

## **CHAPTER 2.16. BOARD OF ADJUSTMENT**

### **2.16.010. Creation and appointment.**

- (a) The town board of trustees shall appoint a board of adjustment consisting of five voting members, as follows: one member from the board of trustees; one member from the planning commission and three regular members. Each member shall serve for two years; provided, however, that of the first appointed board, three members shall serve two-year terms, and two members shall serve a one-year term. Board members must be residents and qualified electors of the town.
- (b) Two associate members to the board of adjustment may also be appointed by the town board of trustees. Each associate member must be a resident and a qualified elector of the town. Associate members shall perform all of the duties of a regular member in the absence or disqualification of a regular member from a meeting.
- (c) Two months prior to the term expiration date, the town clerk shall post a notice of expiration of the term in the town area. Any member currently serving and wishing to be reappointed for an additional term shall do so by submitting a letter of intent to the town administrator. The town board of trustees shall appoint the new member from among those responding to the notification. Members may be reappointed to serve successive terms without limitation.
- (d) The board of adjustment shall elect from its members a chairperson and vice-chairperson whose term shall be for one year. The chairperson and vice-chairperson positions shall be offered to the citizen members, if no citizen member wishes to serve in either capacity, then either position may be filled by the board of trustee member or the planning commission member.
- (e) Any member of the board of adjustment may be removed for chronic absenteeism or for other good cause as determined by the town board of trustees upon written notice. For purposes of this section, the term "chronic absenteeism" means three or more consecutive unexcused absences from board of adjustment meetings or absences from more than 50 percent of the board's meetings in any 12-month period.
- (f) Members shall serve without compensation, except that the town board of trustees may authorize the reimbursement of reasonable out-of-pocket expenses incurred by members in the performance of their duties.

(Code 1973, § 17.72.010; Ord. No. 13-1973, § IX:1, 1973; Ord. No. 15-1973, § IX:1, 1973; Ord. No. 6-1992, § 1, 1992; Ord. No. 4-2004, § 1, 2004)

### **2.16.020. Meetings and procedure.**

- (a) All meetings of the board shall be subject to the requirements of the Colorado Open Meeting Laws. Not less than four members or associate members must be present at a regular or special meeting to transact business, and all questions coming before the board shall be decided by simple majority vote of all those present. All votes shall be recorded ayes and nays, except that a roll call vote shall be conducted upon the request of any member. A tie vote shall be deemed a denial of the matter voted upon.
- (b) Minutes of all regular and special meetings and resolutions passed by the board of adjustment shall be authenticated by the presiding officer and timely recorded in an official book kept for that purpose.

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- (c) The board shall meet on an as-needed basis, with a regular meeting date and time being established by the board. The board may, by majority vote, set and conduct special meetings in addition to conducting regular meetings.

(Code 1973, § 17.72.020; Ord. No. 4-2004, § 1, 2004)

### **2.16.030. Powers and duties.**

The board of adjustment shall have the following powers and duties, all of which shall be exercised, subject to the laws of the state and subject to appropriate conditions and safeguards, in harmony with the purpose and intent of this title, the policies of the town board of trustees, and in accordance with the public interest and the most appropriate development of the neighborhood:

- (1) The board shall hear and decide appeals from, and review any order, requirement, decision or determination by, an administrative official charged with the enforcement of the regulations established by ordinance.
- (2) Where, by reason or exceptional shape or topography of a lot or other exceptional situation or condition of building or land, practical difficulty or unnecessary hardship would result to the owners of the property from a strict enforcement of this title, the board may authorize, upon appeal in specific cases, exceptions to the:
  - a. Minimum area of lot;
  - b. Minimum width of lot (reduced street frontage);
  - c. Minimum front yard;
  - d. Minimum side yard;
  - e. Minimum rear yard.
- (3) To hear and determine whether to grant a variance from the requirements of chapter 14.20 governing lighting.
- (4) No relief shall be granted by the board of adjustment when, in the opinion of the board, the applicant has not provided reasonable and adequate evidence justifying the request presented, or when the request is determined to be a self-imposed hardship.

(Code 1973, § 17.72.030; Ord. No. 15-1973, § IX:2, 1973; Ord. No. 4-1982, § 1, 1982; Ord. No. 4-2004, § 1, 2004; Ord. No. 20-2018, § 4, 11-8-2018)

### **2.16.040. Procedure.**

- (a) A formal application shall be submitted to the town clerk and shall consist of the following:
  - (1) A completed application form;
  - (2) Proof of ownership of the land which is the subject of the request or a notarized letter from the owner authorizing the representative to represent the owner;
  - (3) Application fee;
  - (4) If applicable and without placing undo financial burden on the applicant, a to-scale site plan identifying and locating the subject of the request;
  - (5) If applicable, letters of support and/or opposition from adjacent property owners.

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- (b) The town clerk shall review the application for completeness, schedule the meeting date and notify the board members of the request, either by telephone, e-mail or mail, as soon as possible.
  - (c) The town clerk shall cause the request to be published in a newspaper of general circulation and by the posting of the property at least 15 days before the scheduled hearing date and shall include the following information:
    - (1) Meeting date, time and location;
    - (2) The affected property tax schedule number, physical address and/or the distance and direction from nearest intersection;
    - (3) The nature of the request;
    - (4) Applicant's name;
    - (5) Name of newspaper and date of publication.
  - (d) Upon approval, the town clerk shall prepare and record a copy of the motion of approval.
- (Code 1973, § 17.72.040; Ord. No. 15-1973, § IX:3, 1973; Ord. No. 4-2004, § 1, 2004)

### **2.16.050. Stay of proceedings.**

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board after the notice of appeal has been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown.

(Code 1973, § 17.72.050; Ord. No. 15-1973, § IV:5, 1973)