



## Legislation Details (With Text)

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**TO:** Chair and Board of Adjustment

**FROM:** Andrew Miller, Town Attorney  
Jeremy Knapp, Community Development Director

**DATE:** November 7, 2018

**CONTACT:**  
Andrew Miller, 480-348-3526

**AGENDA TITLE:**  
Discussion and Recommendation to the Town Council re Amendments to the Board of Adjustment Rules & Regulations.

**BACKGROUND:**  
Recently the Council determined that some changes to the Rules of Procedure for the Planning Commission, Board of Adjustment, Hillside Building Committee (which has no adopted rules of procedure), and Council should be explored. A Town Manager working group was organized to discuss some potential solutions to some of the problems that the Council had identified. The working group consisted of the Town Manager, Town Attorney, Vice-Mayor Bien-Willner (who is the Council liaison to the Commission) and Council Member Scott Moore (a former Board of Adjustment and Commission Member). The working group identified four problem areas where some changes to the rules for the aforementioned public bodies would be useful: 1) late submittal of materials by applicants or residents/general public; 2) surprise submittals of documents or electronic materials on the night of a meeting; 3) lack of clarity on allotted speaking times for "spokespersons" for residents or neighborhood groups; and 4) clarity on timing requirements and agenda setting for motions to reconsider a motion or action from the prior meeting.

The working group discussed changes that could be implemented in each of these areas that would

help staff, residents/general public, applicants, and the public bodies maintain greater transparency and openness as well as providing for a more rigorous and thorough review of submitted materials by the Town staff. Of particular concern was making sure that all parties have sufficient time to review materials submitted for public review prior to scheduled hearings or meetings. Based on the input of the working group the Town Manager and Town Attorney have now prepared some changes to the existing Board of Adjustment (“Board”) Rules that should be reviewed by the Board. Staff desires to have the Board provide comments on these proposed changes, as well as any other changes that the Board believes are in order, so that the Council can receive those comments and have a coordinated approach to the Rules of Procedure for the Council, Planning Commission, Board of Adjustment, and Hillside Building Committee.

### **Current Code Provisions Regarding Board Rules:**

The Town Code (Section 2-5-3(C)) provides that the Board has the power to “make and publish rules and regulations to govern its proceedings.” The “rules” are to be “filed in the office of the Board and... the Town Clerk...”

#### Section 2-5-3      Board of Adjustment

C. Rules and Regulations, Records, Procedures, Limitations. The Board shall have power to make and publish rules and regulations to govern its proceedings and to carry into effect the provisions of this section. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact, and shall also keep records of its examinations and other official actions. Every rule, regulation, or every amendment or repeal thereof, and every order, requirement, decision, or determination of the Board shall immediately be filed in the office of the Board and in the office of the Town Clerk, and shall be a public record.

If changes to the Board Rules are to be made, then those changes should be adopted at a public meeting after discussion and input from the public. It is also recommended that proposed changes be sent to the Town Council for its input prior to the adoption of such changes.

The current “Board of Adjustment Rules & Regulations” were last modified in 1998, under then-chair Hope Ozer (copy attached).

### **Issues Identified and Potential Solutions**

#### **1. Late submittal of materials by applicants or residents/general public:**

Council Members had observed that all too often applicants have been submitting materials for inclusion in the agenda packets at the last minute (that is, just in time for the staff to place them in the agenda packet), or even on the night of a public meeting. The practice of staff only receiving an applicant’s written and electronic materials “at the last minute” (or even later) does not allow the staff to have adequate time to review the materials and comment or respond to them prior to having to prepare and distribute the agenda packet. Due to the technical nature of matters that come before the Board and the lack of any prior opportunity for the public to gain insight into the application materials (by way of contrast, rezoning matters that come before the Commission have a citizen review requirement and often have several work study sessions prior to a public hearing). For the Board in particular, a late submittal by the applicant makes it difficult for members of the public who may oppose the variance or appeal set for a hearing to have

adequate time to research and respond to late submittals. The working group felt that a hard deadline should be instituted; with repercussions should an applicant not meet the required deadline for submitting materials. On the other hand, since residents/general public comments (typically emails) are responding to materials submitted in the agenda packet, residents/general public comments should have a later “cut-off” time, such as 24 hours prior to the posted public meeting time.

#### Potential Solutions

The working group suggested that applicants should be required to submit their materials (including electronic materials such as a PowerPoint presentation that the applicant would like to use at the public meeting) before the first date on which an advertisement for the hearing is published in a newspaper of general circulation. This will generally be at least fifteen days before the Board’s hearing date. Materials submitted after the “cut-off” date and time would not be distributed to the Board and would not be considered at the public meeting or hearing on the applicant’s matter. If the applicant felt that the consideration of materials submitted after the cut-off date and time absolutely needed to be placed before the Board, then the applicants’ public hearing would then need to be automatically continued and the applicant would have to pay the costs of re-advertising, re-noticing, and/or re-posting the public hearing. Applicant “hand-outs” of materials at the public meeting would not be permitted unless the hand-out is a copy of materials that were already submitted prior to the cut-off time. Similarly, any electronic materials, PowerPoint presentations included, cannot have new or updated slides or graphics.

The working group suggested that submittals or written statements by residents/general public should have to be submitted at least 24 hours prior to the posted public meeting time in order for the staff to be able to assemble and distribute them to the Board prior to the meeting time. If a resident or member of the general public cannot make a meeting time and has a late submittal, that material may be given to another member of the public who can “present” that material at the public meeting. Because the material would be handed out at the meeting, the member of the public should also be required to have at least ten (10) copies of the material available for distribution (one for each Board Member, and one copy for the staff, the applicant, and the minutes-taker). Similarly, the residents/general public present at the meeting may also submit their own written comments at the public meeting, provided that they have at least (10) copies available to distribute.

PowerPoint presentations by residents/general public present unique problems due to the need to load such electronic materials on to the Town computer system and the concomitant shortened public comment times typically allotted to the general public. Thus, the working group suggested that PowerPoint presentations by the general public should not be permitted; provided, however, a member of the general public may hand-out a printed copy of the PowerPoint “slides” that such member of the public desires to present, again requiring at least ten (10) copies of the PowerPoint “slides” submitted for distribution.

## **2. Surprise submittals of documents or electronic materials on the night of a meeting:**

As noted above, the submittal of documents by an applicant on the night of the hearing are problematic and should not be permitted. The current Board Rules do not address the submittal of materials or written comments from the applicant or the general public.

#### Potential Solutions

Because the current Board Rules do not contain any provisions regarding the submittal of materials by an applicant or comments/materials by the general public, the working group suggested that applicants should not be permitted to submit anything after the cut-off noted above (that is the date that the first ad for the public hearing is published) and that there be a 24-hour cut-off for written comments or materials from the general public. If a member of the public does have a written comment to submit after the 24-hour cut-off period, then that member of the public should have to submit 10 copies of the written material, for the reasons noted above. Additionally, the Board Rules should provide that the Community Development Department can distribute the comments from the general public to the Board Members by email.

**3. Lack of clarity on allotted speaking times for “spokespersons” for residents or neighborhood groups:**

When contentious applications have been heard in the past, neighborhood groups have often organized and selected a spokesperson (and sometimes an attorney hired by the neighborhood group) to speak on behalf of numerous individual residents. The current Board Rules do not address the length of time that a designated spokesperson for a larger group of residents or members of the public has to speak. The Board Rules also do not set the amount of time that an applicant is allotted to state their case during public hearings. The Board Rules simply provide that “If the Chair reasonably believes it is necessary to do so, to expedite the Board’s actions on a matter, the Chair may impose reasonable time limits upon the oral statements of any persons wishing to speak and address the Board” (see “Procedure for Board Meetings, Section E). In comparison, the Town Council Rules of Procedure allot fifteen minutes to an applicant at a public hearing, but also do not set time periods for a “spokesperson.”

Potential Solutions

The working group suggested that there be some consistency between the public hearing processes of the Board and the Council. This would aide applicants and the public on what to expect during public hearing processes conducted for official town business. When a “spokesperson” is identified, both sets of rules should have a specified time set aside for a spokesperson. Although the current Board Rules would provide that the Chair “may impose reasonable time limits” this does not guarantee consistent treatment of spokespersons. Additionally, to the members of the group that have designated a spokesperson, it seems inconsistent to allot 15 minutes or more to an applicant, but to have a much lesser time (sometimes as little as 3 minutes) allotted to a spokesperson who is presenting for a potentially large neighborhood group. Thus, the working group recommended that when a spokesperson for an identified group of residents (such as a HOA officer or an attorney) desires to speak on behalf of that group, a larger amount of time should be allotted, but not in excess of fifteen minutes unless the chair finds that there are particularly detailed and difficult matters involved in the case before the Board so as to justify additional time for the designated spokesperson.

One additional requirement suggested by the working group was that when a neighborhood group brings forward a spokesperson the members of that group should be required to be present at the meeting. This requirement would then allow for the chair to be able to gauge how many residents a spokesperson represents and that the spokesperson will actually be speaking for a larger group, not just on behalf of one or two people. The chair can then also advise the members of that group that if they choose to speak individually they should limit their time and avoid any

repetition of matters already addressed by the neighborhood spokesperson.

**4. Clarity on timing requirements for motions to reconsider a motion or action:**

The current Board Rules do not mention how a motion to reconsider should be handled, thus Robert's Rules of Order has been the default process for handling such motions. However, the Council Rules do mention motions to reconsider and provide that a motion to reconsider any action of the Council can only be made "on the day that the action was taken or at the next regular meeting of the Council." Because of the open meeting law requirements, the Council has also been required to have any member who desires to make a motion to reconsider "at the next regular meeting" first request that the Town Clerk place on the agenda the action item from the prior meeting showing that such member requested that it be placed on the agenda for the purposes of being able to move to reconsider the motion approved at the prior Council meeting. Robert's Rules' procedures for motions to reconsider do not fit well with the need for public bodies to publish agendas in advance of public meetings.

Potential Solutions

The working group suggested that the Council should make a formal change to its rules sometime in the future to have the "agenda request" requirement placed in the Council Rules. Since the Board has had past requests for motions to reconsider, the working group also felt that the Board should have a place in its rules for a motion to reconsider, with an approach similar to what is contained in the Council's Rules, including having a time limit for when a member who voted in the majority must request that the matter be placed on the next business meeting agenda. Such time limits should be discussed by the Commission to see what will work best, but staff would suggest that the request to reconsider be done within a limited time period so that staff would have time to notify interested parties of the request to have a motion to reconsider placed on a future agenda.

**NEXT STEPS**

Discussion of proposed changes to the Board Rules and recommendation to the Town Council of potential changes.

**ATTACHMENTS**

Current Board Rules & Regulations (adopted on May 6, 1998)

Redline of suggested changes to the Board Rules (to follow later)