



**City of Phoenix**

PLANNING AND DEVELOPMENT DEPARTMENT

## **General Information**

**for the**

## **Board of Adjustment Hearing Process**





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PLANNING AND DEVELOPMENT DEPARTMENT

## General Information for the Board of Adjustment Hearing Process

### **BOARD OF ADJUSTMENT**

The Board of Adjustment hears and decides appeals or decisions made by the Zoning Administrator in enforcement of the Zoning Ordinance. Members also hear appeals from the Zoning Administrator's decisions in granting or denying variances and issuance of use permits and hear and decide all matters referred to the Board by the Zoning Administrator. Notice of the hearing is advertised in the Record Reporter at least 15 days prior to the hearing; the property is also posted 15 days in advance. The fee to appeal to the Board is the same as the original Zoning Adjustment filing fee.

The seven-member board, appointed by the City Council, serves a four-year term as a civic responsibility, without pay. Unlike the City Council or the Planning Commission, the Board of Adjustment is not allowed to have any outside communications. Any correspondence for the Board should be directed to the Board of Adjustment Secretary and 11 copies should be submitted 10 days prior to the hearing date. Any person may appeal a decision by the Board of Adjustment within 30 calendar days of the decision by filing a Complaint for Special Action in the Superior Court.

The Board of Adjustment meetings are usually held on the first Thursday of the month. Meetings are at 12:00 noon in the Phoenix City Council Chambers, located at 200 West Jefferson Street (location and time subject to change).

### **Members**

- |                        |                               |
|------------------------|-------------------------------|
| ◆ Tim Eigo             | Editor                        |
| ◆ Steve Beuerlein      | Fire Department Captain       |
| ◆ Rick Cole            | Attorney                      |
| ◆ Abraham James        | Architect                     |
| ◆ Jose de Jesus Rivera | Attorney                      |
| ◆ Gail Knight          | Community Development Advisor |
| ◆ Jonathon Ammon       | Architect                     |

### **Contact**

Julie Garcia, Board of Adjustment Secretary (602) 495-7029  
City of Phoenix Planning and Development Department  
200 West Washington Street, 2nd Floor  
Phoenix, AZ 85003-1611  
[zoning@phoenix.gov](mailto:zoning@phoenix.gov)

### **Other Useful Telephone Numbers**

Planning & Development Department Assistant Director's Office	(602) 262-6656
Zoning Administration Section	(602) 262-7131, press 6
Facsimile Machine	(602) 534-1345



## City of Phoenix

PLANNING AND DEVELOPMENT SERVICES

### **REQUIREMENTS FOR GRANTING USE PERMITS**

Use Permits may be granted upon a finding that the use covered by the permit, or the manner of conducting the use will not cause a significant increase in vehicular or pedestrian traffic in adjacent residential areas; or emit odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions; or contribute in a measurable way to the downgrading of property values; and will comply with the Zoning Ordinance and the laws of the City of Phoenix.

**Revocation** - A use permit may only be revoked upon a finding that there has been material noncompliance with a condition prescribed in conjunction with the issuance of the use permit or that the use covered by the permit or the manner of conducting the same violates the standards listed in Section 307 of the Zoning Ordinance that govern the granting of the permit.

### **REQUIREMENTS FOR GRANTING VARIANCES**

Sufficient evidence must be presented to prove the following elements:

1. That there are special circumstances or conditions applying to the land, building or use referred to in the application, which do not apply to other properties in the same zone; and
2. That such special circumstances were not self-imposed by the property owner; and
3. That the variance is necessary for the preservation and enjoyment of substantial property rights; and
4. That the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.

The use applied for must be commenced, or a building permit must be applied for within 60 days of the granting or within the time stipulated by the Board.

# **RULES OF PROCEDURE OF THE BOARD OF ADJUSTMENT CITY OF PHOENIX, ARIZONA**

## **I. ORGANIZATION**

### **Officers**

The Board of Adjustment, organized as provided under the Zoning Ordinance of the City of Phoenix, shall elect a Chairman and Vice-Chairman at the December meeting, or when vacancies occur. The Chairman and Vice-Chair shall have all the rights, privileges and duties as all other members of the Board, including the ability to make motions and vote on all matters before the Board.

### **Duties**

The Chairman, or when the Chair is vacant for any reason, the Vice-Chairman, shall preside at meetings, shall decide all points of order, and shall swear in witnesses and take evidence. The Vice-Chairman shall perform all customary duties of the Chairman whenever the Chairman relinquishes the Chair, or when the Chairman is absent.

### **Secretary**

The Secretary of the Board shall be a member of the City Planning and Development Department staff assigned by the Zoning Administrator, shall be the custodian of the records maintained in the Planning and Development Department; shall attend to official correspondence and shall supervise the clerical work and technical preparations necessary to the disposition of appeals before the Board, as well as attend Board meetings.

### **Legal Counsel**

The City Attorney or his designated representative shall be the legal counsel for the Board of Adjustment.

## **II. MEETINGS**

### **Regular**

Regular meetings of the Board shall be held on the first Thursday of each month at 12:00 noon.

Any regular meeting may be changed by a majority vote of the Board, if holidays or other events make it impractical to meet at the regularly scheduled time.

### **Study Sessions**

If needed, the Board members may meet prior to the regularly scheduled meeting for the purpose of reviewing the items on that day's agenda or to discuss other educational or administrative matters.

### **Special Meetings**

Special meetings for any purpose may be held by the Board on call of its Chairman, by notification to the Zoning Administrator with a copy to the Board Secretary.

### **6:00 p.m. Closing Time**

All regular and special meetings shall end at or before 6:00 p.m., unless a majority of the Board members present and voting adopts a motion extending the meeting beyond 6:00 p.m.

### **Quorum**

A quorum of the Board shall consist of four members.

### **Agenda**

The Secretary shall prepare an agenda for each Board meeting, listing the matters of business in the following order:

**CALL TO ORDER** - recording of members and staff present and absent

**MOTIONS TO CHANGE THE ORDER OF BUSINESS**

**MINUTES** - submitted for approval, subject to changes as directed

**PUBLIC HEARINGS** - requests for continuances, withdrawals, reconsiderations and new hearing items

**OTHER BUSINESS** - business not part of a hearing

**ADJOURNMENT**

## **III. OFFICIAL RECORDS**

The official records shall include these rules, the minutes of the Board, all findings, decisions, and other documents.

The minutes and copies of all appeals coming before the Board shall be filed in the City Planning and Development Department in accordance with that department's general file system. Original papers of all appeals shall be retained in the Planning and Development Department for a reasonable time.

Should it become necessary to release documents from the custody of the Planning and Development Department the same may be done with permission of the Zoning Administrator and concurrence of legal counsel for the Board of Adjustment.

All Board records shall be open to public inspection during working hours. Audio recordings of the proceedings are available for purchase from the Planning and Development Department three (3) business days following the hearing.

## **IV. EVIDENCE; CONTINUANCES; WITHDRAWAL OF APPLICATIONS**

### **Evidence**

Evidence, legal memoranda, or written statements supporting the approval or denial of an appeal shall be submitted through the Secretary to the Board.

1. The information must be received by the Planning and Development Department at least ten calendar days prior to the public hearing to allow the Board a week to review the materials. Such information may include, but is not limited to photographs, documents, maps, plats, reports, and other written material.
2. Any additional written material or legal memoranda submitted after the ten-day deadline shall require the consent of the majority of the Board members present at the hearing prior to distribution to the Board.

## **Continuances**

Requests for Continuances shall be processed as follows:

### **a. Request for Continuance Received at least 15 days in Advance of Hearing**

If a request by the applicant, appellant or opposing group for continuance is received by the Zoning Administrator at least 15 days prior to the scheduled hearing date, and the property has not been posted, and the property is not in violation of the zoning ordinance, the property will not be posted, the Board will continue the case to a later agenda, and the applicant/appellant need not appear. The application will be retained on the agenda for which notice by publication has been given. For the purpose of this paragraph, "applicant" means the party listed as the applicant in the application on the current agenda (not the appellant). No more than one 30 day continuance per applicant, appellant or opposing group for a total two 30 days continuances will be granted under this section.

### **b. Other Requests for Continuances**

All continuance requests not covered by the above paragraph will not be granted automatically, the property will be posted, and the Board will consider the request for the continuance and any objections at the scheduled hearing. The Board shall grant a continuance only when there is a finding of compelling reason. The Board may also continue a case on its own motion.

## **Withdrawal of Applications**

An applicant for a variance, use permit, or Formal Interpretation may withdraw the application without Board approval at any time prior to the commencement of the hearing wherein evidence or argument on the merits of the appeal is presented to the Board. The appellant to a zoning adjustment application may withdraw the appeal without Board approval at any time prior to the commencement of the hearing wherein evidence or argument on the merits of the appeal is presented to the Board. Thereafter, any withdrawal of the application while the matter is before the Board shall require consent of the majority of the members present.

## **V. HEARINGS AND DECISIONS**

### **Public Hearings**

Hearings on all matters on which a decision of the Board is required by law shall be open to the public. The applicant may appear in his own behalf or be represented by counsel or persons authorized to represent the applicant.

### **Procedure for Hearing**

#### **a. Zoning Administrator or His Representative**

The Zoning Administrator or his representative shall present the city position in the case of referred matters.

#### **b. Appeal by Applicant**

In cases in which the applicant has appealed to the Board, the Chairman shall first call upon the applicant to present his case and all evidence supporting his request.

The Chairman shall next call on those opposed to the granting of the application to present their arguments. The applicant shall then have the right of rebuttal to arguments presented by the opposition.

### **c. Appeal by Others**

In cases in which the appellant is someone other than the applicant, the Chairman shall first call upon the appellant to present his case and arguments and evidence supporting the appeal.

The Chairman shall next call on those favoring the granting of the application to present their arguments. The appellant shall then have the right of rebuttal to arguments presented by those in favor of the application.

### **d. Arguments and Questions**

Each side shall proceed without interruption by the other and all arguments and pleadings shall be addressed to the Board. No argument between individuals will be permitted, but each side may, upon approval of the Chairman, ask witnesses for the opposing side questions relevant to the issues involved in the appeal.

During the hearing, Board members and members of the staff will be given an opportunity to ask questions and to make any appropriate comments pertinent to the application under consideration.

### **e. Time Limits**

In the interest of maintaining a fair and efficient public hearing, the following time limits will be adhered to unless expanded by the Board:

- ◆ Ten minutes for the appellant's presentation; including all persons in support of the appellant's position
- ◆ Ten minutes for the opposition's views; including all persons in support of the opposition
- ◆ Five minutes for rebuttal and summation by the appellant.

Any maps, photographs, electronic presentation (written or electronic) or other documents which are used in a presentation must be left with the Secretary for 30 days (for use if the Board's decision is appealed).

If an applicant or appellant fails to appear for any appeal, in the Board's sole discretion, the Board may approve, deny, or continue the appeal to another hearing or may hear those persons appearing in response to the notice of hearing. The Board may approve or deny the request at such hearing despite the applicant/appellant's absence.

### **Information to be Presented**

All supporting evidence for and against each appeal shall be presented to the assembled Board.

The parties shall be responsible for the presentation of all information supporting their position.

The Zoning Administrator, or his representative, shall be responsible for the presentation of findings of fact resulting from the prior zoning adjustment hearing and the position of the Planning and Development Department.

Members of the Board may direct any question to the appellant, the applicant, staff or any person speaking or may permit the staff to question an applicant or speakers in order to bring out all relevant facts, circumstances and conditions affecting the appeal.

### **Decisions**

Upon conclusion of the presentations, the Board shall render its decision. Decisions on each type of appeal shall be by separate motion. A decision on more than one request within one type of appeal may be by single motion.



The Board may reverse or affirm, wholly or partly, or modify the decision of the Hearing Officer appealed from, and make such order, requirement, decision, or determination as necessary. The Board may also defer action on any appeal whenever it concludes that additional evidence is needed or that alternate solutions need further study.

### **Vote Required**

The concurring vote of a majority of members present and not otherwise disqualified shall be necessary to take any action provided that the number voting still constitutes a quorum. Members who are present and not otherwise disqualified must vote aye or nay on all properly made and seconded motions.

In the event of a tie vote, the Chair may entertain another motion.

### **Disqualification**

#### **a. Conflict of Interest**

A member who has, or whose relative has, a substantial interest in the decision before the Board shall make known such interest in the official records of the Board and shall refrain from participating in any manner in such decision. Legal Counsel to the Board shall advise the Chairman on any potential conflict of interest disclosures made.

#### **b. Ex Parte Communications**

Board members shall not receive any oral communication or receive or review any written communication on applications which are pending before the Board, or which may later come before the Board. The Board may only consider testimony and other evidence presented in public hearings on the application, copies of the official file on the application and written communications furnished to the Board in accordance with the Zoning Ordinance and these Rules of Procedure. Any written communication on any application which is received by a Board member shall be immediately forwarded to the Secretary of the Board. A Board member who engages in oral communications or reviews written communications on an application, other than allowed as stated above, shall notify the Board's Legal Counsel who shall confirm on the record the existence of such conflict and that Board member shall be disqualified to participate in any manner of that application.

### **Requests for Reconsideration**

Section 303.C.3 of the Zoning Ordinance provides that, "an appeal may be reheard only when there has been a manifest error affecting the Board's action."

The term "manifest error" is not defined in the Zoning Ordinance, but case law holds that "a clear or evident error" caused the decision in question.

A request for rehearing must clearly state the alleged manifest error made by the Board.

*Staff Procedure:* A motion to reconsider may be made only at the same or next regular meeting of the Board. On receipt of a properly filed request to reconsider an application, the secretary shall place the matter on the agenda under "Other Business," for consideration at the next regular meeting.

Such requests received prior to a regular meeting but after the agenda has been distributed, shall be presented to the assembled Board by the Secretary, except that no request received less than 48 hours prior to the next regular meeting shall be considered by the Board.

*Board Procedure:* A motion to reconsider a previous decision may be made only by a Board member who voted on the prevailing side. A majority vote of those previously in attendance shall be necessary to reconsider a previous decision. If reconsideration is refused, the Board shall enter on the minutes the basis of the request, the reasons why it was refused, and the vote of the members thereon.

If reconsideration is approved, the Board shall enter on the minutes the basis for the decision and the case will be placed on the agenda for the next regular meeting and the property reposted as a reconsideration of the previous case.

Unless the Board has questions or desires further argument, the Board will consider requests for reconsideration without the applicant or the opposition presenting any comments or evidence to the Board, except comments in writing furnished to the Board prior to the date on which the Board is to consider the request for reconsideration.

If reconsideration is granted, the application will be placed on the next agenda that can be legally advertised and notice of the new hearing posted on the property. The rehearing shall be heard de novo.

## **VI. RULES AND AMENDMENTS**

Amendments to these rules may be made by the Board upon the affirmative vote of a majority of the Board members present. Amendments adopted shall become effective at the next regular meeting of the Board.

A certified copy of these rules and of any amendments thereto shall be placed on record in the office of the City Clerk within ten days following the date of adoption.