenged by the customer or authorized agent.
 - (b) The customer or authorized representative may ask questions of any witness offered by the Department.
 - (c) The customer or authorized representative shall then be allowed to present evidence showing cause as to why the Administrative Penalty or other enforcement action should be reversed in full or in part, as appropriate.
 - (d) The customer or authorized representative may present testimony under oath and may utilize legal counsel at the hearing if the customer so desires.
 - (e) The Department representative may ask questions of any witness offered by the customer or authorized agent.
 - (f) After hearing all evidence presented, the Board shall uphold the Administrative Penalty or other enforcement action at issue if the Board determines that a preponderance of the evidence supports the Administrative Penalty or other enforcement action. If the Board determines that the Administrative Penalty or action is inconsistent with the provisions of Section 18-185 of the Code of Forsyth County, it may order the modification of the action and/or provide such other relief within the scope of its powers, provided that the Board may not increase any fine imposed by the Department.

(11) **Adjournment.**

Section IV. Voting and Interim Order on Pending Appeals.

- A. **Voting.** A majority vote of those members present and voting shall be required to decide all matters which come before the Zoning Board of Appeals. In the event of a tie vote on a procedural motion, the procedural motion shall be deemed to be defeated. In the event of a tie vote on a main motion (whether to approve or deny a variance, whether to affirm or reverse an administrative decision, or whether to affirm or reverse a water penalty decision), the motion shall be deemed to be defeated and the subject matter of the main motion shall remain pending before the Zoning Board of Appeals. If a matter remains pending before the Zoning Board of Appeals upon the adjournment of the meeting at which the tie vote occurred, the subject of the main motion shall be placed on the agenda of the next regular meeting of the Zoning Board of Appeals.

- B. **Interim Order on Pending Appeals.** In the event an interim order on a pending appeal is needed, the Chairman is granted the authority to execute such an interim order. No interim order shall be effective beyond the next meeting of the Zoning Board of Appeals. At its next meeting the Zoning Board of Appeals shall:
 - 1. Extend the interim order;

 - 2. Enter a final order; or

 - 3. Take such other action as deemed appropriate by the Zoning Board of Appeals, which may obtain the advice of the County Attorney with respect to such other action to be considered.

Section V. Amending or Repealing By-Laws.

- A. **Amending By-Laws.** These By-Laws may be amended by majority vote of the Zoning Board of Appeals.

- B. **Repealing By-Laws.** These By-Laws may be repealed by a majority vote of the Zoning Board of Appeals.

- C. **Unified Development Code Changes to Result in Automatic Modification.** Whenever the Unified Development Code is changed, and such change is in conflict with any provision or section of these Bylaws, the Bylaws shall be deemed automatically amended to come into conformance with the Unified Development Code.

- D. **The Open Meetings Act and the Georgia Zoning Procedures Law Changes to Result in Automatic Modification.** Whenever the Georgia Code is changed, and such change is in conflict with any provision or section of these Bylaws, the Bylaws shall be deemed automatically amended to come into conformance with the Georgia Code.