

CITY OF GOODYEAR
BOARD OF ADJUSTMENTS
RULES OF PROCEDURE

Adopted _____

These Rules and Procedures govern the Board of Adjustment of the city of Goodyear when acting in their respective capacity and shall be interpreted in accordance with the Goodyear City Code, Goodyear Zoning Ordinance, Arizona Revised Statutes, and applicable case law.

I. Definitions

- A. For purposes of these Rules and Procedures the following definitions shall apply:
1. **Board:** The Board of Adjustment of the city of Goodyear.
 2. **Chair:** The presiding officer of the Board.
 3. **City:** The city of Goodyear, Arizona.
 4. **Commission:** The Planning and Zoning Commission of the city of Goodyear.
 5. **Council:** The City Council of the city of Goodyear.
 6. **Legal Counsel:** The City Attorney of the city of Goodyear or their designee, or outside counsel designated by the City Attorney in case of conflict.
 7. **Mayor:** The Mayor of the city of Goodyear
 8. **Member:** A person serving on the Board
 9. **Secretary:** The City Clerk of the city of Goodyear or their designee, serving ex officio.
 10. **Vice Chair:** The officer who presides over the Board in the absence of the Chair.
 11. **Zoning Administrator:** The official designated to administer the Zoning Ordinance of the city of Goodyear.
 12. **Zoning Ordinance:** The city of Goodyear Zoning Ordinance.

II. Membership, Purpose and Authority

- A. Membership:
1. The Planning and Zoning Commission shall sit as the Board of Adjustment.
 2. At no time shall the Board have fewer than five (5) Members or more than seven (7) Members.
 3. The Chair.
 - i. The Chair of the Commission shall serve as Chair of the Board.
 - ii. The Chair shall preside at all meetings and hearings of the Board, decide all points of order and procedure, administer oaths, take

evidence and perform any duties required by law, ordinance, or these Rules of Procedure. The Chair shall have the right to vote on all matters before the Board and shall also have the right to make or second motions in the absence of a motion or a second made by a Member.

- iii. The Chair may impose reasonable time limits to ensure orderly proceedings.
- iv. The Chair may enforce any rule adopted by the Board, including the right to clear the hearing room of spectators if the spectators fail to abide by any admonitions or rulings made by the Chair in an effort to keep order at such hearings.
- v. The Chair shall have the right to define the issues to be considered at any meeting/hearing of the Board.
- vi. The Vice Chair shall act as Chair in the Chair's absence.
- vii. In the absence of the Chair and Vice Chair, the most senior Member, based upon years of membership, shall act as Chair.

4. The Vice Chair.

- i. Shall act as Chair in the Chair's absence.

5. The Secretary.

- i. Shall have no vote.
- ii. Shall conduct all official correspondence of the Board.
- iii. Shall send out all notices required by law, ordinance, or these Rules of Procedure.
- iv. Shall be the custodian of the records of the Board.
- v. Shall supervise the clerical work and technical preparations necessary for the disposition of business before the Board and perform all other duties required by law, ordinance, or these rules of the Board.

6. Legal Counsel shall advise the Board.

B. Purpose:

- 1. Pursuant to § 1-2-7 of the Zoning Ordinance, the Board is established to provide for relief from the terms of the Zoning Ordinance through the granting of variances, and to hear and decide appeals from decisions of the Zoning Administrator.

C. Authority:

- 1. The Board shall act under the authority granted by § 1-2-7 of the Zoning Ordinance.
- 2. The Board has the authority to:
 - i. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the Zoning Administrator in their enforcement of the Zoning Ordinance.

- ii. Reverse or affirm, either wholly or partly, or modify an order, requirement or decision of the Zoning Administrator that is subject to appeal.
 - iii. Hear and decide requests for variances from the terms of the Zoning Ordinance under conditions prescribed by law.
- 3. The Board shall not:
 - i. 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, except to grant variances pursuant to these rules, City Code or Arizona State law.
 - ii. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

III. Meetings

- A. Board Meetings are convened at the request of the Zoning Administrator or designee.
- B. All meetings shall comply with Open Meeting Law.
 - 1. Open Meeting Law provides that, with a few limited exceptions, all meetings of a public body shall be open to the public to attend and listen to the deliberations and proceedings.
 - 2. Executive Sessions shall be held only as authorized by law.
- C. Agenda:
 - 1. An agenda shall be prepared by the Secretary for each meeting of the Board. The agenda shall include the various matters of business as scheduled for consideration by the Board.
 - 2. The agenda must list the specific matters to be discussed, considered or decided, and should contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided.
- D. Quorum:
 - 1. A majority of the duly appointed members of the Board shall constitute a quorum for the transaction of business.
 - 2. No action shall be taken at any meeting in the absence of a quorum, except to adjourn the meeting to a subsequent date.
 - 3. A quorum may be achieved when a Member participates in a meeting via teleconference or through another technological device if the Member cannot be physically present at the meeting.
- E. Voting:
 - 1. Each Member shall either vote or expressly abstain from voting if the Member has a conflict of interest.
 - 2. Official action of the Board requires an affirmative vote of a simple majority of Members present and eligible to vote.

3. Business items that result in a tie vote shall be treated as a failure of the motion.
4. Members with a conflict of interest for any application or business before the Board shall abstain from voting.
5. Minutes shall record all votes, examinations, and actions, and be filed with the City Clerk as public records.

F. Conflicts of Interest:

1. Ex-parte communications made by any person to a Member outside a public meeting and/or hearing and that impart substantive information or arguments regarding the merits of a specific matter to be discussed, considered or decided by the Board is prohibited. Any ex-parte communication with a Member shall be disclosed by that Member at the beginning of the next scheduled public meeting or hearing. Ex-parte Communication is not:
 - i. Communication between Members and staff employed by the city of Goodyear regarding information on hearings and agenda items which include procedural guidance, clarification of applicable codes, policies, or general information or clarification regarding a specific matter to be discussed, considered or decided by the Board.
 - ii. Public statements made in a public forum.
 - iii. Statements or inquiries regarding the procedural status of a specific matter before the board.
2. Members shall disclose any conflicts of interest whenever the Member has a conflict of interest which includes a personal or monetary interest in the property under appeal or the Member will be directly affected by the decisions of the Board or when any other conflict of interest exists.
3. A Member shall disqualify themselves from participating in any manner including discussion or voting whenever any applicant, or their agent, has sought to influence the vote of the Member outside the public hearing.
4. Members with conflicts shall recuse themselves from discussion and voting.
5. Abstentions shall be stated and recorded.

IV. Appeals

A. Classification of Appeals to the Board:

1. Interpretation: An appeal for interpretation may be filed with the Board whenever it is alleged there is an error in a determination or application of the Zoning Ordinance by the Zoning Administrator and the Board must determine the meaning or intent of zoning maps or regulations of the Zoning Ordinance.
2. Variance: An appeal for a variance may be filed with the Board whenever a property owner requests relief from the literal or strict enforcement of the Zoning Ordinance because of the existence of special circumstances or

conditions applicable to the property, which were not created by the property owner or former owner of the property or any agent thereof, that the strict application of the Zoning Ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.

3. Dedications and/or Exactions: An appeal of any required dedication and/or exaction may be filed with the Board when imposed by an agency or official of the City as a condition to use, improve, or develop property. The city bears the burden to demonstrate that any dedication or exaction has an essential nexus to a legitimate governmental interest and is roughly proportional to the impact of the proposed use, improvement, or development. The Board may affirm, modify, or delete the requirement. If unsatisfactory, a complaint may be filed with the Superior Court within thirty (30) calendar days for a de novo trial.

B. Filing Requirements

1. Appeals must be filed within fifteen (15) calendar days after the Zoning Administrator has notified the applicant of the final determination.
2. Applications must be filed by affected property owners or their authorized agents.
3. All applicable fees shall be paid when the appeal form is submitted.
4. All appeals shall:
 - i. Be filed in the Development Services Department on forms provided by the City and shall be complete in all respects before being accepted for filing.
 - ii. Include a written statement of the decision being appealed.
 - iii. Include citations to the laws or ordinances alleged to be misapplied.
 - iv. The appeal shall bear the signature of the owner of the property affected or shall be accompanied by a letter from the owner acknowledging the submittal of the appeal.
 - v. In every appeal for variance either the recorded owner, the contract-purchaser, or the present or prospective tenant shall identify in the proceedings and records as the applicant.
5. An incomplete application or a communication purporting to be an application that is not made using the required form(s) shall not be regarded as an appeal and shall not be scheduled for action by the Board.

C. Appeals Generally

1. Appeals to the Board may be taken by persons aggrieved or by any officer, department, board or bureau of the municipality affected by a decision of the zoning administrator by filing with the zoning administrator and with the board a notice of appeal specifying the grounds of the appeal. The zoning administrator shall immediately transmit all records pertaining to the action appealed to the board.

2. Any appeal may be withdrawn upon written notice filed with the Secretary.
3. All fees paid for an appeal or variance are non-refundable.
4. The party challenging the interpretation of a Zoning Ordinance interpretation by the Zoning Administrator and/or provisions of the Goodyear Code of Ordinances bears the burden of proving that the Zoning Administrator's interpretation is clearly contrary to legislative intent or that it is without rational basis.
5. The party challenging factual determinations by the Zoning Administrator bears the burden of proving that no reasonable person could have made such factual determination.
6. Evidence supporting the granting or denial of an appeal shall be submitted through the Secretary, or their designee, or presented to the Board in a public meeting.
7. An appeal to the Board stays all proceedings in the matter appealed from, unless the Zoning Administrator certifies to the Board that, in the zoning administrator's opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. On the certification proceedings shall 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.
8. No appeal that has been denied shall be further considered in a new appeal resulting from the filing of new plans and the obtaining of a new decision from the Zoning Administrator, or his/her designee, unless the new plans materially change the nature of the case.
9. A new application for the same relief previously sought, and for which a decision by the Board has been made shall, in addition to all other requirements, show that there is substantial change in the plans or conditions affecting the property.
10. Every appeal is applicable only to a specific lot or site, if granted, and shall be valid only when utilized for the premises under appeal and shall not be transferable to another property owner.
11. If the use of land or building has not commenced, or a building permit has not been obtained within one (1) calendar year after the Board's decision, the approval of an appeal shall expire, unless greater time is requested in the application and is authorized by the Board. Any approval may be granted one (1) extension of an additional one hundred twenty (120) calendar days on written request filed with the Board before expiration of the original approval. An extension of time filed after the expiration of the original approval shall be heard only upon the filing of a new appeal.
12. A person aggrieved by a decision of the Board, a taxpayer who owns or leases the adjacent property, or a property within three hundred (300) feet from the boundary of the immediately adjacent property, and/or an officer or a department of the municipality affected by a decision of the Board may, at any time within thirty (30) calendar days after a decision has been

rendered, file a complaint for special action in the superior court of Maricopa County to review the Board's decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed.

V. Order of Business

A. Hearings:

1. The Zoning Administrator, at the beginning of the public hearing, shall certify to the Board that notice requirements have been satisfied. He or she will also report on the appeals withdrawn prior to the public hearing.
2. The Zoning Administrator shall announce the name of the applicant, the location of the property involved, and the nature of the request. The Zoning Administrator shall publicly advise the Board of any communications received.
3. The Chair of the Board shall have the power to administer oaths and to take evidence. The oath to be so administered shall be substantially as follows:

I, (NAME), do solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth.
4. The Chair shall first call upon the applicant to present his or her case and all evidence supporting his or her plea. Evidence supporting the granting or denial of an appeal shall be submitted through the Secretary, or their designee, or presented to the Board in a public meeting. The Chair shall then inquire of the applicant if there are others affected who support the appeal.
5. The Chair shall next call on those opposed to the granting of the appeal to present their arguments.
6. The applicant shall have the right of rebuttal to arguments presented by the opposition. Following the rebuttal the Chair closes the hearing and the Board deliberates and renders a decision with findings based on the evidentiary record. Decisions on each type of appeal require separate motions. Multiple requests of the same type may be decided by a single motion, with the action deemed taken on each separate request unless the Board determines they are interdependent.

B. Hearing Conduct

1. Each side shall proceed without interruption by the other and all arguments and pleading shall be addressed to the Board. No questioning or argument between individuals will be permitted. During the hearing, no Member of the Board shall debate or argue an issue with the applicant, nor indicate his or her probable vote on the appeal.
2. The Board shall not continue the hearing on any appeal for which the applicant fails to appear unless the applicant has requested that the Board

act without his or her being present at the hearing, however, the Board shall hear those persons appearing in response to the notice of hearing.

3. The applicant shall be responsible for the presentation of all information supporting his or her appeal. The applicant shall show how his or her appeal satisfied the applicable standards for an appeal.

C. Voting

1. After the Chair closes the hearing, the Board shall deliberate and render its decision.

2. Considerations:

- i. Appeal for Interpretation.

- a. Before acting on an application for interpretation of the Zoning Ordinance the Board shall consider; the facts and statements filed in the application; the testimony and evidence presented at the public hearing; the City of Goodyear staff's report on the appeal; and the Board's independent determination of the language of the Zoning Ordinance.

- b. The decision of the Board shall be based upon specific findings of fact that the Zoning Administrator's interpretation is clearly contrary to legislative intent or that it is without rational basis and no reasonable person could have made such factual determination.

- ii. Appeal for Variance.

- a. Before acting on an application for variance the Board shall consider; whether the proposed use is one permitted in the zone, if strict application of the Zoning Ordinance precludes reasonable use comparable to nearby conforming properties and if limited by strict enforcement of the Zoning Ordinance, cannot yield a reasonable return in service, use, or income as compared to nearby conforming property in the same zone, facts filed with the application, evidence presented at the public hearing, the City of Goodyear staff's report on the appeal and the Board and Zoning Administrator's findings in its inspection of the property.

- b. The decision of the Board shall be based upon a finding clearly showing that because of special circumstances applicable to the property 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 and any variance granted, subject to conditions, shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located

- c. Special Information:

- i. When an application is based upon hardship resulting from sharp changes in topography or unusual terrain features, the PLOT PLAN shall include topographic information related to known base points or surveys, and profiles of the

particular problem involved, including relations to topographic features of adjoining properties.

- ii. When an application is submitted for variance from setback, side or rear yard requirements, the applicant shall provide the information for the properties adjoining the common lot line as may be applicable to the appealed requirements.
 - iii. Dedication/Exaction.
 - a. Before acting on an application for dedication/exaction the Board shall consider; that the City will bear the burden of proving there is an essential nexus between the dedication or exaction and a legitimate governmental interest and that the proposed dedication, exaction or zoning regulation is roughly proportional to the impact of the proposed use, improvement or development or, in the case of a zoning regulation, that the zoning regulation does not create a taking of property.
 - b. The decision of the Board can affirm the dedication or exaction, modify it, or delete the requirement.
3. Decisions on each type of appeal shall be by separate motion. A decision on more than one request for the same type of appeal may be made by a single motion. However, the decision shall be deemed to be an action on each separate request unless the Board previously determines that the requests are so interrelated that no single one would constitute a valid appeal.
4. The Board may grant, modify, or deny any appeal. The Board may also defer action on any appeal whenever it concludes that additional evidence is needed or that alternate solutions need further study, however, the Board shall automatically review and take final action on any case that has been on the docket for more than thirty (30) calendar days after the original hearing.
5. The concurring vote of a simple majority of Members present and eligible to vote shall be necessary to grant, or to grant conditionally, any matter appealed to the Board. When a motion in favor of an applicant fails to receive such a majority it shall be entered in the minutes as a vote to deny. A quorum of the Board is required for action on any appeal.
6. The Board has no power to reconsider its own decision by rescinding or altering it. This rule does not prevent the Board from correcting a clerical error in its decision. It may, however, consider a new application for the same relief if either the plans submitted or the conditions affecting the property have substantially changed.
7. No Member shall be excused from voting except when disqualified. A Member shall disqualify him or herself from voting whenever he or she has a personal or monetary interest in the property under appeal or will be directly affected by the decisions of the Board or any conflict of interest exists. A Member may disqualify themselves whenever any applicant, or their agent, has sought to influence the vote of the Member outside the public hearing.

8. No action of the Board shall set a precedent. Each case shall be decided upon its own merits and upon the circumstances pursuant thereto and according to law.
 9. Written decisions shall include findings and conditions and be maintained as part of the official record.
 10. The Board may not reconsider its own decisions except to correct clerical errors.
- D. New Applications:
1. A new application for the same relief may be considered only if plans or conditions have substantially changed.
 2. A new application for the same relief shall be processed as a new appeal. In addition to all other requirements, the applicant must show substantial change in plans or conditions affecting the property.

VI. Records and Notices

- A. Minutes shall show the vote of each Member and be filed with the City Clerk.
- B. Notices shall comply with posting, publication, and procedural requirements set forth in the Goodyear Zoning Ordinance.
- C. Notice of each meeting shall be published at least once in a newspaper of general circulation published or circulated in the municipality, or if there is none, it shall be posted on the affected property in such a manner as to be legible from the public right-of-way and in at least ten public places in the municipality.
- D. A certified copy of these bylaws, and any amendments, shall be placed on file with the City Clerk within seven (7) calendar days of adoption.

VII. Amendments

- A. These Rules and Procedures may be amended by the Board, provided that:
 1. Amendments to these Rules and Procedures may be voted on by the Board provided any such amendment that is voted on has been submitted in writing at a prior meeting of the Board and was recorded in the minutes of such meeting.
 2. Amendments are adopted in compliance with applicable law.
 3. Amendments may be made by an affirmative vote of a simple majority of the Members that are present and voting, however at least three (3) Members must vote in the affirmative.
 4. Any adopted amendments shall become effective at the next regular meeting of the Board.