

**RULES OF PROCEDURE OF THE
BOARD OF LICENSE INSPECTION AND REVIEW
OF NEW CASTLE COUNTY**

ARTICLE I. Name of Organization

Section 1. The name of this organization shall be the Board of License Inspection and Review of New Castle County, hereinafter referred to as the “Board.”

ARTICLE II. Authorization

Section 1. The Board of License Inspection and Review of New Castle County is authorized by 9 *Del. C.* § 1315 and *New Castle County Code* § 2.05.103. These Rules of Procedure are promulgated pursuant to § 2.05.105 of the *New Castle County Code*.

ARTICLE III. Officers and Duties

Section 1. The officers of the Board shall consist of a Chairperson and a Vice-Chairperson. In accordance with 9 *Del. C.* § 1315 and *New Castle County Code* § 2.05.103, the Chairperson of the Board is appointed by and serves at the pleasure of the County Executive. The Chairperson shall appoint the Vice-Chairperson of the Board. The Chairperson shall administer oaths, preside at all meetings of the Board, decide all points of order or procedure, and take such action as is necessary to preserve the order and integrity of all proceedings. In the absence of the Chairperson, the Vice-Chairperson shall act as Chairperson. If both the Chairperson and Vice-Chairperson are absent from the proceedings, the remaining members shall select an Acting Chairperson who will assume the duties of Chairperson for that meeting.

Section 2. The Department of Land Use (“the Department”) 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 hearing or other official action of the Board, and perform all duties required by law, the Unified Development Code, and the *Rules of Procedure*.

ARTICLE IV. Meetings

Section 1. All meetings and hearings of the Board shall be open to the public, except to the extent 29 *Del. C.* § 10004 otherwise allows. Any action calling for a formal vote shall take place only at a public meeting or hearing.

Section 2. A quorum shall consist of three (3) 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 Chairperson shall be a voting member in all matters before the Board which require a vote.

Section 3. The Board shall meet once a month if there is an application to be heard or other business for the Board to conduct. Applications received by the first day of each month shall be heard the following month insofar as the scheduling of applications permits. The Board shall hear applications filed by an aggrieved person within 45 calendar days of the filing of the appeal, subject to the schedule

of the Board and the applicant. The Board may schedule additional meetings if necessary.

- Section 4. Notice of the matters to be heard by the Board shall be published in the Saturday edition of the News Journal, published in Wilmington, Delaware, at least ten (10) calendar days before the date of the hearing and shall specify the place and times at which the application will be heard. 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. Notice shall also be posted at the Department of Land Use in accordance with the requirements of 29 *Del. C.* §10004.
- Section 5. 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 6. All witnesses who wish to testify before the Board shall testify under oath if the Board deems it necessary. The applicant and the County may submit to the Board such evidence that they desire to offer, subject to the Board's reasonable time limits on the presentation of evidence. The Chairperson shall administer all oaths and shall have the authority to compel the attendance of witnesses at public hearings.
- Section 7. The Board may render its decision at the close of the public hearing on a particular application. In every matter, the Board shall make findings of fact and render a decision in writing based upon the record created at the public hearing within twenty (20) calendar days of that hearing.
- 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 Chairperson or their designee;
 - (b) Presentation by a representative or witness in support of the appeal;
 - (c) Presentation by a representative or witness of the County in opposition to the appeal;
 - (d) Members of the public in support of the application;
 - (e) Members of the public in opposition to the application;
 - (f) Rebuttal.
- Section 9. The applicant must appear on its own behalf or be represented by counsel or other agent at the public hearing, provided that an applicant that is an entity (e.g., corporation, limited liability company, limited partnership) may not appear by an agent who is not either an attorney licensed to practice before the Delaware Supreme Court or an employee or former employee of that entity. Failure of the applicant or applicant's representative to appear at the public hearing will result in the ultimate denial of the application unless the applicant or representative notifies the Department, by letter, within ten (10) calendar 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 the applicant or applicant's representative to appear at the scheduled public hearing, the applicant shall pay an additional fee, on a schedule established by the Department, to cover the cost of re-noticing before the scheduling of a new public hearing.

- Section 10. Tape recordings of Board hearings shall be kept on file in the Department for two-years from the date of filing of the written decision. The applicant or other persons interested shall have access to the stenographic transcript or the tape recording of the Board hearings in addition to other material appearing in Board files, during normal Department business hours. A copy or copies of the stenographic transcript may be procured at the expense of the person requesting the transcript.
- Section 11. Once an application has been submitted to the Board, the application may not be withdrawn before a final decision unless a majority of the members of the Board present vote to allow withdrawal. For the purpose 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 that is withdrawn.
- Section 12. 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 pursuant to *Article IV, Section 4 and 5* of these Rules of Procedure.
- Section 13. Once a hearing has been scheduled with proper notice pursuant to *Article IV, Section 4 and 5* of these Rules of Procedure, the hearing may be re-scheduled or continued only upon the approval of the Chairperson or, in his absence, the Vice-Chairperson. Any request for rescheduling or continuance must be made in writing to the Chairperson at least three (3) business days before the originally scheduled hearing date.
- Notwithstanding the above, a rescheduling or continuance may be granted if a quorum of the Board determines that exceptional circumstances warrant a rescheduling or continuance.
- Notwithstanding the above, the Board may, on its own motion, recess a meeting and reconvene at its convenience.

ARTICLE V. Application Requirements and Timing

- Section 1. Each application for a hearing before the Board shall be submitted by letter to the Department or made on an official application form provided by the Department. The letter or application form must contain sufficient data to permit the advertising and scheduling of the public hearing.
- Section 2. The 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 listed on the application form or appeal letter.
- Section 3. The applicant must submit a filing fee in accordance with the fee schedule established by the Department.
- Section 4. Other data submitted by the applicant in support of the application must be listed on the application form or in the appeal letter.
- Section 5. Each application for a hearing before the Board must be filed within twenty (20) calendar days from the date of the Department's written decision.

ARTICLE VI. Formal Action and Decisions

Section 1. All actions and decisions on any application or appeal to the Board shall be in the form of a written decision. The written decision shall state findings of fact in support of the decision reached by the Board. All actions and decisions of the Board shall be considered effective when the written decision is filed in the Department after being signed by the Chairperson, Vice-Chairperson, or Acting Chairperson of the Board. The Department shall forward a copy of the written decision to the Clerk of New Castle County Council and the applicant or applicant's representative.

ARTICLE VII. Appeals

Section 1. An aggrieved party may appeal the decision of the Board by filing a petition for a writ of certiorari in the Superior Court of the State of Delaware within thirty (30) calendar days of the date the Board's written decision is filed with the Department.

Section 2. The party taking an appeal from the Board's decision shall reimburse the Board for the actual costs of preparing the transcript and evidence filed with the Prothonotary. Unpaid invoices may be referred to the New Castle County Office of Law for enforcement. Interest will accrue on unpaid invoices at the rate set forth in 6 *Del. C.* § 2301(a).

ARTICLE VIII. Amendments

Section 1. These *Rules of Procedure* may be amended on the motion of a quorum of the Board.