

PROCEDURAL RULES
Iowa City Board of Adjustment
July 2018

ARTICLE I. AUTHORITY:

The Iowa City Board of Adjustment shall have that authority which is conferred by Chapter 414 of the Code of Iowa; City Code Title 14, Chapter 7, entitled "Administration," Article A, entitled "Board of Adjustment," and through the adoption of these procedural rules stated herein.

ARTICLE II. MEMBERSHIP:

Section 1. **Qualifications.** The Board of Adjustment shall consist of five (5) members appointed by the City Council. All members of the Board shall be residents of Iowa City, Iowa. A majority of the members of the Board shall be persons representing the public at large and shall not be involved in the business of purchasing or selling real estate.

Section 2. **Compensation.** Members shall serve without compensation, but may be reimbursed for expenses incurred for travel outside the city on designated Board business. Such expenses must be submitted to the City Manager.

Section 3. **Orientation for New Members.** Prior to the first regular meeting following their appointment, each new member shall be given an orientation briefing by City staff and be provided with the Board's procedural rules and other information that may be useful to Board members in carrying out their duties. The City Zoning Chapter and the Comprehensive Plan are available on line.

Section 4. **Absences.** Three consecutive unexplained absences of a Board member from regular Board meetings may result in a recommendation to the City Council from the Board to discharge said member and appoint a new Board member. Members shall be removable for cause by the City Council upon written charges after a public hearing.

Section 5. **Vacancies.** Any vacancy on the Board because of death, resignation, long-term illness, disqualification, or removal shall be filled for the unexpired term by the City Council after at least thirty (30) calendar days of public notice of the vacancy as required by law.

Section 6. **Terms.** Members shall be appointed for terms of five years. No members shall be appointed to succeed themselves. However, a member appointed to fill an unexpired term with one year or less remaining may also be appointed concurrently for one full five (5) year term.

Section 7. **Resignations.** Resignation should be submitted in writing to the Board Secretary, who will transmit the resignation to the City Council with copies to the City Manager, the Director of Neighborhood and Development Services, and the Board Chairperson, preferably at least sixty (60) days prior to the date of intended departure.

Section 8. **Temporary Alternate.** An alternate member, if available, shall be appointed as provided herein, to replace a member who is unable to participate in an appeal of an administrative decision due to a conflict of interest. Any person who has served as a member of the Board within the 5 years preceding the filing of the appeal, and who

represents the public at large and is not involved in the business of purchasing or selling real estate, shall be qualified to serve as an alternate. When the member has recused himself/herself due to a conflict and the date of hearing before the Board has been set, the Secretary of the Board shall notify all such persons and the first to agree to serve as the alternate is hereby appointed to do so.

ARTICLE III. OFFICERS:

Section 1. **Number.** The officers of the Board shall be a Chairperson and a Vice-Chairperson, each of whom shall be elected by a majority vote of the members of the Board. The Board Secretary shall be a staff person, who is appointed by the Director of Planning and Community Development.

Section 2. **Election and Term of Office.** The Chairperson and Vice-Chairperson shall be elected annually at the first regular meeting of the Board each year.

Section 3. **Vacancies.** A vacancy in the office of Chairperson or Vice-Chairperson because of death, resignation, removal, disqualification, or other cause shall be filled by election from the members of the Board for the unexpired portion of the term.

Section 4. **Chairperson.** The Chairperson shall, when present, preside at all meetings, call special meetings, and in general perform all duties incident to the office of a Chairperson, and such other duties as may be prescribed by the members from time to time. Such Chairperson may administer oaths and compel the attendance of witnesses.

Section 5. **Vice-Chairperson.** When the Chairperson is absent or abstaining, the Vice-Chairperson shall perform the duties of the Chairperson and shall have all the powers of and be subject to all the restrictions upon the Chairperson.

Section 6. **Acting Chairperson.** In the absence and/or due to the abstention of both the Chairperson and Vice-Chairperson, the remaining three-member Board may elect a member to serve as Acting Chairperson. The Acting Chairperson shall perform the duties of the Chairperson and when so acting shall have all the powers of and be subject to all the restrictions upon the Chairperson.

Section 7. **Secretary.** The appointed staff person, who serves as the Board's Secretary, shall be responsible for maintaining the office of the Board, receiving and filing Board decisions and orders, posting and publishing notices as required by law, and for maintaining minutes and other records of the Board's proceedings.

ARTICLE IV. APPLICATIONS:

Section 1. **Application Forms.** Any application for a request or appeal to the Board of Adjustment shall be filed with the City Clerk on forms provided by the Secretary of the Board. The Secretary's office is located in the Department of Neighborhood and Development Services. Forms are available in the office of the City Clerk and on the City's website. In the appropriate cases, the Building Inspector shall transmit to the Secretary all documents constituting a record, upon which the Board shall act.

Section 2. **Application Submittal.** Appeals to the Board shall be filed with the City Clerk within a reasonable time period, not to exceed thirty (30) calendar days after the action appealed from, and shall specify the grounds for such appeal. An appeal from a decision

by the Building Inspector to issue a building permit shall not be deemed to have been filed within a reasonable time if such appeal is filed more than ten (10) business days after construction work pursuant to such permit is observable from adjacent properties of the public right-of-way or ten (10) business days after an alleged violation of the zoning code is similarly observable. Applicants may appeal an approval or a denial of a Certificate of Appropriateness from the Historic Preservation Commission within a conservation district by filing a letter with the City Clerk within ten (10) business days after a Resolution of Denial is filed by the Commission.

Section 3. **Application Filing Fee.** The applicant shall complete the required forms, providing all information requested on the form, and any additional information as requested by the Secretary of the Board. A filing fee shall be paid upon presentation of the application. Application fees are established by resolution of the City Council.

Section 4. **Party of Interest.** Requests for a variance or special exception must be filed on behalf of the real party in interest, such as the owner or contract purchaser.

Section 5. **Case Number.** An application filed according to the above procedure shall be given a case number within five (5) business days of the filing date. Case numbers will be assigned according to the order in which applications are received.

ARTICLE V. NOTICE:

Section 1. **Notice Letters.** No less than seven (7) business days prior to the public hearing, the Secretary of the Board shall send notice by mail to all property owners of record within 300 feet of the subject property. Such notice shall include a description of the action requested along with the time and location of the meeting. The applicant shall be formally notified of the time and place of the hearing, in writing, by the Secretary of the Board.

Section 2. **Newspaper Notice.** Notice of the time and place of public hearings shall be published in a newspaper of general circulation not more than twenty (20) calendar day nor less than seven (7) business days prior to the hearing. It shall contain the street address or location of the property and a brief description of the nature of the application or appeal.

Section 3. **Notice Sign.** No less than seven (7) business days prior to the public hearing, the Applicant shall post a sign on or near the property upon which the application is being made, and shall remove the sign immediately following the public hearing on the application. The sign will be provided to the applicant(s) by the Board Secretary.

ARTICLE VI. HEARING:

Section 1. **Regular Hearings.** Hearings will be held as needed at a regular time and place to be set by the members of the Board.

Section 2. **Special Hearings.** Special hearings or meetings of the Board may be called by the Chairperson and shall be called by the Chairperson or Vice-Chairperson at the request of three (3) or more members of the Board.

Section 3. **Place of Hearings.** All hearings and meetings of the Board shall be open to the public and shall be in a place accessible to people with disabilities.

Section 4. **Quorum.** Three members of the Board shall constitute a quorum.

Section 5. **Applicant Representation.** The applicant may, at the time of the public hearing, appear on their own behalf and be represented by agent and/or counsel. The applicant or their representative may present oral argument and testimony; witnesses, including experts; and may submit written evidence and exhibits in the form of statements, photos, charts, or other relevant evidence. In the absence of the applicant or their representative(s), the Board may proceed to act on the matter based on the information provided.

Section 6. **Briefs.** The Board may request written briefs for legal argument. Applicants may submit written briefs if they so choose.

Section 7. **Conduct of Hearing.** Order and decorum shall be maintained at the hearing by the Chairperson of the Board of Adjustment, so as to allow an orderly presentation of evidence wherever possible. The Chair may swear witnesses and direct order of testimony. The Chair shall avoid testimony that is overly redundant. The Chair may provide for recesses during the deliberation, as appropriate.

Any Board member who has a legal conflict of interest shall recuse him/ herself from the decision-making process. A member who has a legal conflict of interest or otherwise elects to recuse him/herself due to a perceived conflict of interest shall state the reason for recusal prior to discussion of the matter under consideration and may choose to leave the meeting room for the duration of the proceedings for that application.

Section 8. **Hearing Order.** The order of hearing shall be as follows:

1. Staff presentation of the facts of the case and recommendation to the board.
2. Statement by proponents of the application.
3. Statement by opponents of the application.
4. Rebuttal by proponents and then by opponents.
5. General discussion by the Board.

Section 9. **Board Deliberation.** After all parties have been heard, the public hearing will be declared closed so that the Board may deliberate the case. The Board must state findings of fact and conclusions of law. These facts and legal conclusions must be set forth in writing as required by Iowa Law. The Board may request additional comments from the participants. An application may be deferred or withdrawn at the request of the applicant at any time before a decision is made by the Board.

Section 10. **Board Motions.** Motions may be made and seconded by any member of the Board other than the Chair. Motions are always made in the affirmative, approving the requested action.

Section 11. **Board Voting.** After a motion and discussion, the Board shall be polled for votes. A board member may abstain from voting, which is a non-vote. The concurring vote of three (3) members of the Board shall be required to uphold an appeal, to decide in favor of a special exception, or to grant a variance.

Voting on Board decisions will be by roll call and will be recorded by yeas and nays. Proxy votes are not allowed.

Section 12. **Legal Advisor.** The City Attorney or a designated representative shall act as legal counsel to the Board.

Section 13. **Conduct of Meetings.** Except as otherwise provided herein, Roberts Rules of Order Newly Revised shall be used to conduct Board hearings and meetings.

ARTICLE VII. RECORDS:

Section 1. **Record of Hearings.** Audio recordings shall be made for all hearings and such recordings shall be kept for a period of no less than six (6) weeks. Minutes shall be produced from such recordings, and forwarded to the City Council after approval by the Board or the Secretary of the Board. All minutes shall be maintained by the Secretary of the Board, and shall also be on file at the City Clerk's office. The applicant may request a court reporter at the applicant's own expense.

Section 2. **Case Files.** The Secretary of the Board shall keep a file of all cases, including forms and additional information. Said file shall be a public record and available for public inspection during business hours. Copies may be made available upon request, at cost.

Section 3. **Transcript.** Upon request, a transcript or the audio recording of the Board's deliberation will be made, at cost to the requestor. In the case of an appeal to district court there is no charge for the transcript.

ARTICLE VIII. DECISIONS:

Section 1. Whenever possible, decisions by the Board shall be made at the same hearing wherein the testimony and presentation of evidence are considered.

Section 2. Formal decisions shall be made in writing, setting forth findings of fact and conclusions of law as required by Iowa law.

Section 3. Each decision shall be filed with the City Clerk within a reasonable time after the Board hearing, and shall be stamped by the Clerk to indicate the date and time of filing. The Clerk will forward the decision to the Johnson County Recorder's Office, for recording at the city's expense.

Section 4.

A copy of said decision shall be forwarded by the Secretary of the Board to the applicant, the Building Inspector, the City Attorney's Office, and any Attorney of Record within a reasonable time after filing with the City Clerk.

Section 5.

Reconsideration: Upon written request, the Board may reconsider a decision on a special exception or variance application. A request for reconsideration must be made within ten (10) business days of the meeting at which a vote on the application was

originally taken and shall articulate and be based on evidence that was not presented or was unavailable at the time of the original hearing. A motion to reconsider must be made at the subsequent meeting by a member of the Board who voted on the prevailing side. If a motion to reconsider is approved, the application will be placed on the agenda of the next meeting in order to satisfy the requirement for public notice and hearing. No decision may be reconsidered more than once. Appeals to the Board may not be reconsidered.

ARTICLE IX. AMENDMENTS TO THE PROCECURAL RULES.

Section 1. A concurring vote of three (3) of the members of the Board shall be necessary to amend these procedural rules. Such proposed amendments shall be presented in writing at any regular meeting or at any special meeting called for that purpose. Amendments shall go into effect upon approval by the City Council.

(Adopted Reso. No. 18-195)

14-7A-2: BOARD OF ADJUSTMENT

E. Alternate Member: An alternate member, if available, shall be appointed as provided herein, to replace a member who is unable to participate in an appeal of an administrative decision due to a conflict of interest. Any person who has served as a member of the board within the five (5) years preceding the filing of the appeal, and who represents the public at large and is not involved in the business of purchasing or selling real estate, shall be qualified to serve as an alternate. When the member has recused himself/herself due to a conflict and the date of hearing before the board has been set, the Secretary of the board shall notify all such persons and the first to agree to serve as the alternate is hereby appointed to do so. (Ord. 18-4749, 5-1-2018)