

BYLAWS
of
THE GRAND COUNTY BOARD OF ADJUSTMENT
Grand County, Utah

ARTICLE I
Officers

I.1. Officers. At the first meeting of the Board of Adjustment (BOA) in each calendar year, the regular members of the BOA shall elect from among themselves a Chair and Vice Chair. A majority of three votes is required for election of officers. Alternate Members are not eligible for election as officers. If an officer resigns during a calendar year, the BOA shall elect a replacement at its first ensuing meeting. The function of Secretary, writing the record of decision of the BOA in any hearing, is performed by assigned staff from the Grand County Community Development Department as per Section 8.2.3.D.3 of the Land Use Code.

I.1.1. Chair. The Chair has the following duties:

I.1.1.1. The Chair presides at all meetings of the BOA, maintaining order and decorum, and insures that the procedures prescribed in Article III are followed in the handling of appeals of land use Administrative Decisions and applications for Variance.

I.1.1.2. The Chair sets the agenda.

I.1.1.3. The BOA reviews, amends as necessary, and finalizes the record of decision of the BOA by signature of the Chair once the BOA has approved the record.

I.1.1.4. Preparations for hearing in complex appeals. When an appeal contains multiple Bases for Appeal and extensive enumerated arguments or assertions of fact supporting each, the BOA Chair may *request* additional information contained in III.2.1.

I.1.2. Vice Chair. The Vice Chair performs the duties of the Chair in the absence of the Chair or as delegated those duties by the Chair.

I.2. Ethics

I.2.1. Recusal. Each member of the BOA has an affirmative ethical duty to recuse themselves from hearing any matter before the BOA in which financial, familial, intimate social interests, or public statements, would call into question their ability to be impartial in the minds of a substantial portion of the general public; or in which a vote against the

interests of one's family and close associates would likely cause significant tensions in those ongoing relationships. Members of the BOA shall comply with Number 462 as amended Policies and Procedures for conflicts of Interest of Grand County Officers. No members of the BOA may participate on an application before the BOA when they have first voted as the land use authority on said application as per UCA 17-27a-701(3)b.

I.2.2. Avoid ex parte communications. Each member of the BOA has an ethical duty to avoid obtaining alleged facts about, or opinions about, the merits of an appeal or variance application before the BOA. Each case must be decided only on the basis of the evidence placed on the record in a public hearing of a matter before the BOA. If a member of the public approaches a BOA member wanting to talk about a matter scheduled to be heard by the BOA, the BOA member should politely decline to discuss the matter.

I.2.3. Maintain public impartiality.

II.2.3.1. Each member of the BOA has an ethical duty to avoid saying anything in public for or against the merits of any matter before the BOA, or any party to a matter before the BOA, before the hearing is concluded and a Finding of Fact is adopted by the BOA.

II.2.3.2. Members of the BOA have a duty to scrupulously avoid involvements with parties to appeals which might call into question their impartiality. For example, gifts or gratuities from a "grateful" applicant or applicant after a hearing in which the BOA member voted in favor of the party should not be accepted.

I.2.4. Faithful attendance and performance. Each member of the BOA has an ethical duty to put aside other claims on their time to attend BOA meetings and conscientiously perform their duties as BOA members. If their circumstances come to prevent faithful attendance and performance of BOA member duties, the member should resign from the BOA.

ARTICLE II Resignation of Membership

II.1. Resignations. Any member of the BOA must submit a signed letter of resignation specifying the effective date on which the member's service will cease. The letter of resignation shall be submitted to the County Council and a courtesy copy provided to the Chair of the BOA via the office of the BOA's staff in the Community Development Department of Grand County.

II.1.1. Acceptance of Resignation. The County Council shall accept resignation upon receipt thereof.

ARTICLE III
Appeals Procedure

III.1. Review for completeness and jurisdiction. The Zoning Administrator shall review the appeal document for completeness and timeliness as defined and required in the Land Use Code.

III.2. Scheduling a hearing. Upon the Zoning Administrator determining that an application is complete and timely as per the Land Use Code the Zoning Administrator and Chair shall work together to schedule a hearing on the matter as promptly as possible, within the requirements for timeliness and publication of notices imposed by the current Land Use Code and availability of appellants and other required to attend the hearing.

III.2.1. Preparations for hearing in complex appeals. When an appeal contains multiple Bases for Appeal and extensive enumerated arguments or assertions of fact supporting each, the BOA Chair may request that:

III.2.1.1. the County Attorney or their designee prepare a response brief which agrees with, disputes, or states insufficient information in respect to each of the enumerated arguments and assertions of fact in the appeal. This permits the BOA to identify and hear arguments only on points in dispute.

III.2.1.2. the appellant or the County Attorney provide supporting documentation not already provided as exhibits which bear on points in dispute, e.g., the appellant claims that state or county code requires something and the County Attorney does not interpret the code as requiring it, but a copy of the relevant section of code is not provided so the BOA members can read the section and interpret its meaning for themselves.

III.2.1.3. the parties prepare briefs presenting their arguments on points in dispute, and then answer each other's briefs with a rebuttal, in order to provide these materials to the BOA members in writing in order to sharpen their understanding of complex points of dispute instead of having to rely solely on comprehension of verbal arguments during a hearing.

ARTICLE IV
Hearing Procedure

IV.1. Polling of the BOA members for ex parte communications and conflicts of interest. The Chair shall convene the hearing and introduce the members of the BOA. The Chair will ask each member of the BOA in turn, including him or herself, to describe any ex parte communications they may have had about the variance or appeal at hand with any of the parties or other members of the public, in which they received alleged facts or opinions about the merits of the case. The

Chair will ask each member of the BOA in turn, including him or herself, about any conflicts of interests they may have in the matter and any public expression of their opinions on the matter they have made.

Having experienced ex parte communications does not require recusal of a BOA member. The purpose of revealing ex parte communications is to get them on the record as experiences that might influence the decision of a BOA member because they can influence the BOA member's perception of the appeal. When on record, these ex parte communications can then be addressed and confirmed or refuted by evidence presented by the parties during the hearing. However, if exposure of a BOA member to information or opinions about the appeal before the hearing convenes has caused that member to "make up their mind" about the merits of the appeal before hearing all the evidence in the BOA hearing, that BOA member has an affirmative duty to recuse themselves from hearing the appeal.

BOA Members shall adhere to Ordinance Number 462 or as amended pertaining to conflicts of interest.

IV.2. Hearings on variances. After convening the hearing and polling the BOA members as described in IV.1, the Chair shall explain the criteria outlined in the Land Use Code and state law which must be met for a variance to be granted and the standards by which the BOA will use in making its determination. The Chair will invite staff to make a presentation regarding the proposed criteria meeting the requirements outlined in the Land Use Code and state law. The Chair shall then invite the applicant to present their case for granting a variance in terms of how their application satisfies these criteria. The Chair will then open the public hearing and call for any party present to present their case or make comments on the variance application at hand. The Chair may recognize the applicant, staff, and other parties to speak to criteria in dispute until the Chair is satisfied that substantive evidence on the issue is adequately developed at which time the Chair will close the public hearing. The appellant has the burden of proof per UCA 17-27a-702(3).

Any member of the BOA other than the Chair may ask to be recognized by the Chair in order to make a motion as to a Finding of Fact on the variance application, to the effect that the criteria for granting the variance have been met and the variance granted, or have not been met and the application for variance is therefore denied. If this motion is seconded, the Chair can call for discussion before calling the question.

Alternately, the Chair can poll each member of the BOA as to whether they vote for or against a Finding of Fact that the criteria for granting a variance have or have not been met. If three or more members vote that the criteria have been met, then the Chair can declare the variance granted. In approving a variance the BOA may impose additional requirements that will mitigate harmful affects of the variance or serve the purpose of the standard or requirement that is being waived as per Section 9.14.6 of the Land Use Code and UCA 17-27a-702(6).

IV.3. Hearings on appeals.

IV.3.1. Introduction by Chair. After convening the hearing and polling the BOA members on ex parte communications, the Chair shall explain the role and function of a Board of Adjustments as a quasi-judicial body, and explain to members of the public attending that the BOA hearing is a public meeting but not a public hearing so members of the public will not speak unless called upon as witnesses. The Chair will provide a brief overview of what Administrative Decision is being appealed and the standards by which the BOA will review the appeal which is contained Section 9.13 of the Land Use Code and UCA 17-27a-707 Standards of Review for Appeal. Thereafter the Chair will introduce those representing the appellant and those representing the county in the proceedings.

IV.3.2. Overview presentation of appeal by the appellant. The Chair will recognize the representative of the appellant to present a summary of their case. During this presentation, the appellant may present evidence and arguments.

IV.3.3. Overview presentation of case for refutation of appeal by county. The Chair will then recognize the representative of Grand County as defendant to present a summary of their case arguing that the Administrative Decisions being appealed are lawful and valid.

IV.3.4. Hearing of arguments on facts in dispute. The Chair will ask the appellant and then the defense to present their arguments for and against each fact in dispute. The parties can call and examine witnesses in support of these arguments.

The Chair can call upon the parties to respond to each other's arguments until the Chair is satisfied that the substantial evidence on the point has been as fully developed on the record as is feasible and necessary. The Chair and BOA members can ask questions of the appellant, the defense, and their witnesses, and can call witnesses themselves to cast light on evidentiary questions.

The proceedings will be conducted in an efficient manner in which focus on the relevant points of dispute is maintained. Going off on tangents, ideological speeches and long-winded proceedings are not to be tolerated in order to minimize possible confusion and deterioration of judgment on the part of the BOA members due to fatigue and "noise."

IV.3.5. Conclusion of hearing. An appeal hearing of the BOA concludes with a majority vote of three or more BOA members as to one of the following:

IV.3.5.1. Relief granted. Finding of Fact that the appellant has met the burden of proof for one or more Bases of Appeal that the Grand County Land Use Code was

not followed in or was misinterpreted in an Administrative Decision, and that Administrative Decision is therefore vacated.

IV.3.5.2. Relief denied. Finding of Fact that the appellant has not met the burden of proof on any Bases of Appeal. In this case, the Administrative Decision stands.

IV.3.5.3. Continuance: If the BOA concludes that it does not have in hand one or more crucial pieces of evidence necessary to fully support a Finding of Fact, the BOA can vote to continue the hearing to a date certain in order to afford the BOA time to obtain the missing evidence and present it at hearing into the record.

A Finding of Fact by the BOA shall include a vote by the members as to whether the burden of proof was met by the applicant on each Basis of Appeal if more than one Basis was presented in the appeal. For each Finding of Fact on a Basis of Appeal, the BOA shall render a finding on each disputed fact or point and this shall be recorded in the approved record of final decision produced by the BOA in order to document the rationale for the BOA's decision.

The Finding of Fact vote may be initiated either by motion of any member of the BOA other than the Chair, or by polling of the members by the Chair, as described in VI.1. above.

ARTICLE V Adoption and Amendment of Bylaws

These Bylaws can be adopted and amended by a majority vote of at least three of the regular members of the Board of Adjustments. The Chair may schedule consideration of amendment of the Bylaws on any BOA meeting agenda. A petition signed by any three members of the Board of Adjustments shall also place consideration of amendment of the Bylaws on the next BOA meeting agenda, with or without the concurrence of the Chair.

Adoption and amendment of bylaws shall be in compliance with Ordinance Number 472 as amended (codified as 2.18 in the Grand County Ordinance Book).