

## **BOARD OF ADJUSTMENT RULES AND PROCEDURES CITY OF PAPIILLION, NEBRASKA**

### **Rule 1: Board Composition**

Nebraska Revised Statute 19-908 indicates:

The Board of Adjustment shall consist of five regular members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by such member shall also result in his or her immediate loss of membership on the Board of Adjustment and the appointment of another planning commissioner to the board of adjustment. After September 9, 1995, the first vacancy occurring on the Board of Adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city or village at such time as more than two hundred persons reside within such area. Thereafter, at all times, at least one member of the Board of Adjustment shall reside outside of the corporate boundaries of the city or village but within its extraterritorial zoning jurisdiction.

### **Rule 2: Notice**

Legal notice of all matters to come before the Board of Adjustment requiring such legal notice shall be given as required by law. In addition, the Board will endeavor to give written notice to owners of property under appeal at least one (1) week before the date of the public hearing. In addition, the Board will make reasonable effort to inform the public of appeals through the news media.

The Board will meet on the second Tuesday of each month as necessary. At each such scheduled meeting the Board will conduct its normal business and will take action on items of business after the necessary public hearings have been held on all items currently before the Board.

The Board shall begin its regular meetings at 7:00pm in the City Council Chambers of the City Hall Building, Papillion, Nebraska.

### **Rule 3: Agenda**

An agenda of the matters to come before the Board will be prepared by the Planning Department and mailed to all Board members and known interested parties. Items not on the agenda will not be heard by the Board unless, by unanimous vote of the members present, it determines that an emergency exists and that the public interest dictates that the matter be heard. The matters shall be heard in the order that the items appear on the agenda.

### **Rule 4: Nature of Testimony; Duty of Appellant**

The role and function of the Board of Adjustment is to make judicial determinations in zoning and construction matters in relation to interpreting the zoning laws of the City of Papillion and the granting of zoning variances and

exceptions, all to be in accordance with the jurisdictional basis and limitations as provided by Sections 100-103 of Chapter 205; Zoning Ordinance and Chapter 92; Building Construction, and other Construction Codes of the Papillion Municipal Code. All appeals to the Board shall state the jurisdictional basis upon which the appeal is being made, and shall state the name of the real party or parties in interest.

Testimony before the Board shall be relevant to the jurisdictional basis upon which the appeal is made.

The appellant must state facts sufficient to permit the Board to find in favor of the appellant, with the jurisdictional limitations of the Board as provided by Sections 100-103 of Chapter 205; Zoning Ordinance and Chapter 92; Building Construction and other Construction Codes of the Papillion Municipal Code. A copy of these codes will be provided to the appellant with the application.

The appellant shall clearly indicate the manner in which the asserted facts fit into the jurisdictional framework of the Board. The Board may ask questions of persons testifying. There shall, however, be no cross-examination or direct questioning in front of the Board between proponents and opponents.

**Rule 5: Presentation of Testimony**

The appellant must present his or her testimony first. Those seeking information or opposed to the applicant shall then be called upon to present their testimony. Each person should first state his or her name and address. Such individual should then present the reasons why the appeal should be granted or should not be granted, in relation to the Board's jurisdictional framework as provided in Sections 100-103 of Chapter 205; Zoning Ordinance and Chapter 92; Building Construction and other Construction Codes of the Papillion Municipal Code.

Any person may testify in his or her own behalf or may be represented by an attorney or may be represented by a close relative, a friend, or by a neighborhood representative when in the judgment of the Chair of the Board such representative is knowledgeable of the factual basis for the appeal and has been authorized in writing to act as a representative.

All visual aides, handouts, supporting documentation, and electronic media used in the presentation shall be provided in sets of seven (7) for the Board of Adjustment to review. A copy of these materials will be made a part of the record.

All parties presenting testimony shall avoid repetition of statements and shall present their position as briefly as possible. Five (5) minutes is the maximum time for each individual's testimony. The Chairperson may grant additional time for items of major significance, upon request.

It is encouraged that large groups in attendance choose one or two representatives to present the arguments for the entire group. The representatives may have the group stand to give the Board an idea of the number of persons sharing similar views. It should be recognized, however, that Board is interested in factual information rather than a show of popular support for a particular viewpoint.

The Board may call upon staff assistance or comments from the appropriate City of Papillion personnel at any time during the proceedings.

**Rule 6: Duties of Board Chairperson**

The Board Chairperson, or Vice Chairperson in the Chairperson's absence, shall be in charge of Board meetings and shall be responsible for directing the order of the Board meetings, for directing persons testifying before the Board to limit their testimony to matters having relevance to the jurisdictional basis upon which an appeal has been made, and for directing the development of facts in support of any final action taken by the Board.

**Rule 7: Withdrawal or Referral**

Any matter which has been advertised for public hearing may be withdrawn or deferred prior to preparation of the agenda before the meeting. Once the agenda has been prepared, items may be withdrawn or deferred only for good cause, with approval of the Chairperson or Vice Chairperson if the Chairperson is out town and not available. In the event of a request for deferral, the Chairperson or Vice Chairperson, if the Chairperson is out of town and not available, will continue to call for public hearing in order to provide the opportunity for those persons wishing to testify who have already altered their schedule for the public hearing.

**Rule 8: Final Action**

As required by law, four affirmative votes are required for final action on any matter. "Final action" shall be defined to mean any vote on a main motion which results in a favorable or unfavorable disposition of an appeal, including a finding of lack of jurisdiction. All subsidiary votes and procedural votes may be determined by the majority vote of the quorum present at any meeting.

The Board shall develop factual findings in support of the final action on an appeal and shall indicate the basis upon which such action was made. The Board's decision, together with the supportive facts developed by the Board, shall be filed in the office of the City Clerk within seven (7) days of such final action.

The initial motion made by a Board member should be a motion to approve the appellant's request. If no motion to approve the appellant's request is forthcoming, then a motion to deny the request would be appropriate.

**Rule 9: Special Meetings**

Special meetings of the Board may be called by the Chairperson, Vice Chairperson, or three members of the Board of Adjustment, as otherwise permitted by law.

**Rule 10. Amendment or Suspension of Rules**

These rules may be amended by an affirmative vote of three members after at least 30 days written notice to all Board members.

These administrative rules may be suspended as to any matter before the Board, as otherwise permitted by law, by three affirmative votes of the Board.

**Rule 11. Election of Chairperson and Vice Chairperson**

The Chairperson and Vice Chairperson shall be elected for a one year term at the regular June meeting. In the event of a vacancy by either the Chairperson or the Vice Chairperson, the Board shall elect a replacement to fill the unexpired term at the next regularly scheduled meeting of the Board following the creation of the vacancy. Should the Vice Chairperson be elected to fill the unexpired term of the Chairperson, the Board shall thereupon, immediately elect a replacement for the Vice Chairperson. All elections pursuant to this paragraph shall be by majority vote of the entire Board (three votes).

The alternate Board member may be elected as the Vice Chairperson.

In the event of a vacancy by the Chairperson, the Vice Chairperson shall have the authority to act as the Chairperson until a replacement is elected. In the event of a temporary absence by the Chairperson, the Vice Chairperson shall have the authority to act as Chairperson during such absence.

In the event that both the Chairperson and Vice Chairperson are temporarily absent, the Chairperson may appoint a temporary Chairperson who will have the authority to act as Chairperson during such absence. In the event that the Chairperson has not appointed a temporary Chairperson, the Planning Director, or someone designated by the Planning Director, shall call the meeting to order for the purpose of electing a temporary Chairperson. The Board shall elect a temporary Chairperson immediately thereafter. Such election shall be by a majority vote of the members present. The temporary Chairperson, so elected, shall have the authority to act as the Chairperson during the absence of the Chairperson and Vice Chairperson.

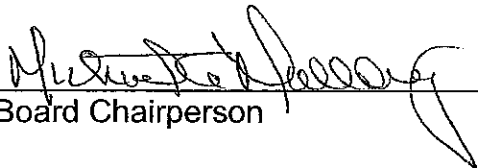
Either the Chairperson or the Vice Chairperson may be removed from office by a four-fifths majority vote of the entire Board prior to the expiration of the regular term.

In addition to the other powers, duties and responsibilities specifically set out in these Rules, the Chairperson shall preside at all meetings of the Board, and shall be responsible for directing the order of the Board, for making rulings upon the propriety of testimony presented to the Board, and for directing the development of the findings of fact on any final action taken by the Board.

**Rule 12: ROBERTS RULES OF ORDER**

Except as otherwise specifically set out herein, all business before the Board shall be conducted in accordance with Roberts Rules of Order.

Adopted by the Board of Adjustment on this 11 day of July,  
2006

  
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Board Chairperson

Approved, as to form and legality:

  
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City Attorney