

RESOLUTION NUMBER 2022-12

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA, ADOPTING AMENDED RULES OF PROCEDURE FOR THE BOARD OF ADJUSTMENT.

WHEREAS, pursuant to the provisions of Section 2-5-3 of the Town Code, the Town Council is empowered to make and publish, from time to time, rules and regulations to govern the proceedings of the Board of Adjustment (the “Board”); and

WHEREAS, the Town Council, working together with the Board, has identified certain areas for improvement in the Board’s Rules of Procedure.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Paradise Valley, as follows:

Section 1. The recitals above are hereby incorporated as if fully set forth herein.

Section 2. Pursuant to Section 2-5-3 of the Town Code, the Town Council hereby approves and adopts the Rules of Procedure for the Board of Adjustment of the Town of Paradise Valley, in the form attached hereto as Exhibit A and incorporated herein by this reference, to supersede and replace any previous version thereof.

Section 3. The Mayor, the Town Manager, the Town Clerk, and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Town Council of the Town of Paradise Valley this 9th day of June, 2022.

Jerry Bien-Willner, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM

Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
RESOLUTION 2022-12

[Rules of Procedure]

See following pages.

**Town of Paradise Valley
Rules of Procedure for the Board of
Adjustment**

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Requirements of Application for Variance

A. Who may apply?

The owner or agent.

B. Requirements for application:

Completed application form and payment of required fee.

Scheduling and Advertising of Hearing

A. Scheduled Date. When an applicant has submitted a complete application, a hearing shall be scheduled. The scheduled hearing shall be no later than 60 days after receipt of the complete application.

B. Publication and Posting. Fifteen days prior to the scheduled hearing, the Town shall:

1. Publish one notice of the time, place, and date of such hearing in an official newspaper of the Town, or in a newspaper of general circulation in the Town; and
2. Post a notice of the time, place, and date of such hearing on the affected property; such notice shall remain posted for the entire 15-day period.

C. Materials Provided to the Board by Town Staff or Applicant. All materials (including electronic materials such as a PowerPoint presentation that the applicant would like to use at the public meeting) must be submitted before the first date on which an

advertisement for the hearing is published in a newspaper of general circulation (the “Cut-off Date”).

1. Materials submitted by the applicant after the Cut-off Date shall not be distributed to the Board and shall not be considered at the public meeting or hearing.
2. If an applicant believes that additional materials not submitted before the Cut-off Date need to be placed before the Board, then the applicant may request that the hearing be continued to another suitable date, in which case the applicant shall pay the costs of re-advertising and re-posting the required notices of public hearing.
3. The Community Development Director may make an exception to the requirements of this Section for materials that do not substantially change the application, or are de minimis in nature, at the discretion of the Director.

D. Statements or Materials by Members of the Public. Members of the public may either:

1. Submit statements or materials at least 24 hours prior to the posted hearing time; or
2. Submit a minimum of 10 hard copies of a statement or material at the time of the hearing.

Chair and Acting Chair

- A. Presiding Officer. The Chair shall preside at all Board meetings.
- B. Absence of the Chair. In the absence of the Chair, the members present at any meeting shall elect a member to be Acting Chair, and such Acting Chair shall exercise all powers and prerogatives of the Chair until such time as the Chair is present.

Procedure for Board Meetings

- A. Location of Meetings: Unless otherwise specified by the Chair, all meetings of the Board shall be held at the Paradise Valley Town Hall, 6401 E. Lincoln Drive.
- B. Time for meetings:
 1. Regular Meetings:

The Board shall hold regular meetings on the first Wednesday of each month at 6:00 p.m., as needed. When the first Wednesday of the month falls upon a legal holiday recognized by the Town, the regular meeting may be scheduled for the following Wednesday.

2. Special Meetings:

Special meetings of the Board may be called by the Chair, provided that each member receives notice of such meeting at least 48 hours prior to such meeting in person, by telephone, or in writing.

3. Work Sessions:

At the discretion of the Chair, the Board may hold a work session to discuss agenda items in advance of a regular or special meeting,

4. Site Visits:

With the agreement of an applicant, members of the Board may visit the site for which an application has been submitted. Site visits must occur within a pre-established period of time, and the Board shall issue a Notice of Possible Quorum at least 24 hours before the commencement of such period. Members of the Board are not required to visit the site simultaneously.

During a site visit, members of the Board shall not communicate with each other, with the applicant, or with any other person regarding the details or merits of the relevant application.

C. Quorum Requirements:

A Quorum of the Board shall be four members.

D. Decisions and Actions by Majority Vote:

1. All decisions and actions of the Board shall be by an affirmative vote of a majority of those members present and voting.
2. The vote or abstention from voting, of every individual member, on all matters voted upon, shall be recorded in the minutes of the meeting by the Board Secretary. A member shall vote “yes” or “no,” or expressly abstain from voting.
3. No member who is present at a meeting of the Board shall abstain from voting unless:
 - a. The member was not present for all or a portion of the hearing on the subject to be voted upon; or
 - b. The member has a conflict of interest as provided by law.

4. When a member of the Board abstains from voting, he or she shall publicly state the reason for such abstention prior to the consideration of the item by the Board.
 5. If a member declines to vote on any grounds that do not satisfy the requirements for abstention, that member shall be deemed to have voted “no.”
 6. The Board may consider multiple motions on a single item.
 7. A tie vote shall be treated as a failure of the motion.
- E. Addressing the Board: Any person recognized by the Chair may speak and address the Board to express an opinion on any matter before the Board. The Chair may require any person who wishes to speak or present evidence to the Board to take an oath, which shall be administered by the Chair or the Clerk. If the Chair reasonably believes it is necessary to expedite the Board’s action on a matter, the Chair may impose reasonable time limits upon the oral statements of any person. If a spokesperson for an identified group of residents (such as an HOA officer or an attorney, the “Spokesperson”) desires to speak on behalf of that group, a larger amount of time will be allotted, but not in excess of 15 minutes unless the Chair finds that there are particularly detailed and difficult matters involved in the case. The Chair shall advise the members of a group that has selected a Spokesperson that if the members desire to speak individually at the meeting, the members shall limit their time and avoid any repetition of matters already addressed by the Spokesperson.
- F. Transcription: Upon the request of any party, and at that party’s expense, a certified court reporter may record the proceedings of all or any portion of a meeting. If a transcript of all or any portion of the Board proceedings is prepared, a copy shall be furnished to the Board by and at the expense of the party ordering or causing the transcript to be prepared and completed.
- G. Motion to Reconsider: A motion to reconsider an action taken by the Board may be made only at the same meeting, or at the next regular meeting of the Board.
1. A motion to reconsider must be made by a Member of the Board who voted on the prevailing side of the motion but may be seconded by any other Member. A question failing by virtue of a tie vote may be reconsidered by motion of any Member of the Board.
 2. If a Member of the Board desires to make a motion to reconsider after the meeting at which the matter was decided, then the Member shall contact the Chair and the Community Development Director within 15 days of the meeting indicating that they would like to have a motion to reconsider the matter placed on the next Board meeting agenda.

3. If the motion to reconsider passes, then the Board shall then take the matter up for discussion and possible action at the same meeting at which the motion to reconsider passed.
- H. Recording: All or any part of a Board meeting may be recorded by any person in attendance, provided that there is no active interference with the conduct of the meeting.
- I. Order of Business: The Order of Business of all regular Board meetings shall be:
 1. Call to Order
 2. Roll Call
 3. Regular Business of the Board
 4. Approval or Amendment of Minutes of Previous Meeting
 5. Adjournment
- J. Presumption. When an applicant for a variance is denied or disapproved by the Board and the reason for such denial or disapproval is not stated in the motion, the reason for denial shall be that the applicant has failed to establish facts justifying a variance.

Board Code of Conduct

The Board may adopt a code of conduct to govern the responsibilities of its members, its method of holding meetings, and other matters.

Assistance from Town Staff

- A. The Community Development Director shall attend all meetings of the Board and may comment on any matter before the Board.
- B. Upon request from the Chair of the Board, the Town Manager shall endeavor to provide any information or assistance which may assist the Board or any member of the Board.

APPENDIX A
TO
RULES OF PROCEDURE FOR THE BOARD OF ADJUSTMENT

Variance Hearing Procedure

- I. Chair states the name of the case and asks for the staff report.
- II. Staff presents its report and recommendation; Board is invited to ask questions.
- III. Applicant/representative presents case; Board is invited to ask questions.
- IV. Chair opens the public hearing, invites speakers in favor of or against the proposal, and asks speakers to state name and whether they are resident of the Town. (Board is invited to ask questions of each speaker after they conclude their remarks.)
- V. Chair closes public hearing.
- VI. Applicant/representative is invited to rebut/clarify/conclude.
- VII. Board members are invited by the Chair to ask questions of the applicant/representative and/or Town Staff.
- VIII. Board deliberates.
- IX. Chair calls for a motion, and a second.
- X. Chair asks for discussion on the motion, if any.
- XI. Voting, either by roll call or voice vote.
- XII. The results of the voting are declared by the Secretary.
- XIII. Board moves to next item of business.

APPENDIX B
TO
RULES OF PROCEDURE FOR THE BOARD OF ADJUSTMENT

Appeal Hearing Procedure

- I. Chair states the name of the case and invites the staff to present the facts related to the appeal.
- II. Chair invites the appellant, or appellant's attorney, to step to the podium, make an introduction, and present the witnesses to be sworn in.
- III. Chair invites witnesses to step forward and face the staff table for swearing-in.
- IV. Chair or clerk rises, asks witnesses to raise their right hands and repeat swearing-in statement after them.
- V. Chair invites applicant/attorney to present argument and invite witnesses to speak as needed.
- VI. Chair opens public hearing and invites interested citizens who wish to speak to be sworn in.
- VII. Chair invites interested citizens to speak.
- VIII. Chair closes public hearing.
- IX. Board members are invited by the Chair to ask questions of the attorney, witnesses, and/or staff.
- X. Board deliberates.
- XI. Chair calls for a motion, and a second.
- XII. Chair asks for discussion on the motion, if any.
- XIII. Voting, either by roll call, hand signal, or voice vote.
- XIV. The results of the voting are declared by the Secretary.
- XV. Board moves to next item of business.