

CITY OF TUCSON  
ARIZONA  
RULES AND REGULATIONS  
OF THE  
BOARD OF ADJUSTMENT

Rules and Regulations

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\* (To Rule J.4., page 12: rewritten to reflect wording in the LUC)

BOARD OF ADJUSTMENT RULES AND REGULATIONS

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RULES AND REGULATIONS  
OF THE  
BOARD OF ADJUSTMENT

\* \* \* \* \*

The Board of Adjustment rules and regulations are established according to Article V of Chapter 23 of the Tucson Code. Three copies of these rules are filed with the Tucson City Clerk to be kept as a permanent public record. Copies of these rules and regulations are available from the Zoning Administrator at \$1.00 per copy.

A. ORGANIZATION

1. The Board of Adjustment is composed of seven members appointed by the Mayor and Council.
2. All Board members must be residents of the City.
3. Members serve without compensation.
4. Members serve four years with staggered terms. Vacancies are filled for unexpired terms.
5. The Board elects a Chair and Vice-Chair from among its members at the first regular meeting every January for a term of one calendar year.
6. A member may be removed for just cause by an affirmative vote of two-thirds of the Mayor and Council.
7. A member who misses more than four consecutive meetings for any reason or who fails to attend for any reason at least 40 percent of the meetings called in a calendar year is automatically and immediately removed.

B. OFFICERS AND STAFF

1. The Chair presides at all meetings and hearings. In the event of the absence or disability of the Chair, the Vice-Chair presides. In the absence of both, the members appoint a temporary Chair (or Chair pro-tem).

2. The Chair may designate members of the Board to make field inspections when necessary from time to time and, unless otherwise directed by a majority of the Board, appoints such committees as may be found necessary.
3. The Chair, subject to these rules, decides all points of procedure or order unless otherwise directed by a majority of the members in attendance on motion duly made and approved. Oaths may be administered and evidence taken. The attendance of witnesses may be compelled.
4. The Vice-Chair performs the Chair's duties whenever the chair is absent.
5. Members of the Planning Department provide staff assistance to the Board as required.
6. Official decisions of the Board are recorded and kept as a permanent public record in the Planning Department.
7. The minutes of its proceedings are a public record and are kept in the Planning Department.
8. Scheduling of materials on the Board agenda is handled by the Zoning Administrator.
9. The City Attorney or a designated representative is the legal counsel for the Board. The counsel advises the Board on its jurisdiction and gives legal advice to the Board. Advice of counsel is received and entered in the minutes before resolution of any question or matter requiring legal interpretation or advice.

#### C. POWERS AND DUTIES OF BOARD

1. The Board:
  - a. Hears and decides on appeals in which it is alleged there is an error or abuse of discretion in any order, requirement, decision, interpretation or other determination made by the Zoning Administrator in the enforcement of the Land Use Code.
  - b. Hears and decides by granting or denying requests for variances from the provisions of the Land Use Code.

- c. Interprets building zone maps.
  - d. Interprets meaning and intent of provisions of the Land Use Code.
  - e. Hears and decides special questions and any other matter as requested by the Mayor and Council.
2. The Board may not:
- a. Grant variances from the provisions of the Land Use Code governing the use of land.
  - b. Make any changes in the wording or terms or provisions of the Land Use Code.
  - c. Grant a variance if the special circumstances or conditions applicable to the property were self imposed or created by the owner or one in possession of the property.
  - d. Grant a variance to a substantially greater extent or degree than indicated in the public notice of the hearing.

#### D. MEETINGS

1. Board meetings are open to the public.
2. Regular meetings of the Board are held at 1:30 p.m. on the fourth Wednesday after the first Monday of each month, and may be recessed or adjourned from day to day or to the next regular meeting. Meeting dates held during October, November, and December may vary due to holidays.

3. Special meetings for any purpose may be held on call of the Chair, or of four members and at the place designated.
4. Notice of special meetings is given members and the general public not less than 24 hours prior to time set. Where required by urgency, written waivers of notice by members is filed. Call of a special meeting to a time certain at any regular meeting constitutes notice to members in attendance. Waiver of notice may be given by members attending any meeting. If a special meeting is called on a case subject to hearing, the required notice provisions for hearing will be met.
5. Notice of an executive session is given members and the general public. Notice is required to state the specific provisions of law authorizing the executive session.  
[A.R.S. P38-431.02(B)]
6. A quorum of the Board consists of four members.
7. The Zoning Administrator prepares an agenda for each Board meeting, listing the matters of business in the following order:
  - a. Call to order -- recording of members present and absent.
  - b. Continued hearings.
  - c. Reconsidered hearings.
  - d. New hearings.
  - e. Other business -- matters for Board action and not part of a hearing.
  - f. Adjournment.
8. Robert's Rules of Order will govern the actions of the Board not covered by these rules and regulations or by the Land Use Code.
9. Where the Board is authorized to act by the Mayor and Council in matters other than zoning, these rules and regulations control where applicable.



## E. APPLICATIONS

1. Applications and appeals to the Board, together with the required fees, are filed with the Zoning Administrator.
2. Applications and appeals are made on forms provided by the Zoning Administrator.
3. Appeals from decisions of the Zoning Administrator may be filed by any person aggrieved or by any officer, department, board or bureau of the City affected by the decisions, provided:
  - a. The appeal is filed in writing, and
  - b. Within 30 calendar days of the date noticed in the Zoning Administrator's written decision.
4. The applicant must state the reason for the application or appeal and the reasons why the request should be granted, for example:
  - a. If a variance is requested, facts should be stated upon which findings may be made by the Board to justify the granting of the variance, as set forth in Section 5.1.7.3.B of the Land Use Code.
  - b. If an appeal is filed alleging an error in any decision, interpretation or other determination made by the Zoning Administrator, facts should be stated in support of the appeal.
5. In all cases, the application submittal to the Board must include site plans which have been reviewed for code compliance by the Planning Department. The written code compliance comments must be attached. Additionally, if applicable, the plans must have been reviewed by the appropriate Historic District Review Committee.

6. Before any case may be placed on the agenda for a public hearing before the Board, the applicant must file a copy of any letters or communications which were sent to neighbors/affected property owners offering to meet to discuss the proposed development.
7. Verification of Neighborhood Meetings. The applicant shall verify in the application to the Board that a neighborhood meeting has been held in the affected neighborhood. For the purpose of establishing this verification, the Board of Adjustment has determined that the meeting must be held within one mile of the property for which the applicant seeks action from the Board.
8. The signature of the owner of the property, subject of a case, is required on the application form. A letter from the property owner acknowledging the filing of the application to the Board is an acceptable substitution.
9. In every case the applicant, be it the property owner of record, the contract purchaser, the present or prospective tenant, or the party aggrieved, will be identified in the proceedings and records.
10. The Zoning Administrator will forward to the Board, for the next available regular meeting, the application or appeal, together with all plans, papers or any relevant material, including a report on the subject.
11. The Board may refuse to hear a case upon failure to supply the required information called for upon the forms, as reasonably required by the Zoning Administrator.
12. Applications deemed complete by staff and filed by no later than 5:00 p.m. on the fourth Monday of the month are heard at the regular meeting of the next month and heard in numerical order except for continued and reconsidered cases. A case may be heard out of order upon motion of a Board member provided no case is heard prior to the legally advertised time.
13. No regular Board of Adjustment agenda will exceed fifteen (15) applications/cases without prior approval of the Board of Adjustment Chairperson.

14. An appeal stays all proceedings in the matter appealed from, unless the Zoning Administrator certifies to the Board that, in his opinion by facts stated in the certificate, a stay could cause imminent peril to life or property. Upon such certification, proceedings will not be stayed, except by restraining order granted by the Board, or by a court of record on application and notice to the Zoning Administrator.

F. NOTICE OF HEARINGS

1. Notice of the time and place of a hearing is:
  - a. Published at least once, in a newspaper of general circulation published and circulated in the City of Tucson, not less than 15 calendar days nor more than 30 calendar days prior to the hearing date.
  - b. Posted in a conspicuous place close to the property affected, not less than 15 calendar days nor more than 30 calendar days prior to the hearing date.
  - c. Mailed to the applicant, parties in interest, and other persons as may be required by the Land Use Code, not less than 10 calendar days prior to the hearing date.
2. "Parties in interest" means:
  - a. The owners of real property, as shown on the Pima County Assessor's rolls, within a 200 foot radius of the exterior lot lines of the property which is the subject of a case.
  - b. Those neighborhood groups registered with the City of Tucson within one mile of the property which is the subject of a case.
3. Adjournment of a hearing to a time, date, and place certain is adequate notice to members and the public.

G. HEARINGS

1. Presentation of cases normally follows this order:
  - a. Zoning Administrator's report.
  - b. Jurisdiction determined.
  - c. Applicant's presentation
  - d. Presentation, by others, in support of the applicant's request.
  - e. Presentation, by others, in protest of the applicant's request.
  - f. Rebuttals as permitted by Board.
  - g. Close of hearing.
  
2. Following the Zoning Administrator's report, the Chair may note the opinion of the City Attorney as to the Board's jurisdiction in the case. Whenever it may appear that the Board lacks jurisdiction, the Chair will advise the applicant and other interested parties on this point, and that the Board may:
  - a. If there is objection to the City Attorney's opinion, hear arguments on the question of jurisdiction and request briefs be filed on the (Issue?)
  - b. If there is no objection to the City Attorney's opinion, make an immediate determination and close the hearing upon finding that it lacks jurisdiction.
  - c. If it is determined by motion that the Board lacks jurisdiction, record the decision as a vote to deny the request.
  
3. If no appearance is made at the hearing by the applicant, the Board may:
  - a. Continue the hearing, or
  - b. Dispose of the matter on the record by hearing those who have appeared in response to the notice of hearing.

4. The applicant and any other party that may be affected by the case may appear in person or by representative.
5. Orderly procedure requires that each presentation proceed without interruption. All discussion is to be addressed to the Board and questioning or argument between individuals will not be permitted.
6. During the hearing, the Chair, Board members and members of staff may ask questions and make appropriate comments pertinent to the case; however, no member should debate or argue an issue with the applicant.
7. The Chair and Board members may direct any question to the applicant or any person speaking in order to bring out all relevant facts, circumstances and conditions affecting the case, and may call for questions from members of the staff.
8. All supporting evidence for and against each case is presented to the assembled Board. The applicant is responsible for the presentation of all information supporting the case. All materials submitted into evidence are entered into the record.
9. The burden of proof for satisfying the findings made by the Board rests with the prevailing party.
10. The Board may take a case under advisement for later consideration, or may defer action whenever it concludes that additional evidence is needed or further study is required.

#### H. DECISIONS

1. On variances, and appeals the motion made is to reflect the applicant's request.
2. The concurring vote of four Board members is necessary to carry a motion made to:
  - a. Grant a variance.
  - b. Reverse on appeal the decision of the Planning Director, or any decision, interpretation, or determination of the Zoning Administrator.

EXAMPLES:

VARIANCES: MOTION TO GRANT.

- a. A motion made to grant a variance(s) must have four or more "yes" votes to pass. On a lesser number of yes votes, the motion fails and the variances(s) denied.

Vote		
Yes	No	
4	3	Motion passes, variance is granted.
3	1	Motion fails, variance is denied.

APPEALS: MOTION TO REVERSE.

- c. A motion made to reverse the action of either the Zoning Administrator or Planning Director must have four "yes" votes to pass. On a lesser number of yes votes, the motion fails.

Vote		
Yes	No	
4	3	Motion passes, action reversed.
3	1	Motion fails, action upheld.

3. When a quorum is present, a motion made to uphold the action of either the Zoning Administrator or Planning Director will pass on any number of "yes" votes, unless there are four "no" votes then the motion fails.

} does not make sense

4. When a quorum is present all motions, unless otherwise specified by these rules, carry by simple majority vote.

This provision is not applicable on matters the Zoning Administrator has not made decisions on and has just submitted the matter to the Board, with or with no recommendation, or in which the Zoning Administrator has rendered a specific determination and an appeal to this determination has been sent to the Board, which will be governed by paragraphs H.2.b and H.3.

5. Actions on questions arising under separately listed powers and duties will be taken by separate motions of the Board.

6. No informal requests for advice need be granted by the Board. Advice, opinion or information given by any Board member or any other official or employee of the City of Tucson is not binding on the Board.

7. A member may be voluntarily disqualified from voting whenever the member has a personal or monetary interest in the property concerned in the case, or has had exparte contact. Disqualification should also occur when the member will be directly affected by the decision of the Board or has, or in belief has, any conflict of interest under State statutes.

I. FINDINGS

1. In acting on variances, the Board makes findings supporting its actions as set forth in Section 5.1.7.3.B of the Land Use Code.

2. In ruling on appeals from actions taken by the Zoning Administrator, Planning Director or Examiner, the Board makes findings supporting its rulings.

## J. CONDITIONS

1. In granting a variance, or extension, and in ruling on other matters, the Board may impose such reasonable conditions as it may deem necessary to implement the purposes of the Land Use Code.
2. A time limitation, a return for review at designated interval, or a temporary and revocable grant may be attached by the Board to any approval.
3. Upon failure to comply with the decisions or conditions of the Board of Adjustment or upon continued violation of the provisions of the Land Use Code, the Building Safety official may, after written notice has been given to the owner of the property, disconnect or order utility companies to disconnect utility services to the premises involved. This provision does not preclude the use of any other enforcement method as provided for in the Land Use Code.
4. Variances granted by the Board are null and void if a required building permit has not been obtained or if conditions imposed by the Board have not been fulfilled within 180 days from the date of the Board's approval. Two extensions of up to 180 days each may be granted by the Planning Director for good cause.
5. Decisions of the Board, unless otherwise stated, apply to the property rather than to the individual and are valid only for the specific premises and use contained in the Board of Adjustment application. It is not transferable to other property nor will it continue on the property under consideration where circumstances of that property have materially changed.
6. Except for the decision on an appeal to an action of the Zoning Administrator, no decision of the Board will set a precedent and each case will be decided on the merits and the circumstances of that case. In the case of Zoning Administrator appeals, the decision of the Board may be applied in similar circumstances as determined by the Zoning Administrator.



K. APPEAL OF DECISIONS

1. The decisions of the Board of Adjustment may be appealed to the Superior Court of Pima County by the filing of a complaint for special action within 30 calendar days after the Board has rendered its decision. [A.R.S. Section 9-462.06(J) & (K)]

L. CONTINUANCES

1. When a quorum is present, a motion on a request to continue a hearing carries by simple majority vote.
2. The hearing of a case may be continued by one of the following actions:
  - a. By request of the applicant and approval of the Board at the hearing.
  - b. By action initiated by the Board at the hearing.
  - c. By the applicant's arrangement with the Zoning Administrator at least seven (7) calendar days prior to the scheduled hearing date.
3. The continued hearing of a case is processed as follows:
  - a. Within seven (7) calendar days of the continuance date, the applicant must submit to staff the appropriate continuance fees. The fees are to be accompanied by the submittal of additional site plans if deemed necessary by staff.
  - b. Upon staff's receipt of the appropriate fees and plans, the continued case will be placed on the agenda for the next regular meeting.
  - c. The notice given a continued case is the same as required for the original hearing.
  - d. A continued case not brought back to the Board within three (3) months of the original hearing date is deemed withdrawn.
  - e. To be heard by the Board, a case once withdrawn must be processed as a new case.

## M. RECONSIDERATIONS

1. When a quorum is present, a motion on a request to reconsider a previous decision carries by simple majority vote.
2. A request for a motion to reconsider a Board decision may be made:
  - a. At the same meeting and, if carried, may be immediately disposed of without further notice
  - b. Prior to the following regular meeting.
3. The Board may entertain one request for reconsideration by the applicant or a party in interest, provided:
  - a. The request is in writing and filed with the Zoning Administrator within 14 calendar days after the Board has rendered its decision, and
  - b. New evidence which was not presented at the hearing on the matter is submitted with the written request.
4. The Zoning Administrator will place a properly filed request for reconsideration on the agenda for the next regular meeting, as an "Other Business" item.
5. If the reconsideration request is approved, the case will be reheard by the Board at the following regular meeting, upon payment of the rehearing fee. Notice given of a rehearing is the same as required for an original hearing.
6. If a request for reconsideration is denied, the Board enters on the record the basis of the request, the reasons why the request was denied, and the vote of the members.
7. The filing of a request for reconsideration stops the 30 calendar day period in which a petition to the Superior Court must be made. The appeal periods will then run from:
  - a. If the reconsideration request is approved, the date of the decision on the reconsidered matter.
  - b. If the reconsideration request is denied, the date the request is denied by the Board.

## N. REFILINGS

1. No matter which has been adversely acted upon by the Board will be considered again within one calendar year following the date of action, except as provided.
2. The Board may hear cases within a one year period concerning the same property when:
  - a. The case does not involve the same Land Use Code section or does not allege the same misinterpretation or hardship as the previous case; or
  - b. The case does not contain the original request for specific variance; or
  - c. Substantial change in the use of adjacent property has occurred since the previous case was heard; or
  - d. The previous case was closed without hearing when the applicant was not present at the time the case was scheduled for hearing.
3. The Board may not:
  - a. Reopen any case where a hearing has been held, except to correct an error.
  - b. Hear any case to determine the location of any district boundary line where the Board has previously determined the location of such boundary line.
4. A case will be considered as heard and closed at such time as the Board approves or rejects an application or appeal by motion, or when it is considered closed by operation of these rules.
5. When the case is opened for hearing and the applicant is not present, the Board may, prior to adjournment that day, recall all such cases. Such cases may be closed if an applicant is not present for the recall and no acceptable reason is given for failure to appear.

## O. SUSPENSION OF RULES

1. The concurring vote of four Board members is necessary to carry a motion to suspend a rule at any meeting.

P. AMENDMENT TO RULES

1. The concurring vote of four Board members is necessary to carry a motion to amend a rule.
2. When an amendment proposal is presented to the Board by a member at a regular meeting, action on the amendment will be scheduled to be taken at the following regular meeting.
3. Members will be sent a written copy of the proposed amendment at least seven calendar days prior to the regular meeting at which the amendment is to be voted on.

QUICK REFERENCE VOTING GUIDE

REQUIRED BOARD VOTES TO CARRY MOTIONS TO:

GRANT VARIANCES .....	FOUR "YES" VOTES.
REVERSE ZA/PD ACTION .....	FOUR "YES" VOTES.
UPHOLD ZA/PD ACTION .....	FAILS ONLY WITH FOUR "NO" VOTES.
CONTINUANCES .....	MAJORITY OF "YES" VOTES.
RECONSIDERATION .....	MAJORITY OF "YES" VOTES.
SUSPEND A RULE .....	FOUR "YES" VOTES.
AMEND A RULE .....	FOUR "YES" VOTES.
ALL OTHER MOTIONS .....	MAJORITY OF "YES" VOTES.
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