

LANCASTER COUNTY
BOARD OF ZONING APPEALS
RULES AND PROCEDURES

RULE 1. NOTICE MEETINGS

~~Legal notice of all matters to come before the County Board of Zoning Appeals requiring such legal notice shall be given as required by law. In addition, the Board will endeavor to give written notice to owners of property under appeal at least one (1) week before the date of the public hearing. In addition, the Board will make a reasonable effort to inform the public of the appeal through the news media.~~

The Board of Zoning Appeals will meet regularly on the second (2nd) Friday of each month. At each scheduled meeting, the Board will conduct its normal business and will take action on items of business after the necessary public hearings have been held on all items currently before the Board.

The Board shall hold its regular meetings at 2:30 p.m., in the City Council Chambers of the County-City Building, 555 S. 10th Street, Lincoln Nebraska. The date, time, and/or place of any regular meeting can be changed by the Chairperson or by the Chairperson upon the request of any two members of the Board. Further, the Chairperson is authorized to cancel any regularly scheduled meeting in the event there is no business before the Board.

RULE 2. AGENDA

An agenda of the matters to come before the Board will be prepared by the Planning Department and mailed to all Board members and known interested parties on the Friday prior to the public hearing. Items not on the agenda will not be heard by the Board, unless, by unanimous vote of the members present, if determined that an emergency exists and that the public interest dictates that the matter be heard. Items not on the agenda may only be heard by the Board if legal requirements regarding notice are satisfied.

The matters shall be heard in the order that items appear on the agenda; however, the Chairperson may adjust the order of the agenda unless a majority of the members in attendance decides otherwise. In the event that an agenda item which is set for public hearing is adjusted to an earlier time on the agenda, the public hearing on that item will remain open at least until its previously scheduled time in order to assure an opportunity for all interested persons to present testimony. Upon a majority vote of the Board members an item which has not previously been placed on the agenda shall be included on the agenda of the next regularly scheduled meeting.

RULE 3. NOTICE

Legal notice of all matters to come before the County Board of Zoning Appeals requiring such legal notice shall be given as required by law. In addition, the Board will endeavor to give written notice to owners of property under appeal at least one (1) week before the date of the public hearing. In addition, the Board will make a reasonable effort to inform the public of the appeal through the news media.

RULE 4. NATURE OF TESTIMONY - DUTY OF APPELLANT

The role and function of the Board of Zoning Appeals is to make determination in zoning matters in relation to interpreting the zoning laws of Lancaster County, and the granting of zoning variances and exceptions, all to be in accordance with the jurisdictional basis and limitations as provided by Article 19 of the Lancaster County Zoning Regulations.

All appeals to the Board shall state the jurisdictional basis upon which the appeal is being made, and shall state the name of the real party or parties in interest.

Testimony before the Board shall be relevant to the jurisdictional basis upon which the appeal is made.

The appellant must state facts sufficient to permit the Board to find in favor of the appellant within the jurisdictional limitations of the Board as provided by Article 19 of the Lancaster County Zoning Regulations. The appellant shall clearly indicate the manner in which the asserted facts fit into the jurisdictional framework of the Board. Testimony before the Board shall be relevant to the jurisdictional basis upon which the application is made.

All applications to the Board shall contain a statement of the jurisdictional basis upon which the application is made, and shall state the name of the real party or parties in interest and a legal description of the property that is the subject of the application.

For those matters before the Board wherein the Board's appellate jurisdiction is invoked, evidence before the Board shall consist of a transcript of all evidence considered by the administrative official in the course of making the decision that is the subject of the appeal and that evidence presented by the parties to the appeal at the public hearing before the Board of Zoning Appeals. Parties shall be allowed to present evidence in the form of testimony as well as documents, drawings, recordings, and written statements. Any written statements shall be in the form of a sworn affidavit. Parties shall be allowed the opportunity to cross examine witnesses testifying at the request of any other party to the action. All testimony presented at the public hearing shall be directed to the Board of Zoning Appeals.

For those matters before the Board where the Board's original jurisdiction is invoked, the applicant and those parties wishing to address the Board at the public hearing may do so through live testimony.

——Material and testimony submitted should be as factual as possible. Persons testifying before the Board must be able to substantiate asserted facts to the satisfaction of the Board. Presentation of drawings, photographs, or similar evidence may be made, provided that such evidence shall be substantiated as may be required by the Board.

——The Board may ask questions of persons testifying. ~~There shall, however, be no cross-examination or direct questioning in front of the Board between proponents and opponents.~~ All questions and testimony shall be directed to the Board. A copy of Rules 4 and 5 should be distributed to each applicant at the time the agenda is mailed to the applicant.

RULE 54. PRESENTATION OF TESTIMONY

For those matters before the Board where the Board's appellate jurisdiction is invoked, the parties to the matter may present the Board with a brief opening statement for the purpose of explaining the questions presented to the Board.

Following these opening statements, the Appellant shall be allowed to present his evidence. The Appellee shall be allowed to cross examine those witnesses who are called to testify by the Appellant on those subjects included in that witness' direct testimony. Upon Appellant completing his presentation of evidence, Appellee shall be given the opportunity to present his evidence. Appellant shall be allowed to cross examine those witnesses who are called to testify by Appellee on those subjects included in that witness' direct testimony.

Upon Appellee completing his presentation of evidence, Appellant shall be afforded the opportunity to present any rebuttal evidence he deems necessary to respond to Appellee's evidence. Members of the Board shall be allowed to ask questions of the witnesses and parties to the action at any time during the presentation of evidence.

When all parties to the matter have presented their evidence, each party may present a closing argument to the Board with Appellant making his argument first followed by the Appellee. Appellant shall then be given an opportunity to present a brief rebuttal argument to the Board. Following closing arguments, the Board shall consider the evidence and take action regarding the matter.

For those matters before the Board where the Board's original jurisdiction is invoked, ~~The appellant~~ petitioner or the petitioner's representative will be requested to must present his or her testimony first. Those seeking information or opposed to the application shall then be called upon to present their testimony. Each person should first state his or her name and address. Such individual should then present the reasons why the appeal should be granted or should not be granted, in relation to the Board's jurisdictional framework as provided in Article 19 of the Lancaster County Zoning Regulations.

Any person may testify in his or her own behalf or may be represented by an attorney or may be represented by a close relative or friend or by a neighborhood representative when in the judgment of the Chairman of the Board such representative is knowledgeable of the factual basis for the appeal and has been authorized in writing to act as a representative.

It is requested that where large neighborhood groups are presenting testimony to an appeal, where possible one or two spokesmen be elected to present the arguments for the group. Such a spokesman may call upon the entire group to stand or raise their hands so that the Board may have an idea as to the size of the group that does share their views. All parties should, of course, recognize that the Board is primarily interested in the facts with regard to the basis for the Appeal and is not conducting a popularity contest.

The applicant shall then be entitled to a very brief rebuttal if he or she do desires.

All parties presenting testimony are requested to avoid repetition of statements and are requested to present their position as briefly as possible.

The Board may call upon staff assistance or comments from the proper City or County Personnel at any time during the proceedings.

RULE 65. DUTIES OF BOARD CHAIRPERSON

The Board Chairperson or Vice-Chairperson in the Chairperson's absence, shall be in charge of Board meetings, and shall be responsible for directing the order of the Board meetings, for directing persons testifying before the Board to limit their testimony to matters having relevance to the jurisdictional basis upon which an appeal has been made, and for directing the development of facts in support of any final action taken by the Board.

RULE 76. WITHDRAWAL OR REFERRAL

Any matter which has been advertised for public hearing may be withdrawn or deferred prior to preparation of the agenda on Friday before the Board meeting. Once the agenda has been prepared, items may be withdrawn or deferred only for good cause, with approval of the Chairperson or Vice-Chairperson if the Chairperson is out of town and not available.

RULE 87. FINAL ACTION

As required by law, three affirmative votes are required for final action on any matter. "Final Action" shall be defined to mean any vote on a main motion which results in a favorable or unfavorable disposition of an appeal, including a finding of lack of jurisdiction. All subsidiary votes and procedural votes may be determined by the majority vote of the quorum present at any meeting.

The Board shall develop factual findings in support of the final action on an appeal, and shall indicate the basis upon which such action was made. Decisions of the Board of Zoning Appeals shall be final unless appealed to the County Board pursuant to Section 19.011 of the Lancaster County Zoning Regulations.

A vote on final action on a matter not receiving three or more votes either for or against said matter shall be deemed to have received neither approval nor disapproval, and shall, without further order of the Board, be continued from regular meeting to regular meeting and shall be heard and voted upon once at each such meeting until such time as it shall receive three votes either for or against.

RULE 98. SPECIAL MEETINGS

Special meetings of the Board may be called by the Chairperson, Vice-Chairperson, or three members of the Board of Zoning Appeals, as otherwise permitted by law.

RULE 109. AMENDMENT OR SUSPENSION OF RULES

These rules may be amended by an affirmative vote of three members after notice to all Board members.

Any and all rules may be suspended as to any matter before the Board, as otherwise permitted by law by three affirmative votes of the Board.

Approved as to form and legality:

Adopted by the County Board of Zoning Appeals on _____, 2012

County Attorney

Board Chairperson