

**TOWN OF DEWEY-HUMBOLDT BOARD OF ADJUSTMENT
BYLAWS**

ARTICLE I

Name

The name of the Board shall be the Town of Dewey-Humboldt, Arizona Board of Adjustment (the "Board").

ARTICLE II

Purpose

The Board is established pursuant to Arizona Revised Statutes § 9-462.06 to hear and decide certain matters as set forth in the Town of Dewey-Humboldt Town Code § 153.021 and herein.

ARTICLE III

Organization and Responsibilities

- A. The Board of Adjustment shall:
1. Hear and decide appeals from a decision, determination or interpretation made by the Zoning Administrator, in which it is alleged there is an error in an order, requirement or decision made by the Zoning Administrator in the enforcement of a zoning ordinance;
 2. Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning classification in the same zoning district. Any variance granted shall be subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
 3. Hear and decide appeals from decisions of the Hearing Officer pursuant to Section 153.019 (D) and (E).
 4. Reverse or affirm, wholly or partly, or modify the order or decision appealed from and make such order or decision as ought to be made; and

5. Interpret Chapter 153: Zoning Regulations when the meaning of any word, phrase, or section is in doubt, or where doubt exists as to the proper district of a specific use.
 6. See A.R.S. § 9-462.06 and Dewey-Humboldt Town Code § 153.021 for a further description of responsibilities.
- B. The Board of Adjustment shall not:
1. Make any changes in uses permitted in any zoning classification or zoning district;
 2. Make any changes in the zoning ordinance; or
 3. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.
- C. Ex Parte Communications. Board members shall not participate, directly or indirectly, in ex parte communications relevant to an application or appeal pending before the Board. Ex parte communications are oral or written communications related to the matter to be heard by the Board and which is made to or by a member of the Board, including in person, telephonic or electronic communications that occur outside of a public meeting of the Board.
- D. Code of Ethics. Board members shall comply with the Town Council's Code of Ethics and the State of Arizona Open Meeting and Conflict of Interest laws.
- E. Membership.
1. The Board shall consist of five (5) members who are appointed by the Dewey-Humboldt Town Council in accordance with the Town Code and Council Policy.
 2. With the exception of the initial board, the term of office for each member shall be four (4) years, unless a vacancy occurs.
 3. Board members shall be qualified electors of the Town of Dewey-Humboldt.
 4. Board members serve at the pleasure of the Town Council.
- F. Vacancies. Vacancies shall be created and filled pursuant to § 31.18 of the Dewey-Humboldt Town Code.
- G. Officers.
1. At the next Board meeting after appointments to the Board are made, the Board shall elect a chair and a vice chair from among its members.
 2. The Chair and Vice Chair shall each serve a two year term.

3. The Chair shall:
 - a. Preside over meetings and hearings of the Board, decide all points of order and procedure, and perform any duties required by law, ordinance, or these bylaws.
 - b. Have the right to vote on all matters before the Board and to make or second motions in the absence of motion or a second made by a member.
4. The Vice Chair shall act as Chair in the Chair's absence.
5. In the absence of both Chair and Vice Chair, the senior member based upon years of membership on the Board shall act as Chair.
6. The Community Planner or his designated representative shall serve as the Secretary of the Board and shall provide professional and technical advice to the Board.

ARTICLE IV

Hearings and Meetings

A. Scheduling of Hearings and Meetings.

1. Meetings shall be scheduled as needed for the fourth Tuesday of the month at 9:00 a.m. unless circumstances require otherwise.
2. Hearings of the Board shall be held at the call of the Chair when necessary for the Board to fulfill its legal requirements.
3. Meetings may be held as necessary to address administrative issues of the Board. Meetings generally shall be held at the same time as a hearing, if possible.
4. Except for executive sessions authorized by law, all meetings of the Board shall be open to the public. Minutes of the proceedings, recording its examinations and showing the vote of each member, shall be kept as required by A.R.S. § 38-431.01 and filed as public records in the office of the Town Clerk.

A. Quorum. A majority of the members of the Board, excluding vacant seats, shall constitute a quorum for transacting business at any regular meeting. No action shall be taken at any regular meeting in the absence of a quorum, except to adjourn the meeting to a subsequent date.

B. Agenda. An agenda shall be prepared by the Secretary after consultation with the Chair for each meeting and hearing and shall be published and posted as required by Arizona law. The agenda shall include the various matters of business as scheduled for consideration by the Board.

ARTICLE V

Conducting Business

A. Parliamentary Procedure

1. The Chair shall call the Board to order and the Secretary shall record the members present or absent. The Chair may call each matter of business in the order of the approved agenda and shall announce the name of the applicant, the location of the property involved, and the nature of their request. The Board, by majority vote, may change the order of the posted agenda to accommodate the Board, staff and members of the public. Supporting evidence for and against each matter shall be presented to the Board.
2. The Chair shall conduct meetings under Robert's Rules of Order unless such rules are suspended by majority vote of the Board. The Chair shall direct questions to the applicant or any person speaking, in order to bring out all the relevant facts, circumstances, and conditions affecting the matter being considered, and then call for questions from other members of the Board and from staff.

B. Conduct of Hearings

1. Rights of All Persons. Any person may appear at a public hearing and submit oral or written evidence related to the application, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall state his name, address, and, if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.
2. Time Limits. The chair may establish time limits for individual testimony and may require that individuals with shared concerns select one or more spokespersons to present testimony on behalf of those individuals.
3. Testimony and Evidence.
 - a. Hearings are quasi-judicial in nature as defined in Arizona Revised Statutes § 38-431(67). Relevant evidence may be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
 - b. All exhibits shall be submitted not later than one week prior to the hearing date, be clearly labeled and made a part of the record of the Board of Adjustment hearing. Evidentiary objections shall be waived unless made at least three days before the hearing.
 - c. The Chair may exclude testimony or evidence that is irrelevant, immaterial, or repetitious. The person offering such testimony or evidence shall have an opportunity to offer a written statement in regard to such testimony or evidence

for the record. Such written statement shall be presented to the town clerk within 3 working days of the hearing.

4. Burden of Proof. The burden of proof of all legal prerequisites to the granting of the relief or action sought shall be upon the party requesting such relief or action.
5. Order of Proceedings at Public Hearings.
 - a. *Introduction of Item*. The Chair shall introduce the item.
 - b. *Public Hearing*. The Chair shall open the public hearing.
 - c. *Staff Report*. Staff shall provide a written report and recommendation to the Board prior to the public hearing. At the hearing, Staff shall present a report and respond to questions from the Board.
 - d. *Applicant Presentation*. The applicant shall present ~~its~~ case and respond to questions from the Board. In its presentation, the applicant shall indicate its agreement or disagreement with staff's recommendations.
 - e. *Public Testimony*. Testimony will be accepted from those requesting to be heard, subject to the limitations regarding time limits and exclusion of testimony.
 - f. *Applicant Response*. The Chair may request the applicant to respond to testimony or evidence presented by the public or staff.
 - g. *Staff Response*. Staff and the Town Attorney may provide information or clarification regarding matters raised during the public hearing.
 - h. *Continuance of Public Hearing*. The Board may, by motion, continue the public hearing to a fixed date, time, and place.
 - i. *Close of Public Hearing*. The Chair shall close the public hearing.
 - j. *Tabling*. The Board may, by motion, table the public hearing. If tabled, the public hearing on the matter shall not be conducted until notice is given in the same manner as for the initial hearing.
 - k. *Deliberation and Action*. The Board shall discuss the request and take action as set forth below in Subsection (B)(6)
 - l. *Revision to Conditions*. If the Board makes a change to the recommended conditions, the public hearing shall be re-opened prior to the vote for the limited purpose of affording the applicant an opportunity to comment on any modified conditions. The public hearing shall be closed before action is taken by the Board.

- m. *Failure of Applicant to Appear.* If an applicant fails to appear at the hearing, the Board may continue the hearing as provided in subsection (h). If, before the meeting, the applicant submits a written request for the Board to act without his presence, the Board may hear those persons requesting to speak in response to the notice of hearing and make a decision without the applicant attending the meeting.
 - n. *Absence of a Board Member.* A member who is absent from any portion of a public hearing conducted by the Board may not vote on the matter being considered during the absence.
6. Voting.
- a. After hearing all testimony and considering all the evidence, the Board shall discuss the request and approve, approve with modifications and/or conditions, or deny the request, unless it has been continued or tabled.
 - b. In taking action on any appeal, the Board may reverse, affirm, wholly or in part, or modify the order, requirement, or decision of the Hearing Officer appealed from, and may make such order, requirement, decision or determination as necessary. Decisions of the Board shall meet the statutory requirements set forth in the Arizona Revised Statutes Section 9-462.06 and Town of Dewey-Humboldt Town Code Section 153.021.
 - c. When making a decision to approve, approve with modifications and/or conditions, revoke, or deny any variance, or when acting on an appeal, the Board shall make findings of fact required by the Town Code, as set forth in Section 153.021.
 - d. Unless otherwise provided by law, and as long as a quorum of three members of the Board is present, a majority vote of those Board members present and voting shall be required to take official action.
 - e. Each member attending shall be entitled to one vote. The minutes of the proceedings shall indicate the vote of each member on every matter acted upon, and shall indicate any absence or failure to vote. No member shall be excused from voting except on matters where the member declares a conflict of interest, as described in Subsection (8), below.
 - e. The Zoning Hearing Officer whose decision is being appealed from shall not participate in any discussion or vote of the Board, but shall be available during the public hearing for questions from the Board members.
7. Prohibition against Ex Parte Communications. To ensure a fair and impartial decision-making process, a member of the Board shall not, directly or indirectly,

participate in any ex parte communication relevant to an application pending before the Board. Ex parte communications are oral or written communications related to the matter to be heard by the Board and which are made to or by any member of the Board, whether in person, telephonic or electronic that occur outside of a public meeting of the Board.

8. Conflict of Interest. A member who has a conflict of interest with a matter being considered, as described in Arizona Revised Statutes §§ 38-501 through 38-511 and § 35.04 of the Dewey-Humboldt Town Code, shall recuse himself, abstain from participating in the discussion and voting on the matter, and leave the dais during discussion and action.

ARTICLE VI

Official Records

- A. Retention of Files. The official records of the Board shall include these Bylaws, minutes of meetings and its adopted reports, all of which shall be deposited with the Town Clerk and available for public inspection as public records. All applications and other matters coming before the Board shall be filed in the Community Development Department in accordance with that Department's general file system. Original papers of all applications and other matters shall be retained in compliance with the Town's Document Retention Schedule.
- B. Recording of Meetings. All public meetings of the Board will be recorded in written form. Any person desiring to have a meeting recorded by an electronic device or by a stenographic reporter, may do so at his own expense, provided he has given advance notice to the to arrange facilities for such recording prior to commencement of the meeting. Such recording shall not disrupt the proceedings and may, at the discretion of the chair, be stopped if it is disruptive.

ARTICLE VII

Amendments

- A. These bylaws may be amended by majority vote of the Board, provided that notice of said proposed amendment is given to each member in writing at least five (5) days prior to the meeting. Such amendment shall be subject to ratification by the Town Council and, if so approved, shall become effective at the next meeting or hearing of the Board.