

RESOLUTION ADOPTING RULES
FOR THE TRANSACTION OF BUSINESS OF THE CITY OF TUSCALOOSA BOARD
OF ADJUSTMENT

WHEREAS, Ala. Code 1975 §11-52-80 et.seq. (Code of Alabama 1975, Title 11, Chapter 52), authorizes the legislative body of an incorporated city or town to create and authorize a board of adjustment and provides that said board of adjustment “shall in appropriate cases and subject to appropriate conditions and safe-guards make special exceptions to the terms of the ordinance in harmony with its general purposes and interest and in accordance with general or specific rules therein contained”, and further provides that such a board of adjustment shall adopt rules for the transaction of business; and,

WHEREAS, in furtherance of said authorization the then legislative body of the City of Tuscaloosa did enact and adopt, on or about, October 3rd, 1972 a series of ordinances known as “The Zoning Ordinances of Tuscaloosa”, and therein at Article XIV, re-established and continued the board of adjustment as previously created by Ordinance Number 1326 of June 25th, 1959 and at section 24-194 thereof did authorize said board to adopt such rules “as shall not be inconsistent with this chapter and the provisions of law”; and,

WHEREAS, pursuant to such authorization the Board of Adjustment did heretofore, on the 22nd of July 1986 adopted new rules for the transactions of its duties and subsequently on the following dates the Board amended said rules: the 25th day of June, 2002; the 23rd day of January, 2007; 22nd day of October, 2007; the 23rd day of May, 2011; the 25th day of November, 2013; The 27th day of January, 2014; the 7th day of May, 2014; the 24th day of August, 2015; The 27th day of June, 2016; the 27th day of February, 2017 and the 26th day of June, 2017; and,

WHEREAS, the said Board of Adjustment now wishes to readopt and reenact its Rules of Procedure “in toto” thereby incorporating all prior amendments as well as additional modifications thereto.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF TUSCALOOSA ZONING BOARD OF ADJUSTMENT:

That the following Rules for Transaction of Business of the City of Tuscaloosa Board of Adjustment, be and the same are hereby adopted as follows:

RULES FOR TRANSACTION OF BUSINESS
CITY OF TUSCALOOSA BOARD OF ADJUSTMENT

JULY 22, 1986

1. POWERS, DUTIES, AND COMPOSITION.

The powers, duties, and composition of the City of Tuscaloosa Board of Adjustment (herein after the "Board") shall be as specified in Ala. Code 1975 §11-52-80 et.seq. (Code of Alabama 1975, Title 11, Chapter 52), and as enumerated in the Zoning Ordinance of Tuscaloosa, Section 24-1 et. seq. as amended.

Approvals by the Board of a Variance or Special Exception are based upon the information in the Petition, representations of the Petitioner to the Board, supporting documents to the Petition including maps, drawings, scaled site plans and/or building elevations, conditions placed upon the Board's approval, the Zoning Code of the City of Tuscaloosa and all other applicable laws, regulations and codes. To the extent Petitioner's subsequent use of the property, which is the subject of the Petition, materially varies from any of the foregoing the approval of the Board is no longer valid.

2. ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

The Board shall elect a Chairman and Vice-Chairman for a term of one year. The election shall be held each year in the month of January or, if there is no meeting in January, at the next meeting after January.

In the event of the Chairman's term ends or the chairman resigns or is no longer able continue his office for any reason, then the Vice-Chairman shall fill the unexpired term of the office of Chairman and the Commission shall elect a new Vice-Chairman for the remainder of the unexpired term of Vice-Chairman.

3. MEETINGS

A regular meeting of the Board shall be held on the fourth Monday of each month at 5:00 p.m. in the Council Chamber at City Hall, provided that the meeting date may be postponed by the Chairman or Acting Chairman if the Secretary reports that a quorum will not be present on the fourth Monday, and further provided that no regular meeting shall be held in any month in which no petitions have been received. If the volume of petitions or other circumstances so dictate, the Chairman may call additional meetings.

4. SPECIALLY SET MEETINGS

If the volume of petitions or if such other circumstances dictate, the Chairman may call such additional meetings as may be warranted and necessary. Should a petitioner or petitioners request a supplemental, special or emergency meeting of the Board (this is in addition to the regular monthly meeting), the Approval for any such supplemental, special or emergency meetings shall be within the sole and exclusive discretion of the Board. Upon filing a petition for a supplemental, special or emergency hearing, each petitioner, or multiple petitioners if any, shall likewise submit an administrative fee of \$500.00 payable to the City of Tuscaloosa as costs for each supplemental, special or emergency hearing. The five regular members of the Board or a supernumerary member if a regular member is unavailable shall be promptly notified of the filing of each petition. A simple majority vote of the five Board Members shall constitute the needed majority to hear a petition. If multiple petitions are filed, each separate petition shall require a separate vote of the Board to hear each petition. Should the Board affirmatively vote to hear a petition, no portion of the administrative fee shall be subject to a refund. Should a majority of the Board decline to hear a petition, the petitioner shall be promptly notified of the Board's decision and the \$500.00 administrative fee shall be refunded.

5. QUORUM AND USE OF SUPERNUMERARIES

Four members shall be a quorum to conduct a meeting, and the concurring votes of four members shall be necessary to approve any petition or to reverse any order or determination of an administrative official on appeal to the Board. Although four members shall constitute a quorum, it is the Board's policy to conduct meetings with five or more members present if possible. On or before the day of a meeting, the Secretary shall contact the regular members by telephone or by other means to ask if they will be present at the meeting. If, by noon on the meeting day, all regular members have not declared their intention to attend, the Secretary shall contact Supernumerary members in order of seniority for the purpose of securing the attendance of at least five members.

6. TIME WITHIN WHICH APPEALS TO BE TAKEN

An appeal from a decision or order of the Zoning Officer of Tuscaloosa shall be filed in the office of the Urban Development, Planning Division within thirty (30) days of such decision or order.

7. FORMS REQUIRED

Every appeal or petition shall be submitted on the form provided for that purpose, and shall include all of the data required in said form, so as to supply all the information necessary for a clear understanding and informed determination by the Board. In addition, for any variance from or special exception to a zoning requirement pertaining to a dimensional requirement or the site, a scaled site plan and/or building elevation produced by a registered land surveyor, professional engineer, or architect shall be required.

8. DOCKET

Each case filed in the proper form with the required data shall be numbered serially, and shall be placed on the docket. The docket numbers shall begin anew on January 1st of each year, and shall be hyphenated with the number of the year. Cases shall come before the Board in regular order as docketed, unless the Chairman, for appropriate reasons, allows a case to be heard out of order.

9. NOTICE OF PUBLIC HEARING

Notice of any petition or appeal to be heard by the Board shall be published one time in a newspaper in Tuscaloosa County not less than seven (7) days in advance of the hearing date. Notice shall also be mailed not less than five (5) days before the hearing date by the Secretary to the petitioner and to the owners of record of property abutting or directly facing the property in question, as their names and addresses appear in the records of the County Tax Assessor. In addition to the above measures, the Secretary may employ supplemental notification procedures to ensure that interested parties are aware of pending cases, but the failure of any such notification procedures shall not invalidate any lawful action or decision of the Zoning Board of Adjustment.

10. CONDUCT OF HEARINGS

The Chairman or, in his/her absence, the Vice-Chairman, shall preside at the meetings. In the event that neither the Chairman nor Vice-Chairman is present, an Acting Chairman shall be elected from among the members present.

The Zoning Board of Adjustment will take up the items on the agenda in the order they appear, though the Board may take an item out of order. During a public hearing, only the petitioner and his or her designees, opponents, and citizens seeking information shall be allowed to speak. Each side of an issue/development shall be limited to four (4) speakers, unless the presiding officer or Board decides to allow more. All speakers, excluding the petitioner, shall have a maximum of five (5) minutes, unless the Board votes to allow a longer time. Speakers may be interrupted by any member of the Board for clarification or additional information, but those interruptions will not count against the speaker's time. City staff will alert the Board once the allowed time has expired for each speaker. After a presentation from staff, the presiding officer will call on the petitioner to present their case. A petitioner or his or her designee should be present during the public hearing to represent the case. In the event that the petitioner is absent, the Board may vote on the Petitioner's case in their absence. The Board may alternatively vote to withdraw or continue the case as specified in subsection 11 below. The petitioner will have a maximum of ten (10) minutes, unless the Board votes to allow a longer time. At the conclusion of the petitioner's remarks, the presiding officer will call on any other party who wishes to support the petition. After receiving those comments, the presiding officer will call on those who wish to oppose the petition. After receiving the remarks of those who oppose the petition, the petitioner will have the opportunity to respond to those objections. Any rebuttal shall be limited to two (2) minutes, unless the Board votes to

allow a longer time. If the petitioner presents any new information in response to the objections, the presiding officer may allow those in opposition to respond to the new information. Any response shall be limited to two (2) minutes, unless the Board votes to allow a longer time. Once the Board is satisfied that they have received all relevant information, public discussion will be closed and the Board members may discuss the matter further.

Standing Motion to Approve; In regard to every Petition or every request in a Petition requiring a vote by the Board, as the case may be, there shall be a Standing Motion to "Approve the Request" thereby eliminating the necessity for a Motion or Second for each such matter. In response to said Standing Motion the Board members, when polled by the presiding officer, may vote "Yes" to approve the request or "No" to deny the request. Provided; however, prior to the vote thereon any member may recommend conditions to be placed upon the Standing Motion to Approve the Request; which, if there appears to be unanimity thereon, the presiding officer will read into the record as a condition(s) upon the Standing Motion to Approve the Request. If there does not appear to be unanimity in regard to said condition(s) or at the request of any Board member, the presiding officer will call for a vote by the Board thereon. Provided further, the Board may also utilize such "Standing Motion To Approve" in regard to any other parliamentary actions including but not limited to, approval of minutes, Approval of continuances, placing conditions upon variances or special exceptions, declaring recesses, adjournments, amending the agenda, amending the rules, points of personal privilege, recommendations to staff or other governmental bodies, procedural matters and any action otherwise authorized by these Rules, Law or Ordinance.

Representative Capacity. Any person wishing to speak on behalf of another person, group or entity shall provide written authorization to the chairperson from the person, group or entity being represented. Immediate family members (defined for this purpose as spouse, parent, or child) do not have to provide such written authorization when speaking on behalf of another immediate family member.

11. CONTINUANCES AND WITHDRAWALS

The Board may, on its own motion, continue the hearing on any case to such future date as it may determine; and it may give consideration to written requests from petitioners or remonstrators for such continuances. After the mailing of any notification to surrounding property owners, a petitioner or developer may only request to have the scheduled hearing on the petition postponed by appearing at the hearing in person to request a continuance. No case shall be continued for more than one month, except with the unanimous consent of the Board members present. In the event that the petitioner is absent, the Board may vote on the petitioner's case in their absence. If that vote is decided adversely against the petitioner, the petitioner will be barred from resubmitting that case for consideration for six months as set out in Rule 13. Alternatively, the Board may vote to withdraw or continue the case. If a case is withdrawn owing to the absence of a petitioner, the vote shall not be considered as an adverse decision barring the

petitioner to resubmit within a period of six (6) months; however, the case will not be docketed again until the petitioner resubmits their case and pays a new filing fee. In the event that a case is continued owing to the absence of a petitioner, the case shall not be docketed for a later meeting until the petitioner has paid an additional filing fee. The Board may vote to waive this additional filing fee in circumstances in which the petitioner's absence is due to an emergency and petitioner contacted staff to make staff aware of this emergency prior to the Board meeting.

12. AUTHORITY OF URBAN DEVELOPMENT, PLANNING DIVISION AND
OFFICE OF THE CITY ATTORNEY STAFF TO PREPARE DOCUMENTS
AND LETTERS FOR THE BOARD

City Staff, who are assigned to assist the Board in the performance of their duties, are permitted, authorized and directed by the Board to prepare, draft and distribute notices, correspondence, letters, approvals, denials and such other documents as requested and directed by the Board. The dissemination of any such notice, correspondence or other document prepared by Staff, consistent with the direction of the Board, shall be deemed promulgated by the Board. A representative of the City Attorney's Office is statutorily authorized to represent, advise and defend the Board pursuant to Ala. Code § 11-44B-11(f) (1975). Anytime the law requires a final decision of the Board to be in writing, including without limitation cases involving wireless telecommunication facilities, the Board's vote at a hearing shall be merely a preliminary determination and the written final decision of the Board shall be prepared by the Office of the City Attorney and such writing shall become the final written decision of the Board when it is signed by the Chairman of the Board or when the Board formally votes to adopt it as the final decision of the Board, whichever occurs first.

13. TIME WITHIN WHICH RECONSIDERATION BARRED

No case which has been decided adversely against the petitioner shall again be placed on the docket for consideration by the Board within a period of six (6) months from the date of the decision previously rendered by the Board except with the consent of a majority of the Board. The reasons for the foregoing rule include the facts that repeatedly hearing the same Petition could impede the Board's transaction of other business, it could adversely impact other petitioner's opportunity for a full hearing, it would be unfair to those in opposition to have to repeatedly attend meetings, it would undermine the credibility of the Board's initial decision and finally to do so without justification would set an undesired precedent.

Any petitioner requesting that the Board waive the bar against reconsideration within six (6) months must demonstrate to the Board that there are valid reasons for the waiver, which must include the following:

- An equitable (fairness) issue exists wherein such a delay would adversely impact the Petitioner, through no fault of the petitioner, in a manner different from other Petitioners.
- The Petitioner has made significant modifications in the design or plan that addresses the reason(s) for the adverse decision by the Board.”

14. DISCRETIONARY DEFENSE OF AN APPEAL FROM A DECISION OF THE BOARD TO A COURT OF PROPER AND COMPETENT JURISDICTION

If the appeal attacks, relates to and or affects a third party or entity and where the outcome of the appeal does not adversely affect the City and the City does not otherwise have an interest in the appeal as determined by the City Attorney, the City Attorney may file such pleadings and transcripts as required by Ala. Code § 11-52-81 (1975), in such Court of proper and competent jurisdiction and decline to take a position on said appeal.

15. EXPIRATION OF SPECIAL EXCEPTION OR VARIANCE

Generally. In any case where the Board approves a Special Exception and/or a Variance not involving construction on the property pursuant to a City building permit as provided in the subsections below, the same shall expire within 180 consecutive calendar days from the date of Approval of such Special Exception and/or Variance if the subject property is not put to the use as approved by the Board. Provided; however, such expiration shall not occur if the petitioner can provide written documentation or credible testimony demonstrating that the failure to utilize the approval was due to action or inaction of a government entity which prolonged the time in which the property could be utilized pursuant to the approval. Then, at the discretion of Urban Development, Planning Division, the time limit may be extended administratively.

Residential Construction. In any case where the Board approved a Special Exception and/or a Variance which involves construction on property pursuant to a City Residential building permit, the same shall expire unless both of the following occur:

- A Residential building permit is issued by Building & Inspections within 180 consecutive calendar days from the date of the Approval of the Special Exception and/or Variance by the Board, and;
- Construction of the structure or structures under said building permit is completed by the issuance of a Certificate of Occupancy by Building & Inspections within 450 consecutive calendar days from the date of the approval of the Special Exception and/or Variance by the Board.

Commercial Construction. In any case where the Board approves a Special Exception and/or a Variance which involves construction on property pursuant to a City Commercial building permit, the same shall expire unless both of the following occur:

- A Commercial building permit is issued by Building & Inspections within 365 consecutive calendar days from the date of the approval of the Special Exception and/or Variance by the Board, and;
- Construction of the structure or structures under said building permit is completed by the issuance of a Certificate of Occupancy by Building & Inspections within 720 consecutive calendar days from the date of the approval of the Special Exception and/or Variance by the Board.

The Board in its discretion, upon proper showing in writing, may approve extensions or renewals of such time limits.

16. SPECIAL EXCEPTIONS NOT TO RUN WITH THE LAND

Generally. Unless the Board expressly rules otherwise, in a particular case, any Special Exception Approved by the Board and authorizing a use normally prohibited by the Zoning Code, upon the property in question, shall lapse and cease to be valid if:

- The person or entity for whom the Special Exception was Approved ceases to utilize the property for the purpose so authorized or,
- The petitioner transfers or assigns the property to another assignee.

Exceptions. In cases involving any of the following:

- New construction,
- Substantial reconstruction or,
- Reduction in on street parking;

The Special Exception shall run with the land and remain applicable to the property despite the transfer or assignment of the property to another assignee, if the improvements are constructed thereon within the period of time as required by these rules. Provided; however, the foregoing shall apply only if the petitioner and any such assignee shall continue to utilize the property pursuant to all the terms and conditions applicable to the same as approved by the Board.

17. DUTIES OF SECRETARY; MINUTES

The Secretary of the Board shall be a properly qualified official appointed by the City for that purpose. The Secretary shall be custodian of the minutes or synopsis and conduct all official correspondence. An accurate minute record or synopsis shall be kept of all proceedings and actions of the Board. The minute record or synopsis shall be signed by the Chairman (or Vice-Chairman if applicable) and attested by the Secretary.

AMENDED, this the 27th day of February, 2023

TUSCALOOSA ZONING BOARD OF ADJUSTMENT

Rob Steward, Chairperson

ATTEST:

Zach Ponds, CNU-A
Secretary