

## RULES OF PROCEDURE OF THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY, DELAWARE

These rules shall govern the procedure of the Board of Adjustment 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 meeting, as well as a statement of intent to hold an executive session and the specific ground or grounds therefor.

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

**“Board of Adjustment”** or **“Board”** means the Board of Adjustment of Sussex County Delaware.

**“Meeting”** means the formal or informal gathering of a quorum of the members of the Board of Adjustment for the purpose of discussion or taking action on public business.

**“Chairman”** means the Chairman of the Board of Adjustment.

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

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

**“Secretary”** means the Secretary of the Board of Adjustment.

## Rule 1 - **Duties**

- 1.1 The Chairman shall preside at all meetings or hearings of the Board, decide all points of order or procedure, and perform all duties required by law or these Rules.
- 1.2 The Planning and Zoning Department 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 Board of Adjustment. In the absence of the Vice-Chairman, the presiding officer, with all powers and duties of the Chairman enumerated herein, shall be such other member of the Board of Adjustment as is elected by a majority vote of the members of Board of Adjustment present.
- 1.4 The Board shall appoint a Secretary who shall serve at the pleasure of the Board. The Secretary shall perform those duties as set forth in Chapter 115 of the Sussex County Code, and shall supervise the clerical work of the Board.

## Rule 2 - **Order of Business; Conduct of Meetings**

- 2.1 The order of business at each regular meeting of the Board of Adjustment shall be as follows:

- Call to Order
- Pledge of Allegiance
- Additions and Revisions to Agenda
- Adoption of Agenda
- Approval of Minutes and Findings of Fact
- Public Hearings

Old Business  
Other Business  
Adjournment

- 2.2 The order of Business can be altered at any duly constituted meeting by an affirmative vote of a majority of the Board of Adjustment members present. The privilege of the floor may be granted to the public at any time by presiding officer
- 2.3 During public hearings, the presiding officer may set reasonable time limits on public comments. An individual may submit a written statement in lieu of or in addition to verbal comments. The presiding officer may terminate or limit testimony which is irrelevant or unduly repetitive.
- 2.4 Every attempt will be made to complete all business scheduled. In the event that the presentation of a scheduled agenda item takes longer than reasonably anticipated, the presentation may be suspended by approval of majority of the Board of Adjustment members present. A motion to suspend a presentation should, to the extent possible, include the date and time at which the remainder of the presentation will be heard.
- 2.5 Testimony at public hearings shall be taken under oath which shall be administered by the Board's attorney or any other individual as may be directed by the presiding officer.

Rule 3 - **Meetings of the Board of Adjustment**

- 3.1 Regular meetings shall be held in the Sussex County Administration Building or such other location as designated by majority vote of all the members of the Board of Adjustment.
- 3.2 Regular meetings shall convene at 7:00 P.M. on those days when a meeting has been properly noticed and advertised.

- 3.3 Special meetings and executive sessions may be held as provided in Title 29, Chapter 100 of the Delaware Code. Special meetings may be called by the Chairman upon at least 48 hours' notice to each member. The Chairman shall call a special meeting within 10 days of receipt of a written request from any two members of the Board. Notice of a special meeting shall include an explanation as to why the notice required in Rule 4 could not be given.
- 3.4 Except for executive sessions, all meetings shall be open to the public.
- 3.5 Minutes of all meetings, including executive sessions, shall be kept and made available for public inspection and copying. At a minimum, the minutes shall include a record of attendance and a record, by individual members of the Board of Adjustment, of each vote taken and each action agreed upon.
- 3.6 The first regular meeting of July shall constitute the annual organizational meeting of the Board.

Rule 4 - **Public Notice of Meetings**

- 4.1 Public notice of all meetings shall be posted on the public bulletin board located in the Sussex County Office of Planning and Zoning in the County Administrative Building and on the official Sussex County website.
- 4.2 Public notice, property posting and advertisement of meetings and public hearings shall comply with all applicable provisions of State law and County ordinances. In addition, notice of a public hearing 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.
- 4.3 At the time that an appeal or application is made to the Board, the Planning and Zoning Office shall prepare a listing of names and addresses of property owners whose property lies within a 200 foot radius of the boundaries of the property subject to the appeal or application. The Director of Planning and Zoning shall cause a copy of

the public notice of the public hearing to be mailed to each person, partnership or corporation whose name appears on the list. Failure to comply with the provisions of Rule 4.3 shall not be considered a defect in the requirements for public notice of a public hearing.

**Rule 5 - Agenda**

- 5.1 The agenda for Board of Adjustment meetings shall be available to members of the Board of Adjustment at least one week prior to the scheduled meeting.
- 5.2 The Director of Planning and Zoning shall be responsible for the preparation and contents of the agenda. Any member of the Board of Adjustment may place items on the agenda by contacting the Director of Planning and Zoning, either verbally or in writing, prior to the posting of the agenda. Any other person may request to have items placed on the Board of Adjustment agenda by notifying the Director of Planning and Zoning, in writing; provided, however, that items requested to be placed on the agenda that are not, in the opinion of the Director or Planning and Zoning, of Board of Adjustment jurisdiction, or which do not meet requirements of notice or advertisement, will not be placed on the posted agenda. Those items that do not qualify as Board of Adjustment business will be responded to by the Director of Planning and Zoning and copied to the members of the Board of Adjustment.
- 5.3 Items which arise at the time of the Board of Adjustment's meeting may be added to the agenda, and items may be deleted from the agenda, by a majority vote of all of the members of the Board of Adjustment present, subject to requirements of advertisement and other applicable provisions of State Law and County Ordinance.

**Rule 6 - Attendance of Members of the Board of Adjustment at meetings; Quorums**

- 6.1 No members of the Board of Adjustment shall be absent from scheduled meetings or from other official duties without cause. When

unable to attend a scheduled meeting, a member of the Board of Adjustment shall be responsible for notifying one of the following: the Chairman, the Director of Planning and Zoning, another Board of Adjustment member, or a staff member of the Office of Planning and Zoning.

- 6.2 The presence of no less than three (3) members of the Board of Adjustment shall constitute a quorum.
- 6.3 When a quorum is not present at any properly called meeting, the members of the Board of Adjustment present may adjourn.
- 6.4 If no members of the Board of Adjustment are present, any staff member of the Office of Planning and Zoning may adjourn the meeting.
- 6.5 Three (3) affirmative votes shall be required to overrule any decision, ruling or determination of an official charged with enforcement of Chapter 115 of the Sussex County Code, or to approve any special use exception or 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 Board of Adjustment members present.

#### **Rule 7 - Voting Procedure**

- 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 of Adjustment on each vote taken. Said record shall also 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 Office of Planning and Zoning of all Board of Adjustment meetings. The file shall include copies of meeting notices (including the time, date and place where they were posted), the agenda and the minutes of the meeting.

#### **Rule 9 - Minutes of Board of Adjustment Meetings**

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

9.2 Minutes shall be taken, prepared and presented by a staff member of the Office of Planning and Zoning and the Board's attorney in written form for approval as written or as amended. The minutes as approved shall be filed in the minute book of the Board of Adjustment. Copies of the approved minutes shall be made available to the general public, except as otherwise authorized by law.

9.3 Recordings will be made of all Board of Adjustment meetings at which County business is transacted. The recordings shall be under the custody of the Director of Planning and Zoning and shall be open to inspection and copying in accordance with applicable law regarding access to public records.

#### **Rule 10 - Conduct During Meetings**

10.1 When a member of Board of Adjustment 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 Board of Adjustment who is the first to address the presiding officer.

10.2 No member of Board of Adjustment 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 Board of Adjustment, in speaking or otherwise, transgresses the Rules of the Board of Adjustment, the presiding officer shall, or any member of Board of Adjustment 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 of Adjustment may be changed or suspended by the approval of a majority of all of the members of the Board of Adjustment.

## Rule 12 - **Rules of Order**

- 12.1 These rules have been adopted in order to provide an orderly procedure for matters coming before the Board. However, these rules shall be interpreted and applied so as 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 ADJUSTMENT 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 Adjustment meetings 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 Adjustment meetings 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 of Adjustment 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 Adjustment.

- 13.3 The County Administrator may, from time-to-time, prescribe by policy reasonable and appropriate attire and conduct for persons attending meetings of the Board of Adjustment.
- 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 Adjustment.
- 13.5 Persons attending Board of Adjustment meetings 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 Adjustment.
- 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 meeting.

Rule 14 - **Appeals and Applications to the Board of Adjustment**

- 14.1 Appeals and applications to the Board, as permitted by State law and County ordinances, shall be on forms to be prepared by the Director of Planning and Zoning and approved by the Board of Adjustment, and shall be accompanied by 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 be accompanied by a recent survey, prepared and approved by a licensed surveyor, of the subject property, except when this requirement is waived by the Board or the Office of Planning and Zoning.
- 14.3 Appellants, Applicants, supporters, and members of the opposition are encouraged to submit their exhibits and other supporting materials prior to the hearing, if possible.

- 14.4 All communication and correspondence with the Board shall be submitted through the Office of Planning and Zoning. Telephone, email, verbal or written communication to individual Board members regarding a case is prohibited.
- 14.5 Appeals and applications shall not be amended after public notice of the public hearing has been transmitted to a newspaper for publication except that the size of any variance requested may be increased or reduced by an applicant prior to or at the public hearing provided, however, that the type of variance requested (side yard variance, front yard variance, etc.) has been included in the public notice.
- 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. No cross-examination of witnesses or applicants will be permitted. All questions for others should be directed to the Board and the Board may direct the question to the appropriate person. Nothing in this Paragraph shall limit an attorney from directly questioning witnesses in support of the position the attorney is advocating.
- 14.7 The Board may continue a hearing or vote to leave the record open for the purpose of supplementing the record and may put limitations or conditions thereon.
- 14.8 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 or applicant. Any oral discussion of or vote upon the application by the Board shall be deemed in the nature of preliminary deliberations to the rendering of a final written decision and only the written decision, as adopted by a majority of the Board, shall constitute a decision of the Board.
- 14.9 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 or conditions upon which it was approved exist or the conditions 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 general nature of the proceeding (appeal, variance, or special use exception), the name of the filing party, the description of the subject property, and shall state whether the Office of Planning and Zoning has received any correspondence pertaining to the application.
- 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 testimony, members of the Board, the Secretary, and the Board's attorney shall have an opportunity to ask questions of the Applicant / Appellant and its witnesses and counsel.
- 15.5 In the case of a variance or special use exception application, at the conclusion of the Applicant's witnesses and evidence, any person desiring to make a statement in support of the application shall be given an opportunity to do so. Each person desiring to make such a statement shall identify himself or herself by name and address and shall be sworn in prior to making a statement.
- 15.6 In the case of a variance or special use exception application, at the conclusion of the statements in favor of an application, any person

desiring to make a statement in opposition to the application shall be given an opportunity to do so. Each person desiring to make such a statement shall identify himself or herself by name and address and shall be sworn in prior to making a statement.

- 15.7 At the conclusion of all evidence and public statements, if applicable, the Applicant / Appellant shall be given a brief opportunity to submit additional testimony or evidence in the form of "rebuttal." The presiding officer may allow for brief "sur-rebuttal" testimony from the opposition provided that such testimony is limited to the scope of the testimony presented in the "rebuttal" and is not repetitive, redundant, or irrelevant.
- 15.8 All exhibits presented to the Board for its consideration shall be identified and marked appropriately by the Recording Secretary. All such documents shall be retained by the Office of Planning and Zoning.
- 15.9 Hearsay evidence shall be permitted a Board hearing and the Board shall be entitled to hear and consider any probative evidence which, in the Board's opinion, is relevant and of sufficient credibility to be entitled to consideration.
- 15.10 The Board shall have the authority to set reasonable time limits on all parties and speakers appearing before it.
- 15.11 The presiding officer shall have authority to terminate or limit any testimony or questioning which is irrelevant or unduly repetitive or provocative.
- 15.12 Once all testimony and evidence has been presented, the public hearing shall be closed and no new testimony or evidence will be permitted unless the Board votes to leave the public record open.

#### **Rule 16 - Delaware Freedom of Information Act**

- 16.1 All procedures of the Board of Adjustment 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 Adjustment 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.

**Rule 18 - Request for a Rehearing**

18.1 A motion for a rehearing shall be made not later than 10 days after the filing of a decision in the office of the Board of Adjustment. The Board of Adjustment may rehear a matter for the following reasons:

- a. Mistake, inadvertent surprise or excusable neglect.
- b. Newly discovered evidence which by due diligence could not have been discovered at the time of the original hearing.
- c. Fraud, misrepresentation or other misconduct of an adverse party.

18.2 A motion for a rehearing shall state the grounds therefore and may be accompanied by applicable affidavits. The motion and affidavits shall be provided by mail to the opposing party of record, if any. The opposing party shall have 10 days after receipt of the motion to file a response thereto and attach applicable affidavits. The Board shall determine the motion upon the written application, any responses thereto, and accompanying affidavits, if any.

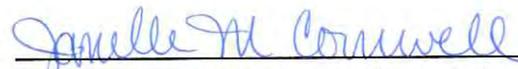
**Rule 19 - Adoption and Effective Date**

19.1 These rules shall become effective upon adoption by a majority vote of all of the members of the Board of Adjustment.



---

Chairman, John Mills



---

Attest: Janelle Cornwell, Director  
Office of Planning & Zoning

Adopted: July 9, 2018

Effective Date: July 9, 2018