

RULES OF PROCEDURE OF THE BOARD OF ADJUSTMENT

TOWN OF MARANA, ARIZONA

I. ORGANIZATION

A. Membership

The Board shall consist of the members of the Planning Commission, as set forth in Marana Town Code (MTC) Section 17-2-2(A). Application, recommendation, appointment, compensation, and removal of Board members shall be as set forth in MTC Chapter 2-6 (Special and Standing Boards, Commissions and Committees) and Chapter 17-2 (Administrative Bodies and Officers).

B. Officers

The Chair and Vice-Chair of the Planning Commission shall serve in the same roles for the Board.

C. Duties

The Chair, or when the Chair is absent for any reason the Vice-Chair, shall preside at meetings, shall decide all points of order or procedure, and shall administer the process of receiving evidence, including upon motion passed by the Board the option of swearing in all witnesses for a particular public hearing. The Vice-Chair shall perform all customary duties of the Chair whenever the Chair relinquishes such duties or when the Chair is absent. In the absence of both the Chair and Vice Chair the Secretary shall call the meeting to order and a temporary presiding officer shall be elected by a majority vote of those Board Members present and that person shall serve until the return of the Chair or Vice Chair. Upon return of the Chair or Vice Chair the temporary presiding member shall relinquish the Chair duties.

D. Secretary

The Secretary of the Board shall be assigned by the Development Services Director, shall be custodian of the records maintained by the Development Services Department and shall provide such records to the Town Clerk's Office. The Secretary shall receive and prepare all official correspondence and shall supervise the clerical work and technical preparations necessary to the disposition of appeals before the Board, as well as attend all Board Meetings.

E. Legal Counsel

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

II. MEETINGS

A. As-Needed

The Board will hold meetings on an as-needed basis when any of the issues listed in MTC Section 17-2-2(C) occur and a hearing is required or requested. In addition, Town staff may schedule a Board meeting to provide training or information to the Board. Meetings of the Board, when needed, shall usually be held on the last Wednesday of the month at 5:30 p.m. in the Town of Marana Municipal Complex located at 11555 West Civic Center Drive, Marana, Arizona.

B. Closing Time

All meetings shall end at the discretion of the Board.

C. Quorum

A quorum of the Board shall consist of four members.

D. Agenda

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

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. APPROVAL OF AGENDA

V. INFORMATIONAL ITEMS

VI. APPROVAL OF MINUTES

VII. PUBLIC HEARINGS

VIII. DISCUSSION/POSSIBLE ACTION ITEMS

IX. ADJOURNMENT

E. Approval and Order of Agenda

The Chair may call items in a different order if the Chair or a majority of Board members present believe it to be in the best interest of the Town or the public. The order of the agenda may be revised by motion at the "Approval of Agenda" item or at any other time the Chair is willing to entertain such a motion during the meeting.

III. HEARINGS

A. Chair's Introductory Statement

Before the first public hearing, the Chair will read the following statement:

“Each item will be called in the order in which it appears on today’s agenda (or in the order of the agenda as modified by motion carried by the Board). The Board wants to hear from anyone who has any pertinent remarks concerning the applications.

“Public hearings normally proceed as follows. First, the staff report is read, including any recommendation or position of the Zoning Administrator. Second, the applicant or the applicant’s representative is permitted to make a presentation. Third, any other persons, in favor of or opposed to the application, are permitted to speak. Fourth, the applicant may then have a short rebuttal.

“Any maps, photographs, or other documents which are used in your presentation should be left with the Secretary and become part of the official record.

“In the interest of having a fair and efficient public hearing, you should stick to the following time limits, unless the Board agrees that additional time is necessary in the interest of justice and due process of law:

“Ten minutes for the appellant’s presentation.

“Five minutes each for presentations by other persons, in favor of or opposed to the application.

“Five minutes for rebuttal and summation by the appellant.

“At the conclusion of the public hearing, the Board may discuss and decide the case or do anything else allowed by the Board’s rules, the Marana Land Development Code, or state law.”

B. Order of Presentation

The presentation of cases shall normally follow this order:

1. Zoning Administrator’s Staff Report
2. Applicant’s Presentation
3. Presentation, by others, in support or protest of the applicant’s request
4. Rebuttals as permitted by the Board
5. Close of Hearing

C. Evidence

Evidence and legal memoranda supporting the grant or denial of an appeal shall be submitted through the Secretary, or to the Board in a public meeting.

1. All application materials including: photographs, documents, maps, plats, reports and other written material which is to be submitted in evidence, including legal memoranda, must be received by the Development Services Department at least 15 calendar days prior to the public hearing to allow Staff time to review the materials and prepare the appropriate notices and reports.

- a. Any additional materials or legal memoranda submitted after the 15 day deadline or at the public hearing shall be limited to materials which rebut evidence, bring to light a change in the application materials submitted or to rebut legal memoranda previously submitted by another party.
 - b. This rule shall not prevent the Board from accepting photographs maps, plats, or drawings presented by the general public, staff or the applicant at the public hearing.
2. The applicant and any other party that may be affected by the case may appear in person or by representative, and give verbal or written testimony.
3. Orderly procedure requires that each presentation proceed without interruption. All discussion is to be addressed to the Board Members and questioning or argument between individuals will not be permitted.
4. During the hearing, the Chair, Board Members and members of staff may ask questions, provide necessary clarifications and make appropriate comments pertinent to the case in order to bring out relevant facts, circumstances and conditions affecting the case. However, no Member or staff member will debate an issue with any party.
5. All supporting evidence for and against each case is presented to the assembled Board during the hearing. The applicant is responsible for the presentation of sufficient evidence to support the applicant's position. All materials submitted into evidence shall become part of the record.
6. The burden of proof for satisfying findings made by the Board rest with the prevailing party.
7. The presentations will meet the following time limits, unless the Board agrees that additional time is necessary in the interest of justice and due process of law:
 - a. Ten minutes for the appellant's presentation.
 - b. Five minutes each for presentations by other persons, in favor of or opposed to the application.
 - c. Five minutes for rebuttal and summation by the appellant.
8. The Board may take a case under advisement for later consideration or may defer action to a later hearing date whenever it concludes additional evidence is needed or further study is required.

D. Requirements for Granting Variances

1. For the Board to grant a variance, sufficient evidence must be presented to prove the following elements:
 - a. Because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district.

- b. The special circumstances applicable to the property are not self-imposed by the property owner.
 - c. The variance, with any conditions imposed by the Board, will not constitute a grant of special privileges inconsistent with the limitations on other properties in the vicinity and zone in which the property is located.
2. The activity or use which is the subject of the variance must be commenced, or a building permit must be obtained, within 180 calendar days of the granting of the variance, or within such additional time as stipulated by the Board.

E. Requirements for Interpretations

The Board shall hear and decide appeals in which it is alleged that there is an error in an order, requirement, or decision made by the Zoning Administrator in the enforcement of a zoning ordinance. A.R.S. §9-462.06 provides that the appealing party must take any such appeal “within a reasonable time.” For purposes of these rules, unless determined otherwise by state statute or case law, “a reasonable time” shall be defined as 15 calendar days from the date of the appealing party’s receipt of the Zoning Administrator’s order, requirement, or decision.

F. General Limitation of Board’s Authority

The Board may not make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance, that exceed the Board’s legal authority to grant variances.

G. Legal Advice

Following the Zoning Administrator’s Staff report, the Chair may seek or invite the Board members to seek legal advice relating to the matter before the Board, including without limitation the opinion of the Town Attorney as to the Board’s jurisdiction in the case. Legal advice may be given in executive session upon adopted motion of the Board if all applicable requirements of the Arizona Open Meeting Law (including notice of the executive session) have been satisfied. The Board may take such action as it deems appropriate in light of the legal advice, including without limitation:

1. Hear oral arguments or request written briefs on the legal question.
2. Accept and take action in a manner consistent with the legal advice.
3. Reject the legal advice and take action as the Board determines appropriate.

H. Absence of Applicant

If no appearance is made at the hearing by the applicant, the Board may:

1. Continue the hearing to another date if sufficient reason is provided for the applicant’s failure to appear, or
2. Hear from those who have appeared and take testimony into the public record, and continue the hearing to another date, providing the applicant an additional opportunity to present the applicant’s case.

3. Hear and dispose the case on the record provided, by hearing those who have appeared in response to the notice of hearing.

I. Decisions

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

The Board may reverse or affirm, wholly or partly, or modify the order, requirement, or decision of the Zoning Administrator, and may 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.

1. On variances, the motion made to affirm or deny shall reflect the applicant's request.
2. The concurring vote of a majority of Board members present is necessary to carry a motion made to:
 - a. Grant a variance.
 - b. Deny a variance.
 - c. Reverse a decision of the Zoning Administrator, or any decision, interpretation, or determination of the Zoning Administrator.
3. An equal vote (two to two or three to three) on a motion to grant or deny a variance constitutes a denial of the variance.
4. An equal vote (two to two or three to three) on a motion to uphold or reverse a decision, interpretation, or determination of the Zoning Administrator upholds the Zoning Administrator's decision, interpretation, or determination.

Decisions shall be final and not subject to reconsideration by the Board, except where there has been a manifest error affecting the Board's decision. For purposes of these rules, "manifest error" means a clear or evident error which caused the decision in question. In such cases, a motion for reconsideration may only be considered in accordance with the rules of parliamentary procedure and the Arizona Open Meeting Law.

J. Disqualification

A member who has, or whose relative has, a substantial interest in the matter before the Board shall make known that interest in the official records of the Board and shall refrain from participating in any manner in the matter.

IV. RULES AND AMENDMENTS

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

These rules, as they are amended from time to time, shall be available for viewing by the public at all times on the Town's internet website.