BYLAWS
OF THE CITY OF BREVARD
BOARD OF ADJUSTMENT

REVISED AND READOPTED: 1 OCTOBER 2024

ARTICLE I
Name

The name of this Board shall be the City of Brevard Board of Adjustment ("Board").

ARTICLE II
Powers and Duties

The Board shall have those powers and duties set out in North Carolina General Statues ("N.C.G.S")§160D-302, and elsewhere in the General Statutes, and in the Unified Development Ordinance ("UDO") of the City of Brevard, as well as those powers not inconsistent therewith as set forth herein.

ARTICLE III
Members

Section 1. *Composition*. The Board shall be composed of five regular members and three alternates as provided by Section 15.1.B of the City of Brevard Unified Development Ordinance.

Section 2. *Term of Office*. Members shall serve three-year terms as provided by Section 15.1.B of the City of Brevard Unified Development Ordinance.

Section 3. *Vacancies*. Vacancies shall be filled as soon as deemed advisable by the applicable appointing authority.

Section 4. *Removal of Members*. Any member of the Board may be removed by the applicable appointing authority for neglect of duty, malfeasance, or conflict of interest.

ARTICLE IV
Officers of the Board

Section 1. *Designated Officers.* The officers of the Board shall consist of a Chair and a Vice-Chair.

Section 2. *Nomination and Election*. The Board shall hold elections for officers at its January meeting each year. Should the Board fail to meet in January of any year, elections shall be held at the next meeting of the Board. Nominations for officers shall be made from among the regular members of the Board. Officers shall be elected by a majority vote of the members, both regular and alternate, present at the meeting.

Section 3. *Term*. Officers shall be elected for a term of one year or until a successor is elected and assumes office. There shall be no limit to the number of terms an officer may serve.

Section 4. *Vacancy in Office*. A vacancy in office shall be filled by the Board not later than seventy days after the occurrence of the vacancy, by a majority vote of the regular and alternate members attending the meeting at which the vote is taken.

Section 5. *Duties of the Chair*. The Chair shall have the following duties:

A. Preside at meetings of the Board;

B. Provide general supervision of the conduct of the affairs of the Board and assigned staff members;

C. Advise the Zoning Administrator of member concerns;

D. Perform such other duties as determined by the Board, the bylaws, policies, and procedures adopted by the Board from time to time.

Section 6. *Duties of the Vice-Chair.* The Vice-Chair shall serve as acting chair in the absence of the Chair and, at such times, shall have the same powers and duties as the Chair.

ARTICLE V
Delegation of Duties; Clerk

The Board may delegate duties or functions to staff members as needed to carry out its assigned duties. The Brevard Planning Department Administrative Staff shall serve as the Clerk to the Board of Adjustment and shall keep the minutes and do other tasks as assigned by the Board. The Clerk shall have the following responsibilities:

A. Attend all regular and special meetings and hearings, as well as any committee meetings, and keep a record thereof, which shall be transcribed in the minute book of the Board.

B. Send notices of all meetings of the Board required to be sent by law, under these bylaws, or as directed by the Chair.

C. Have charge of all books, papers and records of the Board and attend to all correspondence of the Board.

If for any reason the Clerk is unable to attend a meeting of the Board or is temporarily unable to otherwise fulfill the responsibilities of that office, the Chair may appoint a substitute on an interim basis.

ARTICLE VI
Meetings

Section 1. *Regular Meetings*. Regular meetings of the Board shall be held at 3:00 p.m. on the first Tuesday of each month in the Council Chambers of City Hall, except when otherwise decided by the Board, with due notice to the press. If a day scheduled for a regular meeting is a holiday for which the offices of the City of Brevard are closed, the regular meeting shall be held at 3:00 p.m. on a date agreed to by the Board.

Section 2. *Special Meetings.* Special meetings of the Board may be called at any time by the Chair provided that at least 48 hours written notice of the time and place of a special meeting be given, to each regular and alternate member of the Board and to the Clerk. In addition, members of the press shall be notified of each meeting in accordance with law. Special meetings may include Board retreats and like meetings held to conduct internal business of the Board.

Section 3. *Cancellations.* If there is no business for the Board, or if it is apparent a quorum will not be available, the Chair or Clerk may dispense with a regular or special meeting by giving written or oral notice to all members not less than 24 hours prior to the time set for the meeting.

Section 4. *Quorum*. A quorum shall consist of four members of the Board (including alternates); provided, however, when hearing an application for a variance, the Board shall, upon the request of the applicant, continue the hearing when less than five members of the Board are present. Notwithstanding the foregoing, a quorum shall not be necessary to do any of the following:

A. Set a date, time, or place for any subsequent meeting;

B. Discuss general internal Board business; provided, however, in no event may the Board without a quorum hear or discuss the merits of any matter brought or to be brought before the Board as part of a hearing.

Section 5. *Voting*. Except as otherwise provided in these bylaws, including the policies and procedures attached hereto, a majority of all regular and alternate members eligible to vote shall be necessary to transact any official business. Except as otherwise provided herein, any regular member in attendance at any meeting shall be eligible to vote on all matters brought before the Board at that meeting. If there are more alternates present than regular members missing, the Chair shall select which alternate(s) shall be eligible to vote. The Chair may empower alternates to vote at any portion of a meeting where a regular member is absent or excused, including any hearing.

Section 6. *Records*. The Board shall keep minutes and records of all proceedings, including resolutions, transactions, findings and determinations, shall record the

number of votes for and against each question presented, and shall indicate whether any member is absent or abstains from voting. All such records shall be filed in the office of the Clerk to the Board.

Section 7. *Open Meetings and Hearings*. Board meetings and hearings shall be open to the public as required by N.C.G.S. Chapter 143 Article 33C.

Section 8. *Order of Business*. The order of business at regular meetings shall be as follows:

A. Roll call; determination of quorum;
B. Approval of the Agenda;
C. Approval of Minutes of previous meeting;
D. Approval of Orders;
E. Hearing of cases;
F. Other business;
G. Adjourn.

ARTICLE VII
Parliamentary Authority

The Board shall follow-N.C.G.S. §160D-406 Quasi-judicial procedure.

ARTICLE VIII
Amendment

These bylaws may be amended or rescinded from time to time by a vote of a majority of the members, regular and alternate, of the Board present at the meeting at which the matter is voted upon; provided, however, the Board shall under no circumstance have the authority to modify any provisions or requirements of the North Carolina General Statutes or the Code of Ordinances of the City of Brevard. Any proposed amendment may be read at any meeting. Final vote thereon shall take place, if at all, not earlier than ten days nor later than seventy days following the initial reading.

ARTICLE IX
Employment of Attorneys at Law

Subject to budgetary limitations, the Board may employ attorneys at law for assistance in the prosecution of its purposes. Any such counsel, including any counsel whose representation of the Board may be funded by the City of Brevard or by any other entity, shall nevertheless be independent of the directives of any person or entity other than the Board.

ARTICLE X
Governing Law, Construction and Definitions

These bylaws, including any policies and procedures adopted hereunder, shall be, so far as reasonable, construed to be in harmony with the statutes and case law of the State of North Carolina and the ordinances of the City of Brevard. Where such construction is unreasonable, these bylaws shall be subject to and superseded by such statutes, case law and ordinances.

As used in the Bylaws and in the Policies and Procedures the following words have the indicated meanings:

"Appeal" means an appeal from the ruling of the Zoning Administrator.

"Application" shall mean any matter brought before the Board for ruling upon quasi-judicial hearing, including any appeal.

"Board" shall mean the City of Brevard Board of Adjustment.

"City" shall mean the City of Brevard, a municipal corporation.

"Entity" shall mean an individual human being, unincorporated association, limited liability company, corporation, partnership, or governmental body.

"Final Vote" shall mean any vote legally sufficient to carry the will of the Board (though not necessarily a majority of the Board, as in the case of a super-majority requirement) into effect. An initial vote may be a final vote.

"Person" shall mean an individual human being.

"Initial Vote" shall mean the first full vote resulting in an initial decision of the board, not including a final written decision including findings of facts and conclusions of law.

"Zoning Administrator" shall mean either the Zoning Administrator for the City or the designee of such person, but in any case, being an employee of the City.

ARTICLE XI
Preservation

If any court of competent jurisdiction declares any of these bylaws, policies, or procedures to be invalid or unenforceable, the remaining bylaws, policies and procedures shall remain nevertheless in full force and effect.

ARTICLE XII
Repeal of Previous Bylaws, Rules and Policies

All bylaws, rules, policies, and procedures heretofore adopted by the Board are REPEALED by the adoption of these Bylaws.

APPENDIX I
POLICIES AND PROCEDURES

1. Board Policies.

   A. Policies shall be adopted by a majority vote of the regular and alternate members attending the meeting at which the vote is taken.

   B. Policies may be amended or rescinded from time to time by a vote of a majority of members, regular and alternate, of the Board present at any lawful meeting of the Board in a manner consistent with the procedures for amending the bylaws of the Board. Any proposed amendment may be read at any meeting. Final vote thereon, shall take place, if at all, not earlier than ten days nor later than seventy days following the initial reading.

   C. Policies may be suspended temporarily by a majority vote of those present, for reasons declared clearly and specifically and placed upon the minutes.

2. Administration.

   The Clerk shall house all official books, papers and records of the Board and shall be responsible for all official correspondence relative to hearings, meetings, resolutions and decisions of the Board, if any such delegation of duties is not specifically set forth in the Bylaws.

3. Filing appeals and other applications.

   A. Applications for variances, special use permits, and architectural exceptions shall be filed with the Zoning Administrator.

   B. All appeals shall be filed with the City Clerk in accordance with the procedure set forth in Section 16.13.C of the City of Brevard Unified Development Ordinance. Appeals must be filed within 30 days of the receipt of notice, either actual or constructive, of the decision being appealed. Actual notice includes written, and in that event, notice will be adjudged to have been received on the earliest of any of the following dates:

(1) in the case of hand delivery, on the date of delivery to the appellant or any person reasonably adjudged to be capable of forwarding it in a timely manner to the appellant or any director, officer or manager of the appellant;

(2) in the case of delivery sent return receipt requested, on the date of signing of the return receipt unless the appellant can demonstrate to the Board's satisfaction that such person was neither an appellant nor any person capable of forwarding it in a timely manner to the appellant or any director, officer or manager of the appellant;

(3) in the case of any other delivery sent through the U.S. mails, three days after the date of deposit in the U.S. mails, sufficient postage prepaid, and upon the credible sworn statement of the sender or any designee that the notice was so deposited and was not returned;

(4) in the case of any nationally or regionally recognized private courier, on the date shown to have been delivered on a standard receipt or delivery form issued by the courier;

(5) in the case of delivery by electronic mail, on the date of delivery indicated on an electronic delivery receipt form to an electronic address designated by the appellant to receive such notice, accompanied by a printed version of the receipt introduced by the credible sworn statement of the sender or any designee that the electronic receipt is genuine.

C. No application for a variance shall be accepted for Board action within one year of Board action on an application on the same, or substantially the same tract of property, unless the Board finds and resolves that either (1) substantial land use, economic or social changes affecting the property have occurred in the interim or (2) the new application differs significantly from the original application.

For purposes of this Policy, "differs significantly" shall mean (1) that the issue is substantially different from an issue that was or might have been raised in the original application or (2) that the new application contains any other difference that the Board finds to constitute a significant change from the original application.

Applications made by governmental agencies shall not be subject to this policy nor shall governmental applications affect the filing of subsequent non-governmental applications under this provision.

4. Docket procedures.

A. The filing deadline for docketing cases for any Board meeting shall be 5:00 p.m. on the day that is 30 days before the Board meeting; however, no more than ~~four~~ three cases shall be docketed for hearing at any regular meeting of the Board. Except as otherwise directed by the Chair, cases shall be docketed in the order in which applications were received.

B. The agenda of cases to be considered at any Board meeting shall be posted in the office of the Planning Department not less than three days before such meeting.

5. Hearings.

A. Hearings shall be held in the Council Chamber of the City of Brevard or such other place as the ~~Chair~~ Board Clerk from time to time designates.

B. Cases set for hearing on a given day shall be heard in the order in which they appear on the agenda unless the Chair directs otherwise. Once a case is called for hearing by the Chair, the Applicant shall have fifteen (15) minutes to appear and present its case. After the fifteen (15) grace period expires, the Board may, in its discretion, take any action allowed by its Bylaws and Policies including deferring action on the case to a subsequent meeting.

C. The Chair shall rule on any matter of law before the Board, including the admissibility of evidence and the competence of any witness. In addition, the Chair may limit testimony by an examination of a witness for reasonable cause. On motion of the Chair or any Board member, the Chair's ruling may be reversed by an affirmative vote of three members of the board present for the entirety of the hearing to that point and eligible to vote on the application. In these bylaws and policies, a member may be absent from the meeting for a very brief period, as determined by the Chair under all the circumstances, and still be present for "the entirety of the hearing."

D. Rulings of the Chair or the Board on the admissibility of evidence, the competence of witnesses and like matters shall not be strictly bound by the North Carolina Rules of Evidence; however, these rules shall be a guide to rulings on such matters, which rulings shall be made with the intention of preserving both the credibility of the evidence and the public policies of the State of North Carolina with respect to judicial and quasi-judicial hearings.

E. Within a reasonable time before the hearing, any person who has the right to introduce evidence may subpoena witnesses.

F. Each person who testifies at any hearing shall first furnish his name and address to the Board.

G. Each matter in the hearing shall be heard in the following order. In each case, after testimony is presented, the witness may be cross examined.

(1) The Chair of the Board, or other presiding officer, shall read the notice of the hearing.

(2) The Zoning Administrator, or their designee, shall present a summary of the history of the application and contents of the file. The entire file shall be made part of the record of the case without the necessity of a motion by any person.

(3) The applicant, or the applicant's designee, may make a statement giving reasons for the request.

(4) Other persons in favor of the application shall be heard.

(5) Those persons neither in favor of nor opposed to the application, may be heard.

(6) The Zoning Administrator or other representative of the City may present evidence.

(7) Those persons opposed to the application shall be heard.

(8) Parties shall have an opportunity to offer evidence in rebuttal.

(9) The Chair shall close the hearing, after which no testimony shall be allowed unless the Board votes to reopen the hearing.

(10) For good cause the Chair may continue the hearing.

H. Following the hearing, the Board may take any of the following actions:

(1) Approve the application as submitted or modified. The Board may attach reasonable conditions to the approval of any application.

(2) Deny the application.

(3) Close the hearing and defer action on the case to a subsequent meeting, subject to its bylaws and procedures.

I. The following may appear before the Board to present or oppose an application:

(1) Individual persons representing their own interests, if deemed by the Board to have a sufficient interest in the application.

(2) Individual persons representing groups of persons of whom they are a member, if the group is deemed by the Board to have a sufficient interest in the application.

(3) Individual employees or members of an association, corporation, partnership, or limited liability company, or any officer or director thereof, if the entity so represented is deemed by the Board to have a sufficient interest in the application.

(4) Any official representing a governmental body, if the government so represented is deemed by the Board to have a sufficient interest in the application. The City, whose ordinances are necessarily the subject of

every application, shall be deemed to have a sufficient interest to appear before the board at every hearing.

(5) Persons possessing a current valid license to practice law in North Carolina may represent any of the persons or entities mentioned above.

No person, group or entity may be represented by more than one person at any one hearing. This provision is not intended to limit the number of witnesses called.

J. No licensed attorney not appearing on his or her own behalf may both (1) offer testimony and (2) question any witness or argue (or both) at any one hearing.

K. The burden of proof in each case shall be as follows:

(1) In the case of an appeal, on the appellant.

(2) In any other case, on the applicant.

6. Decisions.

A. The granting of a variance shall require an affirmative vote of four board members or alternates present at the entire hearing and eligible to vote. All other decisions of the Board shall require an affirmative vote of a majority of the members present at the entire hearing and eligible to vote. Votes shall be made upon a motion to grant the relief requested. The movant is under no obligation to vote in favor of the motion. If the motion fails to achieve the required number of votes, the application shall be deemed denied without further action by the Board.

B. Written decisions containing findings of fact and conclusions of law may be approved at any time within forty-five (45) days after the initial vote. Any written decision presented to the board for final vote more than seventy days after the initial vote shall be accompanied by a written statement articulating clearly and specifically the reasons for the delay.

C. The final vote, if approving the written decision, shall be held on the following issue: "Do the findings of fact, conclusions of law and ruling contained in the

written decision accurately reflect the sense of those who voted with the decision reached in the initial vote?" Subject to the Board's bylaws and procedures, this final vote may be approved by a majority of those members attending the meeting at which the final vote is held and eligible to vote.

D. If upon an attempted final vote no majority can be reached upon the issue, the Chair shall request of the members who voted with the decision reached in the initial vote to indicate as clearly as possible for the minutes, if in the Chair's opinion they did not do so at the time of the initial vote, the criteria of the ordinance, met or unmet, upon which they based their vote, and the facts adduced at the hearing that support their conclusions.

E. When the applicant / appellant has been granted the relief requested and there has not been a third party granted standing who opposed such relief, the Chair shall have the authority to approve and execute the decision without further action by the Board.

7. Public Records.

The Board shall conform to the requirements of N.C.G.S. Chapter 132 regarding public records. Board public records are located in the offices of the Zoning Administrator, 95 West Main Street, Brevard, NC. The official custodian of the public records shall be the Board Clerk.

8. Ethics.

A. No member of the board shall 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. 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. A member who has been recused shall not sit with the Board and shall not participate in any further discussion on the matter. Refer to N.C.G.S. §160D-109 *Conflicts of Interest*.

B. Every member sitting at any hearing shall announce before the beginning of testimony of the first witness any contacts concerning the application that are not already included in the file. The announcement or inclusion in the record will include the name of the person or persons with whom the contact occurred and the substance of the entire contact; provided, however, that no member need announce such general contacts concerning the hearing itself as may be general to all members in their capacity as members.

9. Reconsideration and Rehearing.

A. No appeal, application, or other matter acted upon by the Board may be reconsidered or reheard (other than as directed by a court of competent jurisdiction), except upon motion for reconsideration by a member of the Board who voted with the prevailing side. The motion must be seconded by any member of the Board either for reconsideration or rehearing. Motions for reconsideration shall be made at the meeting, whether regular or special, immediately following the initial vote.

Provided, however, that a motion for reconsideration based on (1) presence or absence of subject matter jurisdiction or (2) a timely and credible allegation of an unreported conflict of interest may be made at any time before (a) the running of the time to file a petition for certiorari, if no such petition is filed within that time, or (b) the ruling of a superior court judge on a timely filed petition for certiorari based in whole or any part on either or both of the objections listed above.

Rehearings shall follow UDO 16.8.B.6.

10. Judicial Review.

Petitions for judicial review of any ruling of the Board shall be in accordance with N.C.G.S. § 160D-406or its successor statute.

Read, approved, and adopted by the Board of Adjustment of the City of Brevard, North Carolina, in a meeting duly called, noticed and held in Brevard, North Carolina the 1st day of October, 2024.

The following Board members voted AYE:

The following Board members voted NAY:

These bylaws shall become effective upon their adoption.

_____

Peter Offen, Chair

ATTEST:

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Janice Pinson, Clerk