

MARICOPA COUNTY BOARD OF ADJUSTMENT BYLAWS

The Maricopa County Board of Adjustment (Board) is created by the Maricopa County Board of Supervisors pursuant to A.R.S. § 11-816.

ARTICLE I. MEMBERSHIP; CONFLICT OF INTEREST; ATTENDANCE

- (a) The Board is composed of five (5) appointed members; one (1) from each of the five (5) Supervisor Districts in which he/she is a resident. The appointments shall be for staggered terms of four (4) years each. The election of officers shall occur at the first regular hearing of the calendar year or as soon thereafter as possible.
- (b) Members are expected to attend Board meetings/hearings and serve on committees as required. They may also serve as an officer of the Board. Members will be notified beforehand of each meeting/hearing and provided the agenda. Members are expected to make decisions on the cases before them based on the facts and merits of each case.
- (c) The Board of Supervisors shall have the authority to remove any member for cause. Should a member wish to resign from the Board prior to the expiration of their term, a written letter of resignation must be submitted to the elected Supervisor who represents the district from which the member was appointed, with copy to the Clerk of the Board of Supervisors and the Planning and Development Department. Vacancies will be filled through appointment by the Board of Supervisors for the unexpired term of the vacant member.
- (d) Any member of the Board with a "remote" or "substantial" interest in the outcome of any application brought before the Board, as defined in ARS Section 38-502, shall make that interest known, and the minutes of that hearing shall record that the member made such fact known. The member shall refrain from voting or in any way participating in that matter, and shall remove themselves from the dais while such matter is being considered.
- (e) In addition to the conflicts of interest outlined in this Article, any member who feels that for personal reasons they should not participate in an application before the Board, may refrain from voting or participating in that application without stating their reasons for doing so.
- (f) Should a member have any concern regarding a potential conflict of interest, the member shall contact the Chair and the County Attorney's Office to discuss all concerns and receive advice on the situation prior to the meeting. Should the County Attorney have any concerns regarding a

potential conflict of interest, they shall discuss the situation with the member and the Chair.

- (g) It is the responsibility of each Board member to attend regularly scheduled Board meetings/hearings. It is expected that each Board member attend a minimum of seventy-five (75) percent of noticed meetings/hearings over any six (6) month period. If a Board member does not meet the minimum requirement, the Chair may contact the member to discuss the situation. A majority of the Board members may also direct the Chair to contact any member about their attendance at the required number of meetings/hearings.
- (h) If after consultation with that Board member their attendance does not improve over the next six (6) month period, the Chair shall report the matter to the Board of Supervisors member whose district that individual represents. The Board of Supervisors is authorized to remove a member for cause.

ARTICLE 2 OFFICERS

- (a) The Chair will have the following duties, responsibilities and privileges:
 - 1. Call special meetings if necessary;
 - 2. Preside at meetings/hearings of the Board;
 - 3. Generally supervise the conduct and affairs of the Board;
 - 4. Rule on all procedural questions;
 - 5. Call for motions on all matters considered by the Board, but only after interested parties and all members present have had a reasonable opportunity to be heard;
 - 6. Participate in the discussion and vote on all matters, including the right to make or second a motion.
 - 7. Limit the number of people permitted to speak on any matter before the Board, and shall limit the time allotted to each speaker to a maximum of 10 minutes, and rebuttal shall be limited to a maximum of 5 minutes, provided that such limitation shall nonetheless result in a full and fair hearing on all relevant issues.
 - 8. Decide all points of order or procedures unless otherwise directed by a majority of the Board in session at the time.

Any ruling of the Chair may be reversed by a majority vote of the Board.

- (b) The Vice-Chair shall perform the duties of the Chair during their absence. In the event that both the Chair and the Vice-Chair are absent, then the members present shall choose one from among their numbers to be Chair pro-tem of the hearing prior to taking official action on items.
- (c) The Chair and Vice-Chair shall be elected annually by members of the Board. Any Officer may serve consecutive terms.

ARTICLE 3. BOARD OF ADJUSTMENT HEARINGS

- (a) All meetings and hearings of the Board of Adjustment, regardless of type, shall be noticed in accordance with the Open Meeting Law (A.R.S. § 38-431.02).
- (b) Public meetings/hearings by the Board shall be held once a month on a Thursday.
- (c) Board meetings/hearings are held in the Maricopa County Board of Supervisors' auditorium at 205 West Jefferson, unless otherwise directed by the Chair. Board hearings shall start at 10:00 A.M. local time.
- (d) Notices of meetings/hearings shall be conveyed by the Planning and Development Department to each member at the address furnished by them, which shall set forth matters coming before the Board at the meeting/hearing. Nothing contained herein shall be construed as limiting the ability of any member to waive any failure of proper notice. Appearance by a member at a meeting/hearing without objection shall constitute waiver by that member of any defect in notice.
- (e) A majority of the duly appointed members of the Board shall constitute a quorum for the transaction of business, and a majority vote of the quorum shall be required for any official action. However, any interpretation of the zoning ordinance by the Board shall receive at least three (3) affirmative votes.
- (f) Except for the election of officers, which shall be by secret ballot upon the request of any member, all votes shall be by voice vote or by roll call.
- (g) Minutes and records of all resolutions, transactions, findings and determinations shall be kept by the Planning and Development Department. The vote of each member shall be recorded with each motion and the minutes, records, resolution, transactions, findings and determinations shall be public record.
- (h) All meetings/hearings shall be conducted according to Robert's Rules of Order, as amended. In any instance where there is a conflict between these Bylaws and Robert's Rules of Order, these Bylaws shall control.

- (i) When an application is advertised and scheduled for public meeting/hearing, the application may be heard and acted upon on the record regardless of whether any person in favor of or in opposition to the application appears at the hearing.
- (j) Each application shall be considered in the following order:
 - 1. The Chair states the item number and calls the Planning and Development Department Director or their designee to summarize the case;
 - 2. The Chair calls on the applicant or their representative to speak in support of the application;
 - 3. The Chair calls on other persons in favor of the application to speak on its merits.
 - 4. The Chair calls on those opposed to the application to speak on its deficiencies;
 - 5. The Chair may call on the applicant for rebuttal of opposition
- (k) All questions and comments must be directed through the Chair to present general discussion between those in favor of the application and those in opposition.
- (l) Members from the districts in which applicable cases are located shall, if present, have the first opportunity to offer motions to approve/deny/continue such cases.
- (m) The Chair may enforce any rule adopted by the Board, including the right to clear the hearing room of spectators if the spectators fail to abide by any admonitions or rulings made by the Chair in an effort to keep order at such hearings. Public demonstrations of any kind by principals, witnesses, or spectators at any meeting/hearing before the Board, including cheering, booing, hand clapping, or the interruption by remarks from the audience shall be strictly forbidden, and any person or persons who participate in such conduct after having once been admonished for such conduct, shall be subject to removal from the hearing room by order of the Chair.
- (n) The Chair shall have the right to define the issues to be considered at any meeting/hearing of the Board. Any question asked, or any answer given, which is not within the issues so defined, may be stricken by the Chair and as a result be disregarded by the Board in making a decision.
- (o) At the initial meeting/hearing for an application no action will be considered other than continuation unless there is a personal

appearance at the hearing by the applicant or a designated representative, or the item is on the Consent Agenda.

- (p) If previously continued, an application may only be considered for an additional continuation if the applicant or a designated representative appears in person at the hearing or unless the item is on the Consent Agenda. The Board retains the right to deny any continued application where the applicant or designated representative fails to appear in person.
- (q) An appeal for a rehearing can only be granted by a motion to reconsider from a member who voted with the majority on a previous action, and at least three (3) affirmative votes by Board members find that the applicant discovered new evidence or that the interests of fundamental fairness would be served. Staff shall be authorized to determine if new evidence has been submitted. An applicant may appeal Staff's determination to the Board.
- (r) Except as noted in paragraph 'q' of this article, an application for the same request may not be submitted to Planning and Development Department for one year from the Board's original judgment. Within said year, an application can only be considered by the Board if the new application is substantially different from the original request.
- (s) Only Board members and staff are permitted to examine or cross-examine any person appearing as a witness in any such meeting/hearing.
- (t) The Board may prescribe, in connection with granting a request, such conditions as deemed necessary to fully carry out the provisions and intent of the Maricopa County Zoning Ordinance. Where such conditions are violated or not complied with the application shall be deemed to have been denied. An applicant shall have the opportunity to apply for a single time extension to a time sensitive condition not to exceed sixty (60) days.
- (u) No action of the Board shall set a precedent. Each case shall be decided upon its own merits and upon the circumstances pursuant thereto and according to law.
- (v) Ex parte contact is prohibited. Any ex parte contact with a member shall be disclosed by that Board member at the hearing prior to a hearing of the case in question. Communication between Board members and Department staff is not considered ex parte communication.
- (w) Every matter on which the Board is authorized or required to act shall be presented through the Planning and Development Department and include a written staff report. Staff reports and presentations shall not contain recommendations for action. However, conditions of approval for Board consideration are acceptable.

- (x) A continuance agenda may be prepared for items recommended for continuance by staff or upon request by the applicant. These items may be moved for continuance either indefinitely or to a date certain.
- (y) Code Enforcement Review includes items that have been filed as an appeal of a Hearing Officer decision related to Code Enforcement Violation cases. The appellant will present information to the Board regarding the basis for the appeal. The Board is limited to affirming the decision of the Hearing Officer or remanding the case due to a procedural error.
- (z) A consent agenda may be prepared for routine cases with a recommendation for approval if no opposition exists. Any member may remove a case from the consent agenda for complete presentation and consideration. Items shall be removed from the consent agenda if there is opposition present to speak.
- (aa) A regular agenda may be prepared for all unfinished and/or new business items. Unfinished business is consideration of all matters continued from a previous meeting, and new business constitutes a public hearing on any new matter. Regular agenda items receive a complete presentation from staff and a full public hearing.

ARTICLE 4: ORDER OF BUSINESS

- (a) Call to order
- (b) Roll Call / Attendance
- (c) Announcements from the Chair
- (d) Approval/postponement of the minutes of the previous hearings(s)
- (e) Continuance Agenda (cases presented in numerical order)
- (f) Consent Agenda (Cases presented in numerical order)
- (g) Code Enforcement Review
- (h) Regular Agenda (Cases presented in numerical order)
- (i) Other business for discussion
- (j) Adjournment

ARTICLE 5: ANALYSIS OF REQUESTS

- (a) The applicant must demonstrate that due to a peculiar condition of the specific property, enforcement of the zoning regulation would impose a hardship on the property owner.
- (b) The applicant must demonstrate that the relief can be granted without causing a negative impact on the general intent and purposes of the Maricopa County Zoning Ordinance.
- (c) The physical condition and hardship shall not be self-created; financial hardship and aesthetic considerations are not justification for a variance.
- (d) The applicant's reliance upon a permit subsequently determined to have been issued in error may be grounds for relief if there has been substantial reliance upon the permit.

ARTICLE 6: OTHER ITEMS

- (a) The Board of Adjustment Bylaws, in whole or any part thereof, may be amended at a Board hearing provided there are at least three (3) affirmative votes and after not less than a three (3) day notice has been given to all Board members. A copy of the proposed amendment(s) shall be provided and require the concurring vote of a majority of the quorum to become effective.
- (b) The Board shall give Staff authority to adopt procedures which include such items as the Board's docket, agenda, and conduct of meetings including order of business, executive sessions, committee meetings, court appeals, and record keeping.
- (c) Committees of the Board shall be created on an as needed basis by majority vote of the Board. The Chair shall appoint committee Members and the committee Chair. The committee Chair will preside at committee meetings and be the contact person for Staff regarding committee issues. All committee meetings shall be noticed in accordance with the Open Meeting Law (A.R.S. § 38-431.02).

ARTICLE 7: DRAINAGE REVIEW BOARD

- (a) Board members shall also serve as members of the Drainage Review Board.
- (b) The Bylaws of the Board shall also apply to the Drainage Review Board except as identified in the Article.

- (c) The Drainage Review Board shall hear appeals of decisions by the Drainage Administrator. The Drainage Review Board shall either affirm or reverse the decisions of the Drainage Administrator.

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