

RESOLUTION
OF THE
BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DELTA,
STATE OF COLORADO

RESOLUTION NO. 2021-R-~~009~~

RESOLUTION ADOPTING GENERAL RULES FOR THE DELTA COUNTY BOARD OF
ADJUSTMENTS – AMENDMENT #1

WHEREAS, on April 6, 2021, Delta County Board of County Commissioners adopted Resolution 2021-R-009 establishing general rules to govern the organization, procedure, and jurisdiction of the Board of Adjustment pursuant to Colorado Revised Statutes (C.R.S.) 30-28-117(2); and

WHEREAS, Delta County Board of County Commissioners desires to amend general rules to govern the organization, procedure, and jurisdiction of the Board of Adjustment to further clarify the appeal process.


NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Delta County as follows:

1. Board of Adjustment General Rules, Amendment #1, applicable to the Delta County Board of Adjustments, are hereby attached hereto and incorporated herein by reference as Exhibit A.


ADOPTED AS SET FORTH ABOVE on this 18th day of May, 2021.

BOARD OF COUNTY COMMISSIONERS
COUNTY OF DELTA
STATE OF COLORADO

ATTEST:


Mike Lane, Chair


Don Suppes, Vice Chair


Teri Stephenson
Delta County Clerk and Recorder

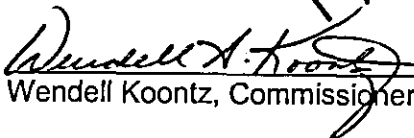

Wendell Koontz, Commissioner



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Section 1: Authority

1.1 The Delta County Board of County Commissioners (Board) are authorized pursuant to Colorado Revised Statutes (C.R.S.) 30-28-117(2) to provide general rules to govern the organization, procedure, and jurisdiction of the Board of Adjustment (BOA).

1.2 These General Rules are in addition to and in complementary with those rules governing the BOA contained in the Resolution and Land Use Code adopted by the Board on January 5, 2021 and recorded at reception No. 725219.

1.3 Pursuant to C.R.S. 30-28-117(2) the BOA may adopt supplemental rules of procedure not inconsistent with C.R.S. or rules established by the Board.

Section 2: Board of Adjustment Purpose

2.1 The purpose of the BOA shall be to implement applicable sections of C.R.S. and the Delta County's Land Use Code (LUC); e.g., review of applications for variances, minor amendments, and appeals of administrative determinations.

Section 3: Definitions/Acronyms

3.1 As used herein, "the Board" shall mean the Delta County Board of County Commissioners.

3.2 As used herein, "the BOA" shall mean the Board of Adjustment.

3.3 As used herein, "the Staff" shall mean the Delta County Planning and Community Development Department staff, both individually and collectively.

3.4 As used herein, "Aggrieved Party" shall mean those property owners defined as neighbors AND those property owners who received Notification as determined by the Director.

3.5 As used herein, "Neighbor" shall mean owner of a property adjoining the applicant's property AND, other property owners, entities, groups and organizations as determined by the Director.

Section 4: Jurisdictional Area

4.1 The jurisdictional area of the BOA shall be limited to the unincorporated areas of Delta County.

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Section 5: Member Duties

5.1 Membership

- a. The BOA shall consist of three members appointed by a majority of the Board.
- b. There shall be one member appointed from each Commissioner District.
- c. Terms shall be for three (3) years unless otherwise specified by the Board. To stagger the membership, initial appointments (beginning 2021) shall be as follows:
 1. District 1, three (3) years
 2. District 2, two (2) years
 3. District 3, one (1) year

5.2 Attendance

Each BOA member shall have the responsibility of attending all regular and special meetings, including work sessions, of the BOA so that the business of the BOA can be conducted in an effective, efficient and responsible manner.

5.3 Compensation

Members of the BOA, including Associate members if applicable, shall receive, as per diem compensation for meetings attended while serving on the BOA as follows: \$50 per meeting and travel expenses.

5.4 Reimbursement

BOA members shall be reimbursed for travel expenses to attend scheduled meetings at a rate established by the Board of County Commissioners. All other expenses incurred while conducting business of the BOA will require Director approval for reimbursement prior to incurring the expense. Such reimbursements that require Director approval include, but are not limited to, conferences and/or meetings in other jurisdictions and travel expenses to such conferences/meetings.

Section 6: Meetings

6.1 Quorum

- a. A quorum of the BOA shall be a minimum of two (2) members present at the beginning of a meeting. No public hearing or meeting shall be held unless a quorum is present. In the absence of a quorum, the BOA shall terminate any scheduled public hearing or meeting within a reasonable time after gathering.
- b. If a public hearing or meeting has not been convened due to lack of quorum; applications that require public notice will not be required to republish notice.

6.2 Official Action

- a. No action of the BOA is official unless authorized by a majority of the members of the BOA present at a regular or special meeting.

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- b. In the event a quorum is not present, all items on the agenda will be tabled until the next regular meeting of the BOA or until a special meeting is called.

6.3 Order of Business

The order of business shall be set forth in an agenda prepared by the Staff as follows, unless otherwise ordered by the BOA Chair:

- A. Call to Order.
- B. Approval of minutes from previous meeting(s).
- B. Consideration of and action on applications tabled from a prior meeting.
- C. New applications.
- D. Other Agenda Business.
- E. New Business.
- F. Adjournment.

6.4 Order of Presentation of Agenda Application Matters

After the BOA Chair has brought the meeting to order, the BOA Chair shall establish the rules of the meeting, after consultation with the Staff and subject to the approval of the BOA. The order of presentation with respect to each application generally will be as follows:

- A. Presentation of the application by Staff.
- B. Questions of the BOA directed to Staff.
- C. Presentation by the Applicant.
- D. Questions of the BOA to the applicant.
- E. Public Comments.
- F. Final comments, rebuttal, from the applicant.
- G. Final questions of the BOA.
- H. Closing of public comments.
- I. Deliberation of the BOA.
- J. Motion and official action by the BOA.

6.5 Establishment of Meeting Agendas

- a. The Staff, in consultation with the BOA Chair, shall establish the agenda for regular and special meetings.
- b. A BOA member may request that a specific matter, directly related to BOA business, be included on a future meeting agenda by making such request as a new business item in a regular meeting. Such matters will be scheduled for discussion in the next available meeting, subject to public notice requirements.

6.6 Rules of Order

- a. Evidentiary hearings before the BOA should be conducted in an orderly manner but need not strictly conform to the rules of procedure and evidence necessary in a judicial proceeding. Proceedings may be conducted in an informal manner; the basic requirement is that the principals of fundamental fairness be observed.

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- b. Roberts Rules of Order shall govern the BOA in all parliamentary procedures unless otherwise specified in these General Rules.

6.8 Form for Motions on Applications

BOA actions are final, unless appealed to the Board. Motions on applications shall be made for approval, approval with conditions or denial. Application motions shall make reference to the applicable sections of County regulations that may control the recommended action.

6.9 Continuance of Agenda Item

When the BOA decides to continue or table a matter or application before it, it may do so by motion without any requirement for further notice to the affected parties or the public. The matter postponed shall be scheduled to the nearest future regular or special meeting. No further notice shall be required provided the matter is continued to a date and time certain.

6.10 Appeals.

- a. Decisions and/or determinations by the Director may be appealed to the BOA by an aggrieved party. An aggrieved party has 15 days to file a complete appeal application from the date of the Director's decision. If additional time is warranted, the Director may afford additional time (up to 30 days total) to file the appeal. The hearing before the BOA shall be de novo.
- b. Decisions of the BOA may be appealed to the Board by an aggrieved party. An aggrieved party has up to 10 days to file a complete appeal application from the date of the BOA decision. The hearing before the Board shall be of record.
- c. In order to initiate an appeal, an aggrieved party must submit a complete appeal application and filing fee within the prescribed timeline. Said application shall include, but not be limited to, information about how the appellant is aggrieved.

Section 7: Voting Privileges

7.1 Voting Right

Each member, including the BOA Chair and Vice-Chair, shall have one (1) vote and shall exercise that voting right at the appropriate time during the proceedings. Proxies are not to be allowed.

7.2 Conflict of Interest

- a. Any member of the BOA who has a conflict of interest on any matter that comes before the BOA shall disclose the conflict on the record and then shall voluntarily excuse him/herself, vacate his/her seat, leave the room where necessary to avoid any appearance of influence on the matter under consideration, and refrain from discussing or voting on the matter. A conflict of interest includes any situation where a BOA member:
 - 1. Has a direct financial interest in the matter; or

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2. Will be directly affected by the decision in the matter; or
 3. Believes he or she has a conflict of interest as defined by an applicable law; or
 4. Will gain an advantage to relations, groups, or associations to whom he or she is affiliated.
- b. A member who has an application before the BOA shall recuse his or her position on the BOA as to such application and participate in the matter as the applicant before the BOA without any voting rights in the matter.

Section 8: Officers

8.1 Elective Office

The elected officers of the BOA shall be the BOA Chair and Vice-Chair who shall be elected by a majority of BOA members.

8.2 Eligibility

Any regular member of the BOA may hold an elected BOA office.

8.3 Duties of the BOA Chair

The BOA Chair shall supervise and manage the BOA and at a minimum shall:

- A. Preside over all meetings of the BOA.
- B. Sign documents of the BOA.
- C. See that all actions of the commission are properly taken.
- D. Advise the Staff on any matters pertaining to the BOA business.
- E. Be the public representative of the BOA.

8.4 Duties of the Vice-Chair

During the absence or disqualification of the BOA Chair, the Vice-Chair shall exercise and perform the duties and responsibilities of the BOA Chair.

8.5 Terms of Office

The term of all elected officers shall be for one (1) year effective on the date of the annual meeting. No elected officer shall serve in that position for more than two (2) consecutive years but may be elected to serve again after a one (1) year hiatus.

8.6 Vacancies

The Vice-Chair shall succeed the BOA Chair if the Chairperson vacates his/her office prior to the expiration of the term. The Vice-Chair shall serve as BOA Chair for the remainder of the unexpired term and the BOA shall elect a new Vice-Chair.

8.7 Nominations

Any member of the BOA can nominate a member of the BOA for the position of any office.

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8.8 Elections

If more than one (1) nominee is presented for any office, voting shall be done by secret ballot and a plurality of the votes cast shall be necessary for election. If only one (1) nominee is presented for each office, voting shall be done in a manner specified by the BOA Chair.

Section 9: Committees

9.1 The BOA Chair may appoint members of the BOA to various committees as is necessary to conduct BOA business.

Section 10: Amendments

10.1 Amendments to these General Rules

These General Rules may be amended at any meeting of the Board by an official action.

Section 11: County Staff

11.1 Functions of the Staff

The Staff will carry out the day to day operations of the Community Development Department. For the BOA, the Staff shall at a minimum:

- A. Review and approve all financial documents and vouchers for the BOA and its members.
- B. Give, serve, post and advertise all public notices as required by the County's regulations.
- C. Prepare, post and distribute the agenda for meetings of the BOA.
- D. Inform the BOA of any changes to the agenda, absences of any BOA member and any matter related to Planning in which the BOA should be informed.
- E. Prepare Staff reports for all applications in accordance with County regulations for review by the BOA.
- F. A member of the Staff or if necessary, another employee of Delta County shall record the minutes of all meetings of the BOA.
- G. Keep the minutes of all meetings in an appropriate manner.
- H. Arrange and coordinate all field tours and travel for the BOA.
- I. Provide timely meeting notices and policies and documents as may be necessary and required for the effective conduct of BOA meetings.

Section 12: Professional Performance

12.1 Bias

The BOA must hear land use matters that come before them without bias, and without any appearance of bias. This is necessary to instill and maintain public confidence and trust in governing bodies.

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BOA members provide input to the Board through various on-the-record actions. BOA members who publicly voice opinions or state positions on these matters create an appearance of impropriety to the public.

It is therefore inappropriate for a member of the BOA to speak in favor of, or in opposition to, an application that was previously before the BOA at any subsequent BOA or Board meeting or other public venue including social media or the news outlets involving the referenced land use matter. In the event that the Board were to refer a matter to the BOA for consideration or recommendations, a BOA member's statement of opinion or position to the Board on the matter would create the appearance of predetermination, which seriously undermines the public trust.

12.2 Gifts

A BOA member shall not accept any compensation, gift, or service which would violate the provisions of Article XXIX of the Colorado Constitution or applicable C.R.S.

12.3 Ex Parte

A BOA member shall not engage in an ex parte communication regarding any active application that will be heard by the BOA in any quasi-judicial proceeding. An ex parte communication is a communication between a BOA member and a member of the public or an applicant that takes place outside a noticed public hearing or meeting on an application that will be heard by the BOA. A BOA member who engages in ex parte communication shall disclose it to the BOA and consider abstaining from voting if such ex parte communication creates an appearance of impropriety, creates a conflict of interest, or otherwise affects due process in the decision making proceedings.

12.4 Colorado Open Meetings

- a. Meetings of the BOA, including site visits and work sessions shall be open to the public pursuant to C.R.S. 24-6-401 et seq. The BOA may meet in executive session as allowed by law.
- b. BOA members should avoid written and oral communications (including email and social media communications) with other members outside of scheduled meetings concerning any application or other quasi-judicial matter pending before the BOA or that has been considered by the BOA in the past as well as individuals and groups that may appear before the BOA with respect to such applications. Such communications can meet the definition of a public meeting and must be avoided to prevent potential violations of the Colorado Open Meetings Law.