

# Board of Adjustment



## ● ● Supplemental Rules and Procedures

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Supplemental Rules and Procedures, as adopted October 29, 1985, and amended December 7, 1993, and January 3, 1996.

#### Supplemental Rules and Procedures

##### I. Authority, Powers, and Duties

- A. These Supplemental Rules and Procedures are adopted by the Board of Adjustment of the County of Boulder ("the Board") pursuant to the authority provided in C.R.S. §§ 30-28-117 and -118, and Article 2, 3, and 4 of Boulder County Land Use Code ("the Land Use Code").
- B. The powers and duties of the Board shall be as provided in the pertinent sections of Articles 2, 3, and 4 of the Land Use Code, a copy of which is attached to and incorporated into these Rules as Exhibit A.

##### II. Membership, Appointments, and Officers

###### A. Membership, Selection, and Term

(See the relevant provisions in Article 2 of the Land Use Code, Exhibit A hereto.)

###### B. Vacancy

In the event of vacancy on the Board, the Board of County Commissioners shall point a replacement to serve out the unexpired term within 30 days after such vacancy, or as soon as practicable. During any period of vacancy the Chair of the Board shall name an alternate member to fill the vacant seat.

###### C. Removal

The Board of County Commissioners may remove a member of the Board of Adjustment from office only for cause, upon written charges and after a public hearing. The Board of County Commissioners shall provide notice of written charges and of the public hearing to all members of the Board of Adjustment and to the charging party in advance of the public hearing.

###### D. Officers

- (1) A Chair and Vice-Chair shall be elected annually by a majority of the membership of the Board. The Chair shall be responsible for conducting all meetings and hearings of the Board. The Vice-Chair shall substitute for the Chair in the absence of the Chair. In the absence of the Chair and Vice-Chair, a majority of the Board present at the meeting shall vote to appoint an acting Chair for that meeting.
- (2) The County Land Use Director, who also serves as the County Zoning Administrator ("the Director"), shall be the Secretary to the Board. It shall be the Director's responsibility to prepare necessary forms, received and review applications, schedule meetings and hearings of the Board, publish notice, notify property owners and other interested persons, prepare agendas, keep the official records of the Board, and do such other administrative acts as are required by the Board and these Rules.

### III. Meeting and Hearing Procedures

#### A. Date, Time, and Place

The Board shall meet at least once a month, as necessary to hear requests for variances or appeals of the administrative decisions, or to conduct other appropriate business of the Board. Meetings of the Board should ordinarily be held on the first Wednesday of each month at 4:00 p.m. in the Hearing Room of the Board of County Commissioners, or at such other time and place as is specified in the public notice for the meeting.

#### B. Special Meetings

Special meetings of the Board may be called by the Chair or the Director at such times as may be necessary, subject to any applicable notice requirements.

#### C. Public Meetings

- (1) All meetings or hearings of the Board at which three or more members are present, and at which any public business is discussed or any formal action taken, shall be open to the public at all times, in accordance with the Colorado Open Meetings Law, Part 4 of Article 6 of Title 24, C.R.S., as amended. Chance meetings or social gatherings at which the discussion of public business is not the central purpose shall not be required to be noticed or held in public, as provided in the Open Meetings Law.
- (2) Upon the affirmative vote of two-thirds of the members present, the Board may hold an executive session at a regular or special meeting or hearing, for the sole purpose of considering any of the matters set forth in Section 24-6-402(4)(b), (c), or (g) of the Open Meetings Law (receiving legal advice from the attorney for the Board on specific legal questions; considering matters required to be kept confidential by federal or state law or rules and regulations; or considering any documents protected by the mandatory nondisclosure provisions of the Colorado Open Records Act, Part 2 of Article 72 of Title 24, C.R.S.). The Chair shall announce the general topic of the executive session prior to convening the session. No adoption of any proposal policy, positions, resolution, rule regulation, or formal action shall occur at any executive session, which is not open to the public.

#### D. Record of Proceedings

- (1) The Board shall keep a record of its meetings and hearings in accordance with this Section. The Director shall keep minutes of the Board's meetings and hearings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. Written summaries of the Board's meetings and hearings shall be considered adequate minutes provided they indicate the votes as required in the preceding sentence.
- (2) The Director shall make a tape recording of all meetings and hearings, which shall constitute the official record of the Board's proceedings. The Director shall provide a transcription of such recording or a copy of the tape itself at cost to any person requesting it.
- (3) The Director shall keep the Board's minutes, tape recordings, and all other written, photographic, or other materials submitted to the Board as part of the Board's official proceedings, and shall make the record of the Board's proceedings available to the public as required by the Colorado Open Records Act, Part 2 of Article 72 of Title 24, C.R.S.

#### E. General Meeting Procedures

- (1) The Director shall be responsible for preparing the agendas for the meetings and hearings of the Board. The Director shall provide copies of the agenda to the members and alternate members of the Board, the County Attorney, and any member of the public requesting the agenda.
- (2) At the meeting the Chair ordinarily will call the items listed for hearing and discussion in the order shown on the agenda. However, the Chair shall have the discretion to alter the order of items shown on the agenda if appropriate in light of the relative anticipated length of items, the presence or absence of interested persons, or other reasonable considerations.
- (3) The Board shall have the discretion at any of its meeting to act by majority vote to amend its agenda to consider items not specifically listed, provided that no hearing on an application for an appeal from an administrative decision or for a variance from the terms of Article 4 of the Land Use Code shall be held in this manner.
- (4) Three members of the Board shall be the required quorum to conduct official business of the Board, with the exception of public hearings on variance and appeal applications where at least four members of the Board must be present and vote in favor of the Applicant/Appellant to overturn the decision of the Director or the County Engineer, as applicable.

## F. General Hearing Procedures

- (1) These procedures shall apply to the Board's hearings on applications for appeals from an administrative decision as authorized under Articles 2 and 4 of the Land Use Code ("Appeals"), and for variances from the terms of Article 4 of the Land Use Code as authorized under Articles 2 and 4 of the Land Use Code ("Variances"). Application and pre-hearing procedures which apply separately to Appeals and Variances are set forth in Article 3 of the Land Use Code (see Exhibit A).
- (2) Four members of the Board shall be the required quorum to conduct any hearing on an application for a Variance or an Appeal. If only four members of the Board are present for a hearing, the Appellant/Applicant may request that the hearing be tabled to the next regular meeting of the Board when five members are expected to be present. Permission to table the hearing under these circumstances shall be freely granted by the Board.
- (3) No member of the Board shall participate in or vote with respect to any matter pending for a hearing before the Board, if that member has a financial, personal, or official interest in, or conflict with, the matter, of such nature that it prevents or may prevent that member from acting on the matter in an impartial manner. Any member having such an interest or conflict shall reveal such fact, to the extent possible, prior to any official Board hearing of or action on the matter, and shall refrain from sitting and participating with the Board in its consideration of and decision on such matter.  
Moreover, no such member shall testify before the Board as a member of the public on any such matter, in order to avoid the appearance of undue influence on the other Board members.
- (4) The appellant in an Appeal ("Appellant") shall have the burden to show that the Director (or County Engineer, as applicable) erred in making the decision or interpretation being appealed. The applicant for a Variance ("Applicant") shall have the burden to show that all criteria necessary to allow a variance to be granted under Article 4 of the Land Use Code have been met.
- (5) Hearing participants may submit documentary evidence to the Board, in addition to testimony, including but not limited to letters of support or opposition, photographs, surveys, or other relevant information. Any documentary evidence submitted to and accepted by the Board shall be kept by the Director as part of the official record of the Board. Exceptions may be made if the evidence is in a form which is difficult to reproduce for keeping by the Director, in which case the person offering and keeping the evidence must safeguard the evidence, and make it available if needed to complete the record of the Board in the event of a rehearing or judicial review.
- (6) All decisions of the Board shall be made based only on the testimony and evidence presented at the hearing and made part of the official record. Decisions shall be made only on a motion incorporating findings as may be reasonably required either to grant or deny the Appeal (that the Director or County Engineer, as applicable, erred in its order or decision pursuant to Article 4 of the Land Use Code), or to grant or deny the Variance (pursuant to the criteria set forth in Article 4 of the Land Use Code). All decisions to grant an Appeal or Variance shall require the concurring vote of four (4) members of the Board.
- (7) In granting any Appeal or Variance, the Board shall have the discretion to impose appropriate conditions and safeguards in harmony with the purposes and intent of Article 4 of the Land Use Code, and in accordance with the public interest and the most appropriate development of the neighborhood.
- (8) If the Board determines at any hearing that it requires additional information to make a decision, or if the Appellant/Applicant or an opposing member of the public makes a reasonable request to the Board to delay its hearing or decision for additional information for other appropriate reason, the Board shall have the discretion to table its hearing or decision for a reasonable period of time. If the Board tables its hearing or decision to a time and date specified in the tabling motion, no additional public notice of the tabled hearing or decision shall be required. If the Board does not specifically close the public hearing in its tabling motion, the public hearing, as well as the Board's decision, shall be deemed tabled as stated in the motion.
- (9) Hearings before the Board shall be conducted in an orderly but informal manner, which need not strictly conform to the rules of procedure and evidence required in a judicial proceeding. [See *Monte Vista Professional Bldg., Inc. vs. City of Monte Vista*, 35 Colo. App. 235, 531 P.2d 400 (1975).]

- (10) The following hearing procedures are guidelines, which can be expected to govern the hearings before the Board. The Chair shall have the discretion to enforce or alter the following procedures as necessary to ensure that the Board conducts its hearings in an efficient manner while observing principles of fundamentals fairness with respect to all interested parties.
- (a) Ordinarily, the Chair will call for a presentation by the Director (or County Engineer, as applicable), followed by a presentation by the Appellant/Applicant. The hearing will then be opened to the public for comment on any issues relevant to the hearing. Thereafter, the Director (or County Engineer, as applicable), the Appellant/Applicant, and if appropriate, members of the public, will be given an opportunity to respond. Members of the Board may ask questions of these persons testifying at any time. Since the Appellant/Applicant has the burden of proof, the Chair shall ensure that the Appellant/Applicant has a fair and sufficient opportunity to present its case and to respond to adverse comments, within the general time constraints specified below.
  - (b) Ordinarily, the Director's (or County Engineer's, as applicable) opening presentation shall be limited to 5 minutes. The Appellant's/Applicant's opening presentation shall be limited to 10 minutes in the case of a Variance, and 15 minutes in the case of an Appeal. Each member of the public wishing to speak shall be limited to 5 minutes. Response times shall be limited to 5 minutes per person testifying, including the Director (or County Engineer, as applicable) and members of the public, except that the Appellant/Applicant shall be allowed 10 minutes to respond. The Chair may refuse to allow repetitive or irrelevant testimony regardless of allowable time limits.
  - (c) Any Appellant/Applicant or other person wishing to testify who desires more time to speak than is allowed in the preceding Subsection, must request additional time from the Director at least 15 days in advance of the hearing, to allow the Director to prepare the meeting agenda accordingly. The Director shall allow for additional time if the request is reasonable. If the Director denies the request for additional time, the person requesting additional time may renew its request before the Board at the hearing.
  - (d) Ordinarily, cross-examination is not conducted at hearings. However, the Chair in its discretion may allow for cross-examination if the Director (or County Engineer, as applicable), Appellant/Applicant, or an objecting adjacent property owner requests it, and demonstrates to the Chair that cross-examination is necessary to allow that party to develop an adequate factual record before the Board. If cross-examination is allowed, the Chair shall extend the same right to other participants in the hearing as necessary to assure a fair proceeding. Cross-examination shall be limited to 10 minutes per person cross-examined, unless the person desiring to cross-examine requests additional time in accordance with the preceding Subsection.
  - (e) Ordinarily, witness oaths will not be administered. All persons testifying at a hearing before the Board shall be truthful in their testimony at all times.
  - (f) Ordinarily, the Chair does not compel the attendance of witnesses through subpoenas. However, if an Appellant/Applicant, the Director (or County Engineer, as applicable), or an opposing member of the public, submits a written request which the Chair and the County Attorney receive within 10 days in advance of the hearing, and which demonstrates to the satisfaction of the Chair that a subpoena is necessary to compel attendance of a material witness to the requesting person's case, the Chair may request that the County Attorney apply to the District Court for a subpoena pursuant to C.R.S. § 30-28-117(4). The witness's full name(s), current residence and mailing address, and a statement of the need for and relevance of the witness's testimony, must be submitted with any subpoena request. If the subpoena request is made by an opposing member of the public, that person shall be responsible for timely serving the subpoena once obtained, and for paying any required witness and mileage fees.

#### **IV. Variance And Appeals: Application and Pre-Hearing Requirements**

(See the relevant provisions in Article 3 of the Land Use Code, attached as Exhibit A.)

#### **V. Rehearing**

- A.** In the event the Board denies a Variance request, such request shall not be reconsidered for 12 months after the date of the decision, except as provided below.
- B.** Any decision of the Board may be reheard only if the Appellant/Applicant (or a person opposed to the application who testified at the hearing where the application was granted) files a request for rehearing with the Director, within 20 days after the date of the hearing at which the decision was made. The request shall state the reasons for which the Appellant/Applicant (or opposing person) seeks a rehearing.
- C.** If no request for a rehearing is filed, the decision of the Board shall be considered final for purposes of judicial review as of the date of the hearing on which the decision was made. If a request for a rehearing is filed but denied by the Board, the Board's decision shall be considered final for purposes of judicial review on the third day after the date on which the Director mails notice of the Board's denial of the rehearing to the person requesting a rehearing.
- D.** The Board may approve a rehearing request on the grounds that the hearing or decision was based on fraud, mistake, or inadequate information; needs clarification; or there is a strong indication that there were procedural problems with the prior hearing. The decision to rehear any matter may be made without public hearing by the assent of three members of the Board who were present at the prior hearing. The Board shall have the discretion to limit the scope of the rehearing to the matters, which the assenting members determine are appropriate to rehear, based upon their knowledge of the prior hearing and the stated reasons for the rehearing request.
- E.** Any rehearing shall be treated in all respects as a new hearing. The concurring vote of four members of the Board shall be required to reverse or alter the decision made at the prior hearing.

#### **VI. Amendments to Supplemental Rules**

The Board may amend these Rules upon an affirmative vote of three regular members.

#### **VII. Conflict**

Whenever there is any conflict between these Rules and either the Land Use Code or the Colorado State Statutes, the State Statutes and Land Use Code shall prevail.