

## **TOWN OF BLACK MOUNTAIN BOARD OF ADJUSTMENT EVIDENTIARY HEARING AND CONDUCT GUIDELINES**

An Evidentiary Hearing, also known as a Quasi-Judicial Hearing, occurs when an agenda item has been advertised and noticed according to the law; however, the Board of Adjustment acts like a court of law. During an Evidentiary Hearing, the Board of Adjustment receives **ONLY** sworn testimony and other credible evidence. In addition, the Board of Adjustment must make Findings of Fact based upon the evidence presented. Citizens may give testimony in an Evidentiary Hearing only **AFTER** they have taken an oath.

Because the Board of Adjustment functions in a different capacity during an Evidentiary Hearing, it uses a procedure form. Below is a summary of the procedures for an Evidentiary Hearing.

### **Call to Order:**

The Chair will call the hearing to order.

### **Approval of the Agenda:**

The agenda shall be approved [or amended if necessary].

### **Approval of the Minutes:**

Minutes from the prior meeting shall be approved.

### **Old Business/New Business:**

The Chairman shall announce the business at hand. Each applicant will be handled separately, one after the other.

### **Outline of Hearing Conduct/Rules of Procedure:**

The Chair reads the opening statement which explains what types of cases the Board hears and that the Board essentially acts as a court of law. There is a burden upon the applicant to meet the criteria found in the Town of Black Mountain Land Use Code. Anyone opposed to the application must put on evidence of a similar kind showing the criteria has not been met.

**Testimony must be given under oath.** All testimony and evidence provided to the Board must be competent, material, and substantial. Pursuant to North Carolina General Statutes, competent evidence does not include opinion testimony of lay witnesses on certain matters. Hearsay evidence will not be admitted. The Board will apply the criteria contained in the Town of Black Mountain Land Use Code and make its decision based on the evidence and testimony presented at the hearing. The role of the Town Attorney during the hearing is to monitor all evidence and testimony to ensure that it complies with North Carolina Law, The Town's Land Use Code, the Rules of Procedure, and all other applicable documents.

Oaths:

Oaths shall be administered to all persons wishing to present testimonies, including staff.

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### **Conflict of Interest/Bias/Ex Parte Communications:**

The Chair will ask if any member of the Board has any of the following possible disqualifications from hearing or voting on this case. Impermissible conflicts include, but are not limited to: a fixed opinion prior to hearing the matter that is not susceptible to change, an undisclosed ex parte communication, a financial interest in the outcome of the matter, or a close familial, business, or other associational relationship with an affected person or entity. If an objection is raised to a member's participation and that member does not recuse himself/herself, the remaining members shall, by majority vote, rule on the objection. The member may excuse himself/herself because of the potential conflict, or may ask the Chair to make a determination. The Chair shall announce any recusals prior to the hearing.

### **Staff Report:**

The Zoning Administrator will give a preliminary statement describing the case and provide any staff findings.

### **Applicant Testimony:**

The applicant shall be called to present his/her case. If the applicant or a representative is not present to give testimony, the Chair shall call for a vote of the members present to continue the hearing for 30 days. The applicant shall be notified of such action. The Chair, with the advice of the Town Attorney, shall be responsible for keeping testimony relevant and factual.

Members and other sworn witnesses can cross examine the witness. Each questioner will get one opportunity to ask questions unless based on new evidence or questions asked since that person had an opportunity to ask.

### **Opposition Testimony:**

Those speaking in opposition to the application shall be called upon to present their case. The Town Attorney shall be responsible for keeping testimony relevant and factual.

Members and other sworn witnesses can cross examine opposing testimony. Each questioner will get one opportunity to ask questions unless based on new evidence or questions asked since that person had an opportunity to ask.

### **Applicant Rebuttal:**

The applicant and/or those in support of the application shall be provided an opportunity to rebut testimony provided by the opposition. The Board may also ask questions of the applicant at this time.

### **Opposition Rebuttal:**

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Those in opposition to the application shall be provided an opportunity to rebut testimony provided by the applicant. The Board may also ask questions of the opposition at this time.

### Hearing Summary:

Before voting to close the hearing, the Chair and the Clerk to the Board will summarize the evidence that has been presented, giving the parties opportunity to make corrections or objections. Also, staff should designate any conditions that the Board should consider.

### Deliberation:

The Board will take a recess to deliberate the application. All deliberates are open to the public and additional testimony is NOT taken during deliberations. Once called into deliberation, no person may address the Board and no questions may be asked by the Board to the public or staff. During this time, the Board may find they have more questions for the application, the opposition or staff.

### Close the Hearing:

After the Board has asked all questions of the application, opposition and staff, the Board will vote to close the evidentiary hearing. At this time, no more evidence or testimony will be gathered or taken and no more questions may be asked.

### Action – Findings of Fact:

Once the deliberations have taken place and the evidentiary hearing has been closed, the board shall discuss each finding of fact in turn and a vote shall be made on each selecting if the findings of fact are yes/true or no/false.

Special use permits and appeals require a majority vote of members present for approval. Variances require a 4/5<sup>th</sup> majority vote of members present for approval.

### Action – Application Approval/Denial

Once the findings of fact have been decided and based on the results of the evaluation and vote on those findings of fact, the application will either be approved for denied. Failure of any single criteria to achieve majority approval by the Board shall necessitate a decision against the application. A majority vote for approval for all criteria shall necessitate a decision in favor of the application.

### Reports and Other Business:

Staff shall report any other business or information to the Board that they may find relevant about upcoming meetings or procedures.

### Adjourn:

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The Board shall make a motion to adjourn the meeting.

For any information regarding Evidentiary Hearings, please contact the Planning and Development Department at 828-419-9300, option 4. Agendas will be added to our webpage at [www.townofblackmountain.org](http://www.townofblackmountain.org) one week before the hearing(s).