BOARD OF ADJUSTMENT

RULES OF PRACTICE AND PROCEDURE

The following Rules of Practice and Procedure ("Rules") are promulgated in accordance with the requirements of Section 3.2.9(H) of the Denver Charter, Section 12.2.6.4 of the Denver Zoning Code, and Article VI, Chapter 2 of the Denver Revised Municipal Code.

ARTICLE I – DEFINITIONS

As used in these Rules, the definitions in the Denver Revised Municipal Code and the Denver Zoning Code shall apply, unless the context clearly requires a different meaning. The following terms shall have the following meanings:

1. "Appellant" means one who files an appeal with the Board.
2. "Applicant" means one who files an application with the Board.
3. "Board" means the Board of Adjustment for the City and County of Denver.
4. "CPD" means the Department of Community of Planning and Development for the City and County of Denver.
5. "Decision at Issue" means the written order, requirement, decision, or determination made by the Zoning Administrator or the Manager that is the subject of the appeal to the Board.
6. "DRMC" means the Denver Revised Municipal Code.
7. "DZC" means the Denver Zoning Code.
8. "Real Property at Issue" means the Zone Lot(s) that is (are) subject of a case before the Board.
9. "Rules" means the Rules of Practice and Procedure of the Board.

ARTICLE II – THE BOARD

1. The Board shall consist of five (5) members.

2. Annually the Board shall nominate and elect from its membership a Chair and a Vice-Chair who shall serve until the election of their successors.

3 The Chair shall preside at all Board meetings and shall be responsible for the conduct of such meetings.

4.. In the absence of the Chair, the Vice-Chair shall exercise all the powers of the Chair. In the absence of the Chair and Vice-Chair, the Board shall elect a Chair Pro-Tem for the meeting for which the Chair and Vice-Chair are absent.

ARTICLE III – MEETINGS AND QUORUM

1. A quorum of the Board members shall be present to conduct the business of the Board. A quorum consists of three (3) members. Three (3) members shall be sufficient to conduct the regular and administrative business of the Board, including the adoption of minutes; rescheduling or dismissing of

cases; and hearing and accepting evidence in cases.

2. To the extent permitted by law, and as determined by the Board Chair, Board members may be provided, or hearings may be held, via alternative methods of participation, including, but not limited to telephonically, electronically, or by other means of communication.

ARTICLE IV – TIME FOR FILING APPLICATIONS AND APPEALS

1. Applications for variances or Zoning Permit with Special Exceptions shall be filed with the Board within one hundred eighty (180) days from the later of the date of the preapplication meeting described in DZC §§ 12.4.7.4.B. or 12.4.9.2.B or the issuance of any document by the Zoning Administrator documenting the outcome of such a meeting.

2. Appeals of administrative decisions shall be filed with the Board within thirty (30) days from the date of the Decision at Issue. Neither the Board, the Board's staff, nor CPD staff is empowered to extend the deadline for filing appeals.

ARTICLE V – FILING APPLICATIONS AND APPEALS

1. Applications and appeals to the Board must be on the form(s) available on the Board's website, and must include the following:

   a. The name of all the owner(s) of the Real Property at Issue;

   b. a copy of the documentation of the preapplication meeting or Decision at Issue;

   c. the specific grounds upon which the relief is claimed; and

   d. shall certify under penalty of perjury that they have the legal authority to file the application or appeal.

2. All applications and appeals made to the Board shall be in the name of the owner(s) of the Real Property at Issue, except for appeals of administrative decisions, which may be made by any person aggrieved or any officer or department of the City.

3. Applicants and Appellants shall pay the required filing fee(s) at the time of filing. See Article XIII of the Rules for required filing fees.

ARTICLE VI – NOTIFICATIONS

1. The Board shall provide notice of applications and appeals to the Appellant(s), Applicant(s), the owner(s) of the Real Property at Issue, CPD, the City councilperson for the district which the Real Property at Issue is located, and all affected registered neighborhood organizations.

2. Appellants and Applicants must post notice about the upcoming hearing before the Board at the Real Property at Issue, or as otherwise directed by Board staff.

   a. The Board staff shall determine the number of required notification signs and prepare such signs in a manner that will give adequate notice of the purpose of the hearing, including the

date, the time, the location, the case number of the hearing, including, and, if applicable, information regarding how the public may participate by telephone, electronically, or by other means of communications.

b. Appellants and Applicants shall pick up the sign(s) from the Board's office prior to the hearing and post the sign(s) on the Real Property at Issue, or as otherwise directed by Board staff, in a conspicuous location and according to the directions of the Board's staff. All signs shall be located on the outside of any buildings and continue to be posted for fourteen (14) consecutive days up to the day of the hearing. Appellants and Applicants shall take every reasonable effort to keep the sign(s) posted on the Real Property at Issue until the hearing is held. Failure to post the sign for fourteen (14) consecutive days prior to the date of hearing, absent good cause (e.g., posting interrupted through no fault of the Appellant or Applicant, such as blown over by wind, rain, snow, etc.), shall result in a continuance of the hearing or dismissal of the case.

ARTICLE VII – REPRESENTATION BEFORE THE BOARD

1. Appellants and Applicants shall appear at the hearing before the Board or be represented by an attorney or other representative. All owners of the Real Property at Issue may appear at the hearing in person before the Board or by an attorney or other representative.

2. CPD shall be a party to every hearing before the Board and may be represented by City employees appearing on its behalf.

3. Any other City office or agency may intervene as a party and may be represented by City employees or officials appearing on its behalf.

ARTICLE VIII – HEARING EXHIBITS

1. Appellants and Applicants shall submit all exhibits or documentary evidence to be used at the hearing to the Board by 12:00 p.m. at least twenty-two (22) calendar days before the hearing.

2. CPD shall submit all exhibits or documentary evidence to be used at the hearing and its position in writing on the issues to the Board by 12:00 p.m. at least eleven (11) calendar days prior to the hearing.

3. Appellants and Applicants shall submit all exhibits or documentary evidence to be used at the hearing to rebut the exhibits or documentary evidence submitted by CPD to the Board by 12:00 p.m. at least eight (8) calendar days before the hearing.

4. Owners, intervenors, or members of the public may submit exhibits or documentary evidence no later than the Thursday before the hearing.

ARTICLE IX - HEARINGS

1. All testimony in Board hearings shall be given under oath, administered by the chair of the hearing.

2. All evidence and testimony shall be presented publicly to the Board.

3. The conduct of the hearing and the admission of evidence shall generally be in accordance with these rules without regard to whether they conform to common-law or statutory rules of procedure or evidence or other technical rules.

4. The Board may take administrative notice of the facts to the same extent and in the same manner as courts of record and may consider any relevant facts within the personal knowledge of any Board member which are stated into the record by such Board member.

5. Any interested person, natural and non-natural, may intervene in Board hearings, offer testimony and evidence, and question witnesses, when deemed appropriate by the Board. Intervenors may be represented by an attorney or representative in the same manner and fashion as Appellants, Applicants, and owners of the Real Property at Issue as provided in Article VII of these Rules.

6. If less than five (5) Board members are present at a hearing, the Board shall advise the Appellant or Applicant of the following:

   a. Of the number of affirmative votes that are necessary to grant the relief requested;

   b. that the Appellant or Applicant may request a continuance for the case to be heard by a five-member Board;

   c. that if at least three (3) members are present, the hearing may proceed, and if the vote of an absent member(s) is required to obtain relief, the decision may be delayed to allow the absent member(s) to listen to the recording of the hearing, review the exhibits, and participate in the deliberations and decision on the case, and

   d. that the member(s) to review the record will be designated by the Chair.

7. All actions and decisions of the Board shall be made in open session and on the record. If any Board member desires to abstain from participating in a particular case, that member shall announce that fact on the record, stating the reason for such abstention.

8. The Board may by a two-thirds (2/3) vote call an executive session for any purpose set forth in DRMC § 2-34. No testimony or exhibits shall be received in executive session.

9. Once a hearing is closed, the Board may not accept additional evidence.

10. Should a party be aggrieved by a final written order or decision of the Board, the party may proceed to have the same reviewed under Colorado Rules of Civil Procedure 106(a)(4) by the district court for the second judicial district of the state. The petition or complaint for review must be filed within twenty-eight (28) days from the date of the final written order or decision of the Board.

11. A case dismissed without a hearing for nonappearance may be reinstated by the Board upon submission of a written request by the Appellant or Applicant within thirty (30) days of the decision to

dismiss. The request must state the reason for the nonappearance in detail. If this reason is deemed adequate to explain the nonappearance, the Board, upon a motion receiving three (3) affirmative votes, may reinstate the case.

ARTICLE X – SUPPLEMENTAL AGENDA

1. Cases on the supplemental agenda will be heard before the Board in open session and on the record. However, such hearings will consist solely of the review of documents with advice by the Board's staff and will not include the presentation of evidence and testimony.

ARTICLE XI – REQUESTS FOR RECONSIDERATION

1. A request for reconsideration may be filed by an Appellant, Applicant, or intervenor within fourteen (14) days after a final written decision of the Board and must be on the form available on the Board's website, and shall include the following:

    a. that new and material evidence is now available that, despite the movant's due diligence, was not available when the hearing closed;

    b. the reason the new and material evidence could not have been presented before the hearing was closed; and

    c. the new and material evidence or an offer of proof of the new and material evidence.

2. The Board shall provide Appellants, Applicants, and intervenors, including CPD, fourteen (14) days to respond in writing to a request for reconsideration and then shall consider the Parties' submissions on the next supplemental agenda.

3. After review of a request for reconsideration and any responses, the Board may, by four (4) affirmative votes, grant a rehearing.

4. Any request for reconsideration that is granted shall be subject to a fifty percent (50%) reinstatement fee under Article XIII. Appellants, Applicants, and the intervenors appearing at the previous hearing(s) shall be notified in writing of the new hearing, and the notices required in Article VI shall be repeated.

5. The filing of a request for reconsideration does not stay or extend the time to file an appeal from a Board decision.

ARTICLE XII - MODIFICATIONS

1. A request for modification of a variance may be filed by an Applicant within three (3) years after the final written decision of the Board granting the variance at issue.

2. The Board shall provide CPD fourteen (14) days to respond in writing to the request for modification and then shall consider the Parties' submissions on the next supplemental agenda.

3. The Board may modify a variance it previously granted, in whole or in part, if the Board determines that such modification is minor and is in keeping with its original decision.

4. The Board may, upon a motion receiving four (4) affirmative votes, modify the original decision. However, no such modification shall prejudice the rights of any person who has in good faith acted upon such a decision before it was modified. If the request for modification is denied, the Applicant may apply for a new case before the Board without prejudice.

ARTICLE XIII - FEES

1. Filing fees for each appeal and application have been determined by the Board and approved by City Council under 12.3.3.4.B. of the DZC and shall be posted on the Board's website.

2. Filing fees shall be paid in full at the time of filing. Neither the Board nor the Board's staff may waive filing fees or refund them without an action of the Board.

3. Any refund must be granted by the Board on the record in a public meeting with a majority vote of at least three (3) members, with the following conditions:

   a. A 50% refund shall be given when a case is withdrawn in writing at least 30 days before its first scheduled hearing. Continued or rescheduled cases are not eligible for such a refund even if withdrawn in writing at least 30 days before the new hearing date.

   b. A 100% refund shall be given when the order or denial on which the application or appeal is filed is rescinded by the Zoning Administrator due to an error in its issuance. Withdrawal of a valid order or denial due to subsequent compliance by the appellant is not grounds for a 100% refund.

   c. A refund of any amount deemed appropriate by the Board may be given upon a finding of hardship caused by exceptional circumstances, which may include age, physical disability or limited income which is severely affected by the payment of the fee required. Appellants may request such a refund from the Board at the time of the hearing. Any Appellant requesting such a refund must present evidence of the hardship, such as proof of monthly income. The determination of hardship shall be at the discretion of the Board, and on a case-by-case basis.

   d. No refund will be given solely for prevailing in a case before the Board.

4. The Board shall establish a fee schedule for recordings of hearings, photocopies, certified records for cases appealed to the District Court, and other such items provided by the Board staff in addition to any copies or items provided free as a normal part of the filing and hearing process.

5. Any case remanded to the Board by a higher court after an appeal under C.R.C.P. 106(a)(4) shall not require an additional filing fee.

LEGISLATIVE HISTORY OF BOARD'S RULES OF PROCEDURE

Restated Rules of Procedure adopted and passed by the Board in accordance with Section 59-53 Revised Municipal Code on August 25, 1987.

Notice published in the Daily Journal in accordance with Section 2-93 Revised Municipal Code.

Frana L. Mace
CHAIR

Restated Rules of Procedure submitted for readoption and passed by the Board in accordance with Section 59-53 Revised Municipal Code and The Most Recently Revised Procedures for Adoption of Denver Rules and Regulations: Ordinance No. 557, adopted effective July 23, 1993.

Susan E. Aukema
CHAIR

Revised Rules of Procedure adopted by the Board as required by and in accordance with the Denver Zoning Code Article 12.2.6.4. on November 18, 2012.

Ben Romero
CHAIR

Revised Rules of Procedure adopted by the Board as required by and in accordance with the Denver Zoning Code Article 12.2.6.4. on October 27, 2020.

Penny Elder
CHAIR

Revised Rules of Procedure adopted by the Board as required by and in accordance with the Denver Zoning Code Article 12.2.6.4. on September 10, 2024.

BY ORDER OF THE BOARD OF ADJUSTMENT

Ignacio Correa-Ortiz Digitally signed by Ignacio Correa-Ortiz Date: 2024.09.11 11:17:37 -06'00'

Ignacio Correa-Ortiz
CHAIR

Approved by the City Attorney this 10th day of September 10, 2024.

KERRY TIPPER
City Attorney

By

Charles T. Solomon
Assistant City Attorney