

**RULES OF PROCEDURE  
GOODYEAR  
BOARD OF ADJUSTMENTS**

**I. ORGANIZATION**

**101. Chair**

The Board, organized and provided under the authority of Ordinance No. 91-446 and as amended by Ordinance No. 95-537 of the City of Goodyear, shall, at its first meeting every January, elect a Chair from among its appointed members, who shall preside at all meetings and hearings of the Board, decide all points of order or procedure and perform any duties required by law, ordinance or these rules. The term of the Chair shall be one year and any member serving as Chair shall be eligible for re-election.

**102. Vice-Chair**

The Board shall, at its first meeting every January, elect a Vice-Chairman from among its appointed members, who shall serve in the absence of the Chair.

**103. Vacancy**

Vacancies in Chair and Vice-Chair created by any cause shall be filled for the unexpired term by a new election.

**104. Secretary**

The Zoning Administrator, or his designee, shall serve as Secretary of the Board. It shall be the duty of the Secretary to prepare all official correspondence of the Board, send out all notices required by law, ordinance, or these rules of procedure; to perform all the customary duties of the office; to be the custodian of the records of the Board; to supervise the clerical work and technical preparations necessary to the disposition of business before the Board; and to perform all other duties required by law, ordinance, or these rules of the Board.

**105. Legal Counsel**

The City Attorney, or his designated representative, shall be the legal counsel for the Board. Advice of counsel shall be received and entered in the minutes before disposition of any question of law or matter requiring legal interpretation of advice.

## **II. MEETINGS**

### **201. Regular Meetings**

Regular meetings of the Board shall be held at the request of the Zoning Administrator or his designee.

### **202. Special Meetings**

Special meetings for good cause may be held by the Board on call of its Chair or of a quorum of members, which call shall be filed with the Secretary, or as may be scheduled by a majority of the members at any previous meeting. The manner of the call shall be recorded in the minutes of the special meeting, and at least 24 hours notice of the meeting shall be given to each member.

### **203. Meetings Public**

All meetings and hearings of the Board, except legally authorized executive sessions, shall be open to the public. Any action calling for formal vote shall take place only at a public meeting.

### **204. Quorum**

A quorum necessary for the transaction of business shall consist of 3 members of the board except as specifically provided otherwise by statute, ordinance, or these rules of procedure. The business of the Board shall be transacted by the majority vote of members present.

### **205. Order of Business or Agenda**

The order of business shall be as follows:

- A. Roll call -- Roll is called by the Secretary. A quorum must be present to transact business.
- B. Approval of minutes of previous meeting(s).
- C. Communications
- D. Unfinished Business
- E. Hearing of Appeals
- F. New Business
- G. Resolutions
- H. Adjournment

### **III. OFFICIAL RECORDS**

#### **301. Definition**

The official records shall include these rules and regulations, and the minutes of the Board together with all findings, decisions, and other official actions.

#### **302. Recording of Vote**

The minutes shall show the vote of each member on every question on which the Board is required to act, or if absent, or failing to vote, and shall indicate that fact.

#### **303. Files - Retention**

All appeals and other matters coming before the Board shall be filed in the Department in accordance with the Department's general filing system. Original papers of all appeals shall be retained for not less than 10 years after date of appeal. The Community Development Department shall keep a permanent file of all plats, maps, charts, reports, resolution, notices, correspondence, or other matter filed with or issued by the Board.

#### **304. Public Record**

Records of the Board, except Executive Session Minutes, shall be public records and shall be open to the public inspection during customary working hours.

### **IV. APPEALS**

#### **401. Types of Appeal**

Every appeal filed with the Board shall be classified by the Secretary according to the categories described:

1. INTERPRETATION - When the Board must determine the meaning or intent of the maps or regulations of the Zoning Ordinance;
2. VARIANCE - When the Board is petitioned to grant relief from the literal enforcement of the Zoning Ordinance in order to achieve a reasonable development of property.

3. APPEALS FROM REQUIRED DEDICATIONS/EXACTIONS - When the Board is requested to hear an appeal of any dedication or exaction which is required by an administrative agency or official of the city as a condition of granting approval of a request to use, improve, or develop property.
4. The Board of Adjustment may:
  - a. Interpret the Zoning Ordinance when the meaning of any word, phrase or section is in doubt, when there is dispute between the appellant and enforcing officer, or when the location of a district boundary is in doubt.
  - b. Allow a variance from the terms of the Ordinance when, owing to peculiar condition, a strict interpretation would work an unnecessary hardship, if in granting such variance the general intent and purposes of the Zoning Ordinance will be preserved.

#### **402. Appeal Procedure For Required Dedications/Exactions.**

The following procedures will apply to an appeal:

It must be in writing and filed with or mailed to the Chairman of the Board of Adjustment of the City within 30 days after the administrative agency or official has made his determination requiring the dedication or exaction. A written appeal should be addressed to the Chairman, Board of Adjustment, 119 North Litchfield Road, Goodyear, Arizona 85338. The Board of Adjustment will serve as hearing officer to the appeal.

There is no fee for filing an appeal.

A hearing can be scheduled within 30 days of receipt of a request by the Zoning Administrator. The City will bear the burden of proving that the dedications or exactions to be imposed on a property bear an essential nexus between the requirement and a legitimate governmental interest and that the proposed dedication or exaction is roughly proportional to the impact of the use, improvement or development proposed.

Notice will be given at least fifteen days prior to the date, time and place of the hearing unless otherwise indicated in a written appeal request that less notice is acceptable to the applicant.

The Board of Adjustment can affirm the dedication or exaction, modify it or delete the requirement. If the decision of the Board of Adjustment is unsatisfactory, a complaint may be filed within 30 days with the Superior Court or a De Novo Trial, for an interpretation.

#### **403. Application Required**

Every appeal shall be filed in the Community Development Department on forms provided by the City, and shall be complete in all respects before being accepted for filing. 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. An incomplete application or a communication purporting to be an application and not made in the form prescribed shall be regarded only as the giving of notice of intent to appeal, and shall not be scheduled for action by the Board. In every appeal for variance either the record owner, the contract-purchaser, or the present or prospective tenant shall be identified in the proceedings and records as the applicant.

#### **404. Time Limits**

Every appeal shall be filed within 30 calender days after the date of decision by the Zoning Administrator. The Secretary shall schedule each appeal for hearing within 21 calender days after the completed application and applicable fees are accepted for filing. Provided, however, when the applicant does not waive hearings by full membership of the Board the appeal shall be placed on the agenda under "Old Business" at the next regular meeting so that a proper date for hearing suitable to all members of the Board may be set.

#### **405. Public Notice**

- A. An official notice of every hearing for an appeal, variance, or request for interpretation applicable to only one property shall be given in accordance with ARS 9-462.04.
- B. Notice of the hearing shall be mailed by registered letter to the applicant, their agent, to the owner of the property under appeal, and to every property owner within three hundred (300) feet at least fifteen calender days preceeding the date of hearing.

#### **406. Submission of Evidence**

Evidence supporting the granting or denial of an appeal shall be submitted only through the Secretary or to the Board in public meeting.

#### **407. Withdrawal of Appeal**

Any appeal may be withdrawn upon written notice filed with the Secretary.

#### **408. Subterfuge Appeal**

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 unless the new plans materially change the nature of the case.

#### **409. Expiration of Granted Appeal**

If the use of land or building has not been commenced or a building permit has not been obtained with 365 calender days 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 extension on an additional 120 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.

#### **410. Appeal Not Transferable**

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.

#### **411. Interpretation: Basis for Filing**

Whenever it is alleged that there is an error in any determination or application of the requirements of the Zoning Ordinance, an appeal for interpretation of the regulations or map designations may be filed with the Board.

#### **412. Interpretation: Papers Required**

An appeal shall include:

- 1) A STATEMENT by the applicant describing the way in which the Ordinance should be interpreted together with diagrams and charts.
- (2) STATEMENT by the Zoning Administrator giving the reason for his or her interpretation of the Zoning Ordinance.

#### **413. Interpretation: Basis for Action**

A. Before acting on an appeal for interpretation the Board shall consider:

- (1) the facts and statements filed in the application.
- (2) the testimony presented at the public hearing.
- (3) the Community Development staff's technical report on the appeal, and
- (4) the Board's independent investigation of the language of the ordinance and of related ordinances bearing thereon.

B. The decision of the Board shall be based upon specific findings of fact and shall take into account the following conditions:

- (1) that there is reasonable doubt or difference of interpretations as to specific intent of the regulations or map;
- (2) that the resulting interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated.

#### **414. Variance: Basis for Filing**

Whenever, owing to exceptional and extraordinary conditions, the literal enforcement of the provisions of the Zoning Ordinance will result in unnecessary hardship in the development of the property, an application for variance may be filed with the Board of Adjustments.

#### **415. Variance: Papers Required**

An application for variance shall include:

- 1) a PLOT PLAN, drawn to scale, showing all lot dimensions, and the location and dimensions of all existing and proposed lot improvements.
- (2) a STATEMENT OF FACTS AND REASON why the zoning regulations should not be applied to the property in question and how the standards governing the Board's action would be satisfied.
- (3) a STATEMENT by the Zoning Administrator citing the reasons for refusing to issue a permit under the plans submitted.

#### **416. Variance: Basis for Action**

A. Before acting on an application for variance the Board shall consider:

- (1) facts filed with the application,
- (2) testimony presented at the public hearing on the application,
- (3) the Community Development Staff's technical report on the application, and
- (4) the Board and Zoning Administrator's findings in its field inspection of the property.

B. Each applicant for variance shall be reviewed in terms of the following standards and shall not be authorized unless the Board finds sufficient evidence:

- (1) Of special circumstances or conditions applying to the land, building or use which do not apply to other properties in the district; and
- (2) That such special circumstances were not created by the owner or applicant; 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.

#### **417. Variance: Special Information Required**

A. 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.

B. 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.

## **V. HEARINGS AND DECISIONS**

### **501. 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 or her own behalf or be represented by counsel or agent.

### **502. General Order of Hearing**

- A. The Zoning Administrator at the beginning of the public hearing, shall certify to the Board that the requirements of notice has been complied with. He or she will also report on the appeals withdrawn prior to the public hearing.
- B. 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. All supporting evidence for or against each appeal shall be presented to the assembled Board. The Board may take any appeal under advisement for later consideration.

### **503. Procedure for Hearing**

- A. The Chair shall first call upon the applicant to present his or her case and all evidence supporting his or her plea. The Chair may then inquire of the applicant if there are others affected who support the appeal.
- B. The Chair shall next call on those opposed to the granting of the appeal to present their arguments. The applicant shall then have the right of rebuttal to arguments presented by the opposition. Following the rebuttal, the Chair may order the hearing closed.
- C. Each side shall proceed without interruption by the other and all arguments and pleading may be addressed to the Board. No questioning or argument between individuals will be permitted. During the hearing no member shall debate or argue an issue with the applicant, nor indicate his or her probable vote on the appeal.

- D. The Board may 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, provided, however, the Board shall hear those persons appearing in response to the notice of hearing.

#### **504. Information to be Presented**

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:

- (a) for interpretation;
- (b) for variance.

#### **505. Findings and Decisions**

Upon conclusion of the presentations, the Chair shall close the hearing and the Board shall then deliberate and render its decision based on findings from the evidence presented. 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 several requests are so interrelated that no single one would constitute a valid appeal.

#### **506. Disposition of Appeals**

The Board may grant, modify, or deny any appeal. The Board may also defer action on any appeal whenever it concludes the additional evidence is needed or that alternate solutions need further study.

#### **507. Vote Required**

The concurring vote of a majority of those present 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. All other motions shall be carried by majority vote of those present and not otherwise disqualified.

#### **508. Disqualification**

- A. 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 affect by the decisions of the Board, or believes any conflict of interest exist.
- B. A member may disqualify him or herself from voting whenever any applicant, or their agent, has sought to influence the vote of the member on the appeal, outside the public hearing.

#### **509. Review and Final Action**

The Board shall automatically review and take final action on any case which has be on its docket for more than 30 days after the original hearing.

#### **510. Reconsideration and Reapplication: General**

A Board of Adjustment has no power to reconsider its own decision by rescinding or altering it when made, since its function is quasi-judicial. But this rule does not prevent the Board from correcting a clerical error in it decision even while legal action is pending. 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.

#### **511. Reapplications: Procedure**

A new application for the same relief previously sought, and for which a decision by the Board has been made, shall be processed in the same manner as any appeal made to the Board, except that in addition to all other requirements, the applicant shall show that there is substantial change in the plans or conditions affecting the property.

### **VI. RULES AND AMENDMENTS**

#### **601. Amendment Procedure**

Amendments to these rules may be made by the Board, upon the affirmative vote of 3 members; provided any such amendment is proposed at the preceding meeting, or is submitted in writing at a prior regular meeting of the Board, and is recorded in the minutes of such meeting or meetings. Amendments adopted as above shall become effective at the next regular meeting of the Board.

**602. Certified Copy**

A certified copy of these rules and any amendments thereto shall be placed on record in the office of the City Clerk within 7 days following their date of adoption.

Adopted: JANUARY 10, 1996  
Date.

Edward P. Quinn  
Chairman, Board of Adjustment.

Harvey H. Krauss  
Zoning Administrator.

APPROVED AS TO FORM:

Donald J. Keyser  
City Attorney. 2/15/96