



**BOARD OF ADJUSTMENT
AGENDA
June 7, 2022
REGULAR BUSINESS MEETING**

REGULAR BUSINESS MEETING- COUNCIL CHAMBERS AT 6:15P.M.

1. CALL TO ORDER –
2. PLEDGE OF ALLEGIANCE -
3. ROLL CALL OF MEMBERS –
4. APPROVAL OF MINUTES FOR November 9, 2021
5. GENERAL BUSINESS –
6. REPORTS – NONE
7. PETITIONS & COMMUNICATIONS –
8. PUBLIC HEARINGS –
9. OTHER ITEMS –
 - Election of officers
 - Adoption of Bylaws
10. ADJOURN –



**SUMMARY MINUTES OF BOARD OF ADJUSTMENT ACTION HELD
NOVEMBER 9, 2021**

1. **CALLED MEETING TO ORDER**– By Richard Derryberry at 6:15 P.M.

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL OF MEMBERS**

Richard Derryberry, Chair; Kathy Drulard, Vice Chair; Meredith Kapushion, Secretary; Barbra Coffman; Russ Rizzo; Alan Albrandt

THOSE ABSENT

It was moved by Ms. Kapushion to excuse Mr. Rizzo from the meeting.

The following votes were cast on the motion to excuse Russ Rizzo:

Those voting Yes: Drulard, Coffman, Derryberry, Kapushion, Albrandt

Those voting No: None

The motion carried.

ALSO PRESENT: Jonathan Moore, City Planner I; Jacob Nitchals, Senior City Planner; Emily Grogg, Sr. Ass't. City Attorney; Josie Suk, Development Systems and Administrative Manager; Abigail Ogg, Administrative Specialist/Recording Secretary; Heidi Van Gieson Administrative Specialist.

4. **APPROVAL OF MINUTES**

Mr. Albrandt stated that Ms. Kapushion didn't nominate herself for secretary.

Ms. Drulard stated that it was her that nominated Ms. Kapushion.

Mr. Albrandt suggested adding his comment about the challenge of recruiting and keeping good candidates if the board only meets a couple of times a year.

September 28, 2021. The minutes stand approved as corrected.

5. **PUBLIC HEARINGS**

STEVE NELSON AND TERRI NAES – VAR2021-0001 – 6260 Johnson Way.

Mr. Derryberry explained the BOA proceedings.

The public hearing was opened.

Mr. Derryberry asked staff if there were any posting or notification requirements.

Mr. Moore stated that the required posting notices are in order. He also stated The staff report has one minor addition. Property looking east but it should say property looking southwest.

Mr. Derryberry asked if there were any additions or corrections to the staff report.

Mr. Moore stated that there is one minor correction on page 8, figure 6 of the staff report. The description should state "*view of subject property Ralston Road frontage looking southwest from patio*" opposed to "*view of subject property Ralston Road frontage looking east.*"

Mr. Derryberry asked staff if there were any additional items received that should be made a part of the public record.

Mr. Moore stated there was one public comment that was received and made part of the public record.

Mr. Derryberry entered into the record, the staff report VAR2021-0002 dated November 1, 2021, affidavit of mailing, affidavit of posting and posting log and public comment received.

Mr. Derryberry asked staff to introduce the project.

Mr. Moore gave a brief explanation of the project.

Mr. Derryberry asked if there was a representative for the applicant present.

The applicant, Stephen Nelson was sworn in by Mr. Derryberry

Mr. Nelson introduced his project and explained the reason for the request. The applicant stated that privacy, noise and security are main concerns of their property. He also explained the lay of the land issue, with road elevations and grading in the backyard ranging anywhere from three to five feet.

Mr. Derryberry opened the hearing for comments from the public.

PUBLIC COMMENT

IN FAVOR

None

IN OPPOSITION

None

There being no one wishing to speak. Public Hearing was closed.

APPLICANT REBUTTAL

None

PUBLIC COMMENT WAS CLOSED

QUESTIONS FROM THE BOARD

Mr. Albrandt asked how many houses down the neighbor was that was granted a variance previously.

Mr. Nelson stated it was two houses down. He also explained when Kipling merged into Ralston Road, the city had installed a ten-foot fence on a portion of the road.

Ms. Kapushion asked if the change in the elevation runs along the entire length of the fence behind the house.

Mr. Nelson explained that there are a couple of different height changes dependent on where you are at in the yard.

DISCUSSION OF THE BOARD

Mr. Albrandt stated that these types of cases are a perfect example of why the Board of Adjustment exists. He also stated he agrees with the staff recommendation.

Ms. Drulard asked if there was record of why the ten-foot fence was never fully completed by the City.

Mr. Moore explained that there are concrete barriers that were placed to help with stormwater issues and some of the fences were built on top of those. He also explained that some of the fences were built by the City and some were built as a part of a development by the developer. He stated that unfortunately there aren't any concrete records as to why the fences were not completed all along Kipling.

Ms. Drulard asked if the City could pay for the finishing of the fence.

Mr. Moore stated that it would have to go through Public Works department and be included in the Capital Improvement Program budget; however at this time it did not fit into the budget.

Ms. Kapushion agreed with the staff recommendation.

Ms. Coffman stated that she agreed with staff recommendation.

Mr. Derryberry stated that he also agreed with the staff recommendation.

MOTION:

It was moved by Ms. Kapushion that VAR2021-0002, Steve Nelson and Terri Naes, 6260 Johnson Way, to construct a ten-foot-tall, solid fence along the Southwest (rear) property line when Section 4-7-2-1 of the LDC restricts fence height to six feet." Be granted for reasons discussed, it being a unique property and respect the typography and undue hardship has been placed on the owner of the property due to no action they have taken.

This motion is based on Findings No. 1 of the Staff Report.

DISCUSSION OF MOTION VAR2021-0002

Mr. Albrandt asked if a fence permit was required as well

Mr. Moore stated that yes the applicant would have to apply for a fence permit and stated that they would have two years to apply if the variance is approved.

The following votes were cast on the motion:

Those voting Yes: Kapushion, Coffman, Derryberry, Drulard, Albrant

Those voting No:

Those absent:

The motion carried.

8. **OTHER ITEMS**

Ms. Drulard asked if there was any other discussion on disbanding the board.

Ms. Suk explained that it will go through and the City Clerk's office sent out requests for application for anyone interested and that resolutions and ordinances would go to council for a vote. She also stated that the expectation to have a new board in place on May 1, 2022 that will listen to both Planning Commission and Board of Adjustment.

9. **ADJOURNED** at 6:40 P.M.

Richard Derryberry, Chair

Meredith Kapushion, Secretary

Abigail Ogg, Recording Secretary



BOARD OF ADJUSTMENT

Bylaws

1. MEETINGS

A. Regular Board Meetings

The Board shall meet in regular session on the ~~second-first~~ and ~~fourth-third~~ Tuesday of each month at 6:15 p.m., when such month does not begin on a Tuesday. When any month begins on a Tuesday, the Board shall meet in regular session on the ~~first-second~~ and ~~third-fourth~~ Tuesday of such month at 6:15 p.m.

Regular meetings require at least one public hearing or administrative review on the agenda and cases should be limited to no more than five individual applicant requests per meeting, unless waived by the Director of Community Development. All meetings shall be published as public hearings.

B. Special Meetings

Special meetings may be called by the Chair with the concurrence of four Board members when the Chair feels the necessity to hear a case at a time other than the regular meeting time. Cases of extreme hardship may merit such a hearing. Special meetings shall be published public hearings.

C. Study Sessions

Study sessions may be called by the Chair when appropriate to study changes in ordinances or other pertinent information regarding the Board's duties.

D. Executive Session

The Board may meet in executive session under the following rules of procedure:

- I. an executive session may be convened by a majority vote of a quorum present at either a regular or special meeting;
- II. attendance at the executive session shall be limited to the members of the Board and staff members required for advice and information;
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- IV. the only items which may be discussed are those dealing with:

- a. conferences with the Board's attorney for the purpose of receiving legal advice on specific legal issues;
- b. matters required to be kept confidential by federal or state law;
- c. details of security arrangements or investigations;
- d. personnel matters; or
- e. consideration of documents protected by the Open Records Act.

E. Decorum and Order

The Chair shall preserve decorum and decide all questions of order subject to appeal of the Board. If a member transgresses the rules of the Board or Chapter 2, Article VIII, Division 2 of the Arvada City Code, Rules of Behavior and Standards of Conduct, the Chair shall, or any other member may, call the member to order, in which case the member shall be seated, unless permitted to explain.

F. Quorum

Four members of the Board in office at the time shall be a quorum for the transaction of business at all Board meetings, but in the absence of a quorum a lesser number may adjourn any meeting to a later time or date; in the absence of all members, the recording secretary may adjourn any meeting for not longer than two weeks.

G. Canceling Meetings

At regularly scheduled meetings, the Board may cancel a future meeting when it has been determined that there is no business items scheduled. In the event a determination has been made by staff that there are no items scheduled on a Board of Adjustment agenda due to withdrawn applications or postponements, prior to the scheduled time of the meeting the Chair may cancel the meeting at his or her discretion. The recording secretary shall notify all Board members of the cancellation.

2. BOARD OFFICERS AND MEMBERS

A. Chair

The Chair shall call the meeting to order at the hour appointed for the Board meeting, and conduct the meeting to its conclusion.

During the absence or disability of the Chair (or when there is a vacancy in the office of Chair), the Vice-Chair shall perform the Chair's duties.

During the absence or disability of the Chair and Vice-Chair (or when there a vacancy in both offices), the Secretary shall perform the Chair's duties.

If none of the officers are present, then the members present shall select a person among the present Board members to fulfill the duties of the Chair for the meeting.

B. Vice-Chair

The Vice-Chair shall serve as Chair under the conditions described above in paragraph 2(A).

C. Secretary

The Secretary shall serve notice of the meeting and sign the minutes. Additionally, the Secretary shall serve as Chair under the conditions described above in paragraph 2(A).

D. Election of Officers

The Board shall elect from among its members a Chair, Vice-Chair, and Secretary. To accomplish this, an election shall be held at the first regular meeting in June of each year, or, if no applications are scheduled, at the next scheduled meeting. The election of officers shall be the last item of business. When a vacancy occurs in the office of Chair, Vice-Chair, or Secretary, an election shall be held as the last item of business at the next regular meeting following such occurrence to fill the vacancy in any office, that vacancy shall be filled during the same election.

The Chair shall invite nomination of candidates for the office of Chair. When all members present have had an opportunity to nominate a candidate and after at least one candidate has been nominated, the Chair shall close nominations. When there is more than one nominee, the Chair shall invite members of the Board to present brief statements regarding the candidates. The Chair shall then call for a vote on each candidate in the order in which the nominations were received. The first candidate who receives a majority of votes shall be declared the winner.

The Vice-Chair and Secretary shall be elected in the same manner as the Chair.

Newly elected officers shall assume their duties at the next regularly scheduled meeting following the election.

E. Oath of Office

New Board members shall be sworn in at the first regular meeting held during the new member's term.

F. Removal

All members of the Board shall serve at the pleasure of City Council and may be removed at any time after a vote by City Council pursuant to Arvada City Code Section 2-78.

3. **OTHER CITY PERSONNEL**

A. Clerk and Employees

The Recording Secretary and other City Staff members shall be under the control and direction of the Chair during Board meetings.

B. Director of Community Development

The Director of Community Development, or their representative and/or staff, shall attend all meetings of the Board, unless excused by the Board. The Director of Community Development shall keep the Board fully advised as to the cases being presented. The Director of Community Development may make recommendations to the Board and may take part in discussions on all matters concerning the welfare of the City, but shall have no vote in the meetings of the Board.

C. City Attorney

The City Attorney, or their representative and/or staff, shall attend all meetings of the Board, unless excused by the Board. The City Attorney shall advise the Board on legal matters pertaining to the case being discussed, and shall make recommendations to the Board and may take part in discussions, but shall have no vote in the meetings of the Board.

D. Recording Secretary

A member of the City Staff shall be the Recording Secretary of the Board, who shall keep minutes of the meeting and perform such other and further duties in the meeting as may be ordered by the Chair or Board members.

On or before the Friday prior to the Board meeting, the Recording Secretary shall furnish each Board member with a copy of the summary of minutes of the preceding meeting and all materials prepared for the Board members by the Director of Community Development.

E. Officers and Employees to Attend

Other employees of the City, when requested by the Chair, shall attend any regular or special meeting and confer with the Board on all matters relating to the City.

4. DUTIES AND PRIVILEGES OF BOARD MEMBERS

A. Seating Arrangement

Board members shall occupy the dais area in the Council Chambers. The Chair shall occupy the center position, the Vice-Chair shall occupy the position immediately to the right of the Chair, and the Secretary shall occupy the position immediately to the left of the Chair. The remaining members of the Board shall occupy positions assigned to them by the Chair, but two or more of those remaining members may exchange positions by joining in a request to the Chair to that effect.

B. Right of Flooring

When recognized by the Chair, a member shall confine himself to the questions under debate, avoid personalities, and refrain from impugning the motives of any other member's argument or vote.

C. Right of Appeal

Any Board member may appeal to the Board from a ruling of the Chair. If the appeal is seconded, the Board member making the appeal may briefly state his or her reasons for the same, and the Chair may briefly state his or her ruling; but there shall be no debate on the appeal and no other Board member or member of the public may participate in the discussion. The Chair shall then put the question, "shall the decision of the Chair be sustained?" If a majority of the Board members present vote "yes," the ruling of the Chair is sustained; otherwise, it is overruled.

D. Limitation of Debate

No member shall be allowed to speak unless recognized by the Chair. No member shall be allowed to speak more than once upon any one subject until every other member choosing to speak has had the opportunity. The Chair shall indicate when he or she feels that nothing is being accomplished by further debate.

E. Making Motions

No motions presented by any member shall require a second except that for appeal from the decision of the Chair. The Chair shall have the same rights and privileges of making motions as any other member. The Chair shall first call for a motion to approve from a Board member who supports the matter and will make a record on why the matter should be approved. If no Board member makes a motion to approve, the Chair shall then ask for a motion to deny. All motions shall

be decided by a majority vote of those Board members present, unless otherwise noted.

F. Voting

A vote taken by recording “yes” or “no” votes by use of voting lights, with the “yes” or “no” votes being read into the permanent record by the Chair, shall be taken upon all motions presented to the Board, and on the election of any officer. Every motion shall require the affirmative votes of a majority of those Board members present for passage. Any motion for approval failing to receive a majority shall result in denial of the motion.

Each member who is present shall vote on all questions except where the member is not allowed to vote by reasons contained in Chapter 2, Article VIII, Division 2 of the Arvada City Code, “Rules of Behavior and Standards of Conduct,” unless the member is excused for good reason by the majority vote of the remaining members present. With regard to public hearings, any member who did not attend the entire hearing, and who has not heard an official recording of the portion of the hearing that was not attended, or who has not read or has not heard a reading of a verbatim transcript of the same, shall not vote. Any member refusing to vote, except when required to not vote by this paragraph, shall be guilty of misconduct in office.

A roll-call vote by “yes” or “no” entered in to the minutes of the Board proceeding shall be an alternate method of taking the vote.

G. Disqualification of Member From Participation

No member of the Board may participate in the debate or vote upon any question in which that member has a direct financial interest, or on any question concerning that member’s own conduct. Request to be excused from participation in or voting upon a variance for any reason must be made before the vote is taken and shall require the consent of the majority of the Board present. The requesting member shall state the reason for the request and the Board shall vote on the request without further debate.

H. Dissent and Protest

Any member shall have the right to express dissent from or protest against any resolution of the Board, and have the reason thereof entered into the records. Such dissent or protest must be filed in writing, in respectful language, and presented to the Board not later than the next regular meeting following the date of passage of the resolution objected to.

I. Excusal from Attendance

No member shall be excused from attendance at a Board meeting except upon roll call and then only by a vote of the majority of the members present. If the majority of members present do not vote to excuse the member from attendance, it shall be considered an unexcused absence.

- I. Members shall notify the Chair or City staff at least 48 hours before a meeting for an absence to be considered as an excused absence.
- II. In the event of an emergency, members shall notify the Chair or City staff as soon as possible; absences due to an emergency will be considered for excusal without the 48 hour notice requirement. If the emergency prevented the member from contacting anyone prior to the meeting, the Board may revisit an unexcused absence and vote to determine if the absence should have been excused at the next scheduled business meeting.

J. Attendance Required

A written report signed by the Chair and Secretary shall be sent to City Council concerning any member of the Board who has three unexcused absences from Board meetings in a one year period, for Council determination as to whether this should be cause for removal of that member from the Board. Such report shall be sent to Council within three days following such member's third unexcused absence.

K. Excusal During Meeting

No member may leave the Council Chambers while in regular session without the permission of the Chair.

5. BOARD PROCEDURE

A. Order of Business

The business of all regular meetings of the Board shall be transacted in the following order, unless the Board, by a vote of the majority of members present, shall suspend the rules and change the order:

- I. Call to order – 6:15 p.m.
- II. Pledge of Allegiance

- III. Roll call of members
- IV. Approval of minutes
- V. Explanation of procedures
- VI. Public hearing of cases in order number
- VII. Hearings on administrative appeals pursuant to the International Property Maintenance Code (IPMC)
- VIII. Other business
- IX. Adjournment

No public hearing shall be set for a regular meeting at any time other than 6:15 p.m., and the Board shall not proceed to consideration of any public hearing prior to the time set for such public hearing. If there is a scheduled Planning Commission meeting for the same date and time, it will start promptly at the conclusion of the Board meeting.

Only Board members and City staff may submit other matters for consideration under other business. At each meeting the Chair shall ask if there are objections or corrections to be made to the summary of minutes of the preceding meeting as published. If no objection, the summary of minutes shall be approved.

B. Filing with the Community Development Department

Every variance request, administrative review, and document to come before the Board for consideration must be filed with the Community Development Department at least 34 days prior to the meeting at which it will be heard, with the exception of those reviews pursuant to the International Property Maintenance Code. Each application filed shall be assigned a Board number by the Community Development Department prior to being submitted to the Board.

All proposed applications shall be reviewed by the Community Development Department to be sure that they are in correct form. The Director of Community Development shall attach to each application a brief digest of the provisions thereof and his or her recommendations.

It shall be the duty of the Director of Community Development to have ready for delivery to each member of the Board by Friday before the Board meeting an agenda indicating the public hearings to be anticipated, showing the order of

business by case number and fully descriptive title, copies of all applications together with the related staff reports prepared by the Director of Community Development, and any other documents to come before the Board for consideration at the meeting.

C. Motions to Withdraw

A motion may be withdrawn by the mover at any time.

D. Motion to Adjourn – when Not in Order – Not Debatable

A motion to adjourn shall be in order at any time, except as follows:

- I. when repeated without intervening business or discussion;
- II. when made as an interruption of a member while speaking;
- III. while a vote is being taken; or
- IV. prior to hearing all cases on the meeting's agenda

E. Motion to Amend – To Strike Out, Etc.

On an amendment to “strike out and insert,” the paragraph to be admitted shall first be read as it stands with the words proposed to be stricken out, and those to be inserted shall be read, and finally the paragraph, as it would stand if so admitted, shall be read. All other motions to amend shall be made on the record and reflected in the minutes.

F. Motion to Continue

A motion may be made to continue a public hearing until the next regular meeting of the Board.

G. Reconsideration

No later than seven business days after the Board issues a decision, any party who has standing to appeal may submit to the Board, by filing with the Recording Secretary of the Board, a written request for supplementation, clarification, or reconsideration of the decision. The request shall state the grounds thereof. In the event that such a request is timely filed, the date of final agency action for purpose of appeal shall be the date of issuance of the supplementation, clarification, reconsidered decision, or a notice of refusal to do so. Only a member of the Board who voted with the prevailing side may make the motion. If the Board grants the motion, it shall, at the same time, set a date for the new hearing, allowing sufficient time for publication and posting. If no member of the Board who voted with the

prevailing side makes a motion to reconsider, the original decision stands without further discussion.

H. Procedure in Absence of Rule

In the absence of a rule to govern appointed procedure, reference shall be had to Robert's Rules of Order Revised.

I. Anonymous and Ex Parte Communication

Unsigned or anonymous communications shall not be introduced at a Board meeting. Ex parte communication between applicants or parties in favor or against an application and Board member are prohibited.

J. Reading of Application

Applications shall be read in full or by title only when copies are available to the Board and those in attendance.

K. Recess

A recess may be called at any time either by the Chair or upon motion by a member and with the consent of the majority. The Board shall not adjourn while in recess but must reconvene prior to adjournment.

L. Agenda Items which are Not Public Hearings

Only at the sole discretion of the Chair, a member of the public may be permitted to speak concerning business items on the agenda which are not public hearings.

6. PUBLIC HEARINGS

Public hearings shall be conducted in the following order:

- A. Announce the case (Case Number, Applicant's Name and Address, and description of the Request);
- B. Determine that the Affidavit of Mailing and posting log are present and in order;
- C. Open the public hearing;
- D. Enter the Affidavit of Mailing, posting log and staff report in the record;
- E. Presentation of Applicant's Case;

The applicant and all the parties who wish to speak in favor of the application shall be allowed a maximum of 20 minutes in total to present their case. All persons desiring to be heard by the Board shall state their name and address for the record, and shall attest by sworn oath that all evidence they present shall be the truth.

F. Presentation of Opposition to Applicant's Case;

All parties who wish to speak against the application shall be allowed a maximum of 20 minutes in total to present the opposition. All persons desiring to be heard by the Board against the application shall state their name and address for the record, and shall attest by sworn oath all evidence they present shall be the truth.

G. Rebuttal;

Applicant shall be allowed a five minute rebuttal after presentation of the opposition.

H. Invite additional comments from City Staff;

I. Close the public comment period;

J. Invite questions from members of the Board;

K. Close the public hearing;

L. Invite members of the Board to discuss the case;

M. Entertain a motion for action on the application;

N. If a lesser variance is considered to be a reasonable alternative to granting or denying the request as presented, a member may move to grant a lesser variance.

O. State the motion;

P. Invite discussion of the motion;

Q. Call for the Vote; and

R. Announce the vote and the result of the question.

7. HEARINGS ON ADMINISTRATIVE APPEALS

A. Hearings on administrative appeals pursuant to the IPMC Section 105.2 are not public hearings for the purposes of taking public comments.

B. Standard of Review

I. For appeals as to notices by code enforcement regarding alleged violations:

a. The Board is to determine whether the Notice correctly interpreted the code provision(s); whether the provision of the code applied in that circumstance; or whether the provisions of the code were satisfied by some other means.

II. For appeals as to administrative fee assessments:

a. The Board is to determine whether the assessment for the administrative fee should apply or be waived.

b. The Board is to determine if there are compelling reasons that the applicant was unable to come into compliance within the allotted time prior to assessment by considering the following:

i. Whether the applicant received proper notice; or

ii. Whether the applicant was afforded enough time to come into compliance; or

iii. Whether the administrative fee was applied uniformly.

C. Procedure for Administrative Hearings

I. Administrative appeal will be announced;

II. The applicant and any witnesses on their behalf will be sworn in;

III. The applicant will be given a chance to explain their reasons for appeal and submit any evidence to support their claim;

IV. The appropriate City staff member will be given an opportunity to submit any information relevant for the Board's consideration as to the applicant's appeal;

- V. The applicant will next be given a chance to rebut any presentation by the appropriate City staff member;
- VI. Close the testimony;
- VII. Invite questions from members of the Board;
- VIII. Invite members of the Board to discuss the case; and
- IX. Entertain a motion for action on the application.

8. EVIDENCE

- A. Strict Colorado Rules of Evidence shall not apply in hearings before the Board, but rather any evidence may be received which is relevant and possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs. Every party to the proceeding may present such party's case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. The Chair may receive all or part of the evidence in written form if the interests of the parties will not be prejudiced substantially, and if the hearing will be expedited thereby.
- B. The rules of evidence and procedure shall conform when practicable to those in state civil nonjury cases, but when necessary to ascertain facts affecting the substantial rights of the parties to the proceeding, the Chair shall receive and the Board shall consider evidence not admissible under the Colorado Rules of Evidence if such evidence possesses probative value.
- C. The Chair shall give effect to the rules of privilege required by state law, may exclude incompetent, irrelevant, and unduly repetitious evidence, and may receive documentary evidence in the form of a copy.
- D. The Chair may take notice of general, technical or scientific facts within his knowledge, not in evidence, so long as such facts and the reliance thereon is made known to the parties.
- E. The Chair may take notice of the laws, codes, ordinances, statutes, and regulations of the city, state, and of the United States.

- F. The City shall be entitled to a rebuttable presumption of good faith and validity concerning administrative actions or determinations of the City, which may be the subject of the hearing.
- G. No ex parte material or representation of any kind or any other communication outside the hearing shall be considered by the hearing officer unless it is fully disclosed on the record and an opportunity is given to the other party for comment thereon at the hearing.

9. MISCELLANEOUS

A. Privilege of Floor

Only members of the Board and officers named in the rules, and persons invited by the Chair of the Board, or by vote of the Board, shall be admitted within the bar of the Council Chambers, and the City Manager shall direct the Chief of Police to cause this rule to be rigidly enforced.

B. Permission Required to Address the Board

Persons other than members of the Board and City staff shall not be permitted to address the Board, except when speaking for or against an application being heard by the Board. Such persons shall be recognized by the Chair. Any Board member may ask permission of the Chair to introduce any person other than a member of the Board. If permission is not granted, the decision of the Chair may be appealed in the manner prescribed in paragraph 4(C).

C. Suspension of Bylaws

Any provision of these Bylaws not governed by the Arvada City Charter or Arvada City Code may be temporarily suspended at the meeting of the Board by a majority vote and entered upon the record. Any Bylaw may be suspended by general consent if presented by the Chair and if there are no objections by any member.

D. Amendment of Bylaws

These Bylaws may be amended or new rules may be adopted by a majority vote of all members of the board. Any such alterations or amendments shall be submitted in writing at the preceding regular meeting and shall be placed on the calendar under the order of other business. This requirement shall be waived only by unanimous consent with the recorded vote of all members.

Approved on

~~Richard Derryberry~~, Chair

ATTEST/WITNESS:

~~Meredith Kapushion~~, Secretary



BOARD OF ADJUSTMENT

Bylaws

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Four members of the Board in office at the time shall be a quorum for the transaction of business at all Board meetings, but in the absence of a quorum a lesser number may adjourn any meeting to a later time or date; in the absence of all members, the recording secretary may adjourn any meeting for not longer than two weeks.

G. Canceling Meetings

At regularly scheduled meetings, the Board may cancel a future meeting when it has been determined that there is no business items scheduled. In the event a determination has been made by staff that there are no items scheduled on a Board of Adjustment agenda due to withdrawn applications or postponements, prior to the scheduled time of the meeting the Chair may cancel the meeting at his or her discretion. The recording secretary shall notify all Board members of the cancellation.

2. BOARD OFFICERS AND MEMBERS

A. Chair

The Chair shall call the meeting to order at the hour appointed for the Board meeting, and conduct the meeting to its conclusion.

During the absence or disability of the Chair (or when there is a vacancy in the office of Chair), the Vice-Chair shall perform the Chair's duties.

During the absence or disability of the Chair and Vice-Chair (or when there a vacancy in both offices), the Secretary shall perform the Chair's duties.

If none of the officers are present, then the members present shall select a person among the present Board members to fulfill the duties of the Chair for the meeting.

B. Vice-Chair

The Vice-Chair shall serve as Chair under the conditions described above in paragraph 2(A).

C. Secretary

The Secretary shall serve notice of the meeting and sign the minutes. Additionally, the Secretary shall serve as Chair under the conditions described above in paragraph 2(A).

D. Election of Officers

The Board shall elect from among its members a Chair, Vice-Chair, and Secretary. To accomplish this, an election shall be held at the first regular meeting in June of each year, or, if no applications are scheduled, at the next scheduled meeting. The election of officers shall be the last item of business. When a vacancy occurs in the office of Chair, Vice-Chair, or Secretary, an election shall be held as the last item of business at the next regular meeting following such occurrence to fill the vacancy in any office, that vacancy shall be filled during the same election.

The Chair shall invite nomination of candidates for the office of Chair. When all members present have had an opportunity to nominate a candidate and after at least one candidate has been nominated, the Chair shall close nominations. When there is more than one nominee, the Chair shall invite members of the Board to present brief statements regarding the candidates. The Chair shall then call for a vote on each candidate in the order in which the nominations were received. The first candidate who receives a majority of votes shall be declared the winner.

The Vice-Chair and Secretary shall be elected in the same manner as the Chair.

Newly elected officers shall assume their duties at the next regularly scheduled meeting following the election.

E. Oath of Office

New Board members shall be sworn in at the first regular meeting held during the new member's term.

F. Removal

All members of the Board shall serve at the pleasure of City Council and may be removed at any time after a vote by City Council pursuant to Arvada City Code Section 2-78.

3. **OTHER CITY PERSONNEL**

A. Clerk and Employees

The Recording Secretary and other City Staff members shall be under the control and direction of the Chair during Board meetings.

B. Director of Community Development

The Director of Community Development, or their representative and/or staff, shall attend all meetings of the Board, unless excused by the Board. The Director of Community Development shall keep the Board fully advised as to the cases being presented. The Director of Community Development may make recommendations to the Board and may take part in discussions on all matters concerning the welfare of the City, but shall have no vote in the meetings of the Board.

C. City Attorney

The City Attorney, or their representative and/or staff, shall attend all meetings of the Board, unless excused by the Board. The City Attorney shall advise the Board on legal matters pertaining to the case being discussed, and shall make recommendations to the Board and may take part in discussions, but shall have no vote in the meetings of the Board.

D. Recording Secretary

A member of the City Staff shall be the Recording Secretary of the Board, who shall keep minutes of the meeting and perform such other and further duties in the meeting as may be ordered by the Chair or Board members.

On or before the Friday prior to the Board meeting, the Recording Secretary shall furnish each Board member with a copy of the summary of minutes of the preceding meeting and all materials prepared for the Board members by the Director of Community Development.

E. Officers and Employees to Attend

Other employees of the City, when requested by the Chair, shall attend any regular or special meeting and confer with the Board on all matters relating to the City.

4. DUTIES AND PRIVILEGES OF BOARD MEMBERS

A. Seating Arrangement

Board members shall occupy the dais area in the Council Chambers. The Chair shall occupy the center position, the Vice-Chair shall occupy the position immediately to the right of the Chair, and the Secretary shall occupy the position immediately to the left of the Chair. The remaining members of the Board shall occupy positions assigned to them by the Chair, but two or more of those remaining members may exchange positions by joining in a request to the Chair to that effect.

B. Right of Flooring

When recognized by the Chair, a member shall confine himself to the questions under debate, avoid personalities, and refrain from impugning the motives of any other member's argument or vote.

C. Right of Appeal

Any Board member may appeal to the Board from a ruling of the Chair. If the appeal is seconded, the Board member making the appeal may briefly state his or her reasons for the same, and the Chair may briefly state his or her ruling; but there shall be no debate on the appeal and no other Board member or member of the public may participate in the discussion. The Chair shall then put the question, "shall the decision of the Chair be sustained?" If a majority of the Board members present vote "yes," the ruling of the Chair is sustained; otherwise, it is overruled.

D. Limitation of Debate

No member shall be allowed to speak unless recognized by the Chair. No member shall be allowed to speak more than once upon any one subject until every other member choosing to speak has had the opportunity. The Chair shall indicate when he or she feels that nothing is being accomplished by further debate.

E. Making Motions

No motions presented by any member shall require a second except that for appeal from the decision of the Chair. The Chair shall have the same rights and privileges of making motions as any other member. The Chair shall first call for a motion to approve from a Board member who supports the matter and will make a record on why the matter should be approved. If no Board member makes a motion to approve, the Chair shall then ask for a motion to deny. All motions shall

be decided by a majority vote of those Board members present, unless otherwise noted.

F. Voting

A vote taken by recording “yes” or “no” votes by use of voting lights, with the “yes” or “no” votes being read into the permanent record by the Chair, shall be taken upon all motions presented to the Board, and on the election of any officer. Every motion shall require the affirmative votes of a majority of those Board members present for passage. Any motion for approval failing to receive a majority shall result in denial of the motion.

Each member who is present shall vote on all questions except where the member is not allowed to vote by reasons contained in Chapter 2, Article VIII, Division 2 of the Arvada City Code, “Rules of Behavior and Standards of Conduct,” unless the member is excused for good reason by the majority vote of the remaining members present. With regard to public hearings, any member who did not attend the entire hearing, and who has not heard an official recording of the portion of the hearing that was not attended, or who has not read or has not heard a reading of a verbatim transcript of the same, shall not vote. Any member refusing to vote, except when required to not vote by this paragraph, shall be guilty of misconduct in office.

A roll-call vote by “yes” or “no” entered in to the minutes of the Board proceeding shall be an alternate method of taking the vote.

G. Disqualification of Member From Participation

No member of the Board may participate in the debate or vote upon any question in which that member has a direct financial interest, or on any question concerning that member’s own conduct. Request to be excused from participation in or voting upon a variance for any reason must be made before the vote is taken and shall require the consent of the majority of the Board present. The requesting member shall state the reason for the request and the Board shall vote on the request without further debate.

H. Dissent and Protest

Any member shall have the right to express dissent from or protest against any resolution of the Board, and have the reason thereof entered into the records. Such dissent or protest must be filed in writing, in respectful language, and presented to the Board not later than the next regular meeting following the date of passage of the resolution objected to.

I. Excusal from Attendance

No member shall be excused from attendance at a Board meeting except upon roll call and then only by a vote of the majority of the members present. If the majority of members present do not vote to excuse the member from attendance, it shall be considered an unexcused absence.

- I. Members shall notify the Chair or City staff at least 48 hours before a meeting for an absence to be considered as an excused absence.
- II. In the event of an emergency, members shall notify the Chair or City staff as soon as possible; absences due to an emergency will be considered for excusal without the 48 hour notice requirement. If the emergency prevented the member from contacting anyone prior to the meeting, the Board may revisit an unexcused absence and vote to determine if the absence should have been excused at the next scheduled business meeting.

J. Attendance Required

A written report signed by the Chair and Secretary shall be sent to City Council concerning any member of the Board who has three unexcused absences from Board meetings in a one year period, for Council determination as to whether this should be cause for removal of that member from the Board. Such report shall be sent to Council within three days following such member's third unexcused absence.

K. Excusal During Meeting

No member may leave the Council Chambers while in regular session without the permission of the Chair.

5. BOARD PROCEDURE

A. Order of Business

The business of all regular meetings of the Board shall be transacted in the following order, unless the Board, by a vote of the majority of members present, shall suspend the rules and change the order:

- I. Call to order – 6:15 p.m.
- II. Pledge of Allegiance

- III. Roll call of members
- IV. Approval of minutes
- V. Explanation of procedures
- VI. Public hearing of cases in order number
- VII. Hearings on administrative appeals pursuant to the International Property Maintenance Code (IPMC)
- VIII. Other business
- IX. Adjournment

No public hearing shall be set for a regular meeting at any time other than 6:15 p.m., and the Board shall not proceed to consideration of any public hearing prior to the time set for such public hearing. If there is a scheduled Planning Commission meeting for the same date and time, it will start promptly at the conclusion of the Board meeting.

Only Board members and City staff may submit other matters for consideration under other business. At each meeting the Chair shall ask if there are objections or corrections to be made to the summary of minutes of the preceding meeting as published. If no objection, the summary of minutes shall be approved.

B. Filing with the Community Development Department

Every variance request, administrative review, and document to come before the Board for consideration must be filed with the Community Development Department at least 34 days prior to the meeting at which it will be heard, with the exception of those reviews pursuant to the International Property Maintenance Code. Each application filed shall be assigned a Board number by the Community Development Department prior to being submitted to the Board.

All proposed applications shall be reviewed by the Community Development Department to be sure that they are in correct form. The Director of Community Development shall attach to each application a brief digest of the provisions thereof and his or her recommendations.

It shall be the duty of the Director of Community Development to have ready for delivery to each member of the Board by Friday before the Board meeting an agenda indicating the public hearings to be anticipated, showing the order of

business by case number and fully descriptive title, copies of all applications together with the related staff reports prepared by the Director of Community Development, and any other documents to come before the Board for consideration at the meeting.

C. Motions to Withdraw

A motion may be withdrawn by the mover at any time.

D. Motion to Adjourn – when Not in Order – Not Debatable

A motion to adjourn shall be in order at any time, except as follows:

- I. when repeated without intervening business or discussion;
- II. when made as an interruption of a member while speaking;
- III. while a vote is being taken; or
- IV. prior to hearing all cases on the meeting's agenda

E. Motion to Amend – To Strike Out, Etc.

On an amendment to “strike out and insert,” the paragraph to be admitted shall first be read as it stands with the words proposed to be stricken out, and those to be inserted shall be read, and finally the paragraph, as it would stand if so admitted, shall be read. All other motions to amend shall be made on the record and reflected in the minutes.

F. Motion to Continue

A motion may be made to continue a public hearing until the next regular meeting of the Board.

G. Reconsideration

No later than seven business days after the Board issues a decision, any party who has standing to appeal may submit to the Board, by filing with the Recording Secretary of the Board, a written request for supplementation, clarification, or reconsideration of the decision. The request shall state the grounds thereof. In the event that such a request is timely filed, the date of final agency action for purpose of appeal shall be the date of issuance of the supplementation, clarification, reconsidered decision, or a notice of refusal to do so. Only a member of the Board who voted with the prevailing side may make the motion. If the Board grants the motion, it shall, at the same time, set a date for the new hearing, allowing sufficient time for publication and posting. If no member of the Board who voted with the

prevailing side makes a motion to reconsider, the original decision stands without further discussion.

H. Procedure in Absence of Rule

In the absence of a rule to govern appointed procedure, reference shall be had to Robert's Rules of Order Revised.

I. Anonymous and Ex Parte Communication

Unsigned or anonymous communications shall not be introduced at a Board meeting. Ex parte communication between applicants or parties in favor or against an application and Board member are prohibited.

J. Reading of Application

Applications shall be read in full or by title only when copies are available to the Board and those in attendance.

K. Recess

A recess may be called at any time either by the Chair or upon motion by a member and with the consent of the majority. The Board shall not adjourn while in recess but must reconvene prior to adjournment.

L. Agenda Items which are Not Public Hearings

Only at the sole discretion of the Chair, a member of the public may be permitted to speak concerning business items on the agenda which are not public hearings.

6. PUBLIC HEARINGS

Public hearings shall be conducted in the following order:

- A. Announce the case (Case Number, Applicant's Name and Address, and description of the Request);
- B. Determine that the Affidavit of Mailing and posting log are present and in order;
- C. Open the public hearing;
- D. Enter the Affidavit of Mailing, posting log and staff report in the record;
- E. Presentation of Applicant's Case;

The applicant and all the parties who wish to speak in favor of the application shall be allowed a maximum of 20 minutes in total to present their case. All persons desiring to be heard by the Board shall state their name and address for the record, and shall attest by sworn oath that all evidence they present shall be the truth.

F. Presentation of Opposition to Applicant's Case;

All parties who wish to speak against the application shall be allowed a maximum of 20 minutes in total to present the opposition. All persons desiring to be heard by the Board against the application shall state their name and address for the record, and shall attest by sworn oath all evidence they present shall be the truth.

G. Rebuttal;

Applicant shall be allowed a five minute rebuttal after presentation of the opposition.

H. Invite additional comments from City Staff;

I. Close the public comment period;

J. Invite questions from members of the Board;

K. Close the public hearing;

L. Invite members of the Board to discuss the case;

M. Entertain a motion for action on the application;

N. If a lesser variance is considered to be a reasonable alternative to granting or denying the request as presented, a member may move to grant a lesser variance.

O. State the motion;

P. Invite discussion of the motion;

Q. Call for the Vote; and

R. Announce the vote and the result of the question.

7. HEARINGS ON ADMINISTRATIVE APPEALS

A. Hearings on administrative appeals pursuant to the IPMC Section 105.2 are not public hearings for the purposes of taking public comments.

B. Standard of Review

I. For appeals as to notices by code enforcement regarding alleged violations:

a. The Board is to determine whether the Notice correctly interpreted the code provision(s); whether the provision of the code applied in that circumstance; or whether the provisions of the code were satisfied by some other means.

II. For appeals as to administrative fee assessments:

a. The Board is to determine whether the assessment for the administrative fee should apply or be waived.

b. The Board is to determine if there are compelling reasons that the applicant was unable to come into compliance within the allotted time prior to assessment by considering the following:

i. Whether the applicant received proper notice; or

ii. Whether the applicant was afforded enough time to come into compliance; or

iii. Whether the administrative fee was applied uniformly.

C. Procedure for Administrative Hearings

I. Administrative appeal will be announced;

II. The applicant and any witnesses on their behalf will be sworn in;

III. The applicant will be given a chance to explain their reasons for appeal and submit any evidence to support their claim;

IV. The appropriate City staff member will be given an opportunity to submit any information relevant for the Board's consideration as to the applicant's appeal;

- V. The applicant will next be given a chance to rebut any presentation by the appropriate City staff member;
- VI. Close the testimony;
- VII. Invite questions from members of the Board;
- VIII. Invite members of the Board to discuss the case; and
- IX. Entertain a motion for action on the application.

8. EVIDENCE

- A. Strict Colorado Rules of Evidence shall not apply in hearings before the Board, but rather any evidence may be received which is relevant and possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs. Every party to the proceeding may present such party's case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. The Chair may receive all or part of the evidence in written form if the interests of the parties will not be prejudiced substantially, and if the hearing will be expedited thereby.
- B. The rules of evidence and procedure shall conform when practicable to those in state civil nonjury cases, but when necessary to ascertain facts affecting the substantial rights of the parties to the proceeding, the Chair shall receive and the Board shall consider evidence not admissible under the Colorado Rules of Evidence if such evidence possesses probative value.
- C. The Chair shall give effect to the rules of privilege required by state law, may exclude incompetent, irrelevant, and unduly repetitious evidence, and may receive documentary evidence in the form of a copy.
- D. The Chair may take notice of general, technical or scientific facts within his knowledge, not in evidence, so long as such facts and the reliance thereon is made known to the parties.
- E. The Chair may take notice of the laws, codes, ordinances, statutes, and regulations of the city, state, and of the United States.

- F. The City shall be entitled to a rebuttable presumption of good faith and validity concerning administrative actions or determinations of the City, which may be the subject of the hearing.
- G. No ex parte material or representation of any kind or any other communication outside the hearing shall be considered by the hearing officer unless it is fully disclosed on the record and an opportunity is given to the other party for comment thereon at the hearing.

9. MISCELLANEOUS

A. Privilege of Floor

Only members of the Board and officers named in the rules, and persons invited by the Chair of the Board, or by vote of the Board, shall be admitted within the bar of the Council Chambers, and the City Manager shall direct the Chief of Police to cause this rule to be rigidly enforced.

B. Permission Required to Address the Board

Persons other than members of the Board and City staff shall not be permitted to address the Board, except when speaking for or against an application being heard by the Board. Such persons shall be recognized by the Chair. Any Board member may ask permission of the Chair to introduce any person other than a member of the Board. If permission is not granted, the decision of the Chair may be appealed in the manner prescribed in paragraph 4(C).

C. Suspension of Bylaws

Any provision of these Bylaws not governed by the Arvada City Charter or Arvada City Code may be temporarily suspended at the meeting of the Board by a majority vote and entered upon the record. Any Bylaw may be suspended by general consent if presented by the Chair and if there are no objections by any member.

D. Amendment of Bylaws

These Bylaws may be amended or new rules may be adopted by a majority vote of all members of the board. Any such alterations or amendments shall be submitted in writing at the preceding regular meeting and shall be placed on the calendar under the order of other business. This requirement shall be waived only by unanimous consent with the recorded vote of all members.

Approved on

, Chair

ATTEST/WITNESS:

, Secretary