MARANA BOARD OF ADJUSTMENT
REGULAR BOARD OF ADJUSTMENT MEETING
NOTICE AND AGENDA
11555 W. Civic Center Drive, Marana, Arizona 85653
Council Chambers, August 31, 2022 at or after 5:30 PM

Thomas Schnee, Chair
Ronald Hill, Vice Chair
David Bowen, Board Member
Don Duncan, Board Member
John Flint, Board Member
John McIntyre, Board Member
Joseph Parsons, Board Member

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the Marana Board of Adjustment and to the general public that the Board of Adjustment will hold a meeting open to the public on August 31, 2022, at or after 5:30 p.m., located in the Council Chambers, of the Marana Municipal Complex, 11555 W. Civic Center Drive, Marana, Arizona 85653.

ACTION MAY BE TAKEN BY THE BOARD ON ANY ITEM LISTED ON THIS AGENDA. Revisions to the agenda can occur up to 24 hours prior to the meeting. Revised agenda items appear in *italics*.

Marana Board of Adjustment
The Board of Adjustment consists of the members of the Planning Commission. The seven-member quasi-judicial Board hears and decides appeals from the decisions of the Zoning Administrator and considers variances.

Meeting Times
Regular Board of Adjustment meetings are held on an as-needed basis at the Marana Municipal Complex. Meetings of the Board, when needed, are usually held on the last Wednesday of the month at 5:30 p.m.
Additional meetings may be called at other times and/or places.

Speaking at Meetings
If you are interested in speaking to the Board of Adjustment during Public Hearing, you must fill out a speaker card, located in the Council Chambers, and deliver it to the Board Secretary prior to the convening of the meeting.

All persons attending the Board of Adjustment meeting, whether speaking or not, are expected to observe the Board rules of politeness, propriety, decorum and good conduct. Any person interfering with the meeting in any way, or acting rudely or loudly will be removed from the meeting and will not be allowed to return.

Accessibility

To better serve the citizens of Marana and others attending our meetings, the Council Chambers are wheelchair and handicapped accessible. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Town Clerk at (520) 382-1999. Requests should be made as early as possible to arrange the accommodation.

Agendas
Copies of the agenda are available the day of the meeting in the Council Chambers or online at www.maranaaz.gov. This Notice and Agenda posted no later than 24 hours prior to the meeting, at the Marana Municipal Complex, 11555 W. Civic Center Drive, the Marana Operations Center, 5100 W. Ina Road, and at www.maranaaz.gov.

REGULAR BOARD OF ADJUSTMENT MEETING

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF AGENDA

INFORMATIONAL ITEMS

APPROVAL OF JULY 27, 2022 MEETING MINUTES

PUBLIC HEARINGS

DISCUSSION / POSSIBLE ACTION ITEMS

1. **Board of Adjustment Rules of Procedure.** Discussion and possible adoption of revised Board of Adjustment Rules of Procedure (Jane Fairall)

EXECUTIVE SESSIONS

Pursuant to A.R.S. 38-431.03, the Board of Adjustment may vote to go into executive session, which will not be open to the public, to discuss certain matters.Executive Session pursuant to A.R.S. §38-431.03 (A), Board of Adjustment may ask for discussion or consideration, or consultation with designated Town representatives, or consultation for legal advice with the Town Attorney, concerning any matter listed on this agenda for any of the reasons listed in A.R.S. §38-431.03 (A).

ADJOURNMENT

Board of Adjustment

From: Terri Byler, Executive Assistant

DATE: 08/31/2022

SUBJECT: **APPROVAL OF JULY 27, 2022 MEETING MINUTES**

Discussion:

Attachments

July 27, 2022 Draft Minutes

MARANA BOARD of ADJUSTMENT
SPECIAL BOARD MEETING

11555 W. Civic Center Drive, Marana, Arizona 85653
July 27, 2022, at or after 6:00 PM

Thomas Schnee, Chairman
Ronald Hill, Board Member
David Bowen, Board Member
Don Duncan, Board Member
John Flint, Board Member
John McIntyre, Board Member
Joseph Parsons,, Board Member

SUMMARY MINUTES

DRAFT

CALL TO ORDER
Chairman Schnee called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL
Roll was called. All board members were present. A quorum was present.

APPROVAL OF AGENDA
Passed unanimously 7-0.

INFORMATIONAL ITEMS

APPROVAL OF MINUTES
Approval of the Board of Adjustment July 10, 2018 meeting minutes.
Passed unanimously.

PUBLIC HEARINGS

DISCUSSION / POSSIBLE ACTION ITEMS

1. **Discussion of and training by the Legal Department on Marana Board of Adjustment rules and procedures, conflicts of interest, open meeting law, and public records law** (Jane Fairall)

Town Attorney, Jane Fairall provided an overview of the Board of Adjustment Rules of Procedure and general rules:

- Rules of Procedure
  - Board of Adjustment's authority
  - Board of Adjustment officers and staff
  - Agenda
  - Parliamentary procedure
- General Rules
  - Conflict of interest laws
  - Open meeting law
  - Public records law

Ms. Fairall noted Marana Town Code section 17-2-2 authorizes the Board of Adjustment to consider variances, interpretations, and other matters referred by the Town Council. **Ms. Fairall** noted an appeal must involve zoning. Non-zoning matters, such as floodplain and subdivisions, are not subject to appeals. The person must file a written appeal with the zoning administrator within a reasonable time, specifying the grounds for the appeal. **Board Member Flint** asked what is considered as "a reasonable time?" **Ms. Fairall** indicated the definition is not outlined in the Rules of Procedure. The language of a "reasonable time," comes from the Arizona State Statues. **Board Member Flint** felt a time limitation should be added to the definition and included as part of the amended Rules of Procedure. **Ms. Fairall** suggested adding a time limit of 15 days to request an appeal to the zoning administrator. This recommendation is based on the code requirements to appeal a conditional use permit decision.

The Board of Adjustment may reverse or affirm, wholly or partly, or modify the decision of the zoning administrator. The Board of Adjustment's decision may include related conditions. After the Board of Adjustment's decision is made, a "person aggrieved" may appeal that decision in court. The appeal before the court is based solely on the record before the Board of Adjustment.

<u>Variances</u>

A Board of Adjustment shall hear and decide appeals for variances from the terms of the zoning ordinance only if:

- 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 such property of privileges enjoyed by other property of the same classification in the same zoning district.

Legal requirements:

- A variance may be granted only where there are special circumstances that apply to the property.

DRAFT

- Any hardship which is a basis for a variance must relate to the land NOT the owner.
- A personal hardship does not justify a variance.
- A variance may not be granted where the hardship was willfully and intentionally created by the landowner.

Board Member Flint asked if the variance is tied to the land or the use. **Ms. Fairall** stated the variance is tied to the land to the extent the zoning code is not changed in the interim**.**

BOA officers and staff

- Town Code 17-22: Chair of the Planning Commission serves as Chair of the BOA.
- Proposed rules: Vice Chair of Planning Commission will serve as Vice Chair of BOA.
- The Development Services Director is responsible to assign someone to be BOA Secretary.
- Town Attorney or designee provides legal advice.
- Outside counsel is sometimes appointed for BOA.

Agenda

- The Secretary prepares the agenda.
- Current BOA rules have no provision for BOA Chair or BOA members to request to include items on the agenda.
- The BOA is a "quasi-judicial" body; other than training and other administrative matters, its agenda items are cases brought before it.

Parliamentary procedure

The Chair manages the floor at all meetings. Questions should be directed to the speaker, applicant or other board members. Debate and discuss after the hearing is closed; and before a motion is made and/or; between when a motion is seconded and the vote. Meetings generally follow Robert's Rules of Order unless those rules are suspended by a majority vote of the Board of Adjustment. Robert's Rules call for proceedings by motion. A motion is not discussed unless it is seconded.

Four types of motions

Main motion – the matter before the body at the moment; may only be voted on when no other motion is pending.

Subsidiary motions – propose to do something to the main motion; e.g., amend, refer, lay on the table.

Incidental motions – relate to pending matter, usually must be dealt with before returning to main or subsidiary motion; e.g., point of order.

Privileged motions – take precedence over all motions; e.g., motion to recess, motion to adjourn; motion is not debatable.

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Motion to reconsider

- May only be made by a member who voted on the prevailing side of the vote sought to be reconsidered.
- May be made at the same meeting as when the matter was considered or at a subsequent meeting
- If made at a subsequent meeting, the motion to reconsider must be on the agenda.
- If the motion to reconsider is approved, the original issue is again before the BOA.
- Changed conditions may moot a motion to reconsider.

Open meeting law

The purpose is to maximize public access to the governmental process and to ensure that the public's business takes place in public. The agenda must be posted at least 24 hours before the meeting. The Board of Adjustment should not discuss an item that is not on the agenda. A meeting may be recessed and reconvened within 24 hours if the time and location of the reconvened meeting is stated on the record during the meeting.

Do not have an illegal "meeting." A "meeting" is a "gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action. Be sensitive to email communications; do not "reply all."

Special considerations for the BOA as a quasi-judicial body:

The parties before you are entitled to hear and participate in all of your deliberations.

- Don't talk separately to a party
- Don't talk separately to another BOA member about a case
- Don't discuss a particular case on social media or in casual conversation.

Public records law

The purpose is to increase public access to governmental information and to make government agencies accountable to the public. The Town is required to provide anything in the Town's records or on the Town's computer system if someone makes a public records request for it. Comments during public meeting are public, even if no members of the public are in the audience. Do not say anything in an email that you would be uncomfortable seeing on the front page of the newspaper.

2. **Board of Adjustment Rules of Procedure**. Discussion and possible adoption of the revised Board of Adjustment Rules of Procedure (Jane Fairall)

DRAFT

Town Attorney, Jane Fairall noted the Board of Adjustment Rules of Procedure were last amended in 2013. Proposed changes to the Board of Adjustment Rules of Procedure include the following:

- The Planning Commission serves as the Board of Adjustment for the Town.
- The Chair and Vice Chair of the Planning Commission serves in the same roles on the Board of Adjustment.
- The Board will meet on an as-needed basis; generally on the last Wednesday of the month at 5:30 pm.

The Board discussed defining "within a reasonable time" in which an aggrieved party may appeal the decision of the zoning administrator.

Board Member Flint proposed establishing a time limit on the applicant as to when they can appeal the zoning administrator's decision. Adding, if an applicant appeals the zoning administrator's decision months later, it puts staff in the position of making the determination of what is reasonable or not unreasonable. **Chairman Schnee** suggested adding the verbiage, "reasonable time, i.e. 15-days." **Board Member Bowen** felt there was no reason to establish a time limit. There is no basis to restrict the applicant because once the zoning administrator renders his decision; it starts the clock to appeal the decision. **Board Member McIntyre** suggested adding a motion indicating a person is limited to the same amount of time that they would have if they appealed a decision to circuit court. **Ms. Fairall** noted there might not be a timeframe for taking appeals or special actions to superior court. **Board Member McIntyre** stated we don't want to make a mistake by creating an impediment where the applicant could say, we have limited their ability to go to circuit court. **Ms. Fairall** stated it wouldn't affect their ability to appeal to superior court. The timeline we are talking about is taking the appeal from the zoning administrator's decision to the Board of Adjustment. The timeline from the Board of Adjustment to superior court wouldn't be until the Board of Adjustment has made its decision. **Ms. Fairall** noted as a reference point that when the Planning Commission denies a conditional use permit, the applicant has 15 days to appeal that decision to the Town Council. **Board Member Hill** would the zoning administrator make the applicant aware of the appeal process and timeline? **Ms. Fairall** when the zoning administrator makes a formal interpretation they provide a formal document with the appeal time limitation of 15-days as part of the document.

The Board discussed defining "motion to reconsider." **Ms. Fairall** noted the Board of Adjustment generally follows parliamentary procedure in the same way the Planning Commission and Town Council does.

Board Member Flint felt the motion to reconsider conflicts with the quasi-judicial hearing process; in which the Board's decision is based on the evidence presented at the hearing.

DRAFT

Board Member Flint suggested adding a provision to the Rules of Procedure that the decision of the Board is final. **Board Member Bowen** understands **Board Member Flint's** view. If the Board doesn't have all of the relevant information to render a valid judgement by the time they meet; the Board shouldn't be meeting in the first place. **Ms. Fairall** noted if the Board wanted to impose a limitation, she suggested that it be only related to the appeals and variance hearings.

Ms. Fairall asked the Commission how they wanted to proceed with the motions. The Commission wanted to vote on the proposed Rules of Procedure, as presented, with the suggested changes and bring back other the two issues; "motion to reconsider" and "reasonable time" to the August 31, 2022 Board of Adjustment meeting.

Motion to approve, as presented by Town Attorney, Jane Fairall, by Board Member Flint, seconded by Board Member McIntyre. Motion passes, 7-0.

The members of the Board of Adjustment suggested amending the Rules of Procedure to include two provisions and bring them back to approve at the August 31st Board meeting.

Chair Schnee moved to direct staff to add a provision to the Board's Rules of Procedure that states that the "reasonable time" in which an aggrieved party may appeal the decision of the zoning administrator shall be defined as 15 days.

Motion to specify in the Rules of Procedure; by Chairman Schnee, seconded by Board Member Flint. Motion passes, 7-0.

Board member Flint moved to direct staff to add a provision to the Board's Rules of Procedure, in the wording the Town Attorney chooses, that the decision of the Board at a hearing will be final, without the possibility of reconsideration.

Motion to specify in the Rules of Procedure; by Board Member Flint, seconded by Board Member McIntyre. Motion passes, 7-0.

ADJOURNMENT

Chairman Schnee called for a motion to adjourn the meeting. Board Member Flint moved to adjourn the meeting, seconded by Board Member McIntyre. Passed unanimously. Meeting adjourned at 7:27 p.m.

CERTIFICATION.

I hereby certify that the foregoing are the true and correct minutes of the Marana Board of Adjustment meeting held on July 27, 2022. I further certify that a quorum was present.

Terri Byler, Board Secretary

DRAFT

Board of Adjustment **1.**

From: Jane Fairall, Town Attorney

DATE: 08/31/2022

SUBJECT: **Board of Adjustment Rules of Procedure.** Discussion and possible adoption of revised Board of Adjustment Rules of Procedure (Jane Fairall)

Discussion:

On July 27, 2022, the Board adopted revised Board of Adjustment Rules of Procedure, primarily due to a recent decision to appoint the Planning Commission to serve as the Town's Board of Adjustment. At the July 27 meeting, the Board directed staff to bring revised Rules of Procedure back at the Board's August meeting, to add the following two provisions:

- Add a provision that states that the “reasonable time” in which an aggrieved party may appeal the decision of the Zoning Administrator shall be defined as 15 days.
- Add a provision, in the wording the Town Attorney chooses, that the decision of the Board at a hearing will be final, without the possibility of reconsideration.

Attached are two different versions of revised Rules adding those two provisions, as shown with double underlining. Attached Version 1 of the Rules adds the 15-day provision for appeals of the Zoning Administrator and adds a provision that provides that all decisions of the Board at a hearing are final, with no opportunity for reconsideration. Attached Version 2 of the Rules includes the same 15-day provision, but provides that all decisions of the Board at a hearing are final, except where there is "manifest error." After review of relevant case law, the Town Attorney recommends adoption of Version 2 of the Rules, allowing for reconsideration in instances of manifest error. In the case of *Austin Shea (Arizona) 7th St. & Van Buren, L.L.C v. City of Phoenix*, the Arizona Court of Appeals described well the reasons for allowing reconsideration in cases of manifest error:

"We have recognized that, just like courts, quasi-judicial bodies should be given the first opportunity to correct their own mistakes. [citation omitted]. Accordingly, we have held that a board of adjustment may rehear a matter if authorized to do so by a rule falling 'within the standards set forth in the legislative act.' [citation omitted]; see also A.R.S. § 9–462.06(C) (authorizing board of adjustment to 'adopt all rules and procedures necessary or convenient for the conduct of its business'). 'The logic of such a proposition is clear. The sooner a mistake is perceived, the more likely it is that it can be corrected and subsequent appeals and relitigation be then avoided or minimized.' [citation omitted]. Allowing quasi-judicial bodies to correct their own mistakes also serves another purpose, that of fairness."

The court also defined "manifest error" as an error that is clear or evident. In Version 2 of the proposed revised Rules, "manifest error" is defined as "a clear or evident error which caused the decision in question" in accordance with the court's decision.

If Version 2 is adopted and reconsideration is allowed where there is manifest error, then a motion for reconsideration would only be considered in accordance with the rules of parliamentary procedure, requiring that a Board member in the majority make the motion for reconsideration, and the Arizona Open Meeting Law, requiring that the motion for reconsideration be placed on a published agenda.

Suggested Motion: I move to adopt [Version 1] [Version 2] of the revised Board of Adjustment Rules of Procedure.

Attachments

Version 1 BOA Rules of Procedure

Version 2 BOA Rules of Procedure

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 the15 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 Meetings 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.

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.

RULES OF PROCEDURE OF THE BOARD OF ADJUSTMENT

TOWN OF MARANA, ARIZONA

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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 the15 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 Meetings 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.