



City of O'Fallon, Missouri

Council Chambers of the O'Fallon Municipal Centre 100 North Main Street, O'Fallon, Missouri

BOARD OF ADJUSTMENT / BY-LAWS

PROCEDURAL FORMAT AND RULES OF ACTION

In conjunction with the rules and requirements established for the formation and operation of the Board of Adjustment that are listed in Article XVII of Title IV of the Municipal Code of the City of O'Fallon, the Board of Adjustment has established and adopted the following additional rules and procedures that state and clarify both the powers specific to this Board, and the responsibilities of all persons appearing in front of the Board seeking relief from the requirements of the City's Municipal Code or appeal of an administrative judgment.

Part 1: Board Establishment.

The O'Fallon Board of Adjustment is established by an ordinance which is contained within Title IV of the City's Municipal Code. Specifically the establishment clause is contained within Section 400.690 of the Zoning Code.

1. The Board shall consist of residents from each ward with a goal of maintaining an equal representation of all wards. These residents shall have been appointed by the Mayor with the consent of the Council.
2. Members of the Board shall serve without compensation.
3. Any changes to the structure, duties, or purview of the Board must be in compliance with RSMo Chapter 89 and the City's Home Rule Charter.

Part 2: Board Membership.

The body of the Board will consist of eight (8) members total, five (5) full members and three (3) alternates, as prescribed in the Zoning Code. However, should the membership change, the following standards will apply:

1. If a full member of the Board vacates their position for any reason, the most senior alternate shall be moved into the vacant slot and have their status upgraded to full member, serving out the rest of the vacated term.
2. If an alternate member of the Board vacates their position for any reason, a new alternate will be appointed as prescribed by City Ordinance.

Part 3: Selection of Board Officers.

The regular members and alternate members of the Board of Adjustment shall elect their own Chairman and Vice-Chairman who shall each serve for a one (1) year term. It shall be noted that Board Officer Candidates may not be elected from among the alternate members.

1. The elections shall be conducted as the last item of new business on the January agenda each calendar year.
2. If for some reason the elections cannot be held in January, they will automatically be rescheduled to the successive meeting.

3. The one year term will be based on a calendar year not a rolling year. Even if the elected officers have not served a full one (1) year term (due to the elections being held after January the previous calendar year) new officers will be elected every January.
4. Sitting officers may be re-elected to consecutive terms.
5. Any officer elected by the members of the Board may be removed at any time without cause by the affirmative vote of two-thirds (2/3) of the entire membership of the Board. Any vacancy occurring in any office shall be filled for the unexpired term thereof by the members in the same manner as provided for elections.
6. The nomination and election of officers shall be in accordance with HENRY M. ROBERT III, ET.AL, ROBERT'S RULES OF ORDER NEWLY REVISED, (10th ed., Perseus Publishing 2000) and these By-Laws.

Part 4: Board Duties.

To authorize in specific cases a variance from the specific terms of these Regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these Regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these Regulations shall be observed, public safety and welfare secured, and substantial justice done.

Part 5: Submission of Items for Board Consideration.

Before a case may be brought to the Board for consideration, the applicant must submit, in writing, a request for consideration. This is accomplished by filling out an application that is provided to the applicant by City Staff. In addition to the application, the submittal should include supporting documentation that explains the nature of the request. If this information is not submitted, the application will not be considered complete. The completeness of an application is determined by its ability to both meet the standards set forth in Section 400.710 of the Zoning Code, as well as provide the following:

1. A site plan shall contain a complete set of notations and descriptions that supply the City Staff with all relevant site plan information.
2. As part of the application, the applicant will be asked to supply written statements from adjoining property owners stating that they have no objection to the variance request since the concerns of the adjoining lot owners are taken into account by the Board when they render their decision. However, it should be noted that a variance request will not be refused (i.e. the Board will still hear the request) if the applicant is unable to obtain the statements.

Part 6: Meetings.

All of the Board's proceedings are considered public hearings and are open to anyone who wishes to attend, whether they have an item on the agenda or not.

1. Regular meetings will be held on the second Wednesday of each month at City Hall, at the O'Fallon Municipal Centre, 100 N. Main Street, O'Fallon, Missouri 63366, or such other time and place as may be determined from time to time by the Board.
2. Four (4) members of the Board must be in attendance at a meeting to constitute a quorum. If the Board meets with only the minimum number available, a unanimous vote of all members shall be necessary to grant a variance. If the Board meets with more than the minimum number available, it will take at least four (4) votes in the same direction to grant a variance. Each member is entitled to one (1) vote. A record of the vote shall be kept as part of the minutes.
3. All meetings shall be open to the general public.
4. A record of the Board's proceedings at all regular and special meetings shall be kept and such records shall be public records. The Custodian of Records for the Board shall be the custodian of records for the City of O'Fallon, Missouri.

5. The Board shall conduct meetings in accordance with Henry M. Robert III, et.al, Robert's Rules of Order Newly Revised, (10th ed., Perseus Publishing 2000).

Part 7: Format for Regularly Scheduled Meetings.

When an item is presented to the Board for consideration, the case is being adjudicated by a "Quasi-Judicial" body. As such, the Board is given leeway to operate in much the same manner as an Appeal's Court. All presentations to the Board, and all Board deliberations and votes are done publicly during the scheduled meetings. Presentation, discussion, and voting takes place as follows:

1. The members of the Board shall receive written copies of all materials relevant to the cases on the agenda approximately one week prior to the scheduled meeting date. This includes the information submitted by the applicant as well as the analysis prepared by Staff.
2. During the scheduled meeting, the pertinent background information for each case is presented to the Board by a Representative of City Staff.
3. After Staff has presented, the applicant is then given the chance to make a presentation supplying any relevant information that they may have. This is the time when the Board will ask questions of the applicant or ask for clarification of any items contained within the submittal if needed.
4. After both sides have presented, the Chair will open the floor for additional testimony from persons in attendance having an interest in the case.
5. Once the Board has concluded their inquiry and deliberations, they will vote on the pending item.
6. Once all items have been reviewed, the meeting will be adjourned.

Part 8: Applicant Presence and/or Representation.

As stipulated under the Missouri Sunshine Law, Board of Adjustment meetings are public meetings and may be attended by anyone. An official record is kept of all of the meetings proceedings and final actions of the Board. The meetings are scheduled in advance; currently the City has a regularly scheduled meeting on the second (2nd) Wednesday of each month. Additional meetings may be held at the Chairman's request as called out in Section 400.700 of the Zoning Code. Items on the agenda for a regular meeting are subject to the following:

1. If an item is placed on the agenda for Board consideration and, at the time of the meeting, the applicant is in absentia (no one is present to represent the applicant), the Board may take action on that item based solely on what has been submitted by the applicant on their written application.
2. Anyone wishing to address the Board must step to the podium to be recognized; they must provide their name, their address, and their relationship to the pending case.
3. Anyone wishing to address the Board must be sworn in under the following oath: "Do you solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?"
4. Anyone of the applicant's choosing may represent them at the meeting; however, if the applicant is represented by legal counsel wishing to argue a point of law, the Board will suspend the proceedings until the City's legal counsel can be present to represent the Board. (The Board may go into "Closed Session" in order to confer with legal counsel.)

Part 9: Addressing the Board.

The only items that may be addressed during a session are the items that have been listed on the agenda. Additional items can only be presented for consideration if the agenda allows for new items to be introduced at the end of a meeting. Even with this, it is at the discretion of the Chair to open the floor to new items with the query, "Does anyone else have an item that needs to be brought before the Board for consideration?" If someone has a new item to present that is not on the agenda, it may only be discussed at this time after all other items have been closed and the Board accepts the request to hear it. If the Chair opens the floor the applicant may present his item under the following conditions:

1. If the person is providing testimony for an agenda item, the information presented must be relevant to item that is on the agenda for Board consideration.
2. If the person is providing testimony for an agenda item, they must limit their comments to new relevant information and refrain from repeating the same points over and over again.
3. If the person is providing testimony for a non-agenda item, it must be a general question or information item; the speaker may not request the Board to take action on an item that would require a formal submittal.
4. If the person is providing testimony for a non-agenda item, the item must not be a request to appeal a previous Board decision.
5. If the person is providing testimony for a non-agenda item, the item must not be a review of an item that is outside the purview of the Board of Adjustment.

Part 10: Subcommittees.

The Chairman may, with the consent of the Board, establish a Sub-Committee. The Chairman may appoint members of the Board to serve on the Sub-Committee. All committees shall provide reports and or recommendations at formal meetings for consideration or approval.

Part 11: Board Deliberation and Voting.

At any time during the presentation of an item to the Board, a Board Member (or designated Alternate) may request a vote on an open item (the item currently under discussion) by making the appropriate motion. If no motion is made by a Board Member then the Chair may solicit a motion in order to take action on a pending item. No matter whether the motion is made by a Member or by the Chair once the motion is made the following rules will apply:

1. If at any time one of the voting members cannot vote on an item due to a conflict of interest, they must abstain from the vote and the Chair will designate one of the alternates to vote in their place.
2. All motions calling for a vote must be made in the affirmative.
3. Once a vote has been called for, the Recording Secretary will conduct a Roll Call vote of each voting Board Member. The Board Members will vote one at a time and the individual votes recorded to determine if a concurring vote of four (4) Board Members has been reached as described in Section 400.705 of the Zoning Code.
4. If the item does not receive enough votes in the "affirmative" to pass, that constitutes the same as a "denial".

Part 12: Administration of the Board's Decision.

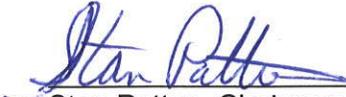
A wide variety of cases fall within the purview of the Board of Adjustment. Most of them will be requests for relief from a specific requirement of the City Zoning or Subdivision Code, and appeals of administrative decisions. The Board may act on these in any manor prescribed in Section 400.705 of the Zoning Code. However, the applicant should be advised that there are conditions that go along with certain Board actions:

1. If an item presented for Board consideration is "approved" the Board may choose to make that approval contingent on certain conditions being met. These conditions become part of the project requirements and will be reviewed during subsequent inspections; failure to meet these conditions will void the approval.
2. If an item presented for Board consideration is "tabled" for any reason (by either the Board or the Applicant), the item must be taken off of the table and either brought forward or withdrawn within 90 days from the date that it was tabled. Otherwise, the item will be removed from the table and summarily denied due to lack of action.

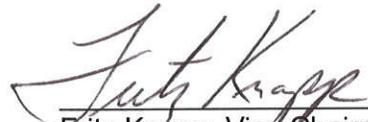
Part 13: Amendments.

From time to time these By-Laws may be altered, amended or repealed and new By-Laws may be adopted by the Board after ten (10) days' written notice of the proposed alteration, amendment or change has been given to each member of the Board, provided that no alteration, amendment or change shall be made without the affirmative vote of a two-thirds (2/3) of the entire membership of the Board. Any such change shall be by resolution of the Board.

PASSED AND APPROVED this 12th day of January, 2011, by the Board of Adjustment of the City of O'Fallon, Missouri.



Stan Patton, Chairman



Fritz Knapp, Vice Chairman



Jack Hartzell



John Callahan



Teresa Price