

**GOVERNING RULES OF THE  
LANDER BOARD OF ADJUSTMENT**

**MEMBERSHIP**

The Lander Board of Adjustment shall consist of the seven (7) members of the City Planning Commission.

**REGULAR MEETINGS**

Regular meetings of the Board of Adjustment shall be held in the City Council Chambers at 6:30 p.m. on the second Thursday of each month. A regular meeting may be cancelled or rescheduled by the Chairman of the Board or the Board itself at a prior meeting or when it is found there are no cases or business pending before the Board.

**ANNUAL MEETING**

The annual meeting of the Board of Adjustment shall be the regular meeting of January of each year. The beginning of the meeting shall be devoted to the election of a Chairman and Vice-Chairman with the newly elected Chairman or in his absence the Vice-Chairman conducting the remainder of the meeting.

**SPECIAL MEETING**

Special meetings of the Board of Adjustment shall be called by the Chairman and at such other times as the board determines, specifying the time and place of the special meeting what business will be conducted and/or which cases would be considered. No other cases or business will be allowed on the agenda. Notice of the special meeting shall be given to all members of the Planning Commission not less than twenty-four (24) hours in advance thereof unless an emergency exists.

**JOINT MEETINGS**

On the third Tuesday of the month of June the Board of Adjustment shall meet with the Mayor and City Council to report on, among other items, the Board's case load, status report on cases, members attendance, any citizen complaints and the Board's policies and procedures. The joint meeting does not replace the board's regular meeting in June.

**OFFICERS**

The officers of the Board of Adjustment shall consist of a Chairman and Vice-Chairman, elected by the Board at the annual meeting for a term of one (1) year. The designated staff person shall serve as the recording secretary with his/her duties consisting of taking minutes of all meetings, prepare and deliver Board packets and be the custodian of the Board's records.

**DUTIES OF OFFICERS**

The duties and powers of the officers of the Board of Adjustment shall be as follows:

- a) Chairman
  1. to preside at all meetings of the Board;
  2. to call special meetings of the Board in accordance with these rules;
  3. to see that all actions of the Board are properly and legally taken;

4. administer oaths and affirmations;
  5. compel the attendance of witnesses;
  6. issue subpoenas; and
  7. regulate the course of the hearing.
- b) Vice-Chairman  
During the absence, disability or disqualification of the Chairman, the Vice-Chairman shall exercise or perform all the duties and be subject to all the responsibilities of the Chairman.

### **VOTING**

At all the meetings of the Board of Adjustment, each member attending shall be entitled to cast one vote. Voting shall be by voice. The concurring vote of a majority of the board is necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the application on any matter upon which it is required to pass under any ordinance or to effect any variation in the ordinance. The board shall keep minutes of its proceedings showing the vote of each member upon each question or if the member was absent or failed to vote.

### **CONFLICT OF INTEREST**

Any member of the Board of Adjustment who has a conflict of interest on any matter that is before the Board shall voluntarily excuse himself, vacate his seat and refrain from discussing and voting on said item. The Secretary shall record in the minutes that the member abstained from the case.

### **REMOVAL OF MEMBERS**

The Mayor and City Council, by majority vote, may remove any Board member for cause upon written charges but only after a public hearing is held. The procedures for a public hearing shall follow those outlined under Section 4-5-4 (b) (i)-(vi) of the City Code. Notice of the hearing and any other relevant documents shall be forwarded to the Board member as well as to the entire board at least fifteen (15) days prior to the hearing.

### **POWERS, DUTIES AND JURISDICTION**

a) The board shall:

(i) Hear and decide:

(A) Appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted by the City Council;

(B) All matters referred to it or upon which it is required to pass under any such ordinance.

(ii) Fix a reasonable time for hearing on an appeal, give public notice, adequate notice to the parties in interest and decide the appeal within a reasonable time. Any party may appear in person at a hearing or by agent or attorney;

(iii) Adopt rules in accordance with the provisions of any ordinance adopted by the City Council.

b) The board has the power to:

(i) Hear and decide special exemptions to the terms of the ordinance upon which the board is required to pass under the ordinance;

(ii) Vary or adjust the strict application of any of the requirements of any ordinance adopted by the City Council in the case of any physical condition applying to a lot or building if the strict application would deprive the owner of the reasonable use of the land or building involved. No adjustment in the strict application of any provision of an ordinance may be granted unless:

(A) There are special circumstances or conditions, fully described in the board's findings, which are peculiar to the land or building for which the adjustment is sought and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant subsequent to the adoption of the ordinance;

(B) For reasons fully set forth in the board's findings, the circumstances or conditions are such that the strict application of the provisions of the ordinance would deprive the applicant of the reasonable use of the land or building, the granting of the adjustment is necessary for the reasonable use thereof and the adjustment as granted is the minimum adjustment that will accomplish this purpose; and

(C) The granting of the adjustment is in harmony with the general purposes and intent of the ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(iii) Grant exceptions and variances upon request after a showing that an illegal construction or a nonconforming building or use existed for a period of at least five (5) years in violation of local ordinance and the city has not taken steps toward enforcement;

(iv) Reverse or affirm wholly or partly the order, requirement, decision or determination as necessary, but no power exercised under this paragraph shall exceed the power or authority vested in the administrative officer from whom the appeal is taken.

- c) To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the Department of Planning in the enforcement of this ordinance.
- d) To interpret the provisions of this ordinance in such a way so as to further the intent and purposes of the recommendations and policies of the duly adopted Comprehensive Plan.
- e) To authorize, upon appeal, such variances from the terms of the ordinance so it will not be contrary to the public interest whenever a property owner can

show that the strict application of any of the requirements of the ordinance would result in practical difficulty or unnecessary hardship that would deprive him of the reasonable use of his land or structure when compared to other land or structures similarly situated.

- f) To authorize upon appeal and in specific cases, an increase in the land area by a legal, existing, nonconforming use or structure on an existing lot or parcel of ground, or the floor area occupied by a legal nonconforming use in an existing structure, subject to terms and conditions fixed by the Board.
- g) To hear and decide on conditional use permits, where such uses would not be appropriate in the designated area unless controlled as to number, area and location, subject to terms and conditions fixed by the Board.
- h) Subject to the limitations set forth in this Section, the Board, by majority vote of the Board may reverse, affirm or modify the order, requirement, decision or determination appealed from and relating to the ordinance and may make such order, decision or requirements as ought to be made, and to that end, the Board shall have all of the powers of the official or agency appealed from. The Board may also attach conditions to a decision.

## **HEARING PROCEDURES**

- a) All parties may appear at the hearing with or without counsel or other representative of their choice;
- b) Each party, or their authorized representative, shall be permitted to inspect and copy, at their own expense at the office of the Board, all documents filed and all documents regarding the subject matter of the hearing contained in the files permitted by law to be inspected and copied.
- c) The hearing shall be reported verbatim, stenographically or by any other appropriate means determined by the Board. A copy will be furnished to any party upon written request to the Board and payment of a fee determined by the Board. If one or more parties desires the hearing transcribed by a certified court reporter, such parties must make the necessary arrangements and bear the cost. By agreement of the parties, court reporter fees and transcription charges may be shared;
- d) All board meetings are open to the public;
- e) Prior to hearing any case on the agenda, the Chairman shall swear in all persons who will testify;
- f) For any given case, the Chairman shall call the case number, petitioner's name, allow for opening remarks, then ask for testimony from the petitioner and receive his exhibits. The public or anyone supporting or opposing the petitioner then can ask questions (cross examination) of the petitioner. The Board may ask petitioner questions. Petitioner can then present his witnesses subject to cross examination. Upon completion of the petitioner's case, the opposing party or parties can present their witnesses and exhibits subject to cross examination.
- g) Once everyone has had an opportunity to testify, the Chairman shall close all testimony and the Board shall then hear closing remarks.
- h) A final decision or order adverse to a party in a contested case shall be in writing or dictated into the record. The final decision shall include findings of fact and

conclusions of law separately stated. Findings of fact if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail of any decision or order. A copy of the decision and order shall be delivered or mailed forthwith to each party or to his attorney of record.

## **VARIANCES**

- a) The Board of Adjustment may authorize, upon appeal, such variances from the terms of the ordinance as shall not be contrary to the public interest.
- b) The purpose of any variance shall be to modify the strict application of the requirements of the ordinance where it can be shown that, by reason of exceptional topography or other extraordinary or exceptional circumstances, literal enforcement of the terms of the ordinance will result in an unnecessary hardship to the extent that the property might be prohibited from being used in a manner similar to other property in the same district.
- c) Each variance authorized shall not be personal to the applicant but shall apply to a specific use or structure and shall run with the land. No variance shall be authorized unless the Board shall find that all of the following conditions exist.
  - (i) That the variance will not authorize a permitted use other than those specifically enumerated in the zoning district in which the variance is sought;
  - (ii) That owing to extraordinary circumstances, literal enforcement of the provisions of this ordinance will result in unnecessary hardship;
  - (iii) That the extraordinary circumstances were not created by the owner of the property and do not represent a general condition of the district in which the property is located;
  - (iv) That the variance, if granted, will not substantially or permanently injure any adjacent, conforming property;
  - (v) That the variance will not alter the character of the district in which it is located;
  - (vi) That the variance, if granted, is the minimum variance and the least modification that will afford the relief sought; and
  - (vii) That the variance will be in harmony with the spirit of the ordinance and will not adversely affect the public health, safety or welfare.

## **RULES FOR PROCEEDING BEFORE THE BOARD OF APPEALS AND VARIANCES**

- a) Appeals to the Board of Adjustment may be taken by any person aggrieved by any officer, department or agency of the City affected by any decision of the Department of Planning. Such appeal shall be made in writing on forms provided and shall be taken within 30 days from the date of the action appealed from.

b) Decisions of the Board of Adjustment in regard to appeals from an order or decision of any agency or official or in regard to variances from the provisions of the zoning ordinance shall be reached only after a public hearing. The Board shall fix a reasonable time and place for the hearing and shall proceed in accordance with the following rules:

- (i) Public notice shall be given of all hearings. Public notice shall consist of one publication of a notice by the City in a newspaper of general circulation at least 15 days prior to the hearing. The newspaper notice shall identify the applicant, shall briefly state the nature of the appeal or the variance sought and shall give the date, time and place of the hearing. All hearings shall be open to the public.
- (ii) At any public hearing, any interested party may appear in person or be represented by an agent or attorney and, after being duly sworn, may offer evidence and testimony and cross examine witnesses.
- (iii) All witnesses shall be sworn or shall affirm their testimony in the manner required in courts of record.
- (iv) All testimony and evidence shall be presented publicly.
- (v) The Board shall keep a record of the proceedings for each matter heard which shall be kept on file and copies made available to any party at cost. The record of proceedings may include documents and physical evidence considered in the case.
- (vi) The Board shall render a written decision on each case heard within 30 days of the hearing. Each decision must be accompanied by reasons therefore, and based on findings of fact. The record shall show the grounds for each decision and the vote of each member upon each question. The record of proceedings shall be a public record. In addition to this record of proceedings, the Board shall cause a description of each variance granted to be filed with the title of the affected property. The description shall include the nature of the variance, any time limitations and any special conditions imposed by the Board.

## **CONDITIONAL USE**

- a) Conditional uses are those that would not be appropriate in the designated area unless controlled as to number, area, and location, and include those set out in the Schedule of Zoning District provided by ordinance. Application for a conditional use permit shall be made to the Board of Adjustment and shall include any information the Board may require.
- b) Public notice shall be given of all hearings. Public notice shall consist of one publication of a notice by the City in a newspaper of general circulation at

least 15 days prior to the hearing and a public notice mailed to the property owners within 400 feet of the premises.

- c) The conditional use permit shall be granted only if after the hearing, the Board finds that the use will be compatible with the character of the area and will not adversely affect the public interest.
- d) The Board may subject conditional use permits to such conditions as it may deem necessary to preserve and protect the character of the area and the safety of the public. The subsequent violation of any condition shall be deemed a violation of this ordinance as well as grounds for revocation of the permit.
- e) If the petition protesting the proposed use and signed by 40% or more of the property owners within 400 feet of the premises is presented to the Board before a decision is reached, then the permit shall not be granted without the affirmative vote of three-fourths of all the Board members or the unanimous vote of those attending the hearing.

## **NON-CONFORMING USES**

- a) Structures, uses and lots which do not conform to the standards set forth in the Schedule of Zoning Districts on the effective date of this ordinance or as the result of subsequent amendments thereto, shall be permitted to remain or continue, but shall be required to have a Certificate Zoning Compliance. This section shall extend to unfinished structures where demolition, excavation, or permanent foundation placement has substantially begun prior to notice of hearing and work has proceeded diligently to completion of the structure.
- b) Nonconforming lots shall not be reduced below the minimum requirements of this ordinance except that multiple contiguous nonconforming lots of record under single ownership, existing at the effective date of this ordinance, may be sold as individual lots.
- c) The area occupied by any nonconforming use shall not be extended except by application to the Board of Adjustment. The Board shall permit the extension only if it finds that the character of the district will be preserved.
- d) Nonconforming structures may be altered, repaired or enlarged provided its degree of nonconformity is not increased.
- e) Nonconforming uses and structures shall not be permitted after:
  - (i) change to a conforming use or structure;
  - (ii) non use for one year or abandonment;
    - 1. condemnation of the structure under the Uniform Code for the Abatement of Dangerous Buildings as adopted in Title 3 of the City Code;
    - 2. destruction of more than 75% of the replacement value of the structure, however, this provision shall not apply to owners of record of this structure as of the effective date of this ordinance, who shall be allowed to replace such structure one time only under such conditions.

## **AMENDMENTS**

These rules may be altered, amended or repealed and new rules may be adopted by the Lander Board of Adjustment at any regular or special meeting of the Board of Adjustment.