

**CITY OF LEWES
BOARD OF ADJUSTMENT
HEARING RULES**

1. Authority. These rules are adopted pursuant to Section 197-19 of the City of Lewes Zoning Code and 22 Del. C. Section 323.
2. Organization. The Board of Adjustment of the City of Lewes shall consist of five (5) members, who shall be appointed by the Mayor and confirmed by the City Council, each for a term of three years. Members of the Board of Adjustment shall be residents of the City, and shall not be City 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 City Council upon written charges and after Public Hearing.
3. Meetings. Meetings shall be held at the call of the Chairman with reasonable notice to other members.
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 the Building Inspector, any requests for a variance, or any requests for a special exception.
5. 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, or, if absent or if failing to vote, indicating such fact. Such minutes and records shall be filed in the City office and open to public inspection, subject to those exceptions authorized by the Delaware Freedom of Information Act.
6. Hearing Rules. The following rules shall govern hearings before the Board of Adjustment on any appeal from an administrative Commission or Committee and from the decision of the Building Inspector, on any request for a variance, or upon any request for a special exception:
 - 6.1 Notice. Notice of all Board of Adjustment proceedings shall be given as provided in Section 197-90(D) of the City of Lewes Zoning Code or in accordance with any subsequent amendment thereto.
 - 6.2 Parties/Public Statements.
 - A. Parties. In addition to the Applicant/Appellant, each person or legal entity desiring to participate in the proceeding by introducing evidence, providing testimony subject to cross examination, and cross examining the applicant/appellant's witnesses shall identify themselves to the Board at the commencement of the hearing.

Where a number of persons indicate a desire to participate as "parties" the Board may, in the exercise of its reasonable discretion, require such persons to designate one or more spokes person(s) to participate on behalf of that number of such persons who appear to share a similar interest in the proceeding. Only persons recognized as "parties" by the Board at the commencement of the hearing shall be permitted to participate as such in the proceeding, but other persons desiring only to make a statement may do so as provided in paragraph (B) of this section.

- B. Public Statements. Notwithstanding these provisions regarding “parties” to the proceeding, and 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.
- 6.3 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.
- 6.4. Oath. The Chairman of the Board of Adjustment, or the Acting Chairman, may administer oaths and compel the attendance of witnesses at hearings. Upon the request of any participant, all witnesses shall be sworn; provided however that if no request for sworn testimony is made at or prior to the taking of testimony from the first witness in any proceeding, the requirement for sworn testimony in such proceeding shall be deemed waived by all participants.
- 6.5 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.
- 6.6 Order of Proceeding. The order of proof shall generally be as follows subject to modification by Chairman for reasonable grounds.
- A. Introduction. The Chairman of the Board shall identify the application number, the general nature of the proceeding (appeal, variance, special exception) the parties filing same, and shall identify and enter into the record all notices given in connection with the proceeding.
- B. Background. The City Building Official, City Manager, or other appropriate City Official, including a representative of appellee, 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 City Official’s file pertaining to the application under consideration. That City Official should identify the property involved by reference to the appropriate City 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 City Official believes are at issue.
- C. Questions Regarding Background. Following the City Official’s initial presentation (which should be designed simply to provide neutral background information), members of the Board of Adjustment may ask the Building 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.
- D. Identification of Parties. After the Board of Adjustment and/or the Board’s attorney have had the opportunity to ask questions regarding the background of the application or appeal, the Chairman shall ask all persons who wish to participate in the proceeding as “parties” to identify themselves. The Chairman shall also apprise those present at the hearing that persons desiring to make a statement at the appropriate time, but who do not wish to participate as parties, shall be given the opportunity to do so.

- E. 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" 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 and cross examine the witness. Thereafter, other parties to the proceeding shall be permitted a brief opportunity to ask questions of or 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.

- F. Statements in Favor from the Public. At the conclusion of the Applicant's/Appellant's witnesses and evidence, and subject to Rule 6.10, 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, if sworn testimony has been required of previous witnesses, such persons shall also be sworn prior to making their statements.
- G. Opponent's Evidence. At the conclusion of the Applicant's/Appellant's witnesses and evidence, those opposed to the application shall be offered an opportunity to present witnesses and evidence. The procedure for opening statement, direct, cross, and redirect examination as set forth above for the Applicant/Appellant shall apply with equal force to those presenting evidence in opposition.
- H. Statements from the Public in Opposition. At the conclusion of the opponent's witnesses and evidence, and subject to Rule 6.10, any person desiring to make a statement in support of the opposition shall be entitled to do so. Each person desiring to make a statement shall identify himself/herself by name and address and, if sworn testimony has been required of previous witnesses, such persons shall also be sworn prior to making their statements.
- I. Rebuttal Evidence. At conclusion of all evidence and public statements of those opposing the application, the Applicant 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.
- J. Closing Argument. At the conclusion of all evidence, the applicant and each participating objector 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.

- 6.7 Exhibits. All exhibits presented to the Board of Adjustment for its consideration shall be identified and marked appropriately, e.g. "Applicants Exhibit 1", "Objector Smith Exhibit 3", 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 until the statutory appeal time upon as set forth in 22 Del. C. §328, shall have expired.
- 6.8 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.
- 6.9 Time Limits. The Board of Adjustment shall have authority to set reasonable time limits on all parties and speakers appearing before it. Ordinarily, and in the absence of prior approval from the Board at the beginning of the hearing, Applicants/Appellants shall be limited to one hour total time to present their case (to include both the "case in chief" and the "rebuttal") and opponents shall be limited to a total of one hour to present their case. Where there are multiple opponents, the time allotted to the opponents shall be allocated among them as they may agree, but failing such agreement, time shall be allotted pro rata, according to the number of opponents. Opening and closing statements by any parties shall be in addition to other time limits and shall be limited to five minutes each. Time devoted to cross examination and questioning of witnesses shall not be included in computing the sponsoring party's time. Cross examination of any witness by any party shall ordinarily be limited to fifteen minutes but may extend at the reasonable discretion of the Chairman, giving due consideration to the number of witnesses testifying, the number of parties participating, and the relevant importance of the witnesses' testimony.
- 6.10 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.
- 6.11 Decision. Within 60 days of the conclusion of the hearing, unless cause is shown, the Board of Adjustment shall issue a written decision setting forth the reasons therefore, shall file a copy of same in the City Office, 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 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.
- 6.12 Service of Decision. At the time of filing, all parties of record shall be served a copy of the decision by certified mail.
7. 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 in the City Office.

8. Rules to be Liberally Construed to Promote Substantial Justice. These rules have been adopted in order to provide an orderly procedure for matter 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 City of Lewes, 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 originally adopted on June 5, 2012 and amended on November 18, 2014.

Board of Adjustment of the City of Lewes



Chairperson Brook Hedge



Vice Chair Candace Vessella



Secretary Robert Kennedy



Member Carl Hunt



Member Denise Emory