

**TOWN OF DEWEY BEACH
BOARD OF ADJUSTMENT
RULES OF PROCEDURE**

These rules shall govern the procedure of the Board of Adjustment of The Town of Dewey Beach, Delaware.

Definitions

"Agenda" includes but is not limited to a general statement of the major issues expected to be discussed at a public meeting, as well as a statement of intent to hold an executive session and the specific ground or grounds therefor.

"Town" means The Town of Dewey Beach, Delaware, unless otherwise specified.

"Board of Adjustment" or "Board" means the Board of Adjustment of The Town of Dewey Beach, Delaware as authorized by Chapter 3 of Title 22 of the Delaware Code.

"Meeting" means the formal or informal gathering of a quorum of the members of the Board of Adjustment for the purpose of discussion or taking action on public business.

"Chairman" means the Chairman of the Board of Adjustment appointed in accordance with Chapter 3, Title 22 of the Delaware Code.

"Presiding Officer" means the Chairman of the Board of Adjustment, or such other person who presides over the meetings of the Board of Adjustment, pursuant to the Rules of the Board of Adjustment.

"Public business" means any matter over which the Board of Adjustment has supervision, control, jurisdiction or advisory power.

"Secretary" means the Secretary of the Board of Adjustment.

HEARING RULES

1. Authority. These rules are adopted pursuant to Section 185-64 of the Town of Dewey Beach Zoning Code and 22 Del. C. §323.
2. Organization. The Board of Adjustment of the Town of Dewey Beach shall consist of five (5) members, who shall be appointed by the Mayor and confirmed by the Commissioners of Dewey Beach, each for a term of three years. The terms of the original members shall be established in such a manner that the term of at least one member shall expire each year, and the successor shall be appointed for a term of three years. Members of the Board of Adjustment shall be residents of the Town, and shall not be Town employees or members of, or candidates for, any elected office. Members shall have knowledge of, and experience with,

problems of rural and urban development. Members of the Board of Adjustment may be removed for cause by the Commissioners of Dewey Beach after a Public Hearing.

3. Meeting Schedule. Meetings shall be held at the call of the Chairman with at least fifteen days' notice to the Applicants/Appellants. The Board will schedule meetings within a reasonable time after applications for a hearing are received, but a meeting will not be scheduled earlier than thirty (30) days after an application is received. The Town shall notify the Board Chair of a hearing application within three business days of its receipt.
4. Quorum. The presence of three (3) members shall constitute a quorum. The affirmative vote of a majority of the quorum present shall be required to grant any appeals from the decision of an administrative official, any requests for a variance, or any requests for a special exception.
5. Change or Suspension of Rules. Any rule of the Board of Adjustment may be changed or suspended by the approval of a majority of all of the members of the Board of Adjustment.
6. Meetings. All meetings of the Board of Adjustment shall be open to the public subject to executive sessions as authorized by the Delaware Freedom of Information Act. The Board shall keep minutes of its proceedings showing the vote of each member upon each question and the reason for the Board's vote, or, if absent or if failing to vote, indicating such fact. Such minutes and records shall be filed at Town Hall and open to public inspection, subject to those exceptions authorized by the Delaware Freedom of Information Act.
7. Appeals and Applications to the Board. Appeals and applications to the Board, as permitted by State law and Town Code, shall be on forms prepared by the Building Official and approved by the Board of Adjustment, and shall be accompanied by the proper fee as set by law. Appeals and applications shall be signed by any person authorized by law to make such an appeal or application, or an authorized agent or attorney of such person.
 - 7.1. Appeals and applications shall be submitted to Town Hall, and the Board Chair shall be notified by Town Hall within three business days of the appeal or application filed.
 - 7.2. All appeals and applications shall be accompanied by a recent survey, prepared and approved by a licensed surveyor, of the subject property, except when this requirement is waived by the Board or the Building Official for good cause.
 - 7.3. All appeals shall be filed within thirty (30) days from the date of the action of the administrative official at issue.
 - 7.4. The Applicant/Appellant shall submit any exhibits and other supporting materials at least ten (10) days in advance of the hearing. The Respondent, if applicable, is encouraged to submit its exhibits and other supporting materials prior to the hearing, if possible.
 - 7.5. The Board may at its discretion continue a hearing for good cause.

- 7.6. The Board shall refuse to consider an application if, within the two year period immediately preceding the filing of the application, the Board had rendered a decision on the same or very similar application, provided, however, that this limitation shall not apply if the Board finds a material change in facts justifying reconsideration.
8. Agenda and Hearing Materials. The agenda and hearing materials for Board of Adjustment meetings should be available to the members of the Board of Adjustment at least seven calendar days prior to the scheduled meeting.
9. Hearing Rules. The following rules shall govern hearings before the Board of Adjustment on any appeal from the decision of an administrative official, on any request for a variance, or upon any request for a special exception:
- 9.1. Communication and Correspondence. All communication and correspondence with the Board shall be submitted through Town Hall. Telephone, email, verbal or written communication to individual board members is prohibited. The Board is a quasi-judicial organization that must consider only evidence presented during the public hearing.
- 9.2. Notice. Notice of all Board of Adjustment proceedings shall be given as provided in Section 185-65 of the Town of Dewey Beach Zoning.
- 9.2.1. Public notice of all meetings shall be posted on the public bulletin boards located at Dewey Beach Town Hall and at the Dewey Beach Life Saving Station.
- 9.2.2. Public notice, property posting and advertisement of meetings and hearings shall comply with all applicable provisions of State law and the Town Code. In addition, notice of a hearing shall be mailed to an appellant or applicant (or attorney or agent of the appellant or applicant) at least 15 days before the date of the hearing.
- 9.2.3. At the time that an appeal or application is made to the Board, the Town shall prepare a list of names and addresses of property owners whose property lies within a 150 foot radius of the boundaries of the property subject to the appeal or application. The Town shall cause a copy of the public notice of the hearing to be mailed to each person, partnership or corporation whose name appears on the list. Failure to comply with the provisions of this subsection shall not be considered a defect in the requirements for public notice of a public hearing.
- 9.3. Public Statements. Subject to the Chair's authority to limit repetitive, irrelevant, or argumentative evidence, any person desiring to make a statement to the Board regarding the subject of the proceeding shall be entitled to do so at the appropriate time when recognized by the Chairman, except that there shall be no public comment during hearings on an appeal from the decision of an administrative official.

- 9.4. Acting Chairman. The Board of Adjustment may delegate to an "Acting Chairman" (who may be the Board of Adjustment attorney) the responsibility for conducting/presiding over the hearing before the Board, and in such case, the Acting Chairman shall have and exercise the power and authority of the Chairman on behalf of the Chairman.
- 9.5. Oath. The Chairman of the Board of Adjustment, or the Acting Chairman, may administer oaths and compel the attendance of witnesses at hearings. All witnesses shall be sworn.
- 9.6. Record of Proceedings. The Board of Adjustment shall make adequate provision so that a verbatim transcript of all hearings and deliberations may be prepared in the event an appeal is filed to the Delaware Superior Court pursuant to 22 Del. C. §328.
- 9.7. Order of Proceeding. The order of presentation shall generally be as follows, subject to modification by the Chairman for reasonable grounds.
- 9.7.1. Introduction. The Chairman of the Board shall identify the application number, the general nature of the proceeding (appeal, variance, special exception), and the parties filing same, and shall identify and enter into the record all notices given in connection with the proceeding.
- 9.7.2. Background. The Town Building Official, Town Manager, or other appropriate administrative official shall speak first, giving a brief synopsis of the matter to be heard. That individual should identify, in chronological sequence, the application and accompanying exhibits, as well as any other pertinent exhibits or unprivileged letters in the administrative official's file pertaining to the application under consideration. That administrative official should identify the property involved by reference to the appropriate Town map (street map or zoning map) and identify the issue(s) which is/are before the body, noting the most pertinent ordinance section(s) which the administrative official believes are at issue.
- 9.7.3. Questions Regarding Background. Following the administrative official's initial presentation (which should be designed simply to provide neutral background information), members of the Board of Adjustment may ask the administrative official any clarifying questions regarding the basic facts, issues, or ordinance provisions. However, these questions should be confined to "neutral facts" simply to allow members of the body to better understand the Applicant's/Appellant's evidence which is to be submitted next.
- 9.7.4. Applicant's/Appellant's Evidence. At this point, the Applicant/Appellant will be offered an opportunity to present evidence. Applicants/Appellants may appear with or without legal counsel. Applicants/Appellants shall have the opportunity to give a very brief "opening statement", no longer than five minutes, summarizing and outlining their position and then shall be permitted to present witnesses and introduce exhibits, petitions, and other documents into the record.

Upon conclusion of each witness's initial testimony, members of the Board of Adjustment and/or the Board of Adjustment attorney shall have an opportunity to ask questions of the witness. Thereafter, other parties to the proceeding shall be permitted a brief opportunity to cross examine the witness. Depending upon the number of active participants at the proceeding desiring to question the witness, the Chairman shall be authorized to use reasonable discretion to terminate or limit cross examination by multiple parties of the same witness.

Following the initial round of questions and/or cross examination, the Applicant/Appellant shall be provided a brief opportunity to present additional "re-direct" testimony from the witness, which may, in the Chairman's discretion, be followed by another round of re-cross examination.

- 9.7.5. Respondent's Evidence. In the case of an appeal, at the conclusion of the Appellant's witnesses and evidence, the Respondent will be offered an opportunity to present evidence as outlined in Rule 9.7.4 for the Appellant.
- 9.7.6. Statements in Favor from the Public. In the case of a variance or special exception application, at the conclusion of the Applicant's witnesses and evidence, and subject to Rule 9.7.13, any person desiring to make a statement in support of the application shall be given an opportunity to do so at this time. Each person desiring to make a statement shall identify himself/herself by name and address and such persons shall also be sworn prior to making their statements.
- 9.7.7. Statements from the Public in Opposition. In the case of a variance or special exception application, at the conclusion of the statements in favor of an application, and subject to Rule 9.7.13, any person desiring to make a statement in opposition to an application shall be entitled to do so. Each person desiring to make a statement shall identify himself/herself by name and address and such persons shall also be sworn prior to making their statements.
- 9.7.8. Rebuttal Evidence. At conclusion of all evidence and public statements, if applicable, the Applicant/Appellant shall be given a brief opportunity to submit additional testimony or evidence in the form of "rebuttal." The same procedures governing direct examination, cross examination, and redirect examination shall apply to such rebuttal evidence.
- 9.7.9. Closing Argument. At the conclusion of all evidence, the applicant, appellant, or other party shall have an opportunity to present a brief "closing argument" to the Board of Adjustment; provided however that the Chairman of the Board of Adjustment shall have authority to exercise reasonable discretion to limit the number of closing arguments by those speaking in opposition where there are multiple objectors. Closing arguments shall be limited to no more than five (5) minutes per party.
- 9.7.10. Exhibits. All exhibits presented to the Board of Adjustment for its consideration shall be identified and marked appropriately, e.g. "Applicant's Exhibit 1," etc. The Board of Adjustment attorney shall date and initial each document or exhibit entered into the record to authenticate same. All such documents shall be retained

by the Board of Adjustment attorney until the statutory appeal time, as set forth in 22 Del. C. §328, shall have expired.


- 9.7.11. Hearsay. Hearsay evidence shall be permitted at a Board of Adjustment hearing and the Board of Adjustment shall be entitled to hear and consider any probative evidence which, in the Board of Adjustment's opinion, is relevant and of sufficient credibility to be entitled to consideration.
- 9.7.12. Time Limits. The Board of Adjustment shall have authority to set reasonable time limits on all parties and speakers appearing before it.
- 9.7.13. Repetitive, Irrelevant or Argumentative Testimony or Questioning. The Chairman shall have authority to terminate or limit any testimony or questioning which is irrelevant or unduly repetitive or provocative.
- 9.7.14. Decision. Within 30 days of the Board deliberation and vote, unless cause is shown, the Board of Adjustment shall issue a written decision setting forth the reasons therefor, shall file a copy of same at Town Hall, and shall notify the Applicant/Appellant and all parties and speakers requesting such notice, of the date when such written decision has been filed.

The Board of Adjustment shall not be required to decide any proceeding immediately following the close of the hearing, but may table action on same in order to consult with legal counsel, review the minutes, or take the matter under consideration. Any oral discussion of or vote upon the application or appeal by the Board of Adjustment shall be deemed to be in the nature of preliminary deliberations to the rendering of a final written decision and only the written decision, as adopted by a majority of the Board of Adjustment, shall constitute the decision of the Board of Adjustment.


- 9.7.15. Service of Decision. At the time of filing, all parties of record shall be served a copy of the decision by certified mail.
10. Appeal. Appeal of any Board of Adjustment decision shall be to the Superior Court of the State of Delaware as provided by statute. The time for filing an appeal shall be 30 days from the date of the filing of the Board's written decision at Town Hall.
11. Rules to be Liberally Construed to Promote Substantial Justice. These rules have been adopted in order to provide an orderly procedure for matters coming before the Board of Adjustment. However, these rules shall be interpreted and applied so as to afford substantial justice and to promote a fair but efficient hearing procedure. Consequently, strict adherence to these rules shall not be required, but the Board of Adjustment may modify and digress from these rules for reasonable cause as the situation may demand. In the event that any rule herein contradicts any state statute or any ordinance of the Town of Dewey Beach, such rules shall be construed in compliance with such statute or ordinance. In the event that these Rules do not provide for a procedure, the Board of Adjustment may refer to Robert's Rules of Order, as revised. In the event that any of the foregoing rules is declared illegal or unenforceable by any court of competent jurisdiction, the balance hereof shall remain in full force and effect.

These rules and procedures were adopted on October 21, 2014.

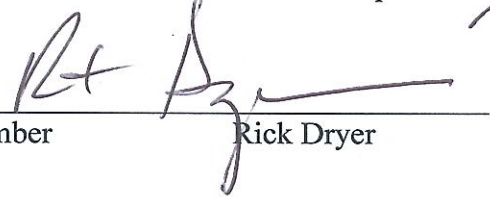
Board of Adjustment - Town of Dewey Beach, Delaware


Chairperson Leonard Read


Member Kathy Cherico


Member Beverly Corelle


Member Phil Davenport


Member Rick Dryer