



## **WASHINGTON COUNTY BOARD OF ADJUSTMENT RULES OF PROCEDURE**

### **I. INTENT**

These rules have been adopted to ensure:

- A. The efficient and orderly conduct of business
- B. That all points of view are heard
- C. That the interests of both the appellant/applicant and the public are protected.

Any interpretation of these rules should be consistent with this intent.

### **II. ELECTION OF OFFICERS**

The Board shall elect a chair and vice-chair from among its members at the last scheduled meeting of the calendar year. The term for each position shall be from the first meeting to the last meeting of the next calendar year.

### **III. DUTIES OF OFFICERS**

#### **A. CHAIR**

- i. The Chair shall:
  - 1. Preside at all meetings of the Board and conduct hearings
  - 2. Decide all points of order and rule as necessary on questions relating to cases not specifically addressed by these rules for the orderly and fair conduct of hearings
  - 3. Administer oaths and compel the attendance of witnesses
  - 4. Work in conjunction with the Zoning Administrator in the preparation of agendas
- ii. The Board may overrule the chair by a majority vote of the members present and voting.
- iii. The chair is a voting member of the Board and shall be counted for the purpose of determining a quorum.

#### **B. VICE CHAIR**

The Vice Chair shall assume the duties of the chair in his/her absence.

#### **C. SECRETARY**

The Zoning Administrator or his/her designee shall act as secretary to the Board. The secretary shall:

- i. Record and maintain a permanent record of Board proceedings and minutes showing the date, time, location, members present and the action taken at each meeting. Minutes shall show the result of each vote taken.
- ii. Keep records of the Board's examinations and other official actions.
- iii. Accurately summarize the testimony of those appearing before the Board.
- iv. Record names and addresses of all persons appearing before the Board.
- v. Conduct correspondence of the Board.
- vi. Publish notices of meetings as required by law.
- vii. File records of Board action in the office of the Board, such records shall be public.

- viii. Be custodian of the files of the Board and keep all records.

#### **IV. CASES TO BE DECIDED BY THE BOARD**

The basis of all actions of the Board of Adjustment are ultimately governed by State Code and Article 9.01.H of the Washington County Zoning Ordinance. The following is a summary of cases that the Board will hear:

- A. Appeals of any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of the *Zoning Ordinance*. The Zoning Administrator, when making an order, requirement, decision or determination shall inform the affected party of his/her rights of appeal.
- B. To hear and decide appeals where it is alleged that there is error of law in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of the *Zoning Ordinance*.
- C. To hear and decide applications for variance of height, area, setback, parking or density requirements.
- D. To hear and decide exceptions to the terms of the *Zoning Ordinance* as contained in the Ordinance.
- E. To hear and decide applications for Conditional Use Permits.

#### **V. PROCEDURE FOR APPEAL/APPLICATION**

- A. Appeal/Application
  - i. Must be presented in written form to the Zoning Administrator.
  - ii. Must clearly state the action being appealed and/or the relief sought, or the Conditional Use Permit being applied for. Additional information may be requested by the Zoning Administrator or the Board.
  - iii. Must be accompanied by an application fee and other costs related to public notification and publication per county Planning & Zoning Schedule of Fees.
  - iv. Appeals must be filed with the Zoning Administrator within thirty days of the ruling complained of.
  - v. Applications will be scheduled for hearing in accordance with dates published in the annual Application Deadlines – Meeting Dates schedule.
- B. The Zoning Administrator shall:
  - i. Deposit filing fee in appropriate County fund and upon request issue a receipt to the appellant/applicant.
  - ii. Assign a case number to the appeal/application.
  - iii. Gather all relevant documents together into a case file.
  - iv. Determine date for hearing.
  - v. Notify appellant/applicant and surrounding landowners.
  - vi. Forward the application/appeal and relevant materials to the Board members along with agenda.
  - vii. Publish legal notice of hearing.

#### **VI. MEETINGS**

- A. All meetings are open to the public in accordance with Chapter 21, Code of Iowa.
- B. Pending applications, meetings shall be scheduled to occur monthly in accordance with dates published in the annual Application Deadlines – Meeting Dates schedule, or when called by the Chair.
- C. **Cancelation:** A regular meeting may be canceled due to a lack of substantive agenda items to be addressed, meeting location scheduling conflicts, emergency conditions, inclement weather, or other acts of nature beyond the County's control. It is the responsibility and prerogative of

the Chair of the Board of Adjustment to cancel such meeting, and the Chair will notify the Planning & Zoning Administrator or his/her designee who will assume responsibility for notifying the media and persons affected by the cancellation, posting notice of the cancellation as appropriate, and rescheduling the meeting as appropriate. In the event that a scheduled meeting is canceled, the Chair may schedule a special meeting of the items scheduled to be conducted at the canceled meeting that shall be deferred until such rescheduled meeting.

- D. **Quorum:** Three members of the Board, including the Chair, shall constitute a quorum.
- E. **Order of Business:** The agenda will be prepared and sent to the Board four to six days prior to the hearing date and shall include:

- i. Call or Order
- ii. Roll Call
- iii. Approval of Agenda
- iv. Minutes of Previous Meeting(s)
- v. Hearings
- vi. Old Business (Review of past cases)
- vii. Other Business
- viii. Adjournment

The order is subject to the will of the Board.

- F. **Voting**
  - i. Concurring vote of three members of the Board are required to reverse any order, requirement, decision, or determination of the Administrator or to decide in favor of the applicant in any matter acted upon by the Board as required under this ordinance.
  - ii. Roll call vote is required on all resolutions.
  - iii. Affirmative voice vote by a majority of members present and voting is acceptable in approval of minutes and motions pertaining to Board procedure.
  - iv. The order of roll call shall be rotated for each action.
- G. **Ex parte Contacts:** Any contact through e-mail, phone, in-person, or in such similar fashion that a Board member may have with a party involved, or potentially involved, in a matter before the Board and outside of the public hearing process is known as an "Ex parte" contact. Any substantive information or facts that a Board member may receive during the course of those contacts that relates to the matter at hand shall be made a part of the public record so that it can be available for consideration or challenge by all interested parties. This shall be done by way of a public statement by the Board member prior to the presentation of the matter under consideration at the Board's meeting.
- H. **Conflict of Interest:** A Board member may abstain if the member believes there is a conflict of interest, particularly if the conflict is of a financial nature or otherwise. A member who elects to abstain from voting shall state the reason for the abstention prior to the presentation of the matter under consideration. During the presentation and discussion of the matter under consideration, a member who plans to abstain from voting should remove him/herself from the proceedings and from taking any action on the issue or attempting to persuade any other member of the Board to act in any specific direction. Board members may not receive any type of gift for their own personal use or enjoyment related to transaction of their official Board duties.
- I. **Continuances:** The Board may table a case until a later meeting to enable additional testimony to be heard, a site visit, or for other good cause by an affirmative vote of a majority of the members present and voting. The Board may remove the item from the table at anytime by an affirmative vote of a majority of the members present and voting, however may not take final action on the item unless a quorum is present and such action receives a concurring vote of at least three member of the Board.

## VII. HEARINGS

- A. Notice of hearings shall be given according to the *Zoning Ordinance* and Code of Iowa.
- B. Hearings will be conducted in an orderly and courteous manner. No abusive, demeaning, or harassing statements or questions will be tolerated. Persons disrupting a meeting of the Board may be ejected.
- C. Appellant/Applicant may appear on his/her own behalf or may be represented by an agent or counsel. In the absence of a personal appearance on behalf of the applicant the Board may proceed to dispose of the case on the evidence of forms and information provided before.
- D. The *Subdivision Ordinance* gives the Board the power to compel testimony. Subpoenaed witnesses will be placed under oath; other witnesses, including the appellant/applicant, may be placed under oath.
- E. **Order of Hearing:**
  - i. The Chair will open the hearing at the appropriate time according to the Agenda and make whatever opening statement he/she deems appropriate, including rules for the hearing and any time limits that will be imposed.
  - ii. The Zoning Administrator or County Staff will present a report on the detailed information and observations regarding the request.
  - iii. The appellant/applicant will be recognized to present his/her case, and may present any information and exhibits and call witnesses as necessary to justify the request. Testimony by witnesses will be in the form of narrative statements addressed to the Board. Appellant/Applicant may be assisted by legal counsel in delivery of their narrative.
  - iv. Any witnesses subpoenaed by the Board may be called to testify. They will be questioned only by the Board.
  - v. Members of the public are recognized to make statements. No particular order is required. All interested parties shall be heard, except that repetitious testimony may be ruled out of order by the Chair. The Chair may place time limits on public testimony if deemed necessary.
  - vi. After all interested parties have been heard, the hearing shall be closed to public comment and the appellant/applicant will be recognized to make a closing statement.
  - vii. The Board shall then deliberate the case, formulate a resolution and vote thereon. No motion need be made to enable discussion, but any motion must be moved and seconded and further discussion will be allowed before the vote. No comment by the appellant/applicant or the public will be recognized during deliberations by the Board, but the Board may question anyone present. The Board may examine subpoenaed witnesses at this time.
  - viii. The Board shall not be bound by strict rules of evidence, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony. All records, data, plats, drawings, plans and models shall be allowed as exhibits and retained as part of the case file. The Chair shall rule on questions relating to the admissibility of evidence, which may be overruled by a majority of the Board present and voting.
- F. A copy of the Board's recorded Decision and Order accompanied by a cover letter from the Zoning Administrator is mailed to the appellant/applicant within fourteen (14) days after the hearing.

## VIII. REHEARINGS

- A. A rehearing may occur at the will of the Board upon:
  - i. Request by the original appellant/applicant alleging new evidence, or
  - ii. Action by the Board because of alleged fraud or misrepresentation at the original hearing.

A rehearing will be set by a motion by a Board member supported by a majority of the Board.

**IX. APPEALS OF BOARD ACTIONS**

Decisions of the Board are final and dissatisfied parties may appeal to District Court in the manner provided by the laws of the State of Iowa.

**X. RECORDS**

The Zoning Administrator shall keep the minutes of proceedings and all records of case. All records are public.

**XI. INFORMAL ADVICE**

The Board will not consider a request (informal or not) for advice on theoretical or actual situations which potentially may later come before the Board as an appeal or application.

**XII. OFFICE**

Correspondence to the Board shall be directed to the Washington County Planning and Zoning Office.

**XIII. AMENDMENTS TO PROCEDURAL RULES**

These rules may be amended by an affirmative vote of three members of the Board. Amendments shall become effective at the meeting subsequent to the meeting in which the vote to amend was taken.

ADOPTED: June 24, 2010

AMENDED: March 22, 2012