

RULES OF PROCEDURE  
OF THE  
BOARD OF ADJUSTMENT OF NEW CASTLE COUNTY  
STATE OF DELAWARE

ARTICLE I.           Name of Organization

Section 1.           The name of this organization shall be the Board of Adjustment of New Castle County, hereinafter referred to as the "Board."

ARTICLE II.         Authorization

Section 1.           The Board of Adjustment of New Castle County is authorization by 9 *Del. C* §1311 *et seq.* and by §40.30.320 of the New Castle County Code.

ARTICLE III.        Duties

Section 1.           The Chairman, or in his absence the Vice Chairman shall preside at all meetings or hearings of the Board, decide all points of order or procedure, and perform all duties required by law or these Rules.

Section 2.           The Department of Land Use, hereinafter referred to as "Land Use", shall conduct, at the direction of the Board, all official correspondence of the Board, send out all notices required by law and by these Rules of Procedure, keep records of each examination of other official action of the Board, and perform all duties required by law and these Rules of Procedure.

ARTICLE IV. Officers

Section 1. The officers of the Board of Adjustment shall consist of a Chairman and a Vice Chairman.

Section 2. The Chairman of the Board is appointed in accordance with 9 *Del. C.* §1311 and §40.30.341A of the New Castle County Code. The Chairman shall select a Vice Chairman, in accordance with §40.30.341A of the New Castle County Code, who shall preside at meetings when the Chairman is not present.

ARTICLE V. Meetings

Section 1. All meetings and hearings of the Board shall be open to the public. Any action calling for a formal vote shall take place only at a public meeting or hearing.

Section 2. The Board may hold a virtual meeting or hearing in accordance with 29 *Del. C.* § 10006A, which requires an anchor location, as defined in 29 *Del. C.* § 10002, at which one (1) or more members of the Board must be present during the virtual meeting or hearing. The Chairman shall decide which member(s) will be present at the anchor location for the virtual Board meeting or hearing.

Section 3. A quorum shall consist of four (4) members appointed to the Board to transact business at all meetings and hearings. The vote of a majority of the members present at any meeting or hearing of the Board shall

be necessary to carry a motion. The Chairman shall be a voting member in all matters before the Board that require a vote.

Section 4. The Board shall meet at least once a month in a Regular meeting and at such other times for Special meetings as the Board may determine. Applications received by the first (1st) day of each month shall be heard the following month by the Board insofar as the scheduling of applications permits.

Section 5. Notice of matters to be heard by the Board shall be published in accordance with the requirements of §40.31.340 of the New Castle County Code. The notice shall set forth the time and place of the public hearing and shall describe in a general way the nature of the application.

Section 6. Each applicant and counsel or representative of record shall be notified by ordinary first-class mail of the date, place, and time of the public hearing at which their application will be heard.

Section 7. Any person desiring to obtain the permission of the Board for any purpose for which permission is required under the New Castle County Unified Development Code (Chapter 40 of New Castle County Code-hereinafter the UDC), or for any use not otherwise covered, shall make written application therefore. The Board shall cause public notice of the time and place of a public hearing on said application to be made in accordance with the requirements of §40.31.340 of the New Castle County Code. All witnesses that wish to testify before the Board shall testify under oath if the Board deems

it necessary. The Chairman or Vice Chairman shall have the discretion to permit reasonable opportunity for cross-examination. After a public hearing upon notice as provided for herein, the Board shall render a written decision within twenty (20) days.

Section 8. The order of business at all public hearings of the Board shall be as follows:

- (a) Reading of the public notice for the application by the Chairman or or his designate;
- (b) Presentation of the application by the applicant or his designee;
- (c) Opportunity for public comment;
- (d) Presentation of report by the designate of Land Use; and
- (e) Rebuttal by applicant.

Section 9. The applicant(s) must appear in their own behalf or be represented by counsel or other agent at the public hearing. Failure of the applicant or applicant's representative to appear at the public hearing may result in the ultimate denial of the application unless the applicant or representative notifies Land Use, by letter, within five (5) days after the public hearing, of the compelling reasons why the applicant or applicant's representative was not present at the public hearing. If a new public hearing is granted after failure of applicant or applicant's representative to appear at the scheduled public hearing, the applicant shall pay an additional fee to cover cost or readvertising before the

scheduling of a new public hearing.

Section 10. Recordings of Board hearings shall be kept on file in the Land Use offices for a two-year period of time from the date of filing of the notice of decision. Applicant or other persons interested shall have access to the stenographic report or tape recording of the Board hearings in addition to other material appearing in Board files during normal Land Use Department business hours. A copy or copies of the stenographic report may be procured at the requestor's expense.

Section 11. Once an application has been submitted to the Board for consideration, it may be withdrawn at the request of the applicant at any time prior to the date of the hearing. At any time thereafter, a request to withdraw the application must be approved by a majority of the quorum of the Board present for the hearing. For the purposes of this section, a majority vote by the Board to allow withdrawal of an application shall not be construed as rendering a decision on said application. The filing fee will be forfeited for any application withdrawn.

Section 12. No new application shall be acted upon by the Board if the Board shall find that within the two-year period immediately preceding the filing of the new application it had rendered a decision of denial regarding the same application. However, this limitation shall not be applicable if the Board shall find that the facts and circumstances existing at the time of the prior action by the Board

have undergone a material change justifying the Board's reconsideration. The Board shall make a ruling on the issue of change in fact and circumstances following a presentation by the applicant limited to that issue. If such change is found by a majority of the quorum present, such findings shall be made a part of the record of the public hearing on the new application and shall describe the particular change in facts and circumstances which has occurred since such prior action which justifies the reconsideration of the application.

Section 13. At any time after a public hearing, the Board may require a further hearing for the purpose of supplementing the record. In such cases, the Board shall schedule the public hearing, publish notice thereof, and give notice in accordance with applicable law.

Section 14. Once a hearing has been scheduled after proper publication pursuant to these Rules of Procedure, the hearing may be rescheduled or continued by compliance with the requirements of §40.31.350 of the New Castle County Code. After the start of a public hearing on the application, a continuance may be granted only if a majority of Board Members present determines that exceptional circumstances warrant such a rescheduling or continuance.

Section 15. The Board may continue a hearing for the purpose of supplementing the record upon its own or the applicant's request by majority vote.

ARTICLE VI. Appeals

Section 1. Appeal from an action or interpretation by Land Use, within the jurisdiction of the Board, must be filed in accordance with §40.31.510 *et seq.* of the New Castle County Code.

Section 2. Filing of an appeal with the Board shall stay the order, requirement, decision, or determination appealed from and all matters related thereto. Upon application by any person aggrieved by the stay or any officer, department, board, or bureau, the Board shall hold a hearing and may revoke the stay upon showing of extreme hardship resulting from the stay.

ARTICLE VII. Data Requirements

Section 1. Each application for a hearing before the Board shall be made on an official application form as provided by Land Use. The application form must contain sufficient data to permit the advertising and scheduling of the public hearing.

Section 2. A plot plan must be submitted showing the shape of the property and its location from an established landmark (street or railroad intersection). The plot plan must also contain the dimensions and bearings together with the structures and uses existing on the subject property and the structures and uses within 200 feet of all the property lines. The plot plan must also show the size of any construction proposed or other change desired or other matter that may be the subject of the public hearing.

- Section 3. The property parcel number assigned to the property by the New Castle County Board of Assessment (parcel number is shown on the tax invoice for the property) shall be included with the application.
- Section 4. Filing fee in accordance with the fee schedule contained herein.
- Section 5. Other data submitted by the applicant in support of the application must be listed on the application form.
- Section 6. At least seven (7) days before the scheduled Board hearing for an application, any submission for consideration by the Board at the hearing in excess of two (2) pages, including reports of RPATAC or other agencies with respect to the application, must be electronically conveyed to the Department of Land Use by the applicant in Word or pdf format, or submitted by hand to the Department of Land Use with ten (10) photocopies, collated and securely stabled or bound, along with seven (7) un-addressed prepaid postal envelopes, with postage needed for the weight of each copy, which will be directed promptly to the Board members by the Department of Land Use so as to assure two (2) days for review prior to the hearing. Failure to provide the document(s) as indicated may result in their not being considered by the Board at the hearing, or a continuance in accordance with Article V, Section 15 hereof or otherwise. This Section shall not apply to pictures, maps, or graphs.

ARTICLE VIII. Fees



Section 1. A fee shall be submitted for each application to be heard by the Board. The filing fee payable to NEW CASTLE COUNTY shall be submitted with the application for public hearing pursuant to Appendix 2 of the New Castle County Code.

ARTICLE IX. Formal Action and Decisions

Section 1. All actions and decisions of the Board shall be considered in effect when signed by the Chairman or Vice Chairman of the Board and filed in Land Use. All decisions shall be forwarded to the applicant or applicant's representative. All actions and decisions on any application or appeal to the Board shall be in the form of a written decision. Such decision shall, where applicable, include findings of the fact in support of the decision reached by the Board. Whenever the Board imposes any condition with respect to the granting of an application or appeal, such condition should be stated in the order of the Board, and in the building permit and/or in the certificate of occupancy subsequently issued by Development and Licensing. Such decisions shall remain valid only as long as the condition or conditions upon which it was approved or the conditions imposed by the Board are adhered to.

ARTICLE X. Court Review of Board Decisions

Section 1. Appeals from a decision of the Board shall be taken in accordance with 9 *Del. C.* §1314.

ARTICLE XI. Amendments

Section 1. These Rules of Procedure may be amended by action of the Board in accordance with the requirements of 40.30.340(A) of the New Castle County Code.

Adopted by the Board:



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David H. Burt, Chairman

Dated: 2/25/2022

Consent of County Executive



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Matthew Meyer

Dated: March 21, 2022