RESOLUTION

ADOPTING THE RULES OF PROCEDURE FOR THE TOWN OF GREENEVILLE BOARD OF ZONING APPEALS

WHEREAS, in accordance with Tennessee Code Annotated 13-7-205, the Town of Greeneville is authorized to establish a Board of Zoning Appeals;

WHEREAS, the Town of Greeneville Board of Zoning Appeals (Board) is established under the provisions in the Greeneville Zoning Ordinance, Article XI, Section 1101;

WHEREAS, the Board of Mayor and Aldermen has adopted rules to govern the organization, procedure, and jurisdiction of the Board in Article XI of the Zoning Ordinance; and

WHEREAS, the Board shall adopt these supplemental Rules of Procedure in accordance with Tennessee Code Annotated 13-7-205(b)(1) and (2), and as provided in Section 1103 of the Greeneville Zoning Ordinance;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF GREENEVILLE BOARD OF ZONING APPEALS AS FOLLOWS:

1. The Board of Zoning Appeals hereby adopts the Rules of Procedure, which are attached and incorporated as "Exhibit A" hereto.

THIS RESOLUTION SHALL BE EFFECTIVE IMMEDIATELY UPON ADOPTION

SIGNED, SEALED AND DELIVERED AS OF THIS 16TH DAY OF FEBRUARY, 2016

Vice- Chair, Board of Zoning Appeals, Town of Greeneville, TN
Bob King

ATTEST:

Secretary, Board of Zoning Appeals, Town of Greeneville, TN

Exhibit A

TOWN OF GREENEVILLE

BOARD OF ZONING APPEALS

RULES OF PROCEDURE

1. PURPOSE

The purpose of these rules is to provide for the orderly disposition of the business of the Greeneville Board of Zoning Appeals (Board) by codifying the means by which that business is to be transacted. As supplementary to the general rules to govern the organization and procedure and jurisdiction of the Board established by the Board of Mayor and Alderman in the Zoning Ordinance, these rules specify the procedure in situations not covered by the Zoning Ordinance and the Municipal Code with respect to the duties and functioning of the Board. All references made in these rules to the "Zoning Ordinance" mean the Zoning Ordinance of the Town of Greeneville. All references to "party" or "parties" mean aggrieved persons who are appealing from decisions made by the zoning enforcement officer or designee (under strict application of the Zoning Ordinance), and aggrieved persons who are seeking a decision by the Board on some matter over which the Board has jurisdiction. Generally, an "aggrieved person" as used herein is any person whose legal rights or interests or property would be detrimentally affected by an action taken by the zoning enforcement officer.

2. AUTHORITY

These rules are adopted pursuant to the authority vested to the Board by Tennessee Code Annotated §13-7-205, Article XI of the Zoning Ordinance, and the Sign Ordinance of the Town of Greeneville.

3. APPLICATION

3.1. Any person who wishes to appeal to the Board under the provisions of the Zoning Ordinance and the Sign Ordinance must do so on a form provided for that purpose by the Department of Planning, Building and Development. An appeal to the Board may be taken by any person, firm or corporation aggrieved, or by any governmental officer, department, board, or bureau affected by any decision of the Building Official based in whole or in part upon the provisions of this Rules of Procedure. An appeal must be made to the Board within 30 days of the date of the decision of the Building Official, and by 5:00pm Eastern Time on the 20th of a month in order for the item to be considered by the Board at its regular meeting in the following month.

3.2. If a property owner or representative intends to place a request before the Board for consideration such shall consult the Town Planner or designee of the Building Official. If the Town Planner or such designee determines that the request involves one or more items authorized for consideration by the Board as provided in the Zoning Ordinance or the Sign Ordinance, then the Town Planner or said designee shall generate an application number for the intended request, place the number on the application form for Board of Zoning Appeals Submittals, and provide the application to the property owner or representative for completion. The Town Planner or designee of the Building Official shall reject and not placed on the docket any request that is not authorized for consideration by the Board.

3.3. An accepted application shall be placed on a docket for hearing in chronological order, unless, the Board orders otherwise pursuant to the Zoning Ordinance or these rules.

3.4. All applications must be accompanied by a scaled drawn site plan or a plo plan showing accurate measurements between structures and from property lines. Site plans shall be drawn on a size not less than 8 $^1/_2$" x 11" nor large than 11" x 17" and conform to the following standards:

3.4.1. Site plans for uses other than one or two family residential and day care homes shall be drawn to an engineer's or surveyor's scale and be of professional quality.

3.4.2. All sign applications shall be accompanied by a drawing showing the proposed elevation and dimensions.

3.4.3. The Board will also accept electronic site and elevation drawings submitted in Adobe Acrobat (PDF). All electronic copies should be eligible at standard 100%-page zoom.

3.4.4. Appellants to the Board shall provide all required information and pay required review fee to the planning staff by the filing deadline Cases will not be placed on a docket by the Town Planner until all required documents are provided and the review fee is paid. A checklist will be provided by the planning staff to aid in the submittal process.

3.5. Submittals: In order to provide information to the Board in a timely manner, any drawings, letters, emails, or other documentation that appellants, proponents or opponents want the members of the Board to read prior to the public hearing, must be received by the staff of the Board no later than four (4) calendar days at 5:00pm prior to the public hearing. Documentation provided within the time listed above will be forwarded by the staff to the members of the Board. The Board reserves the right to make any documents submitted to it part of the Town's public records.

3.6. The application fee shall be double that set by the Board of Mayor and Aldermen for Board of Zoning Appeals submittals if an applicant files an acceptable application with the Board after construction has begun or the object of the request was constructed without applicable approval of the Board of Zoning Appeals.

4. WITHDRAW OR FAILURE TO APPEAR

4.1. Application fees are non-refundable. However, any appellant may withdraw their application once, without prejudice, at any time prior to the public hearing on the case. The withdrawal must be made in writing to the Board through the Town Planner or designee of the Building Official.

4.2. If a second application is withdrawn, the withdrawal shall be with prejudice; the Board will not consider, and the Department of Planning, Building and Development shall not accept for filing, the same or similar application by anyone relating to the same property for six months from the date of the withdrawal.

4.3. In any case where the appellant has failed to appear, the Board shall dismiss the application for lack of prosecution. The appellant will be eligible to re-apply and shall pay a new filing fee and the case will be re-advertised for the next available docket after dismissal.

5. RES JUDICATA

5.1. The Board shall not consider and the Department of Planning, Building and Development shall not accept for filing, any application for a variance or a special exception permit which requests the same or similar previously denied relief which involved the same property, regardless of who makes the application for a period of time of six months unless the Board establishes a different period of time in the case decision.

5.2. The Board shall not consider, and the Department of Planning, Building and Development shall not accept for filing, any appeal for a declaration of non-conforming status which has been heard on a previous application, regardless of who filed the appeal, within a period of time of six months of a denial.

5.3. Any decision made pursuant to Subsections 5.1 to 5.2 above may be appealed to the Board on a case-to-case basis. The Board can disallow future re-filings of the same request if the Board finds the appellant failed repeatedly to prove their case.

6. CONFLICT OF INTEREST

6.1. Any member of the Board who has a personal interest as defined in the Greeneville Municipal Code §1-1902 in any property which is the subject matter of, or affected by, a decision of the Board shall be disqualified from participating in the discussion, decision, and/or proceedings of the Board. Such member shall declare the conflict before the Board begin the hearing on the matter, shall recuse himself or herself from the discussion and decision on the matter, and shall leave the room when the matter is discussed and decided upon. The recusal shall be entered into the acts of the Board.

6.2. Generally, Board members shall conduct themselves in accordance with the Standards of Ethics established in Title 1, Chapter 19 of the Greeneville Municipal Code.

6.3. Ex Parte Contact: It shall be the policy of this Board that no member shall discuss the merits of any pending case with any person having an interest in the case prior to the public hearing. Furthermore, any interested party wishing to provide written information to the Board prior to the public hearing (including electronic communications) shall place such information only in the public record through the staff of the Board, and the interested party shall be allowed to provide the information directly to a Board member only during the Board's meeting.

7. PROCEDURE

7.1. All meetings of the Board shall be open to the public pursuant to T.C.A. §8-44-101, et seq.

7.2. The regular meetings of the Board shall be scheduled for 9:30am on the second Tuesday of the month unless otherwise changed by the Board. In cases where meeting dates conflict with holidays or political elections, the Board may schedule only one meeting within a twenty-eight (28) day cycle to avoid conflict with this date. Meetings shall be held in the G. Thomas Love Boardroom at the Greeneville Light and Power Systems Building in Downtown Greeneville located at 110 N. College St. unless an alternate site is needed due to circumstances beyond the control of the Board's staff.

7.3. The presence of five (5) members of the Board shall constitute a quorum and a quorum must be present to vote on any case.

7.4. Pursuant to Article XI, Section 1102 of the Zoning Ordinance, the Board, acting by and through its Chairperson may upon the request of a party, compel the attendance of witnesses and the production of books, papers, and records pertinent to a case in order to find facts and statements of material evidence as the Board may deem pertinent. Any party requesting the attendance of witnesses through the Board's staff must do so at least five (5) working days prior to when the Board shall hear the case. The Board reserves the right to require the submission of any documents on a case before it before it would rule on the case. Any witness testifying to the Board shall state his or her name and resident street address for the records.

7.5. If the Board determines that false information has been presented to it, the Board reserves the right to reconsider its decision.

8. HEARING

8.1. The Board shall not hear a case unless the appellant or a representative authorized by the appellant in writing is present at the hearing.

8.2. A public hearing is deemed to have begun after the person chairing the Board's meeting has called the case on the docket and the applicant has indicated that he or she intends to proceed with the request.

8.3. Each case shall be taken in the order listed on the agenda unless otherwise changed by the Board at the beginning of the meeting for a cause approved by a majority vote of the Board constituting a quorum. After the chairperson of the meeting declares the public hearing is closed, no one will be allowed to speak to the matter unless the Board re-opens the case. The Board may prompt a discussion with any interested party for purposes of clarification.

8.4. Addendum items shall be heard in the following manner:

8.4.1. Those cases that were deferred by the Board prior to the public hearing, at the request of an appellant shall be heard at the end of the regularly scheduled docket when rescheduled.

8.4.2. The Board, when deferring a case without a request from the appellant after opening the public hearing, shall indicate in the motion to defer whether the item will be taken up at the front or the rear of the docket on the date it is rescheduled.

8.4.3. All other business, such as cases tied up on votes, requests for rehearing, and other business before the Board, shall be taken up at the rear of the docket unless it is determined that the necessity for participation of particular members is required at a specific time during the course of the public hearing to conduct the business of the Board.

8.4.4. The Zoning Ordinance shall be considered a part of the record in every case coming before the Board. Relevant sections will not be read verbatim into the record unless requested by a party at the hearing in which the specific matter is heard by the Board. The Zoning Ordinance will be made a part of the proceedings before the Board upon any appeal to Courts of Law or Equity as if read verbatim into the record.

8.4.5. The Board will base its decision only on information presented in public hearing and in the record; however, a Board member at his/her option, may visit a site that is the subject of an appeal to gather information. Said visit shall be disclosed in the public hearing and when disclosed, any information relied upon by the Board member shall be entered into the record by the Board member.

8.4.6. Upon calling of the case by the chairperson:

8.4.6.1. The Board staff shall

A) Briefly explain why the case is before the Board, including relevant Zoning Ordinance sections;

B) Present maps and photographs, and other exhibits, if necessary; and

C) Provide a statement as to the Department of Planning, Building and Development's position regarding any case involving a non-conforming use or interpretation – in other matters, the Department may take a position if it so desires. If staff take a position and makes a recommendation in writing, staff shall be required to state the recommendation orally at the Board's meeting.

8.4.6.2. The appellant or appellant's representative shall present their case, including:

A) The name of the appellant or representative

B) A statement of why the appellant believes the relief sought be granted; and

C) Any witnesses in support of the application.

8.4.6.3. Opponents shall present their case, including:

A) The opponent's name;

B) A statement of why the opponent believes the relief sought should not be granted, and

C) Any witnesses in opposition to the application

8.4.6.4. Time Limits on Testimony

A) If there is no opposition, the appellant shall have 10 minutes to present their case.

B) If there is opposition present, the appellant along with those persons in support shall have 15 minutes in total to present their case. Any rebuttal time the appellant may wish to retain would come from those 15 minutes. Any persons appearing in opposition to the request shall have 15 minutes total to present their case immediately following the close of the appellant's testimony.

C) At least four (4) calendar days before the hearing, either the appellant or opposition may petition the Board for additional time for case presentation. The petitioner must state what extenuating circumstances exist that would prevent the petitioner from completing their case record in the allotted time.

D) Each side of the case would enjoy equal time should the Board grant such a request.

8.4.6.5. Any member of the Board may directly question a witness a any time during their testimony.

8.4.6.6. All exhibits presented to the Board for consideration must b submitted as evidence and made a part of the record unles the Board otherwise deems it unnecessary. All bulky exhibit presented to the Board must be accompanied by an electroni copy of the exhibit and submitted on a suitable size for recor by the person presenting the exhibit.

8.4.6.7. Upon the conclusion of all of the testimony and evidence, th public hearing will be closed and no further evidence may b admitted except as the Board may permit on motion.

9. CASE DECISION

9.1. Upon the conclusion of the public hearing of each case, the Board shal discuss and vote on that case.

9.2. After discussion by the members and upon motion, an application shall be granted or denied if the motion receives a majority of the votes of the Board members constituting a quorum and acting on the case.

9.3. A case shall be deemed denied by the operation of law in the event that there is failure to receive a majority affirmative votes within sixty (60) days of the first public hearing when a quorum is present.

9.4. In any decision made by the Board on an application:

9.4.1. For a Variance:

9.4.1.1. The Board shall indicate the specific section of the Code under which the variance is being considered, and shall state its findings beyond such generalities as "in the interest of public health, safety and general welfare" or "the variance will not substantially impair the intent and purpose of the Zoning Ordinance."

9.4.1.2. The Board shall specifically identify and place on record the hardship warranting the granting of a variance. Difficulty or hardship shall be limited to exceptional narrowness, exceptional shallowness, exceptional shape, exceptional topographic conditions, or other extraordinary and exceptional situation or condition as provided in T.C.A §13-7-207(3).

A) "Exceptional" shall mean the physical condition or feature of the property is uncommon or unique to itself in the general vicinity of the subject property. The area described as "general vicinity" shall be determined by the Board on a case-by-case basis following the prevailing character of the area surrounding the subject property.

B) "Narrowness" shall apply to the width of the subject lot.

C) "Shallowness" shall apply to the depth of the subject property.

D) "Topography" shall apply to the gradient or slope of the land in the general vicinity.

E) "Other extraordinary or exceptional situation or condition" of a piece of property shall apply to natural features on the property such as a creek or sinkhole or other natural conditions as determined by the Board. Factors such as the size of a property, personal considerations, pecuniary benefits, aesthetic preferences, historical importance, insinuation of public good, and proximity to inconsistent uses (boundary of zone district, non-conforming use, and property previously given variance or other relief) shall not qualify as reasons for authorizing or granting a variance.

9.4.1.3. For reasons fully set forth in the findings of the Board, the circumstances or conditions set forth in subsection 9.4.1.4 above are such that the strict application of the provisions of the Zoning Ordinance would deprive the applicant of any reasonable use of his land. Mere loss in value shall not justify a variance; there must be a deprivation of beneficial use of land.

9.4.1.4. Variances shall not be granted to allow a use otherwise excluded from the particular district in which the subject property is located; nor shall a variance be granted which will alter the density standards established by the Zoning Ordinance. Requests for hearings by the Board involving these two cases shall not be placed on the Board's docket.

9.4.1.5. Any variance granted under the provisions of this Section 9.4.1 shall be the minimum adjustment necessary for the reasonable use of the land.

9.4.1.6. The Board of Zoning Appeals shall have no authority to consider reductions in the number of trees or shrubs, or the total area of landscaping required in the Greenspace Provisions of the Town, and any request for such reduction shall not be placed on the Board's docket. Request to increase the permitted size of signs shall likewise not be considered by the Board, and the Board's staff shall not place it on the Board's docket or agenda.

9.4.1.7. The Board reserves the right to attach conditions to variances, and shall specify such conditions when necessary in the motion.

9.4.1.8. Upon the expiration of three (3) years from the authorization hereunder of any variance for consideration which has not been completed or commenced and an extension of time for completion granted, the authorization shall expire. Variances or special exceptions previously granted by the Board prior to the adoption of this section shall not be subject to this time limitation.

9.4.1.9. To insure that all parties that may be specially affected by the Board's decision will be notified in the case of a variance request, the appellant shall prepare and submit with his or her application stamped unsealed envelopes equal in number to the number of properties within two hundred (200) feet of the property lines of the subject property. The Town Planner or designee of the Building Official shall, with these envelopes, send by ordinary mail notices to the property owners within the 200ft radius at least ten (10) calendar days before the Board

holds its hearing. "Property owner" as used here shall be the current name on the tax records of the property as verified in the Recorders Office, or the Greene County Property Assessor Office for property outside of the corporate limits of the Town of Greeneville.

9.4.2. For a special exception or conditional use permit:
The record shall indicate the specific section of the Zoning Ordinance under which the permit is being considered, shall state the Board's findings beyond such generalities as "in the interest of public health, safety and general welfare," or "the special exception does not impede the intent and purpose of the Zoning Ordinance," and that the application meets all conditions established in the Zoning Ordinance. The record shall also state clearly any other specific conditions imposed in granting such permit.

9.4.2.1. All special exception uses approved by the Board are based on the site plan and other evidence submitted to the Board at the time of consideration of the matter. If the staff of the Board determine that a deviation from the site plan has occurred such that the deviation would have affected the Board's decision if it had been included at the time of hearing, then the deviation would require Board action.

9.4.2.2. To insure that all interested parties will be notified in the case of special exception, the appellant shall prepare and submit with his or her application stamped unsealed envelopes equal in number to the number of properties within two hundred (200) feet of the property. The Town Planner or designee of the Building Official shall, with these envelopes, send notices to the property owners within the 200ft radius at least ten (10) calendar days before the Board holds its hearing. "Property owner" as used here shall be the current name on the tax records of the property as verified in the Recorders Office, or the Greene County Property Assessor Office for property outside of the corporate limits of the Town of Greeneville.

9.4.2.3. Upon the expiration of three (3) years from the authorization hereunder of any special exception for consideration which has not been completed or commenced and an extension of time for completion granted, the authorization shall expire. Special exceptions previously granted by the Board prior to the adoption of this section shall not be subject to this time limitation.

10. POST HEARING REQUESTS

10.1. Request for rehearing:

10.1.1. Any aggrieved party may, within sixty (60) days of the public hearing, request a rehearing in a case they were present at the hearing.

10.1.2. No such request to grant a rehearing shall be considered, unless new evidence is submitted which could not have reasonably been presented at the previous hearing.

10.1.3. The request must be in writing and it must recite with specificity the new evidence and the reasons for the request. The request may be accompanied by plans or diagrams, if necessary.

10.1.4. A request for a rehearing shall be acted upon by motion of a member of the Board who voted in the majority as to the disposition of the case.

10.1.5. The affirmative vote of four (4) members for the motion is necessary to grant a rehearing. Failure to obtain four (4) votes shall be deemed a denial.

10.1.6. If the request is denied, an appropriate order shall be prepared by the Secretary and sent to the parties making the request.

10.1.7. If the request is granted, an appropriate order shall be prepared by the Secretary, a copy shall be sent to all the parties and the case will be set for another public hearing - upon receipt of a new filing fee by the moving party and the publication of the case in a newspaper of general circulation as required in State Law.

10.2. Appeal of Board's Decisions:

Any aggrieved party may within 60 (sixty) days of the entry of an order appeal a finding of the Board in accordance with T.C.A 27-9-101 et seq.

11. ENTRY OF ORDERS

11.1. As soon as possible after the decision of the Board in a particular case, the Secretary shall enter an order describing the action taken, the reasons, therefore, and vote.

11.2. When the minutes of the Board containing the action taken are approved by the Board, the order shall be dated and signed by both the Chair or Vice-Chair and the Secretary. Any written record of the proceedings of the Board shall not be considered the acts of the Board unless such a record is approved by a majority vote of the Board when a quorum is duly present.

11.3. After the Order has been duly executed, a copy shall be placed in the Board's file, and in the Map and Parcel records of the Department of Planning, Building and Development.

11.4. A copy of the Order shall be sent to the appellant informing them of the decision of the Board.

12. MINUTES AND RECORDS

Each action of the Board shall be recorded with an order and supporting documentation retained in the appeal file. The entire proceedings shall be recorded and that record shall be retained a minimum of three (3) years following a final decision by the Board. All such records shall be available to the public in the Town of Greeneville Recorder office.

13. SPECIAL MEETINGS

A special meeting may be called by the chairperson or upon the written request of four (4) or more members of the Board. Written notification of the time, place and purpose of the meeting shall be delivered to each member of the Board at least five (5) days prior to the meeting. At a special meeting, only the business designated as the purpose of the meeting may be transacted. Where public notices for a specified period are required by Tennessee State Law, a

called meeting shall be held only when the public notice has been provided fc at least the required timeframe.

14. ELECTION OF OFFICERS

14.1. The Board shall elect from its members a Chair who shall head th operations of the Board, a Vice-Chair who shall assist the chair in his c her function, a Secretary who shall record the acts of the Board, and a Alternate Secretary who shall assist the secretary in his or her functions and all four officers shall all serve for one (1) year. Elections shall be hel in September.

14.2. A majority of the voting members present shall be required to elect member to the position.

15. AMENDMENTS

These rules may be amended at any regular or special meeting of th Board by a positive vote of a majority of members present and constituting quorum, provided the amendment has been delivered to all members at leas ten (10) days prior to the meeting.

16. INTERPRETATION OF THE BOARD'S RULES

16.1. The Board is the final authority as to the meaning of these rules.

16.2. These regulations may from time to time be amended, supplemented changed, or rescinded by the Board at its regular or special meetings.

17. SAVING PROVISION

These rules shall not be construed as abating any action now pending under, or by virtue of prior action of the Board, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the municipality under any section or provision existing at the time of adoption of these regulations, or as vacating or annulling any rights obtained by any person, firm, or corporation by lawful action of the Board, except as may be expressly provided in these regulations.

18. SEVERABILITY

If any part or provision of these regulations or application thereof to any person or circumstances is adjudicated invalid by any court of competent jurisdiction, such judgement shall be confined in its operation to the part, provision, or application directly involved in the controversy where such judgement shall have been rendered and shall not affect or impair the validity of the remainder of these rules or the application thereof to other persons or circumstances. The Board hereby declares that it would have enacted the remainder of these rules without any such part, provision, or application.

19. FILING AND EFFECTIVE DATE

These rules shall become effective after adoption by a majority vote of members of the Board constituting a quorum at a regular meeting, and shall be filed with the Town Recorder.

20. REPEAL OF PREVIOUS RULES OF PROCEDURE

Any other Rules of Procedure previously adopted by this Board are hereby repealed.

Approved and adopted on this 16th day of February, 2016.

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Vice- Chair, Board of Zoning Appeals, Town of Greeneville, TN
Bob King

ATTEST:

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Secretary, Board of Zoning Appeals, Town of Greeneville, TN