

ADAMS COUNTY BOARD OF ADJUSTMENT BY-LAWS¹

1.000 Definitions

- 1.100 Applicant: That person or entity originally requesting action to be taken by the Adams County Board of Adjustment.
- 1.200 Board: Adams County Board of Adjustment.
- 1.300 Board Hearing: A public assembling of the Board as prescribed by § 30-28-117(4), C.R.S. to conduct business pursuant to duties set forth in the Adams County Development Standards and Regulations and any other duties prescribed by law or lawfully-enacted regulation.
- 1.400 Board Member: A person duly appointed by the Adams County Board of County Commissioners pursuant to § 30-28-117(1), C.R.S. to serve on the Board. Members consist of regular and alternate members.
- 1.500 Counsel: An attorney employed by Adams County and assigned by the County Attorney to assist the Board of Adjustment with legal matters concerning cases before the Board of Adjustment and litigation which may arise therefrom.
- 1.600 County: Adams County
- 1.700 Motion: A statement, by a Board Member, of proposed action to be taken by the Board.
- 1.701 Motion, Amendment to: A proposal by a Board Member, other than the maker of the motion, to amend the maker's motion. A "friendly" amendment may be offered, to which the maker and second of a motion may respond by voluntarily including the suggested amendment in the motion. A "formal" amendment requires a second apart from the second to the original motion, and must be voted upon prior to a vote on the original motion.
- 1.800 Objector: That person or entity requesting that the Board deny or place conditions upon the request of an applicant.
- 1.900 Public Testimony: Public input on Board agenda items during that portion of the Board Hearing reserved for such testimony.
- 1.1000 Second: An acknowledgment by a Board Member, or other than the maker of the motion, that a motion should be considered.

¹ Includes amendments through May 2014.

1.1100 Staff: Employees of Adams County assigned by their respective departments to assist the Board with professional expertise.

1.1101 Staff Secretary: An employee of Adams County assigned to record public transactions of the Board, transcribe the minutes of each public hearing, prepare for signature by the Board Secretary or Chairman any paperwork necessary to the efficient and lawful transaction of business by the Board and perform such other duties as may be found in these By-Laws or which may be assigned by the Board.

1.2000 Study Session: No formal action is taken at Study Sessions. Study Sessions may be included on a Board Hearing agenda or a special meeting may be called. No public testimony, statement by the applicant, or other evidence shall be taken or considered by the Board, and no policy, resolution, rule, regulation, or formal action shall be made or taken. Board Members may inform the Staff of issues or information that may be of interest or concern to the Board at the time of the formal application review and Public Hearing. The Study Session shall not be considered part of the Public Hearing record for the application.

2.000 Administration

2.100 Jurisdiction:

2.101 The Board shall have jurisdiction to hear all matters which they have, by resolution of the Adams County Board of County Commissioners pursuant to § 30-28-117(3), C.R.S. been designated to hear, together with those matters set forth in § 30-28-118, C.R.S. If a question arises as to whether or not the Board has jurisdiction to hear a matter, the Board shall vote upon whether to consider a matter, after consultation with Staff. The Board shall not hear matters that, in the opinion of the majority of the board members present, constitute a rezoning.

2.200 Composition:

2.201 The Board is a body appointed by the Adams County Board of County Commissioners, consisting of five regular members and as many alternate members as the Board of County Commissioners may choose to appoint.

2.202 An alternate member shall be contacted to replace any Board member who has not confirmed his or her attendance 24 hours prior to a scheduled Board hearing.

2.203 No regular Board Member arriving after the beginning of a Board hearing may unseat an alternate member.

2.204 The Board of Adjustment may recommend, through written charges agreed upon by a majority vote, that any Board Member be removed for cause by the Board of County Commissioners. After a Board of County Commissioner's public hearing, unless such hearing is waived by the Board Member, the final disposition will be made by resolution. Reasons for removal of a Board Member may include: failure to attend three (3) consecutive, regular Board Hearings without good cause; failure to attend six (6) or more Study Sessions or Board Hearings in a calendar year; failing to abide by the rules of conduct of Board Members; or ceasing to be a resident of the County. A Board Member may also be removed if, because of personal, business, or professional ties, the Board Member has been rendered ineffective as a Board Member because the Board Member is unable to participate in decisions on a substantial share of the matters before the Board of Adjustment.

2.300 Election of Officers:

2.301 The regular members of the Board shall annually elect from their membership a Chairman, Vice-Chairman and Secretary.

2.302 The annual election shall occur during the first board hearing, at which all regular members are present, following the annual reorganization by the Adams County Board of County Commissioners. A non-Board member shall convene and conduct this election until all officers are elected, at which time the newly-elected chairman shall conduct any further business to come before the Board.

2.303 Upon proper nomination and second by seated Board Members, a nomination for Chairman shall be considered. A majority vote of members seated shall be required to elect a Chairman. After a Chairman is elected, the same procedure shall be followed to elect a Vice-Chairman and Secretary.

2.304 In the event that the duly-elected Chairman becomes unable to complete the term of office, the Vice-Chairman shall automatically assume the position of Chairman until the completion of the term, and a new Vice-Chairman shall be elected at the next regular meeting in accordance with the provisions of these By-Laws. In the event that a Vice-Chairman or Secretary is unable to complete the term, an election shall be held (at the next regular meeting) to fill that vacancy. Said election shall be in accordance with the provisions of these By-Laws.

2.400 Duties of Officers:

2.401 Chairman: It is the responsibility of the Chairman to conduct Board hearings in accordance with the Rules of Order adopted in these By-Laws

and accepted principles of decorum. The Chairman is a voting member of the Board and is accorded the same rights and privileges accorded other Board Members.

2.402 Vice-Chairman: In the event that the Chairman is temporarily unable to act due to absence from Adams County, illness, personal interest in any other matter coming before the Board, or any other cause, the Vice Chairman shall act in place of the Chairman. In this instance, the Vice-Chairman shall be accorded the same privileges and responsibilities as the Chairman.

2.403 Secretary: The Secretary shall work with the Staff Secretary to ensure proper records are kept for the Board proceedings. The Secretary shall sign correspondence transmitted by the Board and any other papers requiring an official signature and perform other duties as may be found in these ByLaws.

2.410 Duties of Counsel:

2.411 Meetings: To attend all regular and special meetings of the Board of Adjustment and to render professional assistance relative to legal matters which may arise during the course of such meetings.

2.412 Executive Sessions: To confer with and offer legal opinions to the Board of Adjustment concerning disputes involving the Board of Adjustment that are the subject of pending or eminent court action and other matters which are the appropriate subject of an executive session in compliance with the Colorado Sunshine Law, § 24-6-402, C.R.S.

2.413 Information: To advise the Board of Adjustment of the status of any threatening or pending litigation and to seek the approval of the Board of Adjustment relative to any anticipated settlement or compromise.

2.500 Amendments of the By-Laws:

2.501 These By-Laws may be amended by the following procedure:

1. Any proposed amendment shall be submitted for the Board's review no later than the Board hearing prior to the Board hearing at which the amendment will be voted upon.
2. Upon proper motion and second, an affirmative vote of three Board Members shall be required for the amendment to carry.

3.000 Conduct of Board Hearings

3.100 Schedule of Hearings

- 3.101 Board hearings shall be held at the call of the Chairman, or as regularly scheduled on the first and third Tuesdays of each month. Regularly scheduled hearings may be canceled if there is no business to come before the Board.
- 3.102 The Chairman shall set special hearings of the Board when so requested by an Applicant and upon payment by an Applicant of a special fee as set forth in the Adams County Development Standards and Regulations. The Board shall comply with all notice requirements set forth in the Colorado Revised Statutes and the Adams County Development Standards and Regulations in scheduling a special hearing.
- 3.103 Board Hearings shall Begin at 6:00 p.m. on assigned hearing days, or at any other properly noticed time if deemed necessary by the Board, and shall be held in the Adams County Administration Building Hearing Room.

3.200 Order of Business

3.201 The order of business for Board Hearings shall be as follows:

1. The Chairman shall declare the hearing open and direct that a roll call be conducted by the Secretary. The names of all regular Board members shall be called, and the record shall reflect whether a member's absence is excused or unexcused. Absences of members from Board Hearings are excused in the event of a member's illness or occupational conflict. Upon three consecutive unexcused absences, the Board, by majority affirmation vote, may request and recommend to the Board of County Commissioners that such a member be removed and replaced.
2. The Chairman shall call for consideration of the minutes of the previous hearing. The minutes may be adopted as written, corrected, or deferred by a majority vote of the Board members present.
3. The Chairman shall call for approval of the proposed agenda for the hearing in session, and no other matters shall be considered by the Board during that hearing

4. The Chairman shall conduct Board business as presented on the approved agenda for each hearing.
5. For each item on the agenda, the Chairman shall allow testimony or input from the applicant, any objectors present, Staff, and Board Members and anyone wishing to provide information which, in the opinion of the Chairman, is relevant. No person participating in any Board Hearing shall participate until recognized by the Chairman.

3.202 The Staff Secretary shall prepare for each hearing a packet containing a preliminary agenda and support material which shall be provided to Board Members and Staff 5 days prior to each hearing. Additions or deletions to that agenda may be made by the Board or Staff prior to each Board Hearing.

4.000 General Rules of Order

4.100 The following general rules of order apply to the conduct of business at all Board Hearings:

- 4.101 A quorum shall consist of three Board Members, and shall be required to formally act on agenda items except as specified elsewhere in statute or these By-Laws.
- 4.102 Each Board Member shall be entitled to only one vote on any matters before the Board.
- 4.103 A motion before the Board may be made only by members of the Board. Any motion made must be seconded by a member of the Board other than the maker of the motion prior to the vote on that motion.

After a motion and second, the Chairman shall restate the motion and ask for discussion from Board Members and Staff. After all interested Board Members and Staff have had an opportunity to speak, the Chairman shall instruct the Secretary to conduct a roll call vote of all Board Members. Board Members voting in favor shall so signify by saying “aye.” Board Members opposed shall so signify by saying “nay.” Board Members wishing to abstain shall signify by so stating, and shall then state the reason for their abstention.

When the voting on a motion consists of an equal number of affirmative and negative votes, the motion shall be defeated.

4.104 Any Board Member who actually or potentially has a conflict of interest with regard to any business before the Board or whose participation would

otherwise violate the appearance of fairness, shall disqualify himself or herself from voting or participating in the discussion and deliberation in any motion concerning such business. When the Board Member has so disqualified him or herself, the member shall not sit on the board during discussion and voting on the matter. If an alternate is available, the alternate may be seated for the purpose of hearing that matter only.

A potential conflict of interest or violation of the appearance of fairness exists when a Board Member is involved in or has a direct or indirect interest, financial or otherwise, or is engaged in any business or transaction or professional activity, or incurs any obligation of any nature of an entity that is participating in, is proposing to participate in, or is in competition with, the business under consideration.

No Board Member shall discuss Board business with any interested party outside of Board Hearings prior to a final decision on the matter. Any Board Member who does discuss Board business with an interested party will disqualify him or herself on the relevant matter. The Board shall recommend removal and replacement of any Board Member who is found to have voted in a matter after ex parte communication with an interested party. An “interested party” includes the applicant and objectors to and proponents of the application.

- 4.105 Upon proper motion, second, and majority affirmative vote, any request before the Board may be granted, denied or continued. The Board must act on each matter before it by either granting, denying, or continuing that matter by a majority affirmative vote.
- 4.106 An applicant or objector may request a rehearing following board action on any matter.

To receive a rehearing, the applicant or objector must submit a written request to the Staff, outlining the reason(s) for the rehearing. Such request must be submitted to Staff within thirty (30) days of the date of the Board’s decision. Staff will then place the request on the agenda for the next available Board meeting, and the Board may consider the request. The Board may, but is not required, to allow public testimony at the discussion of the request for rehearing. The request for a rehearing does not toll the applicable timelines contained in C.R.C.P. 106, unless the case is selected for rehearing.

The Board shall, by majority vote, grant or deny a request for re-hearing.

If the rehearing is granted, proper notice shall be provided, and the rehearing shall be scheduled for a future Board hearing. Under no circumstances shall the Board reconsider an original decision without proper notice to all interested parties.

4.107 Any question or issue as to the proper procedure for conducting business at any Board hearing which is not resolved by the general rules set forth in these By-Laws shall be resolved by the Chairman.

4.108 In all appeals to the Board where the concurring vote of four members of the Board is necessary to reverse any order, requirement, decision, or determination, a full five-member board must be present and eligible to vote on the matter prior to the board hearing the case. If a five-member board is not available, the matter shall be continued to the next regularly scheduled board meeting.

4.109 The Board and its counsel may meet in executive session as authorized by § 24-6-402(4), C.R.S. as amended, upon the affirmative vote of two-thirds of the quorum present. Prior to holding any executive session, the Board shall announce to the public the specific statutory provision authorizing the executive session and identify the particular matter to be discussed. Minutes of the executive session shall be recorded in the same manner as the open meeting unless, in the opinion of the Board's counsel in attendance at the session, the session constitutes a privileged attorney-client communication. The Chair or acting Chair of the Board present at the executive session shall sign any written minutes of the executive session attesting that the minutes substantially reflect the substance of the discussion; or, in the event the executive session was a privileged attorney-client communication, general counsel shall sign any written minutes of the executive session attesting that the session was not recorded because the discussion constituted an attorney-client privileged communication. Alternatively, the Board may satisfy the executive session recording requirement by making an electronic recording of the executive session discussion. Any written minutes or electronic recording of the executive session shall be kept separate from written minutes or electronic recordings of public hearings, and shall be retained for ninety (90) days following the executive session. All written minutes and electronic recordings of executive sessions shall be confidential and may not be disclosed for any purpose other than by order of court.

4.200 Appeal from an Administrative Decision: When an appeal before the Board is requested pursuant to Section 2-02-17 of the Adams County Development Standards and Regulations (the "Regulations"), the following procedures shall apply:

4.201 Petitions for Hearing: The Board's authority concerning appeals of administrative determinations is limited to allegations of error by an administrative official in the application or enforcement of the Regulations. All petitions for appeal shall clearly state grounds for the appeal, the Board's specific authority under Section 1-02-03-12-03 of the Regulations to hear the issue, and a statement of the specific section or sections of the Regulations that is/are at issue. The Petitioner in an appeal shall have the burden to show that the Department erred in making the decision or interpretation being appealed. An application for appeal of an administrative decision shall be accompanied by the Petitioner's application fee. No application for appeal of an administrative decision will be accepted without the Petitioner's application fee.

4.202 Pre-Hearing Matters:

1. Documents/Evidence: At least 25 days prior to the hearing, Department shall provide, to the Petitioner, copies of all documents/evidence (i.e. staff report and Petitioner's completed application) anticipated to be submitted at the hearing. The Petitioner shall submit any supplemental documents/evidence to be considered at the hearing to the Department no later than 15 days prior to the hearing. The Department shall forward all documents/evidence, including the Petitioner's supplemental information and any supplemental Department information to the Board members and the Petitioner no later than ten (10) days prior to the hearing.
2. Representation: At least fifteen (15) days prior to the hearing, the Petitioner shall provide the Board and the opposing party/Department with information concerning whether they will be represented at the hearing by counsel, a consultant, or other spokesperson. The petitioner shall disclose who their representative is by providing the representative's name, address, phone number, and the capacity of their representation.

4.203 Hearing Procedures:

1. Time: Each party shall be allotted one-half hour to present their case. If the hearing proceeds beyond the time allotted, the Board, at its discretion, may either proceed with the hearing for such time as the Board retains a quorum, or continue the matter to a date certain.
2. Order of Presentation: The order of presentation at the hearing shall be as follows:

- a. The County Attorney shall introduce the appeal, providing an overview of the issue(s) being appealed.
 - b. The Petitioner will present his/her case. Petitioner and/or their representative shall be subject to questions by the Board.
 - c. The Department will present its case. The Department and/or its representative shall be subject to questions by the Board.
 - d. At any time during the parties' presentations, the Board may ask questions, or have the parties clarify their statements.
3. Rules of Evidence: The Board shall not be bound by technical rules of evidence usually employed in legal proceedings, but may consider any evidence it deems relevant.
 4. Decisions: Following the hearing, pursuant to Section 4.108 of these Bylaws, the Board shall vote to ratify or reverse the order, requirement, decision, or determination at issue.