



**TOWN OF HARRISBURG, NORTH CAROLINA
HARRISBURG TOWN HALL
BOARD OF ADJUSTMENT MEETING**

**August 15, 2023
6:00 PM**

AGENDA

1. CALL TO ORDER

A. PUBLIC PARTICIPATION VIA ZOOM

Harrisburg Town Hall's Council Chambers will be open for the public to attend the meeting in person.

The public has the option to join the meeting virtually via the Zoom platform using the following link:

<https://us02web.zoom.us/j/82922934233?pwd=UUUVbHlWenglYStOUUVmVWdtZXllQT09>

Webinar ID: 829 2293 4233

Passcode: 249745

Or join by phone:

312.626.6799

301.715.8592

B. AGENDA ADOPTION

2. SPECIAL PRESENTATIONS

A. Swear in new Board Members

3. CONSENT AGENDA

4. NEW BUSINESS

A. Elect Chairperson and Vice Chairperson

B. Consideration to Set a New Date and Time for Board of Adjustment Meetings

C. Consideration of Adoption of Annual Meeting Schedule

5. ADJOURNMENT

Vision Statement

Harrisburg will be a distinctive, family-focused community where memories are made.

Mission Statement

Together, we enhance our quality of life by collaborating, planning, and investing to create our community of choice.



HarrisburgNC
The right side of opportunity

Rules of Procedure

Harrisburg Board of Adjustment

Rules of Procedure for Harrisburg Board of Adjustment

1. GENERAL RULES.

The function of the Board of Adjustment (referred to as the "Board") is to hear and determine certain quasi-judicial matters under the development regulations of the Town of Harrisburg. The Board shall be governed by the terms of Chapter 160A, Article 19, Part 3 and Chapter 160D of the General Statutes of North Carolina and by the Unified Development Ordinance of the Town of Harrisburg (referred to as the "UDO"). The Board shall exercise such additional authority as may be given it under general law, special act and local ordinance. These Rules of Procedure are intended to supplement and explain procedural provisions and requirements set out in the applicable provisions of law and ordinance.

These Rules of Procedure are adopted by the Board and the Town Council.

All members of the Board shall thoroughly familiarize themselves with the statutes and ordinances specified above and these Rules of Procedure.

2. OFFICERS AND THEIR DUTIES.

A. Chair. The Chair shall be a regular member elected by a majority vote of the full membership of the Board (including extraterritorial and alternate members). The Chair's term of office shall be one year, or until a successor is elected, beginning on July 1. The Chair shall be eligible for reelection. The Chair shall decide upon all points of order and procedure, subject to these rules. The Chair shall rule on all objections to the presentation of evidence. Rulings of the Chair may be appealed by a member of the Board to the full Board. The Chair shall appoint any committees found necessary to conduct the business of the Board.

B. Vice Chair. The Vice Chair shall be a regular member of the board elected by the Board in the same manner and for the same term as the Chair. The Vice-Chair shall serve as Acting Chair in the absence of the Chair and at such times the Vice-Chair shall have the same powers and duties as the Chair.

C. Secretary. The Secretary shall be the appointed Planning and Zoning Planning Technician for the Town of Harrisburg. The Secretary, subject to the direction of the Chair and the Board, 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 clerical work of the Board. The Secretary shall keep in a permanent volume the summary of minutes of every meeting of the Board. These shall show the record of all important facts pertaining each meeting and hearing, every resolution acted upon by the Board and all votes of members of the Board upon the final determination of any question, indicating the names of the members absent or failing to vote. The Secretary shall not be eligible to vote upon any matter and is not a member of the Board.

The Secretary shall provide to every new member of the Board print or electronic copies of all relevant ordinances, these Rules of Procedure, and such other educational materials deemed appropriate. The Secretary shall arrange for an orientation for new members and shall coordinate

provision of continuing education for Board members.

3. MEMBERS.

A. Regular Members. There shall be five (5) regular members of the Board, each to be appointed by the Town Council, according to the appointment procedure in Rule 6 of the Rules of Procedure of the Harrisburg Planning & Zoning Board. Such members may also be members of the Harrisburg Planning & Zoning Board and/or Town Council during the same term of office, but not required. One of the five regular members shall be the P&Z member residing in the Town's extraterritorial jurisdiction ("ETJ"), who will have been appointed as determined in Rule 1 of the Rules of Procedure of the Harrisburg Planning & Zoning Board.

B. Alternate Members. There shall be two (2) alternate members of the Board, each appointed by the Town Council in the same manner as provided for regular members. The two alternate members may be the other two members of the Harrisburg Planning & Zoning Board and shall be designated by the Town Council as the alternate members when so appointed. Alternate members are encouraged to attend all meetings of the Board, but shall not participate in hearing, deliberating, and deciding a case only when acting in the place of a regular member. On receiving such notice that a regular member will not be participating, the Secretary shall, by the most expeditious means, notify an alternate member to attend. An alternate member shall be called upon by the Chair to participate in an individual case in the place of a member who has a conflict and is ineligible to participate in that case. At any meeting or case upon which they are called upon to participate, alternate members shall have the same powers and duties as regular members. Alternate members who are present and participate in hearing an individual case shall continue to hear, deliberate and vote on that case at any subsequent meeting.

C. Term. Each regular and alternate member shall be appointed for a three (3) year term. Each such member may be reappointed to a second three (3) year term, after which the member is not eligible for reappointment until four (4) years have elapsed. All terms of appointment shall start on July 1st. Any member that is appointed to fill an unexpired term may still be appointed for two (2) consecutive terms of their own.

4. RULES OF CONDUCT FOR MEMBERS.

A. In accordance with the Unified Development Ordinance, members of the Board may be removed by the Town Council for cause, including violation of the rules stated below. The Chair shall report to the Town Council any violation of these rules of conduct. Where feasible, the Town Council shall notify a member being considered for removal of the reasons for removal and give that member an opportunity to respond.

B. Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite for continuing membership on the Board. Any regular Board member who is absent for more than three consecutive regular meetings or more than 75% of the regular meetings in a calendar year shall lose his or her status as a Board member. Absence due to sickness, death in the immediate family, or other emergencies of a similar nature shall be recognized as excused absences and shall not affect a member's status on the Board, except that in the event of a long illness or other such cause for prolonged absence the member shall be replaced. The Secretary to the Board shall keep a record of attendance and shall provide reasonable notice to any member who is in immediate risk of failing to meet these attendance

requirements.

C. Board members should disclose at the hearing any pertinent facts about a pending case of which they have personal knowledge prior to the hearing. Other than this type of disclosure, a board member seated for a hearing should not testify at that hearing. A board member who is recused from a case should avoid testifying as a witness in that hearing if at all feasible.

D. Board members 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 conflicts 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. Board members shall endeavor to avoid the appearance of impropriety. Conflicts of interest are governed by N.C. Gen. Stat. § 160D-109.

A member with a potential bias or conflict of interest may consult with the Chair or the Town Attorney regarding that potential conflict prior to the hearing. A Board member with a bias or conflict of interest shall declare that at the opening of the hearing on the matter and shall be recused by the Board from all participation in hearing and deciding the case.

If an objection is raised to a member's participation in a case by a party to that case or by another Board member, the remaining members of the Board shall by majority vote rule on the objection. When a member is recused, that member shall absent himself or herself from the hearing room for the duration of the board's hearing, deliberation, and vote on that matter.

E. Board members shall not discuss any quasi-judicial case with, or receive any information about a case from, any parties to the case, other board members, or from other interested persons outside the evidentiary hearing on that case. No Board member shall conduct an investigation or gather facts about the case outside the evidentiary hearing. A Board member may visit the site of a pending case provided that visit is disclosed at the evidentiary hearing. Board members may seek and receive general information about ordinance and planning provisions pertaining to the case from the Chair, the Town Attorney, or Town Staff (except when a staff member is a party or an adversarial witness), provided any factual queries regarding the pending case itself shall only be made in open session at the evidentiary hearing.

F. Board members shall not vote on the merits of any quasi-judicial matter unless the Board member has either attended the evidentiary hearing on that matter or has thoroughly reviewed the full hearing record for that matter.

G. Board members shall not express individual opinions or judgments regarding a pending quasi-judicial case prior to the determination of that case.

5. MEETINGS.

A. Regular Meeting. Regular meetings of the Board shall be held on the third Tuesday of each month at 6:00 p.m. in the Council Chambers of Town Hall; provided that meetings may be held at any other convenient place, date or time in the Town if directed by the Chair in advance of the meeting and proper notice is given in accordance with applicable provisions of the Town Code and state law. Typically, meetings of this Board shall either directly precede or be directly after a meeting of the Harrisburg Planning & Zoning Board. The Secretary to the Board shall make the

schedule of regular meetings available to the public and shall post a copy of the schedule on the Town web site.

Regular meetings and hearings may be rescheduled by the Planning and Zoning Director if a scheduled meeting or hearing cannot be held because of a holiday, weather, lack of a quorum, or other unusual circumstance. Notice of a rescheduled meeting shall be provided in the same means as required for a special meeting. When an evidentiary hearing will be conducted at a regular or special meeting, all required notices to the parties must be provided within the times set by state law and the UDO.

B. Special Meetings. Special meetings of the Board may be called at any time by the Planning and Zoning Director pursuant to applicable provisions of the Open Meetings Law, N.C. Gen. Stat. §143-318.12. At least forty-eight (48) hours' written notice of the time and place of a special meeting shall be given by the Secretary to the Board to each member of the Board and to each news organization and person requesting such notice. This notice may be provided by electronic mail. This notice shall also be posted on the Town web site.

C. Cancellation of Meeting. If there are no quasi-judicial cases to be heard or other business before the Board, if there is a weather emergency or similar situation, or if so many regular and alternate members indicate that they will not be able to attend that a quorum will not be available, the Planning and Zoning Director may cancel a regular meeting by giving written and oral notice to all Board members. If feasible, notice of cancellation shall be made not less than twenty-four (24) hours before the time set for the meeting. The Secretary to the Board shall post a notice of the meeting cancellation at the regular meeting location.

D. Quorum. A quorum of the Board, necessary to meet, shall consist of three (3) members of the Board, but the Board shall not vote on any questions related to an appeal of a decision or a determination of the Zoning Officer or an application for a variance or special use permit when fewer than four (4) voting members of the Board are present. If fewer than five (5) voting members of the Board are present, a party to a quasi-judicial matter may request that the hearing be continued until five (5) voting members are present. Whenever during a meeting, a quorum ceases to be present, if no objection is raised by a member of the Board, the Board may continue to hear evidence and debate but may not vote on any action except to adjourn.

E. Hearing Deferrals and Continuances. Once a quasi-judicial case has been noticed for hearing, the Board generally expects the case to be heard at that time. An applicant may make a written request to delay consideration of a case to the next scheduled meeting, provided that the request is received at least twenty-four (24) hours prior to the scheduled meeting. Except for good cause shown, if an applicant fails to appear at a meeting to prosecute his or her application, and the hearing has been continued one (1) time before, the Board may dismiss the application for failure to prosecute. An application that has been dismissed may be resubmitted upon payment of applicable fees.

The Board may in its discretion continue any hearing when the Board deems that to be reasonable in order to receive additional evidence or to further deliberate. In all instances the Board shall decide cases within a reasonable time.

F. Voting. All regular members shall vote on any issue unless they have been disqualified for one or more of the reasons stated in Rule 4. Alternate members shall vote on any issue for which they are seated in place of regular members unless they have disqualified themselves for one or more of the

reasons stated in Rule 4.

The required vote to issue a variance shall be four-fifths of all members eligible to vote on the matter. If a motion to approve a variance does not receive the affirmative vote of four-fifths of those members eligible to vote, the variance shall be deemed denied. When this occurs, members who did not cast an affirmative vote on granting the variance shall state for the record their rationale for casting a negative vote. The required vote to decide any other quasi-judicial matter shall be a simple majority of all members eligible to vote on the matter.

In all other matters the vote of a majority of the voting members present shall decide issues before the Board. The Chair votes as any other Board member.

G. Conduct of Meetings. All meetings shall be open to the public, except for closed sessions as allowed by law. The order of business at regular meetings shall be as follows:

1. Call to order, roll call and announcements;
2. Action on minutes of previous meetings, including acceptance and correction;
3. Hearing, consideration, and determination of cases;
4. Reports of committees;
5. Unfinished business;
6. New business;
7. Adjournment.

Without objection from a member the Chair, or other member presiding at the meeting, may change the order of business and the order in which cases are heard. Upon objection, the issue shall be put to a vote of the Board. Requests to continue a matter before the Board shall be voted on by the Board.

H. Agenda and Meeting Materials. An agenda for each meeting and hearing shall be prepared by the Secretary to the Board and shall be distributed to all members of the Board, applicants with cases to be heard, and any other interested person who has made a written request to receive an agenda. The agenda shall be distributed at least one week prior to regular meetings and two days prior to special meetings.

Written briefs, documents, letters, and staff reports may be submitted to Board members by the Secretary to the Board prior to an evidentiary hearing, provided that any such material is also submitted to all parties to that case at the time they are submitted to Board members. Staff may establish reasonable deadlines for submission of any such material to be distributed prior to the hearing. Such materials shall be distributed at the same time the meeting agenda is distributed. Any such material shall be part of the hearing record and introduced as documentary evidence at the evidentiary hearing. Board members shall endeavor to review the materials prior to the hearing.

I. Meeting Recordings. The Secretary shall make audio or video recordings of each meeting and hearing. Electronic recordings that may be used to generate transcripts for judicial review as needed shall be made of each meeting and shall be held for safekeeping by the Secretary in accordance with record retention policies set by state law and the UDO. Any party to a quasi-judicial proceeding may request a verbatim transcript of the evidentiary hearing, with the cost of preparation of the transcript borne by the party making that request. Any person may make an audio or video recording of any Board hearing or meeting, provided it is done in a manner that does not disrupt the hearing or meeting.

J. Oaths. All witnesses presenting testimony in evidentiary hearings shall be sworn in. Oaths may be administered by the Chair or the Secretary to the Board. An affirmation may be made by any witness with a religious objection to swearing.

K. Subpoenas. Persons with standing on a quasi-judicial matter before the Board may make a written request to subpoena for witnesses or to compel the production of evidence. The Chair shall issue subpoenas determined to be reasonable in nature and scope and not oppressive. The Chair shall rule on any objections or motions to quash subpoenas. The Chair's decisions on subpoenas may be appealed to the full Board.

6. APPEALS AND APPLICATIONS.

A. Types of Appeals and Applications.

1. The Board shall hear and decide all appeals from final, binding written decisions or determinations made by the Zoning Administrator as provided by the UDO and by state statutes.

2. The Board shall hear and decide petitions for variances from the zoning ordinance and other such ordinances as provided by the UDO.

3. The Board shall hear and decide special use permits as assigned by the UDO.

4. The Board shall make interpretations of the Zoning Map, including disputed questions of zoning district boundary lines and similar questions that may arise from administration of the development regulations of the Town of Harrisburg.

5. The Board shall also hear and decide all matters referred to it or upon which it is required to pass by the UDO and any other matters assigned to it by ordinance or by law.

B. Procedure for Filing Appeals and Applications.

1. An appeal of a decision or determination of the Zoning Administrator shall be filed with the Town Clerk or such other officer as designated by the UDO. The notice of the appeal shall state the grounds for the appeal. No appeal shall be heard by the Board unless the appeal is filed within thirty (30) days of written or constructive notice of the order or determination made by the Zoning Administrator.

2. Applications for variances and special use permits shall be accompanied by a site plan of sufficient size and accuracy to enable the Board to see the precise location and size of the variance and/or nature and location of the special use permit being sought. Such application shall specifically state the type of variance or special use permit sought. Upon submission of an application, the Zoning Administrator shall determine if these requirements are satisfied.

3. All appeals, applications, and any other matter coming before the Board shall be made upon the form for that purpose.

4. All required information required shall be complete and all required fees paid before an appeal, application, or other matter shall be considered as having been filed.

5. An applicant may withdraw any appeal, application, or other matter prior to the start of the evidentiary hearing on that matter. A withdrawal shall be made in writing. Upon withdrawal the case is closed. New application and fee must be submitted if the application is renewed.

C. Evidentiary Hearings.

1. Time. After receipt of an appeal, application, or other matter, the Planning and Zoning Director shall schedule the matter for hearing at the first available regular or special meeting scheduled.

2. Notice. The Board shall give notice of evidentiary hearings on quasi-judicial cases by first-class mail to the person whose appeal or application is the subject of the hearing, to the owner of the affected property if the owner did not initiate the hearing, and to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The notice shall be posted in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the hearing. A notice of the hearing shall also be prominently posted on the property that is the subject of the hearing (or the adjacent street right-of-way) in this same time period.

If a hearing is set for a given date and a quorum of the Board is not then present, the hearing shall be continued until the next regular Board meeting by announcement by the Chair without further advertisement. In addition, the Board may, without further advertisement, continue a hearing to a date certain after the hearing has been called to order.

The hearing notice shall include the location of the property subject to the hearing, the general nature of the matter being heard, and the date, time, and location of the hearing.

3. Conduct of Evidentiary Hearing. Any party may appear in person or by agent or by attorney at the hearing. The order of business for hearing shall be as follows:

a. The Chair, or such person as the Chair may direct, shall give an opening statement regarding the nature of the hearing and the process that will be followed. The Chair shall poll all Board members participating in the case as to any ex parte communications, bias, or conflicts of interest. Issues regarding standing, participation of Board members in consideration of the case, or other jurisdictional issues shall be addressed. Witnesses to offer testimony may be sworn in.

b. The Chair or the staff shall provide a preliminary statement of the case, including a summary of the facts and relevant ordinance provisions. Staff shall present the application, supporting materials, staff report, and any other written materials received and distributed prior to the hearing for introduction into the hearing record.

c. The applicant shall present evidence and argument in support of the application or appeal taken.

d. Parties opposed to the application, including the staff from whom an appeal is being taken, may present evidence and argument.

e. Other persons may present relevant evidence.

f. Staff may make a recommendation to the Board concerning requests for special use

permits and variances.

- g. Parties may present rebuttal evidence.
- h. Closing statements or summaries may be made by parties to the case and staff.
- i. The Board shall deliberate on and make a determination of the case.

Witnesses may be called and factual evidence may be submitted. The Chair must recognize witnesses before they are heard and confirm that they are under oath. The Chair shall allow all witnesses to be heard but may limit testimony or evidence that is irrelevant, repetitive, incompetent, hearsay, or inadmissible opinion testimony. The Chair shall allow the parties to the case to make direct and cross examination of witnesses and to present rebuttal evidence. The Chair may establish reasonable procedures to assure that what is done is in a fair, impartial, and efficient manner. Board members may ask questions of any witness.

The Board shall not be limited to consideration of such evidence as would be admissible in a court of law, but all decisions must be based on competent, material, and substantial evidence properly placed in the hearing record. Board members may view the premises before arriving at a decision, but any key facts observed by members shall be disclosed at the hearing and made part of the record.

Upon completion of the presentation of evidence and recommendation by the staff, Board members shall discuss the case among themselves in open session and may recall any witness to ask further questions and otherwise deliberate among themselves. Board members shall not discuss the case or give opinions on the evidence until initial presentation of the case is completed.

4. Rehearings. An application for a rehearing may be made to the Board and shall contain evidence that there has been a substantial change in the facts or conditions of the case. The Board may decide to conduct a full evidentiary hearing to consider such application. The application for rehearing shall be denied by the Board if, from the record, it finds there has been no substantial change in facts or conditions. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as a new application.

D. Decisions.

1. Time. Decisions by the Board shall be made in a reasonable time from the completion of the evidentiary hearing. A decision may not be continued indefinitely.

2. Motion and Voting. Voting on an appeal, application, or other matter shall be in accordance with the provisions of the UDO and the North Carolina General Statutes. A vote on a request for a variance, special, or conditional use permit or on an appeal of a staff determination shall be in the form of a motion to approve the request, and such motions shall require a second. A motion made to determine a quasi-judicial matter shall state specifically any conditions desired to be made a part of that decision and shall reference, if appropriate, any documents or maps submitted as a part of that application. Any such references made in the motion shall, if approved, be part of the record and decision in that case. The vote of each member shall be recorded. If a request or application is not approved, the members voting not to approve shall state for the record the factual findings and rationale that support their opposition.

3. Form. All decisions of the Board on quasi-judicial matters shall be reduced to writing as soon as practicable after the case is decided. The written decision shall reflect the Board's determination of contested facts and the application of the pertinent standards to those facts. The written decision shall be signed by the Chair or other duly authorized member of the Board. After signature, the written decision shall be filed with the Secretary to the Board and delivered to the parties.

4. Effective Date and Filing. Decisions of the Board on quasi-judicial matters are effective upon filing the written decision with the Secretary to the Board and the delivery of the decision to the applicant, the property owner if that entity is not the applicant, and to any other person who filed a written request for a copy of the decision at the evidentiary hearing on the matter. The decision may be delivered by personal service, first-class mail, or electronic mail.

5. Public Records of Decisions. The decisions of the Board shall be a public record available for inspection at all reasonable times. All decisions shall be entered into the minutes of the Board. The Secretary to the Board shall maintain copies of all written decisions of the Board.

6. Amendments. These Rules may be amended without prior notice only by the Town Council.

Approved and adopted on this 12th day of June, 2023.

TOWN OF HARRISBURG

Jennifer Teague, Mayor

ATTEST:

Janet Rackley, Town Clerk



TOWN OF HARRISBURG

Agenda Item Details

Title:

Consideration of Adoption of Annual Meeting Schedule

Presenting Personnel:

Zachary Gordon, Planning Director

Suggested Motion or Action:

Motion to adopt proposed meeting schedule through June 2024

Description/Background:

Proposed meeting dates (subject to Agenda items):

September 5th
October 3rd
November 7th
December 5th
January 2nd
February 6th
March 5th
April 2nd
May 7th
June 4th

Recommendation:

Staff recommends adoption of proposed meeting schedule through June 2024

Fiscal Impact:

None

Attachments:

1. BOARD OF ADJUSTMENT_2023_24 Calendar_FIRST TUESDAY



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BOARD OF ADJUSTMENT

**2023-2024 MEETING CALENDAR
FIRST TUESDAY OF EACH MONTH AT 6 PM
HARRISBURG TOWN HALL**

AUGUST 15, 2023

SEPTEMBER 5, 2023

OCTOBER 3, 2023

NOVEMBER 7, 2023

DECEMBER 5, 2023

JANUARY 2, 2024

FEBRUARY 6, 2024

MARCH 5, 2024

APRIL 2, 2024

MAY 7, 2024

JUNE 4, 2024