

Article XIV: Board of Adjustment

Section 1 Creation

The Town Board hereby creates a Board of Adjustment, (the Board), pursuant to Minnesota Statutes 462.354, Subdivision. 2. as amended and all acts amendatory thereof, consisting of three (3) members.

Section 2 Composition

There shall be three (3) members, all of whom shall be residents of The Town of Duluth, in the following member categories:

- A. **Supervisor.** A Town Board Supervisor shall serve as one member.
- B. **Resident.** The Town Board shall seek out and appoint a resident from the community.
- C. **Planning Commission.** The Planning Commission shall appoint one of its members to serve on the Board.

Section 3 Appointments

- A. **Method of Appointment.** Appointments to the Board of Adjustment are to be made in the following manner.
 - 1. At the first required meeting of the Town Board in each calendar year, the Town Board shall:
 - a. Appoint a resident from the community.
 - b. Designate which of the Supervisors will serve on the Board of Adjustment
 - 2. At the first normally scheduled meeting at the start of the calendar year, the Planning Commission shall designate which member will serve on the Board.
- B. **Terms of Appointment.** Terms of appointment shall follow the standards provided below.
 - 1. Each member of the Board shall serve for one (1) calendar year.
 - 2. Each calendar year shall run from the date of the first required meeting of the Town Board to the first required meeting in the following year.
 - 3. No person shall be appointed for more than three (3) consecutive full terms of office.
- C. **Vacancies.** Vacancies shall be filled using the procedures below.
 - 1. Appointments shall be made by the respective entity whose position was vacated for any vacancy created during the term. Such appointment will be made at the earliest possible convenience of the appointing entity.
 - 2. Vacancies will be declared under the following conditions:
 - a. Death of a member
 - b. Resignation of a member
 - c. Removal for cause as stipulated below.
- D. **Removal for cause.** The following shall be deemed sufficient cause for the Town Board to remove any Board of Adjustment member. The Town Board shall remove any member upon the occurrence of any of the following conditions as reported to the Town Board by either the Chairperson of the Board of Adjustment or the Planning Director.
 - 1. Failure of the member to attend one-third (1/3) of the regularly scheduled Board of Adjustment meetings in any twelve (12) month period. The twelve (12) month period is defined as commencing from the date of the first required meeting of the Town Board in a given year to said meeting date in the next following calendar year.

2. Failure of the member to attend three (3) consecutive regular Board of Adjustment meetings, or to attend four (4) consecutive regular and special Board of Adjustment meetings in a year (as defined in **Item D-1**, above).
3. Attendance at several regular or special Board of Adjustment meetings for such a short length of time as to render the member's services of little value to the Town. The Town Board shall make judgment on such matters after receiving a report of the Chairperson or Planning Director as provided in this section above.
4. Violation by the member of any land use control ordinance adopted by the Town pursuant to Minnesota Statutes 366.1 and all acts amendatory thereof.
5. Any change in residency status from the Town.
6. Inability to carry out the duties of the Commission due to a conflict of interest.

Section 4 Organization and Procedures

- A. Officers.** The Board of Adjustment shall:
1. Elect a Chairperson
 2. Elect a Vice-chairperson
 3. Appoint a Secretary who need not be a member
- B. Rules of Procedure.** The Board shall adopt rules for the transaction of its business that shall be consistent with the Statutes of the State of Minnesota and this Ordinance.
- C. Meetings.** Meetings shall following the standards listed below.
1. Meetings shall be held at the call of the chairperson and at such other times as the Board in its rules and procedure may specify.
 2. All meetings of the Board are open to the public pursuant to Minnesota Statutes.
- D. Voting.** Voting shall follow the standards and procedures listed below.
1. Each regular member, including the chairperson, shall be entitled to vote on all questions, unless a particular issue involves a conflict of interest. A decision to abstain from voting, due to a potential conflict of interest, shall also extend to discussion. Testimony, however, may be offered.
 2. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by agreement of the two members not being challenged.
 3. Any member who believes he or she may have a conflict of interest, or who has a relative who has an interest in any decision to be made by the Planning Commission shall disclose such interest and either disqualify him or herself or seek a ruling pursuant to **Item 2**, above.
 4. Any person may, in person or in writing, challenge whether any member may have a conflict of interest. Upon any such challenge, the Board shall decide the question pursuant to **Item 2**, above.
- E. Records.** The Board shall keep a written public record of all its transactions, findings, and determinations on all matters referred to it, and shall record such records as necessary pursuant to Minnesota Statutes.

Section 5 Authority and Duties

- A. Appeals.** The Board of Adjustment has authority to hear appeals in the following circumstances.
1. The Board shall have the exclusive authority to hear and decide appeals from and review any order, requirement, decision, or determination made by the Planning Director.
 2. The Board may reverse or affirm wholly or partly or may modify any order, requirement decision, or determination appealed from and taken to that end will have all the powers of the officer from whom the appeal was taken and may direct issuance of the permit.

3. Appeals shall be taken to the Board of Adjustment within forty-five (45) days of receipt of the notice from the Planning Director or any order, requirement, decision, or determination made by the Planning Director.
 4. Appeals shall be submitted to the Board within 30 days of receipt of:
 - a. Notice from the Planning Director of any order, requirement, decision or determination made by him/her.
 - b. Decisions made by the Planning Commission regarding conditional uses and variances.
 5. The Planning Commission and/or The Planning Director shall transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- B. Public Hearings.** The Town of Duluth has determined that public hearings are in the public interest.
1. The Board shall conduct public hearings on all variance appeals and other appeals_brought before it.
 2. The Board of Adjustment will set a reasonable time for hearing of all appeals and give due notice to the applicant and the officer from whom the appeal is taken to the public as prescribed by Minnesota Statutes and the applicable ordinances of the County and the Town.
 3. Notification will be determined by:
 - a. Extent of the effects (including effect on natural resources, visual effects, and social effects) the case.
 - b. Intensity of the effects of the case.
 - c. Duration of the effects of the case.
- C. Notification.** At a minimum, if there were a prior public hearing, the same area of impact for notification would be notified of the appeal. The Board shall set a reasonable time for hearing all appeals and give due notice to the appellant and the deciding entity, pursuant to Minnesota Statutes and applicable ordinances of St. Louis County and the Town of Duluth.
- D. Decisions.** Decisions by the Board of Adjustment must meet the following standards.
1. Decisions by the Board shall be made on all appeals within thirty-five (35) days from the date the public hearing was closed.
 2. Reasons for the decision(s) shall be stated in writing.
 3. All decisions made by the Board Of Adjustment in granting variance or in hearing appeals from any administrative order, requirement, decision or determination or in granting any permit, shall be final except that any aggrieved person or persons, or any department board, or commission of the jurisdiction or of the State shall have the right to appeal within thirty (30) days after receipt of notice of the decision, to the District Court in St. Louis County on questions of law and fact.
- E. Decision Criteria.** Criteria for decisions shall be based upon the Planning Commission and/or Planning Director's:
1. Rationale and consistency in following this Ordinance.
 2. Finding of Fact.
 3. Interpretation of achieving the goals and visions in the Comprehensive Plan.
 4. Other criteria the Board deems appropriate and their reason for considering it in rendering a fair and just decision.
- F. Other Duties and Authority.** The Board shall also have duties and authorities as defined by other Ordinances of the Town of Duluth.
- G. Compensation.** Compensation for members of the Board of Adjustment shall be determined by the Town Board. Compensation may be paid for necessary expenses in attending meetings of the Board of Adjustment and in the conduct of business of the Board of Adjustment.