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**BOARD OF ADJUSTMENT HEARING**

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**1.1. PURPOSE**

The purpose of this procedure is to describe the scheduling of applications for review before and action by the Board of Adjustment and the general procedures followed by the Board of Adjustment in hearing and acting on an item (application).

**1.2. DESCRIPTION**

The Board of Adjustment (BOA) is a five (5) voting member volunteer board appointed by the Board of County Commissioners (BoCC).

The Board of Adjustment shall hear and determine appeals of general relief decisions and dimensional variances in accordance with the LDC and C.R.S. § 30-28-118, the Procedures Manual, and as established by Colorado law. The Board of Adjustment's specific authorities are identified in Section 2.2.3(B) of the LDC. In addition to the authorities described in the LDC, the Board of Adjustment shall:

- Regulate the course and decorum of a hearing;
- Rule on procedural matters;
- Rule on the relevance of evidence and testimony;
- Seek the opinion of the County Attorney on legal questions pertaining to any matter before the Board of Adjustment; and
- Take other action necessary to lawfully conduct a hearing.

The Board proposes its own procedures which are set forth in its adopted Bylaws and Procedures, which are adopted by the BoCC. This procedure outlines how the Board operates and how items are brought before the Board. Any conflict between this procedure and the Board's adopted Bylaws and Procedures is unintended, and any such conflict shall result in a deferral to the Board's adopted Bylaws and Procedures.

The PCD serves as the staff for the Board of Adjustment and is responsible for preparing all items for review by the Board of Adjustment, including scheduling items on the agenda, preparing the agenda, and keeping the official records of the Board of Adjustment.

The Board of Adjustment hearings are considered to be quasi-judicial. Quasi-judicial hearings are subject to stricter procedural requirements than legislative hearings as they involve the legal rights of specific parties. As such, decisions made as a result of such hearings must be based upon and supported by the "record" developed at the hearing.

**1.3. PROCESS**

**1.3.1. Scheduling a Development Application for Review**

No development application shall be scheduled for hearing before the Board of Adjustment until the PCD Planner determines that the review has been completed, all review comments have been addressed to the maximum extent practicable, and staff has evaluated the merits of the application and prepared the Staff Report. Until all issues have been addressed to the satisfaction of the PCD Planner, the development application will not be scheduled before the Board of Adjustment. If the applicant objects to the application being scheduled for review, the applicant shall work with the PCD Planner to resolve any outstanding issues. This may require the applicant initiate the issue resolution process where a conflict exists that cannot be resolved.

The PCD Director shall have the discretion to determine whether an application intended to resolve a code violation should be delayed from being heard before the Board of Adjustment or if such application requires immediate hearing before the BOA.

When the application is determined to be ready for review by the Board of Adjustment, the PCD Planner shall contact the secretary to the Board of Adjustment to identify the first available Board of Adjustment hearing date that will allow any and all required or courtesy notice to be prepared and provided in accordance with public notice. In scheduling a hearing, due regard will be given primarily to the availability and convenience of the Board and the Secretary and, secondarily, to the availability and convenience of the applicant, known persons in opposition to the application, and other known interested parties (and their representatives or lawyers).

The PCD planner shall provide the secretary with a blurb describing the application. This blurb shall include, at a minimum, a detailed description of the proposed project or activity for the agenda including the name of the applicant, file number, application type, a short description of the project, a description of the location of the property relative to the nearest major intersection, and Assessor's schedule number.

### **1.3.2. Hearings**

The hearing before the Board of Adjustment is an open and public hearing which provides an opportunity for the public to speak in favor or against an application. The purpose of the hearing is for the Board to gather factual information to assist them in formulating their decision. The hearing is not a debate or a question and answer session with the audience. The hearing shall be conducted in accordance with Robert's Rules of Order.

The Board of Adjustment, in conducting a quasi-judicial hearing, shall acknowledge that parties are entitled to an opportunity to appear, in person or by a representative or counsel, to present and rebut testimony and evidence to an impartial approval authority and to have the proceedings recorded.

The objectives of the Board of Adjustment when conducting a hearing are:

- To conduct the proceedings in a fair and efficient manner, allowing the applicants, opponents and other interested parties a reasonable opportunity to present their evidence and express their views without undue, unreasonable, or arbitrary restrictions;
- To ensure that applicants, opponents and other interested parties who are not represented by a lawyer are not prejudiced by that fact, taking affirmative steps to put them at ease, to prevent them from being intimidated either by the proceeding or by lawyers representing others and to assist them, where possible, in complying with these rules and any procedural or evidentiary technicalities;
- To base all decisions on the merits, and not on procedural or evidentiary technicalities, to the extent permitted by applicable law;
- To base all decisions on competent evidence;
- To base all decisions on a reasoned consideration of the terms of the applicable County rules, regulations, codes, standards, and ordinances, providing an explanation of the reasoning at the time, as appropriate, of the decision; and
- To ensure that the applicable County rules, regulations, codes, standards, or ordinances are being enforced and administered in a fair and efficient manner, consistently with prior decisions, but without being strictly limited to such prior

decisions where the facts and conditions of the application warrant, and with any pertinent statement of policy or intent in the applicable County rules, regulations, codes, standards, and ordinances or in the official record of the proceedings leading to its adoption or revision.

The Board of Adjustment Chair conducts the public hearing generally in accordance with the adopted bylaws.

**1.3.3. Recessed or Reopened Hearing**

If a proceeding, once commenced, is recessed for any reason and is to be continued, notice of the date, time, and location at which the proceeding is to be continued shall be given by oral announcement by the Chair at the time the proceeding is recessed.

If a proceeding is reopened for any reason, notice of the date, time, and location at which the proceeding is to be reopened shall be given in the same manner as the original hearing.

**1.3.4. Personal Attendance**

The applicant, opponents, and other interested parties (or their representatives) should appear in person at the proceeding or virtually with prior notice of a minimum of 24 hours being given to the PCD Planner. The Chair may, at his or her discretion, admit written statements into evidence.

**1.3.5. Subpoenas**

The Chair, at his or her sole discretion, shall have the authority to subpoena witnesses and compel the production of evidence in any proceeding: (a) upon his or her own initiative; (b) upon written or oral request of any other Board member participating in that proceeding; or (c) upon the written request of any applicant, opponent, or other interested party participating in the proceeding, for good cause shown in that written request.

**1.3.6. Copies of Legal Authorities To Be Provided**

Where an applicant, opponent, or other interested party (or his, her representative) relies on a judicial or administrative decision or a statute or governmental regulation in support of a position, a separate copy of that decision, statute, or regulation shall be provided for each member of the Board by the applicant, opponent, or other interested party referencing such decision or regulation.

**1.3.7. Private Court Reporters**

No private court reporter will be permitted to transcribe any part of a proceeding unless the person engaging that court reporter agrees, on the record, (a) to provide the Board with a copy of the transcript without charge if an appeal is taken from the Board's decision (regardless of who the appealing party is) and (b) to indemnify and hold the Board and El Paso County government harmless from any costs that may be assessed against either of them on appeal with respect to the expense of such transcript.

**1.4. NOTICE**

Notice shall be provided as required by State law, the LDC, and other County rules, regulations, or ordinances and the public notice requirements associated with the particular application type.

**1.5. FORM OF ACTION**

The Board of Adjustment takes action by resolution which shall include findings and conclusions supporting the action.

**1.6. REFERENCE**

**1.6.1. Applicable Statues and Regulations**

**C.R.S. §30-28-117 and C.R.S. §30-28-118**

LDC Sections: 2.1.2, 2.2.3; and 2.2.4