

Ordinance



ITEM O5c
City Council
City of Wilmington
North Carolina

Introduced By: Anthony N. Caudle, City Manager

Date: 11/16/2021

Ordinance Adopting Rules of Procedure for the Design Adjustment Committee Created by Adoption of the New Land Development Code

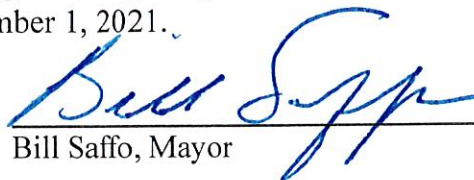
LEGISLATIVE INTENT/PURPOSE:

This ordinance is necessary due to the adoption of the new Land Development Code which will be effective on December 1, 2021. Specifically, under the new Land Development Code, the Design Adjustment Committee has been created. As a new board hearing evidentiary quasi-judicial matters adoption of Rules of Procedure by City Council is necessary prior to the Design Adjustment Committee's first meeting following the effect date of the new Land Development Code.

THEREFORE, BE IT ORDAINED:

THAT, the attached Rules of Procedure for the Wilmington Design Adjustment Committee are hereby adopted and shall be effective beginning December 1, 2021.

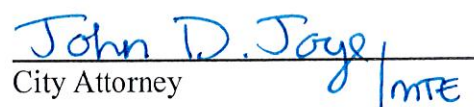
Adopted at a regular meeting
on November 16, 2021

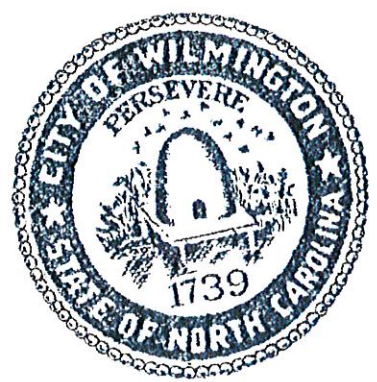

Bill Saffo, Mayor

CERTIFIED TO BE A TRUE COPY
Penelope Spicer-Sidbury
CITY CLERK

ATTEST:

Penelope Spicer-Sidbury, City Clerk

APPROVED AS TO FORM:

John D. Joyce
City Attorney



**RULES OF PROCEDURE FOR THE DESIGN ADJUSTMENT COMMITTEE
OF THE CITY OF WILMINGTON, NORTH CAROLINA**

ARTICLE I. GENERAL RULES

- Section 1. These rules are supplementary to the provisions of the City of Wilmington Land Development Code adopted on August 17, 2021, and effective December 1, 2021, establishing the Design Adjustment Committee pursuant to Section 18-619.
- Section 2. The Design Adjustment Committee (hereinafter referred to as the “DAC”) shall be governed by the applicable terms of North Carolina General Statute Chapter 160D, Article 8, and by the terms of the Subdivision Regulations adopted by the Council of the City of Wilmington.
- Section 3. All meetings of the DAC are subject to the N.C. Open Meetings Law.
- Section 4. Nothing herein shall be construed to give or grant the DAC the power or authority to alter or change the Subdivision Regulations, except as explicitly provided for in the Land Development Code.
- Section 5. The City Attorney is the legal advisor to the DAC and is responsible for retaining outside legal counsel, when necessary.
- Section 6. In cases where the powers of the DAC are not clearly defined, the City Attorney shall be consulted for an interpretation.
- Section 7. Any applicant may appear for himself/herself in a proceeding before the DAC, may appoint an agent in writing, or may be represented by a licensed attorney.
- Section 8. The DAC is sitting in a quasi-judicial capacity; however, the North Carolina Rules of Evidence do not apply.

ARTICLE II. MEMBERS, OFFICERS, AND DUTIES

- Section 1. Pursuant to Sec. 18-619 of the Land Development Code, the DAC shall consist of five members representing Planning, Engineering, Traffic Engineering, Fire, and the Cape Fear Public Utility Authority.

The department heads for Planning, Engineering, and Fire shall represent their respective departments and the City Traffic Engineer shall represent Traffic Engineering on the DAC (or their successor departments or titles as may exist in the future). The Cape Fear Public Utility Authority shall appoint a permanent representative to the DAC.

In the alternative, department heads may designate a permanent representative from their department as the DAC representative.

Each DAC member shall have a designated alternate representative who shall represent that department or position when the permanent representative is absent or has a conflict. The department head, City Traffic Engineer, or CFPUA shall appoint their alternate member and submit their name and contact information to the Secretary.

- Section 2. The officers of the DAC shall be Chair, a Vice-Chair, and a Secretary.
- Section 3. The Chair of the DAC shall be appointed by the City Manager. The DAC shall elect from among its members the Vice-Chair, and the Vice-Chair shall serve as acting Chair in the absence of the Chair; and, at such time, the Vice-Chair shall have the same powers and duties as the Chair. The Planning Coordinator position, or successor in title, shall serve as the Secretary to the DAC. The Secretary is not a member of the DAC and may not vote on any matter.
- Section 4. The Chair shall supervise the affairs of the DAC, preside at meetings of the DAC, appoint such committees and sub-committees as may be necessary to carry out the purposes of the DAC, and decide upon all points of order and procedure, subject to these Rules, unless directed otherwise by a majority of the DAC in session at the time.
- Section 5. The Secretary, subject to the direction of the Chair and the DAC, shall be responsible for the conduct of all correspondence of the Board, the professional work of the DAC, and shall generally supervise the clerical work of the DAC. The Secretary shall be responsible for keeping, in a permanent volume, the minutes of every meeting of the DAC. These shall show the record of all important facts pertaining to each meeting, every motion acted upon by the DAC, and all votes of members of the DAC upon any motion or upon the final determination of any question, indicating the names of members absent or failing to vote. The Secretary shall not be a member or alternate member of the DAC, and is not eligible to vote upon any matter.
- Section 6. The DAC members shall thoroughly familiarize themselves with these Rules of Procedure.
- Section 7. No DAC member or alternate member shall begin their duties until the oath of office has been taken.
- Section 8. No DAC member shall vote at a hearing unless they have attended the hearing on that matter.
- Section 9. No DAC member shall discuss any case with any parties thereto prior to a hearing on that matter.

- Section 10. Members of the DAC will not express individual opinions on the proper outcome of any hearing prior to the DAC's hearing on that matter.
- Section 11. The applicant shall have the right to an unbiased and non-partisan panel. DAC members shall not participate in or vote on any matter in which they have an impermissible conflict as provided in N.C.G.S 160D-109(d), A member of any board exercising quasi-judicial functions shall not participate or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial (spouse, parent, child, brother, sister, grandparent, or grandchild -- including also step, half, and in-law relationships), business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

ARTICLE III. MEETINGS

- Section 1. The DAC shall hold its regular public meetings on the third (3rd) Wednesday of each month at 1:30 pm. In the event that the regular meeting day shall fall on a recognized holiday, the DAC, by vote of its members present at a meeting preceding the holiday, shall establish an alternative date for the meeting.
- Section 2. Regular meetings may be canceled by the Secretary when there are no cases pending. Notification of cancellation must be given to the members not less than 48 hours prior to the time set for such meetings.
- Section 3. Special meetings of the DAC may be called at any time by the Chair as follows:
- (1) The Chair shall call a special meeting upon written or oral request from at least three (3) members of the DAC and further provided that such special meetings shall in no way conflict with provisions set forth in N.C.G.S 160D-406(b) and Section 18-565 of the Land Development Code.
- Section 4. All meetings shall be open to the public. Notice of hearings, where required, shall be provided pursuant to the requirements of Section 18-565 of the Land Development Code
- Section 5. A quorum shall consist of a minimum of four (4) Board members. A quorum is required for any regular or special meeting and is required for any decision, determination, or official action by the DAC on a variance, waiver, or adjustment. If a quorum is not present, the DAC members present shall continue all business to the next regular meeting.
- Section 6. The concurring vote of four-fifths of the board shall be necessary to grant a variance, waiver, or adjustment. If only four members are present for a meeting,

or if a member has a conflict and may not participate in the hearing, the applicant may request a continuance, and this request shall not be denied. No action other than a continuance may be taken on any item involving a variance, waiver, or adjustment, unless there are a minimum of four eligible voting members present to hear the variance, waiver or adjustment.

Section 7. When a DAC member is aware of an excused absence from a meeting or a conflict regarding a matter on the agenda, that member should make all efforts to have their alternate member attend the meeting so that the meeting may proceed.

ARTICLE IV. CONDUCT OF MEETINGS

Section 1. No executive or secret session shall be permitted at any time. The order of business at regular meetings shall be as follows:

- (1) Approval of minutes of previous meeting.
- (2) Consideration of continued items.
- (3) Consideration of new applications.
- (4) Other business.

Section 2. The DAC may grant a continuance only upon a showing of good cause.

Section 3. The order of consideration of each evidentiary quasi-judicial matter shall be as follows:

- (1) All parties and all people wishing to speak shall be sworn.
- (2) The City of Wilmington staff shall introduce the proposed project and members of the DAC may ask questions of City staff.
- (3) The applicant shall present their information after the conclusion of the City's presentation and the DAC may ask the applicant questions.
- (4) All parties appearing before the DAC must be given a full and fair opportunity to present their case. The City and the applicant are parties.
- (5) Cross-examination and rebuttals shall be permitted.
- (6) A ten-minute public comment period may follow and may be extended at the discretion of the Chair.
- (7) The Chair may limit repetitive and argumentative statements.

Section 4. Every person attending and appearing before the DAC shall abide by the order and direction of the Chair. Discourteous, disorderly, or contemptuous conduct by a party may be cause for the immediate continuance of the matter at hand until the next regular meeting of the DAC.

Section 5. Actions on all matters shall be governed by the provisions of Roberts Rules of Order.

- Section 6. The DAC shall receive all documents and information presented by the parties, and has the authority to determine what weight, if any, to be given to presented materials. The DAC's final determination shall be based on substantial, competent, and material evidence.
- Section 7. The DAC shall vote on any waivers requested and make sufficient findings of fact for to support each vote.
- Section 8. If final action is not taken at the meeting at which the initial discussion is heard, the Chair shall, at that meeting, schedule the item within 35-calendar days at which such final action is to be taken.
- Section 9. Decisions of the DAC shall take the form of a written Order, prepared by the Secretary of the DAC and reviewed and approved by the City Attorney, and shall include the substantial, competent, and material facts relied upon in making its determination.

ARTICLE V. AMENDMENTS AND SUSPENSION OF RULES

- Section 1. These rules may be suspended by a unanimous vote of the DAC members present at a regular meeting.
- Section 2. These Rules may only be amended by approval of the City Council, upon the recommendation of a majority of the members of the DAC. The proposed amendment must be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

The foregoing rules and regulations are hereby adopted by the Wilmington City Council on _____, 2021. A copy of said rules shall be filed with the City Clerk, with copies provided to the Secretary for the Design Adjustment Committee and to the City Attorney's Office.