



MORGANTOWN BOARD OF ZONING APPEALS

January 20, 2016
6:30 PM
Council Chambers

Board Members:

Leanne Cardoso
Bill Burton
Linda Herbst
George Papandreas
Jim Shaffer

Resolution 2016-01

“Amend By-laws and Policy Annexes 1, 2, and 3”

WHEREAS, to gather pertinent information and concerns, safeguard a full airing of the issues involved, and ensure basic fairness, the Morgantown Board of Zoning Appeals conducts a public hearing for each variance, conditional use, and administrative appeal petition; and,

WHEREAS, the Board finds it necessary and prudent to establish policies concerning deadlines for submitting evidence supporting the granting or denial of an application and related procedures, use of electronic display, majority vote for official action, addressing unruly and disruptive behavior, and accordingly revising the pre-meeting announcement for regular and special meetings; and,

WHEREAS, the Board finds it necessary and prudent to establish rules of procedure for administrative appeal hearings by adopting a related policy annex.

WHEREAS, it is the intent of the Board to accordingly amend its Bylaws and Annexes as attached hereto.

NOW THEREFORE, BE IT RESOLVED, by the Morgantown Board of Zoning Appeals that:

1. The Board’s Bylaws and Annexes 1 and 2 are hereby amended as attached hereto.
2. The Board adopts Policy Annex 3, Administrative Appeal Hearings, Rules of Procedure as attached hereto.
3. This Resolution shall be effective immediately upon adoption.

Adopted: 20 JAN 2016
Date



Chairperson, Morgantown Board of Zoning Appeals



Secretary, Morgantown Board of Zoning Appeals

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

CITY OF MORGANTOWN, WEST VIRGINIA
BOARD OF ZONING APPEALS BYLAWS

ARTICLE I.....AUTHORIZATION
ARTICLE II..... OFFICERS AND STAFF
ARTICLE III..... MEETINGS
ARTICLE IV BUDGETS
ARTICLE VRETENTION OF FILES
ARTICLE VI SEPARABILITY
ARTICLE VIIAMENDMENTS AND POLICY ANNEXES

POLICY ANNEX 1 ORDER & CONDUCT OF BUSINESS
POLICY ANNEX 2 GUIDANCE IN FAIRNESS AND IMPARTIALITY
POLICY ANNEX 3ADMINISTRATIVE APPEAL HEARINGS

Adopted: December 19, 2007

Amended: June 19, 2013

January 20, 2016

ARTICLE I – AUTHORIZATION

SECTION 1 – STATE CODE

The Morgantown Board of Zoning Appeals was created as provided for in West Virginia State Code Chapter 8A, Article 8, as amended.

SECTION 2 – CITY CHARTER

The Morgantown Board of Zoning Appeals was created as provided for in Article VI of the City Charter, Morgantown, West Virginia, as amended.

SECTION 3 – CITY CODE

The Morgantown Board of Zoning Appeals was created as provided for in Article 1389 of the Planning and Zoning Code of the City of Morgantown, as amended.

ARTICLE II – OFFICERS AND STAFF

SECTION 1 – ELECTION

- (A) At its first regular meeting each calendar year, the Board shall elect from its members a Chairperson and Vice-Chairperson.
- (B) No member of the Board shall be eligible for the office of Chairperson or Vice-Chairperson until s/he has served on the Board for at least one (1) year, unless no member has served a minimum of one (1) year. In such event, the Chairperson or Vice-Chairperson shall be selected from any of the Board members.

SECTION 2 – CHAIRPERSON

- (A) The Chairperson shall preside at all regular and special meetings, public hearings, study sessions, field trips, and workshops of the Board.
- (B) The Chairperson may call special meetings of the Board as required or necessary.
- (C) The Chairperson shall automatically send a letter to the City Manager to inform him/her when any member fails to attend three (3) consecutive regular meetings or any five (5) regular meetings in a calendar year. The Chairperson may also include in the letter a request that the member be removed under City Council's procedures for the removal of members of the Board for inactivity, neglect of duty, or malfeasance. Said procedure should include provisions requiring that the person to be removed be provided with a written statement from the City Manager of the reasons for removal and an opportunity to be heard by the City Manager on the matter.

SECTION 3 – VICE-CHAIRPERSON

The Vice-Chairperson shall act as Chairperson of the Board during the absence or disability of the Chairperson.

SECTION 4 – TEMPORARY CHAIRPERSON

For the purpose of establishing a quorum for a meeting and in the absence of both the Chairperson and Vice-Chairperson, any member may call the meeting to order for the purpose of electing a temporary Chairperson by a simple majority of those present.

SECTION 5 – REPLACING OFFICERS

- (A) In the event of the death, disability, resignation, or removal of the Chairperson and Vice-Chairperson, the Board shall elect one of its eligible members to complete the unexpired term.
- (B) A three-fifths majority of the total membership of the Board may, at any regular meeting, remove the Chairperson and Vice-Chairperson from office, provided that a new election to fill the remaining term of office is immediately held.

SECTION 6 – SECRETARY

The Director of Development Services of the City of Morgantown, or his/her designated representative, shall serve the Board as Secretary. The Secretary shall perform such duties and functions as may be required from time to time by the Board, including recording, maintaining and distributing the minutes of each meeting, and sending notices and agendas to members in a timely fashion. The Planning Division shall furnish professional and technical assistance to the Board.

SECTION 7 – ATTORNEY

All questions of law shall be referred to the City Attorney, or designated representative, for advice and opinion.

ARTICLE III – MEETINGS

SECTION 1 – REGULAR MEETINGS

- (A) Regular meetings of the Board shall be held on the third Wednesday of the month at 6:30 PM. Whenever a legal holiday is the same day as a meeting, such meeting shall be cancelled or scheduled for an alternate date and advertised in accordance with State regulations pertaining to Open Government Meetings. An alternate date may be selected when, in the opinion of the Chairperson, the regular date conflicts with a community event that may hinder public access, attendance, and/or participation. In such case, the alternate date shall be advertised in accordance with State regulations pertaining to Open Government Meetings.
- (B) The Board shall establish rules and procedures pertaining to the order and conduct of its regular and special meetings. Regular and special meetings of the Board shall be open to the public and minutes of its proceedings, showing the vote of each member and records of its examinations and other official actions, shall be filed in the office of the Planning Division as a public record. For any matter under consideration, any person may submit written comments and if attending in person, may speak to the issue upon being recognized by the Chairperson after stating his/her name and address and the names of any persons on whose behalf they are appearing.
- (C) Regular meetings of the Board shall be held in Council Chambers of City Hall, unless advertised differently.

SECTION 2 – SPECIAL MEETINGS

- (A) Special meetings may be called by the Chairperson or upon the written request of any two or more members.
- (B) Notice for a special meeting must be in writing, include the date, time, and place of the special meeting, and be sent to all members by the Secretary at least two (2) days before the special meeting.
- (C) Written notice of a special meeting is not required if the date, time, and place of the special meeting were set in a regular meeting.

SECTION 3 – QUORUM

- (A) The Board must have a quorum to conduct a regular or special meeting. A majority of the members of the Board shall constitute a quorum.
- (B) No action of the Board is official unless authorized by a majority of the members present at a regular or properly called special meeting.

SECTION 4 – PARLIAMENTARY PROCEDURE

Roberts Rules of Order, current addition, shall be the parliamentary authority of the Board's regular and special meetings.

SECTION 5 – EXECUTIVE SESSIONS

The Board may hold an executive session closed to the public during a regular or special meeting to consider matters permissible in executive sessions pursuant to the laws of the State of West Virginia and the City of Morgantown Charter.

SECTION 6 – FIELD TRIPS

The Board may take Field Trips to view property or for other purposes relevant to a public hearing or other matter under consideration. All Board Field Trips shall be taken as part of a regular or special meeting and all interested persons shall be afforded the opportunity to be present to view the property and hear any reports or comments. A record of the Field Trip shall be entered into the minutes, so that the record shall indicate that the Field Trip was taken into consideration as evidence.

SECTION 7 – WORKSHOPS

- (A) Workshops for any purpose may be held on the call of the Chairperson or request of two or more members, by giving notice to all the members by phone, by personal delivery, by email, and/or by verbal comment during a regular or special meeting at least twenty-four (24) hours before the workshop. At least twenty-four (24) hours notice shall be given to the general public by posting such notice at City Hall and otherwise in conformance with West Virginia State Code. The Workshop call and notice shall specify the date, time, place, and purpose of the Workshop.
- (B) Workshops shall not be considered regular or special meetings and may not include the formal conduct of business, rendering decisions, or taking action for which the Board is charged. Workshops are intended to serve as Board training, public education, etc.

ARTICLE IV – BUDGETS

The Secretary shall prepare and submit an Annual Budget to the City Manager in the same manner as other departments of the City government and shall be limited in all expenditures to the provisions made therefore by City Council.

ARTICLE V – RETENTION OF FILES

- (A) The official records of the Board shall include its bylaws, rules, regulations, minutes of meetings, resolutions, and its adopted reports, which shall be deposited with the office of the Planning Division and which shall be available for public inspection during customary office hours.
- (B) All applications and other matters coming before the Board shall be filed in the office of the Planning Division in accordance with that office's general file system.
- (C) Original papers of all applications and other matters shall be retained for not less than five (5) years after date of application. Thereafter, such matters may be retained in digital format, along with other special matters as the Secretary deems essential, for permanent record.

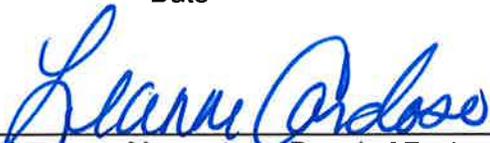
ARTICLE VI – SEPARABILITY

The invalidation of any article or any section of any article shall not invalidate any other portion of these Bylaws.

ARTICLE VII – AMENDMENTS AND POLICY ANNEXES

- (A) These Bylaws may be amended by majority vote at any meeting of the Board; provided that notice of said proposed amendment is given to each member in writing at least five (5) days prior to said meeting.
- (B) Policy Annexes that supplement these Bylaws may be adopted and amended by majority vote at any meeting of the Board, provided that notice of said proposed amendment is given to each member in writing at least five (5) days prior to said meeting.

Adopted: 20 JAN 2016
Date



Chairperson, Morgantown Board of Zoning Appeals



Secretary, Morgantown Board of Zoning Appeals

**CITY OF MORGANTOWN, WEST VIRGINIA
BOARD OF ZONING APPEALS BYLAWS**

**POLICY ANNEX 1
ORDER & CONDUCT OF BUSINESS**

SECTION 1 NOTICE OF HEARINGS
SECTION 2 OPENING OF MEETINGS
SECTION 3 ORDER AND CONDUCT OF BUSINESS
SECTION 4 VOTING
SECTION 5 RECORDING OF MEETINGS

Adopted: December 19, 2007

Amended: June 19, 2013

January 20, 2016

SECTION 1 – NOTICE OF HEARINGS

- (A) Notice of time and place of any public hearing to be held by the Board will be given by the Secretary, or his/her designee, as required by State law and/or City Ordinance.
- (B) Notice of pending Board consideration of variance and conditional use petitions will be sent by the Secretary, or his/her designee, to owners of property within 200 feet of the subject site for which a public hearing is held. Said notice will be mailed, not less than 15 days prior to the hearing date, to owners of record at the Monongalia County Courthouse.
- (C) An agenda will be prepared by the Secretary for each regular and special meeting and executive session of the Board. The agenda will include the various matters of business as scheduled for consideration by the Board.
- (D) Any petition or request may be withdrawn upon written notice to the Secretary, but no request shall be withdrawn after posting of hearing notice or legal advertisement published for notification and prior to the public hearing thereon without formal consent of the Board.
- (E) Hearings on all matters on which a decision of the Board is required shall be open to the public.
- (F) The applicant may appear on his or her own behalf, or may be represented by agent or by an attorney licensed to practice in the State of West Virginia. Any party may appear in person, by agent or by an attorney licensed to practice in the State of West Virginia.

SECTION 2 – OPENING OF MEETINGS

- (A) The Chairperson will call the Board to order and the Secretary shall record the members present and absent for all regular and special meetings.
- (B) The Chairperson will conduct meetings under Robert's Rules of Order, current edition, unless such rules are suspended by majority vote of the Board or superseded by these Bylaws. In a conflict between these Bylaws and Robert's Rules of Order, these Bylaws will prevail.
- (C) The Chairperson will direct questions to the applicant or any person speaking, in order to bring out all relevant facts, circumstances, and conditions affecting the matter being considered, and then call for the questions from other members of the Board and from the City Staff.
- (D) The Chairperson will read a statement for the benefit of the Board, petitioners, and the public that describes the order, procedures, and conduct of the meeting (see Exhibit A – Pre-Meeting Announcement).

SECTION 3 – ORDER AND CONDUCT OF BUSINESS

- (A) The Chairperson will first call for the presentation of the staff report and report on any communications received.
- (B) The Chairperson will then call upon the applicant to present his/her petition and all evidence supporting his/her request.
- (C) The Chairperson will then call on those who are in support of the request or other matter being presented.
- (D) The Chairperson will then call on those who are opposed to the request or other matter being presented.

- (E) The Chairperson may then grant the petitioner the right of rebuttal to any arguments presented by the opposition.
- (F) Each side will proceed without interruption by the other, and all arguments and pleadings will be addressed to the Board. No questioning or argument between individuals will be permitted.
- (G) The Board may continue the hearing up to ninety (90) days on any application or other matter for which the applicant fails to appear unless the applicant has requested in writing that the Board act without him/her being present at the hearing; provided, however, the Board may hear those persons requesting to speak in response to the notice of hearing.
- (H) Witnesses shall not ordinarily be sworn unless a specific request therefore is made and granted prior to the taking of any testimony. The Chairperson may, upon request of any member of the Board or upon the advice of the City Attorney, require that all witnesses be sworn before giving testimony in a particular matter. Witnesses may be sworn as a group prior to the presentation of the staff report.
- (I) A member of the Board who is absent from any portion of a hearing conducted by the Board may vote on the matter at the time it is acted upon by the Board; provided that s/he has listened to the tape recording made, or reviewed the minutes of, any portion of the hearing from which s/he was absent, and states for the record prior to voting that s/he has read the staff report and is familiar with it.
- (J) The hearing need not be conducted according to technical, judicial Rules of Evidence. Any relevant evidence may be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- (K) The Chairperson may exclude irrelevant or redundant testimony and may make such other rulings as may be necessary for the orderly conduct of the proceedings ensuring basic fairness and a full airing of the issues involved. Evidentiary objections shall be waived unless made timely to the hearing.
- (L) Any evidence from a person other than the applicant supporting the granting or denial of an application must be submitted to the office of the Planning Division no less than five (5) days prior to the public meeting. No evidence submitted after the deadline will be considered unless the Board finds, at the hearing, that good cause exists to admit additional evidence. If additional evidence is admitted by the Board after the deadline, the Board will offer the opportunity to submit responsive evidence or argument prior to making its decision(s) on the related application(s). The applicant shall be entitled to submit evidence at the hearing in response to any evidence submitted by another person, and the Board may, but shall not be required to, offer additional opportunity to submit evidence.
- (M) In order to schedule available resources and control the effective conduct of the meeting and/or public hearing, any electronic display may be presented to the Board only if approved by the Chairperson at least five (5) business days prior to the hearing. No electronic display of materials will be permitted without prior approval.
- (N) In order to expedite the conduct of the hearing, the Chairperson may limit the amount of time which a person may use in addressing the Board. The Chairperson may also limit the speakers or testimony upon a particular issue in order to avoid repetitious and cumulative evidence.
- (O) The burden of proof of all legal pre-requisites to the action sought will be upon the party requesting such action.

SECTION 4 – VOTING

- (A) After all evidence has been submitted to the Board, each case shall be heard, considered, and acted upon in public meeting.
- (B) The Board shall close public participation for discussion prior to taking action, but may ask questions of the staff, the applicant, or persons in the audience pertaining to the matter under consideration.
- (C) The Board may approve, approve with conditions, or deny any application or other matter under consideration, subject to the provisions of the Planning and Zoning Code of the City of Morgantown.
- (D) By majority vote, the Board may also defer action on any matter whenever it concludes that additional time for further study is necessary. If continued, any public hearing shall be continued to a date certain, not to exceed sixty (120) days from that date.
- (E) Every decision by the Board must be in writing and state findings of fact and conclusions of law on which the Board based its decision.
- (F) A majority vote of those Board members present and voting shall be required to take official action.
- (G) The Chairperson shall vote on all matters before the Board, and shall have the right to make or second motions in the absence of a motion, or a second, made by a member.
- (H) In the event a majority vote for an official action is not obtained, the matter shall be continued until such time as the Board is able to obtain a majority vote for official action. The failure of the Board to obtain a majority on a vote shall not operate as an approval nor a denial of an application.
- (I) A member shall disqualify him/herself and abstain from voting whenever s/he has, or may have, a personal or monetary interest in the matter under consideration, or will be directly affected by the decision. When a member must disqualify him/herself, s/he must recuse him/herself from any vote, discussion, participation, or other activity regarding the conflicting issue. The determination by a member to abstain from voting on any action before the Board shall not be counted as either a “yes” vote or a “no” vote, nor shall it be counted in the determination of the majority.
- (J) Each member attending will be entitled to one (1) vote which will be by show of hand. The Chairperson may request a voice vote or roll call vote when, in his/her opinion such is necessary to accurately record each member’s vote. The minutes of the proceedings shall indicate the vote of each member on every matter acted upon, and shall indicate any absence or failure to vote.
- (K) No member shall be excused from voting except on matters involving the consideration of his/her own official conduct, or such matters as referred to in Section 4 (I) above. In all other cases, a failure of any member to vote shall be entered into the minutes as an affirmative vote.
- (L) The Board shall vote upon the merit of any petition or other matter under consideration within one-hundred-twenty (120) days from beginning of the public hearing, unless the application is withdrawn by the applicant. A vote to continue or table the matter under consideration shall not constitute a vote on its merits.
- (M) A motion to adopt or approve staff recommendations or simply to approve the action under consideration shall, unless otherwise particularly specified, be deemed to include adoption

of all proposed findings and execution of all actions recommended in the staff report on file in the matter.

SECTION 5 – RECORDING OF MEETINGS

- (A) The Secretary shall see that all public meetings of the Board are recorded by electronic device.
- (B) Any person desiring to have a meeting recorded by an alternate electronic device or by a stenographic reporter, at his/her own expense, may do so, provided that s/he consults the with Secretary to arrange facilities for such recording prior to the commencement of the meeting, or does not otherwise disrupt the proceedings.

Adopted: 20 JAN 2016
Date



Chairperson, Morgantown Board of Zoning Appeals



Secretary, Morgantown Board of Zoning Appeals

EXHIBIT A
Pre-Meeting Announcement read by the Chairperson

Good evening and welcome to the regular/special meeting of the **City of Morgantown Board of Zoning Appeals**. Please turn off all cell phones or other devices that may disrupt these proceedings. It is the duty of this Board to consider requests for relief from the requirements of the City's zoning regulations; to consider conditional use permit requests; and, to hear administrative appeals.

The Board conducts business in the following order:

- Review, amend, and approve minutes of a previous meeting.
- Unfinished Business
- New Business
- Announcements from Staff

Each request is heard in the order that it appears on the agenda. For each Conditional Use and Variance request, the following is done:

- I will introduce the agenda item and the Planning Division will present a Staff Report, which may or may not offer a recommendation.
- The applicant/agent will be asked to present their justification for their request, which may include questions by members of the Board.
- I will then open a PUBLIC HEARING to hear testimony in support of, or in opposition to, the request. Rules regarding public testimony are as follows:
 - Anyone wishing to testify during the public hearing may do so once recognized by me or may, in lieu of oral testimony, submit written testimony to the Chair. All recognized speakers must approach the podium, state their name and address for the record, and speak clearly into the microphone.
 - All comments must be addressed to the Board, should be relevant to the application, and may not be of a personal nature or personal attacks.
 - All speakers will be limited to five (5) minutes. If members of the Board have any questions of the speaker, that time will not be counted toward his/her five (5) minutes.
 - If there is a large number of speakers, including many who are part of groups or organizations, I may, to avoid repetitive comments, elect to ask for a representative to speak on behalf of the group or organization.
 - Speakers are notified that irrelevant comments or comments of a personal nature or personal attacks may result in the speaker forfeiting his/her opportunity to participate in the public hearing.
 - I may elect to recognize the applicant/agent at the end of the public hearing to provide rebuttal or additional comments, which will be limited to five (5) minutes. If members of the Board have any questions of the applicant/agent, that time will not be counted toward his/her five (5) minutes.
- After all testimony is heard, I will declare the PUBLIC HEARING CLOSED and no further public comment will be permitted.

- Uncivil, unruly, and/or disruptive behavior at any time during this meeting is prohibited and will result in removal from this public meeting.
- State law requires the Board to consider findings of fact for each conditional use and variance request. The request cannot be granted unless a majority of the quorum present finds in the positive of ALL of the findings of fact. The Board may elect to continue the hearing to another date if it needs additional information.
- Applicants and requesting parties will be notified in writing by the Planning Division of the Board's findings and conclusions. Regardless of whether a request is approved or denied, decisions of the Board can be appealed to the Circuit Court of Monongalia County within thirty (30) days upon receipt of the written notification. Any work done relating to decisions rendered by this Board during this thirty-day period is at the sole financial risk of the applicant.

Thank you for your consideration and respect for these proceedings and the opinions of all meeting participants.

**CITY OF MORGANTOWN, WEST VIRGINIA
BOARD OF ZONING APPEALS BYLAWS**

**POLICY ANNEX 2
GUIDANCE IN FAIRNESS AND IMPARTIALITY**

SECTION 1 QUASI-JUDICIAL PUBLIC HEARINGS

SECTION 2 BIAS

SECTION 3 CONFLICT OF INTEREST

SECTION 4 EX PARTE CONTACT

SECTION 5 PERFORMANCE

Adopted: December 19, 2007

Amended: June 19, 2013

January 20, 2016

SECTION 1 – QUASI-JUDICIAL PUBLIC HEARINGS

The Board of Zoning Appeals' hearings are considered "quasi-judicial" hearings. Quasi-judicial hearings are subject to stricter procedural requirements than legislative hearings as they involve the legal rights of specific parties. As such, decisions made as a result of such hearings must be based upon and supported by the "record" developed at the hearing. Most quasi-judicial hearings include land use matters such as conditional uses, variances, administrative appeals, etc.

SECTION 2 – BIAS

"Bias" generally means that a BZA member is incapable of making a decision on the basis of the evidence and argument presented during a public hearing due largely because his/her decision is made before the hearing.

SECTION 3 – CONFLICT OF INTEREST

- (A) A BZA member may not vote on or decide a matter that has become "personal" to that individual.
- (B) A matter is considered "personal" to a BZA Member when s/he has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his/her vote or would clearly give the appearance of impropriety.
- (C) An interest is not "personal" if the interest of the BZA Member in the matter is affected as a member of, and to no greater extent than any other member of, a profession, occupation or class.
- (D) There are two conflict of interest types:
 - (1) Actual Conflict – Actual conflict is an action or decision, the effect of which *would* be to a BZA Member's (or a family member's) financial benefit or detriment. The obligatory procedure is to disclose the "nature of the conflict" and not take part in the discussion, debate, or decision on the related matter.
 - (2) Potential Conflict – Potential conflict is an action or decision, the effect of which *could* be to a BZA Member's (or a family member's) financial benefit or detriment. The obligatory procedure is to disclose the "nature of the conflict" and then take part in the discussion, debate, or decision on the related matter.

SECTION 4 – EX PARTE CONTACT

- (A) "Ex parte" essential means "on, or in the interests of one side only."
- (B) "Ex parte contact" occurs when it is taken or granted at the instance and for the benefit of one party only, and without notice to, any person adversely interested, or without the opportunity to rebut.
- (C) To ensure open, equal, and fair deliberation, all sides and the general public must know all of the information that each BZA Member has received which may influence decisions.

- (D) Ex parte contact applies to quasi-judicial public hearings.
- (E) The obligatory conduct of BZA Members relating to ex parte contact is:
 - (1) Avoid situations and circumstances with parties interested in pending quasi-judicial hearing issues.
 - (2) Avoid discussions relating to pending quasi-judicial hearing issues.
 - (3) When contacted concerning a pending quasi-judicial hearing issue, end the discussion and disclose the contact at the related BZA quasi-judicial hearing by providing the substance of the contact.
- (F) Unlike bias, ex parte contact does not disqualify a BZA Member, but requires disclosure.

SECTION 5 – PERFORMANCE

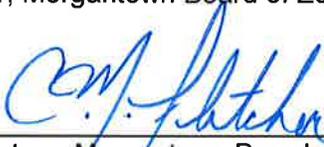
- (A) Any communication between any party and a BZA Member that may have the appearance of or potential to lead to bias or partiality must be disclosed as soon as possible at the related quasi-judicial hearing.
- (B) Any party to a quasi-judicial proceeding, may challenge the partiality and appearance of fairness of any BZA Member during the hearing. A challenge must include the facts relied on by the challenging party, relating to the BZA Member's alleged bias, prejudgment, or personal interest, or other basis by which the party has concluded that the BZA Member cannot participate in an impartial manner.
 - (1) In the event of a challenge under this subsection, the challenged BZA Member shall respond in a statement, which shall be part of the record, or step down from participating in the hearing on the matter. The statement shall respond to the challenge and include the reasons why he or she should be allowed to participate.
 - (2) The statement regarding continuing to participate in the hearing shall not be subject to BZA examination but shall be subject to rebuttal by the challenging party.
 - (3) In the event of a rebuttal, the BZA Member shall be given an opportunity to respond making special reference to the facts alleged in rebuttal, or shall disqualify him or herself and state the reasons therefore.
- (C) For a recusal to be effective, it is necessary for the BZA Member to excuse himself/herself from the discussion, participation, or other activity regarding the issue by fully disclosing his/her interest, physically removing himself/herself from the room during that period, and recusing himself/herself from voting on the issue.
- (D) If as a result of conflict of interest, ex-parte contact and/or appearance of fairness, a quorum of the entire BZA cannot be assembled for the purposes of conducting a hearing, then the matter relating to the conflict of interest, ex-parte contact and/or appearance of fairness must be tabled and an opinion obtained from the West Virginia Ethics Commission.

Adopted: 20 JAN 2016

Date



Chair, Morgantown Board of Zoning Appeals



Secretary, Morgantown Board of Zoning Appeals

**CITY OF MORGANTOWN, WEST VIRGINIA
BOARD OF ZONING APPEALS BYLAWS**

**POLICY ANNEX 3
ADMINISTRATIVE APPEAL HEARINGS
RULES OF PROCEDURE**

SECTION 1 OPENING OF MEETINGS
SECTION 2 ORDER AND CONDUCT OF BUSINESS
SECTION 3 VOTING
SECTION 4 RECORDING OF MEETINGS

Adopted: January 20, 2016

SECTION 1 – OPENING OF MEETINGS

- (A) The Chairperson will call the Board to order and the Secretary shall record the members present and absent.
- (B) The Chairperson will conduct meetings under Robert's Rules of Order, current edition, unless such rules are suspended by majority vote of the Board or superseded by these Rules of Procedure.
- (C) The Chairperson will direct questions to the applicant or any person speaking, in order to bring out all relevant facts, circumstances, and conditions affecting the matter being considered, and then call for the questions from other members of the Board.
- (D) The Chairperson will read a statement for the benefit of the Board, petitioner, and the public that describes the order, rules of procedures, and conduct of the hearing (see Exhibit A – Administrative Appeal Pre-Hearing Announcement).

SECTION 2 – ORDER AND CONDUCT OF BUSINESS

- (A) The Board will review the Administrative Appeal and the Staff Report, if any, prior to the scheduled hearing.
- (B) Any Staff Report responding to an Administrative Appeal shall be submitted to the Board and the administrative appeal applicant at least five (5) calendar days prior to the hearing on the appeal. No additional filings will be permitted or considered by the Board. The Administrative Appeal and Staff Report shall identify the evidence relied upon that was presented at the proceeding subject of the appeal. No evidence outside the record below will be considered by the Board unless the Board determines that good cause exists for supplementation of the record. If additional evidence is admitted by the Board, the Board may offer the opportunity to submit responsive evidence or argument prior to making its decision on the Administrative Appeal.
- (C) Parties to an administrative appeal hearing may only address the Board from the podium, unless the Chairperson permits another method based on good cause shown.
- (D) In order to schedule available resources and control the effective conduct of the meeting and/or public hearing, any electronic display may be presented to the Board only if approved by the Chairperson at least five (5) business days prior to the hearing. No electronic display of materials will be permitted without prior approval.
- (E) The Chairperson will first call for the applicant to present the administrative appeal petition.
- (F) The Chairperson will then call upon staff to present the basis of the decision from which the administrative appeal was filed and present a response to the applicant's administrative appeal.
- (G) The Chairperson will then call upon the applicant to present a rebuttal.
- (H) The Chairperson will then recognize members of the Board who may have questions for the applicant and/or staff.

- (I) Each side will proceed without interruption by the other, and all arguments and pleadings will be addressed to the Board. No questioning or argument between individuals will be permitted.
- (J) The Board shall endeavor to offer an equal amount of time in an administrative appeal hearing to the petitioner or other person aggrieved and staff.
- (K) The Chairperson will then call on those who are in support of the administrative appeal petition.
- (L) The Chairperson will then call on those who are opposed to the administrative appeal petition.
- (M) Presumption of correctness. At the hearing, the staff decision for which the administrative appeal was filed is presumed to be correct.
- (N) The burden of proof of the petitioner. After staff explains the basis for the decision appealed, the petitioner has the burden of proof to rebut the presumption of correctness by a preponderance of the evidence.
- (O) Witnesses shall not ordinarily be sworn unless a specific request therefore is made and granted prior to the taking of any testimony. The Chairperson may, upon request of any member of the Board or upon the advice of the City Attorney, require that all witnesses be sworn before giving testimony in a particular matter. Witnesses may be sworn as a group prior to the presentation of the staff report.
- (P) A member of the Board who is absent from any portion of an administrative appeal hearing conducted by the Board may vote on the matter at the time it is acted upon by the Board; provided that s/he has listened to the tape recording made, or reviewed the minutes of, any portion of the hearing from which s/he was absent, and states for the record prior to voting that s/he has read the staff report and is familiar with it.
- (Q) The hearing need not be conducted according to technical, judicial Rules of Evidence. Any relevant evidence may be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- (R) The Chairperson may exclude irrelevant or redundant testimony and may make such other rulings as may be necessary for the orderly conduct of the proceedings ensuring basic fairness and a full airing of the issues involved.
- (S) In order to expedite the conduct of the hearing, the Chairperson may limit the amount of time which a person may use in addressing the Board. The Chairperson may also limit the speakers or testimony upon a particular issue in order to avoid repetitious and cumulative evidence.

SECTION 3 – VOTING

- (A) After all evidence has been submitted to the Board, each administrative appeal case shall be heard, considered, and acted upon in public meeting.

- (B) The Board shall close public participation for discussion prior to taking action, but may ask questions of the staff, the applicant, or persons in the audience pertaining to the matter under consideration.
- (C) The Board will decide to reverse or affirm, wholly or partly, or may modify, the administrative decision for which the administrative appeal was filed.
- (D) By majority vote, the Board may also defer action on any matter whenever it concludes that additional time for further study is necessary. If continued, any public hearing shall be continued to a date certain, not to exceed twenty (20) days from that date. The Board shall in all cases issue a written decision within thirty (30) days of the initial hearing on the administrative appeal.
- (E) Every decision by the Board must be in writing and state findings of fact and conclusions of law on which the Board based its decision. A written copy of such decision shall be available in the Planning Division Office within five (5) days after making such decision.
- (F) A majority vote of those Board members present and voting shall be required to take official action.
- (G) The Chairperson shall vote on all matters before the Board, and shall have the right to make or second motions in the absence of a motion, or a second, made by a member.
- (H) In the event a majority vote for an official action is not obtained, the matter shall be continued until such time as the Board is able to obtain a majority vote for official action. The failure of the Board to obtain a majority on a vote shall not operate as an approval nor a denial of an application.
- (I) A member shall disqualify him/herself and abstain from voting whenever s/he has, or may have, a personal or monetary interest in the matter under consideration, or will be directly affected by the decision. When a member must disqualify him/herself, s/he must recuse him/herself from any vote, discussion, participation, or other activity regarding the conflicting issue. The determination by a member to abstain from voting on any action before the Board shall not be counted as either a "yes" vote or a "no" vote, nor shall it be counted in the determination of the majority.
- (J) Each member attending will be entitled to one (1) vote which will be by show of hand. The Chairperson may request a voice vote or roll call vote when, in his/her opinion such is necessary to accurately record each member's vote. The minutes of the proceedings shall indicate the vote of each member on every matter acted upon, and shall indicate any absence or failure to vote.
- (K) No member shall be excused from voting except on matters involving the consideration of his/her own official conduct, or such matters as referred to in Section 3 (I) above. In all other cases, a failure of any member to vote shall be entered into the minutes as an affirmative vote.
- (L) The Board shall vote upon the merit of administrative appeal under consideration within thirty (30) days from beginning of the public hearing, unless the application is withdrawn by the applicant. A vote to continue or table the matter under consideration shall not constitute a vote on its merits.

- (M) Any appeal determined by the Board shall be particular to that case and site, and shall not be applied to the entire Ordinance, except as noted in Section 1375.05, Administrative Interpretations.

SECTION 4 – RECORDING OF MEETINGS

- (A) The Secretary shall see that all public meetings of the Board are recorded by electronic device.
- (B) Any person desiring to have a meeting recorded by an alternate electronic device or by a stenographic reporter, at his/her own expense, may do so, provided that s/he consults the with Secretary to arrange facilities for such recording prior to the commencement of the meeting, or does not otherwise disrupt the proceedings.

Adopted: 20 JAN 2016
Date



Chairperson, Morgantown Board of Zoning Appeals



Secretary, Morgantown Board of Zoning Appeals

EXHIBIT A

Administrative Appeal Pre-Hearing Announcement read by the Chairperson

Good evening and welcome to this ADMINISTRATIVE APPEAL HEARING of the City of Morgantown Board of Zoning Appeals. Please turn off all cell phones or other devices that may disrupt these proceedings. It is the duty of this Board to hear properly submitted administrative appeal petitions.

The Board will conduct this administrative appeal hearing in the following order:

- The Board will review the Administrative Appeal and the Staff Report, if any, prior to the scheduled hearing.
- Any party may submit additional evidence for the Board's consideration no less than five (5) business days prior to the scheduled hearing. No evidence submitted after the deadline will be considered unless the Board finds, at the hearing, that good cause exists to admit additional evidence. If additional evidence is admitted by the Board after the deadline, the Board will offer the opportunity to submit responsive evidence or argument prior to making its decision on the Administrative Appeal.
- Parties to an administrative appeal hearing may only address the Board from the podium, unless the Chairperson permits another method based on good cause shown.
- In order to schedule available resources and control the effective conduct of this hearing, any electronic display may be presented to the Board only if approved by the Chairperson at least five (5) business days prior to the hearing. No electronic display of materials will be permitted without prior approval.
- I will first call for the applicant to present the administrative appeal petition.
- I will then call upon staff to present his/her basis of his/her decision for which the administrative appeal was filed and present a response to the applicant's administrative appeal.
- I will then call upon the applicant to present a rebuttal.
- I will then recognize members of the Board who may have questions for the applicant and/or staff.
- Each side will proceed without interruption by the other, and all arguments and pleadings will be addressed to the Board. No questioning or argument between individuals will be permitted.
- I will endeavor to offer an equal amount of time in an administrative appeal hearing to the petitioner or other person aggrieved and staff.
- I will then open a PUBLIC HEARING to hear testimony in support of, or in opposition to, the administrative appeal. Rules regarding public testimony are as follows:

- Anyone wishing to testify during the public hearing may do so once recognized by me or may, in lieu of oral testimony, submit written testimony to the Chair. All recognized speakers must approach the podium, state their name and address for the record, and speak clearly into the microphone.
 - All comments must be addressed to the Board, should be relevant to the administrative appeal application, and may not be of a personal nature or personal attacks.
 - All speakers will be limited to five (5) minutes. If members of the Board have any questions of the speaker, that time will not be counted toward his/her five (5) minutes.
 - If there is a large number of speakers, including many who are part of groups or organizations, I may, to avoid repetitive comments, elect to ask for a representative to speak on behalf of the group or organization.
 - Speakers are notified that irrelevant comments or comments of a personal nature or personal attacks may result in the speaker forfeiting his/her opportunity to participate in the public hearing.
- After all testimony is heard, I will declare the PUBLIC HEARING CLOSED and no further public comment will be permitted.
 - Uncivil, unruly, and/or disruptive behavior at any time during this meeting is prohibited and will result in removal from this hearing.
 - Every decision by the Board must be in writing and state findings of fact and conclusions of law on which the Board based its decision. A written copy of such decision shall be available in the Planning Division Office within five (5) days after making such decision.
 - Any appeal determined by the Board shall be particular to that case and site, and shall not be applied to the entire Ordinance, except as noted in Section 1375.05, Administrative Interpretations.

Thank you for your consideration and respect for these proceedings and the opinions of all meeting participants.