

RULES OF PROCEDURE OF THE BOARD OF ADJUSTMENTS AND APPEALS OF SUSSEX COUNTY, DELAWARE

These rules shall govern the procedure of the Board of Adjustments and Appeals of Sussex County, Delaware.

Definitions

“Agenda” includes but is not limited to a general statement of the major issues expected to be discussed at a public hearing or meeting, as well as a statement of intent to hold an executive session and the specific ground or grounds therefor.

“Board of Adjustments and Appeals” or **“Board”** means the Board of Adjustments and Appeals of Sussex County Delaware.

“Chairman” means the Chairman of the Board of Adjustments and Appeals.

“County” means Sussex County, Delaware, unless otherwise specified.

“Hearing” means the formal or informal gathering of a quorum of the members of the Board of Adjustments and Appeals for the purpose of discussion or taking action on public business.

“Presiding Officer” means the Chairman of the Board of Adjustments and Appeals, or such other person who presides over the meetings of the Board of Adjustments and Appeals, pursuant to the Rules of the Board of Adjustments and Appeals.

“Public business” means any matter over which the Board of Adjustments and Appeals has supervision, control, jurisdiction or advisory power.

“Secretary” means the Secretary of the Board of Adjustments and Appeals.

Rule 1 – Duties

- 1.1 The Chairman shall preside at all hearings or meetings of the Board, decide all points of order or procedure, and perform all duties required by law or these rules.
- 1.2 The Building Code Office shall conduct, at the discretion of the Board, all official correspondence of the Board, send out all notices required by law and by these Rules of Procedure, keep records of each examination of other official action of the Board and perform all duties required by law and these Rules of Procedure.
- 1.3 In the absence of the Chairman, the presiding officer, with all powers and duties of the Chairman enumerated herein, shall be the Vice-Chairman as elected from its membership by a majority vote of all of the members of the Board of Adjustments and Appeals. In the absence of the Vice Chairman, the presiding officer, shall be such other member of the Board of Adjustments and Appeals as is elected by a majority vote of the members of the Board of Adjustments and Appeals present.
- 1.4 The Building Official shall act as Secretary of the Board. The secretary shall perform those duties as set forth in Chapter 52 of the Sussex County Code, and shall supervise the clerical work of the Board.

Rule 2 – Order of Business; Conduct of Hearings

- 2.1 The of business at each hearing of the Board of Adjustments and Appeals shall be as follows:

- Call to Order
- Roll Call of Members
- Additions and Revisions to Agenda
- Adoption of Agenda
- New Business
- Old Business
- Other Business
- Adjournment

Rule 3 – Hearings of the Board of Adjustments and Appeals

- 3.1 Regular hearings shall be held in the Council Chambers located in the Sussex County Administration Building or such other location as designated by majority vote of all the members of the Board.
- 3.2 Regular hearings shall convene at 6:00 P.M. on those days when a hearing has been properly noticed.
- 3.3 All hearings shall be open to the public.
- 3.4 Minutes of all hearings shall be kept and made available for public inspection. At a minimum, the minutes shall include the notice of appeal, an agenda, a record of attendance, and a record by individual members of the Board of each vote taken.

Rule 4 – Public Notice of Hearings

- 4.1 Public notice of all hearings shall be posted in the County Administrative Building on the Administration's main public bulletin board, the Building Code's public bulletin board, and on the official Sussex County website.
- 4.2 Public notice of hearings shall be mailed to an appellant or applicant (or attorney or agent of the appellant or applicant) at least 15 days before the date of the hearing.

Rule 5 – Agenda

- 5.1 The agenda for the Board hearings shall be available to members of the Board at least one week prior to the scheduled hearing.
- 5.2 The Chief of Building Code shall be responsible for the preparation and contents of the agenda. Any member of the Board may place items on the agenda by contacting the Chief of Building Code, either verbally or in writing, prior to the posting of the agenda.

- 5.3 Items which arise at the time of the Board's hearing may be added to the agenda, and items may be deleted from the agenda, by a majority vote of all the members of the Board present.

Rule 6 – Attendance of Members of the Board at Hearings; Quorums

- 6.1 Members of the Board shall not be absent from scheduled hearings or from other official duties without cause. When unable to attend a scheduled hearing, a member of the Board shall be responsible for notifying one of the following: The Chief of Building Code, another Board member, or a staff member of the Building Code Office.
- 6.2 The presence of no less than three (3) members of the Board shall constitute a quorum.
- 6.3 When a quorum is not present at any properly called hearing, the members of the Board present may adjourn the hearing.
- 6.4 If no members of the Board are present, any staff member of the Building Code Office may adjourn the hearing.
- 6.5 Three (3) affirmative votes shall be required to overrule any decision, ruling or determination of an official charged with enforcement of Chapter 52 of the Sussex County Code or to approve any variance. Failure to receive three (3) affirmative votes shall be deemed to disapprove any matter.
- 6.6 Any other matter may be decided by majority vote of the Board members present.

Rule 7 – Voting Procedures

- 7.1 On each motion duly made and seconded, the presiding officer shall call the roll or determine the vote in some other manner, and announce the results.
- 7.2 A written record shall be made by the Clerk of the vote by each member of the Board on each vote taken. Said record shall reflect the number of "aye" votes, the number of "nay" votes and the number of "abstaining" votes.

Rule 8 – **Record Keeping**

- 8.1 A file shall be kept in the Building Code Office of all Board Hearings. The file shall include copies of hearing notices (including the time, date and place where they were posted), the agenda and the minutes of the hearing.

Rule 9 – **Minutes of Board Hearings**

- 9.1 Minutes shall be taken of each hearing of the Board and shall reflect the following:
- a. Kind of hearing.
 - b. Date, place and time of hearing.
 - c. Name of the presiding officer.
 - d. Members of the Board present.
 - e. The proceedings of the Board, briefly and accurately stated. The minutes shall record what was done rather than what was said. However, a member of the Board may request that a statement or written material be attached to the minutes and made part thereof.
 - f. All motions voted upon and the results of said motions.
 - g. Names of members of the Board making motions and those making secondary motions.
 - h. A record by individual members of the Board, of each vote taken and action agreed upon.
 - i. Time of convention and adjournment.

- 9.2 Minutes shall be taken, prepared and presented by a staff member of the Building Code Office in written form for approval as written or amended. The minutes as approved by the Chief of Building Code shall be kept with the appeal file. Copies of the approved minutes shall be made available to the general public, except as otherwise authorized by law.

Rule 10 – Conduct During Hearings

- 10.1 When a member of the Board desires to speak, that member shall address the presiding officer and shall not proceed until recognized and granted the privilege of the floor. The presiding officer shall recognize the member of the Board who is the first to address the presiding officer.
- 10.2 No member of the Board shall interrupt another in debate without the consent of the other. To obtain such consent, the member shall first address the presiding officer.
- 10.3 If any member of the Board, in speaking or otherwise, transgresses the Rules of the Board of Adjustments and Appeals, the presiding officer shall, or any member of the Board may, call the errant member to order. When a member shall be called to order, that member shall not proceed without the permission of the presiding officer.

Rule 11 – Change or Suspension of Rules

- 11.1 Any rule of the Board may be changed or suspended by the approval of a majority of all of the members of the Board.

Rule 12 – Rules of Order

- 12.1 These rules have been established to provide an orderly procedure for matters coming before the Board. However, these rules shall be interpreted and applied to afford substantial justice and to promote a

fair but efficient hearing procedure. Consequently, strict adherence to these rules shall not be required but the Board may modify and digress from these rules for reasonable cause as the situation may demand. In the event that any rule herein contradicts State Law or County Ordinance, such rule shall be construed in compliance with such statute or ordinance. In the event that any of the foregoing rules is declared illegal or unenforceable by any court of competent jurisdiction, the balance hereof shall remain in full force and effect.

- 12.2 All rules of parliamentary procedure not covered or provided for by the RULES OF PROCEDURE OF THE BOARD OF ADJUSTMENTS AND APPEALS OF SUSSEX COUNTY, DELAWARE, or by the laws of the State of Delaware, shall be decided in accordance with MASON'S MANUAL OF LEGISLATIVE PROCEDURE.

Rule 13 – **Standards of Conduct**

- 13.1 Persons attending Board of Adjustments and Appeals hearings shall observe appropriate dress standards and standards of conduct. Attire that may distract from the proceedings shall not be permitted.
- 13.2 Persons attending Board of Adjustments and Appeals hearings may wear one (1) “cause supporting sign” affixed to their clothing. The size of such “sign” may not exceed three (3) inches by five (5) inches. Signs offensive to the members of the Board or to participants, and signs that may distract from the proceedings shall not be permitted. No placards shall be permitted at any meeting of the Board of Adjustments and Appeals.
- 13.3 The County Administrator may, from time-to-time, prescribe by policy reasonable and appropriate attire and conduct for persons attending hearings of the Board of Adjustments and Appeals.
- 13.4 Members of the news media shall conduct themselves in such a manner as to not be disruptive of the proceedings of the Board of Adjustments and Appeals.
- 13.5 Persons attending Board of Adjustments and Appeals hearings shall at all times conduct themselves in an orderly manner and follow the direction of the presiding officer. The Sussex County Sheriff or other

person designated by the presiding officer shall be responsible for ensuring that reasonable and appropriate dress standards and standards of conduct are observed at meetings of the Board of Adjustments and Appeals.

- 13.6 No applause or other disruptive behavior shall be permitted. All cellular phones, pagers, and other electronic devices which emit noise shall be turned off or placed on silent mode for the duration of the hearing.

Rule 14 – Appeals and Applications to the Board of Adjustments and Appeals

- 14.1 Appeals and applications to the Board, as permitted by State Law and County Ordinances, shall be submitted to the Chief of Building Code in writing and shall be accompanied with the proper fee. Appeals and applications shall be signed by any person authorized by law to make such an appeal or application, or an agent or an attorney of such person.
- 14.2 All appeals and applications to the Board shall state the nature of what is being appealed and reasons of requesting an appeal hearing.
- 14.3 Appellants, Applicants, supporters, and members of the opposition are encouraged to submit their exhibits and other supporting materials prior to the hearing.
- 14.4 All communication and correspondence with the Board shall be submitted through the Building Code Office. Telephone, email, verbal or written communication to an individual Board members regarding a case is prohibited.
- 14.5 Appeals and applications shall not be amended after public notice of the appeal hearing has been posted.
- 14.6 During the presentation of an appeal or application to the Board, persons addressing the Board shall identify themselves by name and place or residence.
- 14.7 Following a decision by the Board on an appeal or application, a copy of the written decision shall be sent to the appellant or applicant, or the agent or attorney for the appellant.

- 14.8 The Board may impose conditions with respect to the granting of an application or appeal pursuant to the Sussex County Code. Whenever such condition is imposed by the Board, the condition should be stated in the decision of the Board. Such decision shall remain valid only as long as the condition(s) imposed by the Board are adhered to.

Rule 15 – Order of Proceeding

- 15.1 The order of presentation shall generally be as follows subject to modification by the Chairman for reasonable grounds.
- 15.2 The Secretary shall identify the application number, the governing code and /or code section, the name of the filing party, and the general nature of the appeal.
- 15.3 The Applicant / Appellant will be afforded the opportunity to present testimony and evidence supporting the application. The Applicant / Appellant may appear with or without legal counsel. The Applicant / Appellant shall be permitted to present witnesses and introduce exhibits, petitions, and other documents into the record.
- 15.4 Upon the conclusion of each witness' initial statement, members of the Board or the Secretary shall have an opportunity to ask questions of the Applicant / Appellant and its witnesses and counsel.
- 15.5 Before a final ruling, the presiding officer shall grant any persons desiring to make a statement either in support or opposition of the application an opportunity to do so. Any persons desiring to make such a statement shall identify themselves by name and address.
- 15.6 Upon conclusion of all evidence and public statements, if applicable, the Applicant / Appellant shall be given a brief opportunity for any closing statements.
- 15.7 The Board shall have the authority to set reasonable time limits on all parties and speakers appearing before it.

15.8 The presiding officer shall have the authority to terminate or limit any statements or questioning which is irrelevant or unduly repetitive or provocative.

Rule 16 – Delaware Freedom of Information Act

16.1 All procedures of the Board of Adjustments and Appeals shall comply with the Delaware Freedom of Information Act, as contained in Title 29, Chapter 100 of the Delaware Code, as amended. To the extent that any provision herein shall conflict with the provisions of the Delaware Freedom of Information Act, the more restrictive provision shall apply.

Rule 17 – Delaware State Employees’, Officers’ and Officials’ Code of Conduct

17.1 Members of the Board of Adjustments and Appeals shall be subject to the Delaware State Employees’, Officers’ and Officials’ Code of Conduct, as set forth in Title 29, Chapter 58, Subchapter I of the Delaware Code.