

RULES OF PROCEDURE
OF THE
TOWN OF BELLEFONTE BOARD OF ADJUSTMENT

ARTICLE I Name of Organization

Section 1. The name of this organization shall be the Board of Adjustment of the Town of Bellefonte, hereinafter referred to as the “Board”.

ARTICLE II Authorization

Section 1. The Board is authorized pursuant to the provisions of 22 *Del.C.* §§321 *et seq.* Section 14 of the Building Zone Ordinance of the Town of Bellefonte (the “Building Zone Ordinance”)

ARTICLE III Duties

Section 1. The Chairman, or in his or her absence, the Acting Chairman as elected by those Board members in attendance at the meeting in which an Acting Chairman is required, shall preside at all meetings or hearings of the Board, decide all points of order or procedure, and perform all duties required by law or these rules.

Section 2. The Town Building Code Official or such other designee of the Board, shall conduct, at the direction of the Board, all official correspondence of the Board, send out all notices required by law and these Rules of Procedure, keep records of each hearing, meeting, or other official action of the Board, and perform all duties required by law and these Rules of Procedure.

ARTICLE IV Officers

Section 1. The officers of the Board shall consist of a Chairman and a Secretary.

Section 2. The Chairman of the Board is appointed in accordance with 22 *Del.C.* §322(d)(2) and Section 14 of the Building Zone Ordinance. In the absence of the Chairman, the Secretary shall preside at meetings. If the Chairman and the Secretary are not present, the members present shall designate a member to serve as Acting Chairman.

ARTICLE V

Meetings

- Section 1. All meetings and hearings of the Board shall be open to the public. Any action calling for a formal vote shall take place only at a public meeting or hearing.
- Section 2. A quorum shall consist of three (3) members appointed to the Board to transact business at all meetings and hearings. The vote of a majority of the members present at any meeting or hearing of the Board shall be necessary to carry a motion. A tie vote on a matter or question before the Board shall be considered a denial of the application or question before the Board. The Chairman shall be a voting member in all matters before the Board that require a vote.
- Section 3. The Board shall meet at such times when there are matters to come before it and at such other times for Special meetings as the Board may determine.
- Section 4. Notice of matters to be heard by the Board shall be published in accordance with the requirements of 29 *Del.C.* §10001 *et seq.* The notice shall set forth the time and place of the public hearing and shall describe in a general way the nature of the applications before the Board.
- Section 5. Each applicant and counsel or representative of record shall be notified by ordinary first-class mail of the date, place and time of the public hearing at which their application will be heard.
- Section 6. Any person seeking approval from the Board for any purpose for which the Board's approval is required shall make written application therefore. The Board shall cause public notice of the time and place of the public hearing on such application to be made in accordance with the requirements of 29 *Del.C.* §10001 *et seq.* and these Rules of Procedure. All witnesses that wish to testify before the Board shall testify under oath. The Chairman, or member presiding at the hearing, shall administer all oaths and shall have the authority to compel the attendance of witnesses at public hearings. The Chairman or the member presiding at the hearing shall have the discretion to permit and control the reasonable opportunity for cross examination. Cross examination, except in exceptional circumstances, shall be limited to attorneys. After a public hearing upon notice as provided for herein, the Board shall render a decision.

Section 7. The order of business at all public hearings of the Board shall be as follows:

- (a) Reading of the Public Notice of the application;
- (b) Presentation of the application by the Applicant or its designee;
- (c) Testimony by witnesses in favor of the application;
- (d) Testimony by witnesses in opposition to the application; and
- (e) Rebuttal.

Section 8. The applicant must appear in person or be represented by counsel or other agent on its behalf at the public hearing. Failure of the applicant or the applicant's representative to appear at the hearing will result in the denial of the application unless the applicant or the applicant's representative notifies the Board, by letter, within five (5) days of the date after the public hearing of compelling reasons why the applicant or its representative was not present at the public hearing.. if a new public hearing is granted after the failure of the applicant or its representative to appear at the scheduled public hearing, the applicant shall pay an additional fee of \$250.00 to cover the administrative costs associated with the advertising and scheduling of the hearing prior to such rehearing being scheduled.

Section 9. Tape recordings of Board hearings shall be kept on file at the Board's offices for a two-year period of time from the date of the filing of the decision. The applicant or other persons interested shall have access to such recordings in addition to other materials appearing in the Board's files during normal Town business hours and subject to all requirements contained in *29 Del.C. §10001 et seq.* A copy or copies of the materials appearing in the Board's file, as well as a stenographic report of the proceedings before the Board may be procured at the requestor's expense.

Section 10. Once an application has been submitted to the Board for consideration, it may be withdrawn by the applicant at any time prior to the date of the public hearing. At any time thereafter, a request to withdraw must be approved by a majority of the members of the Board in attendance at the public hearing. For purposes of this Section, a vote by the Board on a request to withdraw the application shall not be construed as rendering a decision on the application. The filing fee shall be forfeited for any application withdrawn.

Section 11. No new application shall be acted upon by the Board if the Board shall find that within a two-year period immediately preceding the filing of a new application it rendered a decision regarding the

same application. However, this limitation shall not be applicable if the Board shall find that the facts and circumstances existing at the time of the prior application to the Board shall have undergone a material change justifying the Board's reconsideration. The Board shall make a ruling on the issue of change in fact and circumstances following a presentation by the applicant limited to that issue. If such a change is found to exist by a majority of the quorum present, such findings shall be made part of the record for the application and the Board shall proceed to a consideration of the new application.

Section 12. At any time after a public hearing, the Board may require a further hearing for the purposes of supplementing the record. In such cases, the Board shall schedule the public hearing, publish notice thereof and give notice in accordance with applicable law.

Section 13. Once a hearing has been scheduled after proper publication pursuant to these Rules of procedure, the hearing may be rescheduled or continued at the written request of the applicant. After the start of a public hearing on the application, a continuance may only be granted if a majority of the quorum of the Board present at the hearing determines that exceptional circumstances warrant such rescheduling or continuance. If a continuance is granted to the applicant under either scenario described above, a new public hearing on the application shall not be scheduled until a continuance fee of \$250.00 is received by the Board.

ARTICLE VI Appeals

Section 1. Filing a appeal with the Board shall stay the order, requirement, decision or determination appealed from and all matters related thereto. Upon application by any person aggrieved by the stay or any officer, department, board or bureau, the Board shall hold a hearing and may revoke the stay upon a showing of extreme hardship resulting from the stay.

ARTICLE VII Data Requirements

Section 1. All applications for a hearing before the Board shall be in writing and on such form approved by the Board. The application form must contain sufficient data to permit the advertising and scheduling of the public hearing.

Section 2. A plot plan must be submitted showing the shape of the property and its location from an established landmark (street intersection). The plot plan must also contain the dimensions and bearings

together with the structures existing on the subject property and the structures and uses within 100 feet of all property lines. The plot plan must also show the size of any construction proposed or other change desired or other matter that may be the subject of the public hearing.

Section 3. The New Castle County Tax Parcel Number shall be included with each application.

Section 4. The required filing fee shall be provided with each application.

Section 5. A certification from the Town of Bellefonte that all Town of Bellefonte taxes for all properties in the Town of Bellefonte owned by the applicant and/or the property owner have been paid or are current.

ARTICLE VIII Fees

Section 1. A fee shall be submitted for each application to be heard by the Board. The filing fee payable to the TOWN OF BELLEFONTE shall be submitted with the application for a public hearing in accordance. The filing fee for applications for residential properties shall be in accordance with the provisions of Section 14 of the Building Zone Ordinance.

ARTICLE IX Formal Actions and Decisions

Section 1. All actions and decisions of the Board shall be considered in effect when signed by the Chairman or Acting Chairman of the Board. All decisions shall be forwarded to the applicant or the applicant's representative. All actions and decisions on any application shall be in the form of a written decision. Such decision, where applicable, shall include findings of fact in support of the decision reached by the Board. Whenever the Board imposes any condition with respect to the granting of an application or appeal, such condition shall be stated in the written decision of the Board.

ARTICLE X Court Review of Board Decisions

Section 1. Appeals from a decision of the Board shall be taken in accordance with the provisions of 22 *Del.C.* §328.

ARTICLE XI Amendments

Section 1. These Rules of Procedure may be amended by action of a majority of the Board at a duly noticed public meeting.