



EDGEWATER BOARD OF ADJUSTMENT & APPEALS

Held at 1800 Harlan St.

Edgewater, CO 80214 AND

<https://global.gotomeeting.com/join/598481245>

United States: +1 (571) 317-3122

Access Code: 598-481-245

September 18, 2024

5:00 p.m.

****Requests for ADA accommodations (including American Sign Language interpretation or CART) can be made by emailing cityclerk@edgewaterco.com****

Public Comment: The public is invited to be heard during the Public Comment portion of the meeting. During Public Comments you may address any topic or issue with the Board. The Board may not respond to your comments opting to take your comments and suggestions under advisement. Your questions will be directed to the appropriate person or department for follow-up.

3 or more City Council or Board Members may attend this meeting.

Item 1. Call to Order

Item 2. Roll Call

Item 3. Pledge of Allegiance

Item 4. Approval of Agenda

Item 5. Public Comment (Non-Agenda Items)

Item 6. Consent Agenda

1. Minutes – May 15, 2024

Item 7. General Business

1. Board Vacancy Interviews

a. Larry Welshon

b. Colin Desmond

2. Rules of Procedure Updates

Item 8. Public Comment

Item 9. Board Member Comments

Item 10. Upcoming Agenda Items; Staff Comments

Item 11. Adjournment

BOARD OF ADJUSTMENT & APPEALS
May 15, 2024
5:30 p.m.

Item 1. Call to Order

Chair Fleck called the meeting to order at 5:40pm.

Item 2. Roll Call

Deputy City Clerk Sofia Mitchell called the roll.

Present: Chair David Fleck, Board Member Martin Thomson,
Board Member Madeline Burnham.

Also Present: Deputy City Manager and Community Development Director
Jocelyn Mills, and City Attorney Carmen Beery.

Full and timely notice of the meeting was given and a quorum was present

Item 3. Pledge of Allegiance

The pledge of Allegiance was recited.

Item 4. Approval of Agenda

Board Member Thomson made a motion to approve the Agenda as
presented. Seconded, and passed unanimously.

Item 5. Public Comment (Non-Agenda Items)

None.

Item 6. Consent Agenda- Approval of the meeting minutes for April 17, 2024

Board Member Burnham made a motion to approve the Consent Agenda
as presented. Seconded, and passed unanimously

Item 7. General Business

1. Public Hearing - Resolution 2024-02

Public Hearing was opened at 5:46

Deputy City Manager and Community Development Director Jocelyn Mills
gave the Staff Report, and addresses an email sent by Edgewater resident
Larry Welshon.

Chair Fleck and Board Member Thomson questioned if the Variance was extraordinary or exceptional, as per Code Section 16-24-60(a), the Variance criteria for approval.

Variance applicant Scott Zimmerman was sworn in and gave testimony. He addressed his reasons for believing his property fit the Variance criteria.

Board Member Thomson asked the applicant how the Variance would affect the neighborhood.

Board Member Burnham asked the applicant if he was aware of the environment of the neighborhood with which he is justifying his request for the variance.

Applicant Zimmerman responded and said he was not aware of the extent it would affect him.

Resident Larry Walsh is sworn in and gives testimony. Resident Walsh emphasized the Boards requirement to approve variances based on the criteria only, and questioned how the Applicant meets the criteria, and commented on the fairness to other residents if this application is approved.

No additional Staff Comments.

Scott reiterated his property as qualifying for the Variance.

Public Hearing was closed at 6:15

Discussion and Possible Action on Resolution 2024-02, A RESOLUTION APPROVING AN APPLICATION FOR A VARIANCE FROM CODE SECTION 16-20-40 TO ALLOW THE MAXIMUM REAR AND NORTH SIDE YARD FENCE HEIGHT AT 2501 LAMAR STREET TO EXCEED THE MAXIMUM HEIGHT BY 30 INCHES

Chair Fleck and Board Member Thomson Compared the situation of the Property and the Applicant's reasoning to request the Variance to the situation of properties such as Memorial Park's and is therefore not extraordinary or exceptional.

Board Member Burnham commented that the zoning of the property is in R – 1 zoning, which does not suggest the same use as an area zoned for a park, although it is used in similar ways to a park. For this reason, the Variance is therefore extraordinary or exceptional.

Chair Fleck commented that the same reasoning for the Variance as made by the Applicant can be created by change in neighborhoods, such as a two-level house being built next to a one level house, and is therefore not extraordinary or exceptional.

Board Member Thomson commented that it would cause an adverse effect on the neighborhood because of the aesthetics which he claims appears hostile.

Board Member Thomson motions to deny Resolution 2024-02, A RESOLUTION APPROVING AN APPLICATION FOR A VARIANCE FROM CODE SECTION 16-20-40 TO ALLOW THE MAXIMUM REAR AND NORTH SIDE YARD FENCE HEIGHT AT 2501 LAMAR STREET TO EXCEED THE MAXIMUM HEIGHT BY 30 INCHES, seconded by Chair Fleck.

Chair Fleck approves the Motion to deny Resolution 2024-02, Board Member Thomson approves the Motion to deny Resolution 2024-02, Board Member Burnham denies the Motion to deny Resolution 2024-02.

The Motion to Deny Resolution 2024-02 passed 2-1.

2. Interview for Vacant Seat

a) Gary Cure

Appeared in-person and was interviewed by the Board Members

Board Member Thomson made a motion to send Gary Cure's interview notes to Mayor Conklin. Seconded, and passed unanimously.

3. Rules of Procedure Update

Board Member Burnham made a motion to recommend to City Council the approval of the Board of Adjustment and Appeals Rules of procedure update as amended with Section Six, as discussed, highlighted, and stricken. Seconded, and passed unanimously.

Item 8. Public Comment

Resident Larry Welshon explains his understanding of the Board of Adjustment and Appeals and asks that the Board applies high standards to the variance applications as per Municipal code and the Criteria as stated in Code Section 16-24-60(a) and with little bias.

Item 9. Board Member Comments

Board Member Thomson - None

Board Member Burnham – None

Chair Fleck – Appreciates Citizens who are part of Board of Adjustment and appeals as well as those who have applied to be part of it and emphasizes the beneficial result of this involvement as introducing diversity of experiences.

Says the Variance tonight was difficult to decide and appreciates the Applicant's willingness to take part in the process and the Board Members integrity in their decision.

Item 10. Upcoming Agenda Items; Staff Comments

Deputy City Manager and Community Development Director Mills – None

City Attorney Carmen Beery – Appreciates the Board Members for addressing specific parts of the Variance approval Criteria during the discussion on Resolution 2024-02.

Item 11. Adjournment

Chair Fleck Adjourned the meeting at 6:52

APPLICATION FOR APPOINTMENT TO THE CITY BOARDS AND COMMISSIONS/OTHER ENTITIES

Name: Larry Welshon

Home Address: _____

Street _____ City _____ State _____ Zip Code _____

Home Phone Number: _____ Mobile: _____

Email: _____ Employer: _____

Work Address: _____

Address _____ City _____ State _____ Zip Code _____

Work Phone Number: _____ Work Email: _____

Please describe your type of work: I am a teacher and administrator.

Please indicate which board/commission/entity you are applying to:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Board of Adjustments and Appeals | <input type="checkbox"/> Volunteer Firefighter Pension Board |
| <input type="checkbox"/> City Council (for appointments only) | <input type="checkbox"/> Edgewater Redevelopment Authority |
| <input type="checkbox"/> Election Commission | <input type="checkbox"/> Planning & Zoning Commission |
| <input type="checkbox"/> Parks, Recreation, Historic Preservation & Arts Advisory Board | |

When did you move to the City of Edgewater: _____

Are you a registered elector? Yes No

Are you an elected official, officer or employee of the City of Edgewater? Yes No

Have you ever been convicted of embezzlement, bribery, solicitation of bribery? Yes No

perjury, subornation of perjury or any offense involving fraud? Yes No

Would you be able to devote the time necessary to fulfill your obligation as a member? Yes No

Please state the reasons for your interest (attach additional sheets if necessary): Please see attached.

What contributions do you feel you can make to this entity; please be as specific as possible (attach additional sheets if necessary): Please see attached.

What previous work experience, civic activity or other volunteer service would you bring to this position? (attach additional sheets if necessary): Please see attached.

Oath of Application

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge and belief.

	Printed Name	Date
[REDACTED]	Larry Welshon	5/16/2024

Statement to the Board of Appeals and Adjustment
from Larry Welshon
May 16, 2024

Thank you for allowing me the opportunity to speak with you about my interest in serving as a member of the Board of Adjustment and Appeals. I'll speak about my background first then address what qualifies me to serve on the Board of Adjustment and Appeals.

I grew up at [REDACTED] just west of here. By the time I was 17 in [REDACTED] I began my association with Edgewater. It was in that year that I met a Jefferson Saint on a blind date. She would eventually be my wife and we would begin our married life together at [REDACTED]. We raised our children to adulthood here and I have every intention to age in place. I'm excited at the prospect of serving on the BOA and to be an active part of our civic process.

After receiving my BA in History and MA in educational administration, my wife and I started a small school for our children at [REDACTED]. It's called [REDACTED]. Why is this relevant to my interest in BOA. Briefly, the school we started and where I'm still employed is a self-governing community that holds as its core value the rule of law. I have spent the last [REDACTED] years at [REDACTED] practicing what I preach in terms of following due process of law. It may be interesting for you to know that the students and staff at my little school, each of whom has one vote, make all the rules and enforce the rules through deliberative and judicial bodies that are scaled down versions of our larger society. It is not an overstatement for me to claim that I've been making and adjudicating law for [REDACTED] years.

Although I have not regularly attended your meetings I do keep an eye on your actions. As some of you may know, I do attend the City Council meetings and have done so for a very long time. I would like to serve our community by being appointed to the Board of Adjustment and Appeals.

(continued on next page)

This board is the only apolitical board in the city. Since BOA does not directly influence policy, politics should not matter. If appointed, I will faithfully serve in my quasi-judicial role safeguarding the rule of law that protects us as citizens. What do I mean by this?

As a Board member I will bring no bias as to the outcome of the proceedings. I am comfortable and experienced in making decisions based only on the evidence presented to us during public hearings. This is the very essence of the rule of law. By scrupulously following our written law, we are able to protect our fellow citizens from potential arbitrary or capricious acts of the City as it administers chapters 16 and 18 of our municipal code. I have watched countless hearings at City Council and thoroughly understand that while sitting as a member of a quasi judicial board we must make our decisions based only on the evidence presented in open testimony before all parties. Having sat thru several of Thad's and Carmen's legal training on Quasi-Judicial and Ex Parte communications over the years and then having seen many hearings at City Council, I'm confident that if appointed, I can step into this critically important role and serve well right off the bat. This board doesn't meet often but when you do, you must perform your duties well.

I've read, from time-to-time, this Board's decisions. There's not that many of course. But in each instance, a fellow citizen has brought their appeal or their request for a variance to you in the hope that they will be treated fairly. For them, these requests are crucially and dearly important. For your part, as Board members, you have to follow the law as it is written. There is nothing more important than this for the continuation of our unique form of government.

As Board members we must be compassionate and at the same time, we must follow the law. Chapter 16-24-60 of our municipal code spells out very clearly that variances shall not be approved unless a set of criteria are met. This is a tough position and not for the faint of heart! The criteria for variances are really strict and if chosen I will very likely have to disappoint people who may be neighbors. Just as we are protecting the citizens from potentially arbitrary and capricious decisions of the City, we must at the same time hold ourselves to that very high standard. Our decisions must be based on evidence presented in public hearings. Our decisions cannot be made by emotions such as feeling sorry for them or thinking that our law may be too strict. This latter issue is not within our purview. We must follow the law.

(continued on next page)

These formal proceedings are uncomfortable for most people. If appointed to this position, I will do my very best to explain clearly to my fellow citizens how the process works with the utmost compassion and understanding. I'm confident I can do this. I've been explaining due process and the importance of law to my students and their parents from time to time for close to [REDACTED] years.

Whether it's hearing and deciding appeals or hearing applications for variances from the requirements of chapter 16 and 18 I will faithfully serve the process that ultimately protects citizens especially when those decisions cause my fellow citizens disappointment.

I hope that I've communicated to you that I value Edgewater, its citizens and our process. I'm happy to answer questions. Thank you.



1800 Harlan Street
Edgewater, Colorado 80214
www.edgewaterco.com

APPLICATION FOR APPOINTMENT TO THE CITY BOARDS AND COMMISSIONS/OTHER ENTITIES

Name: _____

Home Address: _____

Street _____ City _____ State _____ Zip Code _____

Home Phone Number: _____ Mobile: _____

Email: _____ Employer: _____

Work Address: _____

Address _____ City _____ State _____ Zip Code _____

Work Phone Number: _____ Work Email: _____

Please describe your type of work: advise small / medium-sized businesses on ownership transition. also have software eng consulting job.

Please indicate which board/commission/entity you are applying to:

- | | |
|---|--|
| <input type="checkbox"/> Board of Adjustment and Appeals | <input type="checkbox"/> Volunteer Firefighter Pension Board |
| <input type="checkbox"/> City Council (for appointments only) | <input type="checkbox"/> Edgewater Redevelopment Authority |
| <input type="checkbox"/> Election Commission | <input type="checkbox"/> Planning & Zoning Commission |
| <input type="checkbox"/> HARP – History, Arts, Recreation & Parks | <input type="checkbox"/> Other _____ |

When did you move to the City of Edgewater? _____

Are you a registered elector? Yes No

Are you an elected official, officer or employee of the City of Edgewater? Yes No

Have you ever been convicted of embezzlement, bribery, solicitation of bribery, perjury, subornation of perjury or any offense involving fraud? Yes No

Would you be able to devote the time necessary to fulfill your obligation as a member? Yes No

Please state the reasons for your interest (attach additional sheets if necessary): _____

I feel a moral responsibility to be engaged in local governance to the extent it is useful. I also find the work interesting.

What contributions do you feel you can make to this entity; please be as specific as possible (attach additional sheets if necessary): _____

It's an appeals board, so I can't offer much soaring rhetoric, but I am quite confident I have the critical thinking skills to meet the requirements. I am also deeply attune to the way neighborhoods are developed, having lived in some incredible ones and some rather dreary ones, so can assure you I will think critically about the tradeoffs with each situation.

What previous work experience, civic activity or other volunteer service would you bring to this position? (attach additional sheets if necessary): _____

For BoA, not much.

Oath of Application		
I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge and belief.		
Authorized Signature	Printed Name	Date
	Colin Desmond	



TO: Board of Adjustment and Appeals (BOA)

FROM: Jocelyn Mills, Community Development

DATE: August 21, 2024

RE: BOA Rules of Procedure

Background: Periodically, the Board of Adjustment and Appeals reviews its Rules of Procedure (ROP) and this was completed earlier this year. Once any amendments are vetted by the Board, a recommendation is made to City Council to adopt the ROPs.

At the City Council meeting to adopt BOA's 2024 recommended updates, the Council asked staff to review both Planning Commission and the Board of Adjustment and Appeals rules of procedure to ensure consistency between the two, as appropriate.

Attachment: Attached to this cover sheet is the BOA's recommended 2024 ROPs with additional possible edits to be discussed by the Commission.

Action: Review the 2024 ROPs with additional suggestions for further edits. Upon discussion with the commission, a vote will be called whether to recommend these new additional changes to City Council for adoption.

CITY OF EDGEWATER
BOARD OF ADJUSTMENT AND APPEALS
RULES OF PROCEDURE

DRAFT – August 2024

Blue – Proposed Amendment

~~Strikethru~~ – Proposed Deletion

ARTICLE I - Purposes and Authority

Section 1 – Appeals from Refusals of Building Permits.

As provided in §11.5 of the City Charter and § 16-24-10 of the Edgewater Municipal Code (“Code”), the Board of Adjustment and Appeals (“Board”) shall hear and determine appeals made by any person aggrieved by the inability to obtain a building permit, or by the decision of any administrative office or agency based upon or made in the course of the administration or enforcement of the provisions of Chapter 16 of the Code, concerning zoning.

Section 2 – Variance Applications

As provided in §11.5 of the City Charter, the Board shall have the power to make exceptions to the terms of the City zoning regulations in harmony with their general purpose and intent and to authorize variances from the strict application of the zoning regulations in such situations, subject to such limitations as may be set by ordinance.

Section 3 – Conditional Use Permits

As provided in §16-23-160 of the City Municipal Code, the Board shall hear and make decisions on Conditional Use Permits in Flood Hazard Areas in harmony with the Flood Hazard Area regulations per the City’s Zoning Code.

ARTICLE II – Board Members, Tenure and Vacancies

Section 1 - Number and Term

The Board shall consist of five (5) members to be appointed by the Mayor. The members shall serve overlapping three-year terms. (Charter §11.4) To achieve overlapping terms as required by the City Charter, each member of the Board shall be assigned to one of the five defined Board terms.

Ref: "APPENDIX A" for term definitions.

Section 2 - Appointments to Board

The Mayor shall not make any appointment to the Board without posting and publishing notice of any vacancy thereon at least fourteen (14) days prior to the appointment and without considering the recommendations of the Board. (Charter §11.1(8))

Section 3 - Officers

The Board shall elect its own Chair and Vice-Chair. (Charter §11.1(6)(a))

Section 4 - Rules of Procedure

The Board shall adopt and operate in accordance with its own rules of procedure. Such rules shall not conflict with the City Charter or Code and shall not take effect until approved by the City Council. (Charter §11.1(6)(b))

Section 5 - Eligibility

The members of the Board shall be registered electors who are not elected officials, officers, or employees of the City and who have been residents of the City for at least one (1) year immediately preceding the date of their appointment. ~~No person who has been or who is convicted of embezzlement, bribery, solicitation of bribery, perjury, subornation of perjury, or any offense involving fraud, shall be capable of holding a position on the Board.~~ (Charter §§ 11.4 (2) and 11.1(9))

Section 6 - Removal

As set forth in §11.1(5) of the City Charter, members may be removed by the Mayor, after a charge in writing and the opportunity for a hearing before the Council, for inefficiency, neglect of duty, or malfeasance in office.

Section 7 - Vacancy

Should any vacancies occur among the Board by reason of death, resignation, disability or otherwise, notice thereof shall be given to the City Clerk **and to the presiding officer (Vice-Chair, in the event of vacancy in Chair)** as soon as practical. Vacancies that occur in any manner other than expiration of a term shall be filled for the remainder of the unexpired term.

Section 8 - Resignation

Any member wishing to resign shall provide written notice to the City Clerk. The City Clerk shall notify the Mayor as soon as practical.

Section 9 - Absence

Any member of the Board with three (3) absences from consecutive regular or special meetings, or four (4) absences from any regular or special meeting during twelve (12) consecutive months may be recommended for dismissal to the Mayor upon the majority vote of the Board. The Mayor shall receive such recommendation and advise the Board and member in writing of his or her determination and action.

ARTICLE III - Duties and Responsibilities of Officers, Assistants and Members

Section 1 - Officers and Assistants

A. Officers:

1) The Chair shall preside at all regular meetings, special meetings and public hearings of the Board. The Chair shall certify all written findings, orders, resolutions, and other official actions taken by the Board. The Chair, or their designee, shall assist the City Clerk in preparing the Board Agenda.

2) The Vice-Chair shall, in the absence of the Chair or in the case of the Chair's inability to act, have all the powers necessary to function as the Chair.

3) In the event both the Chair and the Vice-Chair are absent from a meeting, the clerk, or in the event there is not a clerk, a member of the Board shall call the Board to order and call the roll. If a quorum is present, the Board shall elect, by a majority vote of the members present, an Acting Chair who will preside over the meeting until the arrival of the Chair or Vice Chair, at which time the Acting before the Board.

B. ~~Assistants~~ Staff:

1) City Clerk:

a) For purposes of these Rules of Procedure and as used throughout, the term "City Clerk" means the person holding that office or his or her designee.

a)

b) The City Clerk notifies Board members of the business to be brought before the Board, and serves public notice of all hearings and public meetings of the Board in accordance with the City Charter and Edgewater Municipal Code.

b)

c) The City Clerk records Board meetings, including all public hearings, for retention as a public record of those meetings. The City Clerk submits the minutes of prior Board meetings, including any findings or recommendations, to the Board for approval.

e)

d) The City Clerk keeps on file the official records of the Board.

~~d) The City Clerk is authorized to perform the duties, functions and obligations required by these Rules of Procedure personally and/or through a designee, as the Clerk determines appropriate.~~

2) Community Development Department

a) The City's Community Development staff **Director or designee** prepares evidence and data regarding matters to come before the Board and submits this data and evidence to the Board in a timely and acceptable form.

b) The City's Community Development staff **Director or designee** serves as liaison between the Board and other City departments and boards, and as the coordinator between the Board and applicants appearing before the Board.

Section 2 - Election of Officers

~~A. At its 4th Quarter Regular Meeting, or at the next successive regular Board meeting if such meeting is not conducted, the Board shall nominate and elect by a majority vote of the entire membership of the Board a Chair and Vice-Chair from within its members. The terms of such offices shall commence immediately upon the date of election and shall run until the next election. Officers shall be eligible for re-election to subsequent terms without limitation as to the number of consecutive terms served.~~

A. The Board shall nominate and elect by a majority vote of the entire membership of the Commission a Chair and a Vice-Chair from within its members. All officers shall serve a one-year term. Officers shall be eligible for re-election to subsequent terms without limitation as to the number of consecutive terms served. Elections shall take place during the first regularly scheduled meeting of each calendar year.

B. If the Chair is vacated:

The Vice-Chair shall be named as the new Chair unless they refuse to assume the office of Chair. If the Vice-Chair so refuses, or if the office of Vice-Chair is also vacant, a new Chair shall be elected as soon as practical. All current Board members are eligible for nomination. The new Chair shall serve the remainder of the term.

C. If the Vice-Chair is vacated:

A new Vice-Chair shall be elected as soon as practical. All current Board members are eligible for nomination excluding the current Chair. The newly elected Vice-Chair shall serve the remainder of the term.

Section 3 - Compensation

All members of the Board shall serve without compensation.

ARTICLE IV - General Procedures

Section 1 - Meetings

A. Public Notice and Public Comment

- 1) All meetings shall be posted and published as required by the City Charter and applicable state and federal laws.
- 2) All meetings shall provide members of the public an opportunity to address the Board.
- 3) All meetings shall be open to the public, except that the Board may go into executive session for the purpose of considering matters permitted by the statutes, as from time to time amended, to be considered in executive session. No formal and legally binding action shall be taken at any such executive session.

B. Quorum

- 1) Three (3) members of the Board shall constitute a quorum for the transaction of any business. No official business of the Board shall be conducted without a quorum.
- 2) If a quorum is not present a member of the Board shall adjourn the meeting due to lack of a quorum.

C. Regular Meetings.

Regular meetings of the Board shall be **may conduct** quarterly, in the City Council Chambers at City Hall and/or virtually, on the following dates at such times as designated

and properly noticed in compliance with all applicable open meetings laws, unless such meeting is cancelled or rescheduled, as set forth below:

1st Quarter Meeting: 3rd Wednesday in January

2nd Quarter Meeting: 3rd Wednesday in April

3rd Quarter Meeting: 3rd Wednesday in July

4th Quarter Meeting: 3rd Wednesday in October 5

Any regular meeting may be canceled or rescheduled by the City staff, after consultation with the Chair, if there are no hearings, reports or other business to bring before the Board. In the event of rescheduling or canceling, City staff shall provide notice to each Board member. In the event of rescheduling, City staff will also post notice of such rescheduling on the City web site, as soon as practical.

D. Special Meetings.

Special meetings may be called by the Chair or by a majority vote of the entire membership of the Board. Notice of any special meeting of the Board shall be given to all members at least 48 hours in advance of such meeting.

E. Minutes.

The City Clerk shall keep the minutes of all Board meetings. The minutes shall become public record after proper certification as to their accuracy. The approved minutes of the Board shall be retained in the City Clerk's office. The adopted minutes shall become public record as required by law. (CRS Title 24, Article 72, Part 2)

Section 2 - Order of Business

The order of business shall be by Agenda. The Board Chair or Vice Chair may ~~their designee~~ shall assist the City Clerk in preparing the Board Agenda prior to the preparation of Board Packets.

Section 3 - Matters of Business

All matters decided by the Board shall be introduced by motion. The City Attorney and the Community Development Department Director or designee shall review all resolutions prior to being placed on the agenda.

Section 4 - Voting

A. All members have the right to full participation of debate and voting at all meetings. Each member of Board shall be entitled to one vote on all matters that come before the Board. No proxy votes shall be allowed.

B. Any Board member shall be permitted to explain their vote.

C. A Board member may change their vote either:

1) Before the result has been announced, but not thereafter, or

2) Upon the proper reconsideration of the question.

D. Any Board member absent from a public hearing shall not vote on matters regarding said public hearing, unless such Board member has reviewed the recording of tapes and any all documentary evidence related to the portion(s) of the public hearing at which they were not present.

E. Voting shall be by show of hands, voice (ayes and nays) or electronic as permitted by the City Charter. Members must be present to vote. For purposes of this section, a Board member is "present" if they are physically present in the meeting room or attending virtually or telephonically with the ability to clearly listen to and participate in the proceedings by voice.

F. At least three (3) affirmative votes shall be necessary to reverse any order, requirement or decision of any administrative official, or to grant any variance. (Code § 16-24-10(6))

G. All advisory actions must be approved by a majority vote of the members present.

H. No Board member shall be permitted to abstain from voting unless they indicate a conflict of interest (or unless subsection D. above applies).

1) As defined in § 21.11 by the City Charter, a "conflict of interest," for purposes of this Section, means a pecuniary, property or commercial benefit of any Board member, or of any relative of such Board member, but does not include any matter involving the common public interest or any matter in which a similar benefit is conferred, or is available to all persons or property similarly situated.

2) If a member of the Board intends to abstain from voting on the basis of conflict of interest, such intention shall be stated at the beginning of the hearing or at such time as such personal bias or conflict of interest is ascertained.

3) If the Board determines that disqualification is necessary, the disqualified member shall not participate in the discussion and shall not vote on the matter.

4) If the abstention of a member results in the loss of a quorum, no action will be taken.

a) If all members of the Board are present and abstentions result in the Board's inability to take action, the Board shall inform the City Council that the Board was unable to take action.

b) If one or more members of the Board are absent, and abstentions result in the loss of a quorum, the hearing shall be opened and immediately continued to a date certain.

I. In the case of a tie vote on any motion, the original motion is lost and the Chair shall reopen the discussion to solicit a second motion. If the Chair is unable to secure a second motion, or if there is a tie vote on the second motion, the motion shall be considered defeated.

ARTICLE V - Rules of Order

Unless these Rules of Procedure specifically state otherwise, the City of Edgewater City Council Rules of Procedure and Procedural Guidelines shall govern the proceedings of the Board.

ARTICLE VI - Public Hearings

The Board shall conduct a public hearing on each variance application, **conditional use permit** and appeal that is properly and timely filed.

~~In addition to these hearings, the Board may, at its discretion, hold public hearings when it decides that such hearings will be in the public's interest. Such hearings shall be posted and published as required by law. [not sure of the intent nor the need for this language; the Board can solicit and hear public comment on any topic at any time, even in a directed way, such as, *we want to receive public input on XYZ*, and advertise the same. Such a meeting would more akin to an open house than "public hearing."]~~

In addition to those hearings required by law, the Commission may, at its discretion, hold public hearings when it decides that such hearings will be in the public's interest. Such hearings shall be posted and published as required by law.

ARTICLE VIII - Amending the Rules of Procedure

These Rules of Procedure may be amended at any Board meeting provided that notice of the proposed amendment is given to each member in writing at least 48 hours prior to the meeting. The affirmative vote of a majority of the ~~entire membership~~ **quorum** of the Board

shall be required for the adoption of any proposed amendment to the Rules of Procedure. It shall be the responsibility of the Board to review these Rules of Procedure periodically, to ensure their compliance with the City Charter and Edgewater Municipal Code. Any adopted amendments shall not take effect until approved by the City Council.

APPENDIX A

Board of Adjustment and Appeals

Term Definitions

To achieve overlapping three-year terms as required by the City Charter, each member of the Board of Adjustment and Appeals shall be assigned to one of the following terms.

Ref: Charter § 11.4

Term #1 –12/01/2025, 12/01/2028, 12/01/2031, 12/01/2034, 12/01/2037, etc.

Term #2 –05/01/2024, 05/01/2027, 05/01/2030, 05/01/2033, 05/01/2036, etc.

Term #3 –05/01/2026, 05/01/2029, 05/01/2032, 05/01/2035, 05/01/2038, etc.

Term #4 –05/01/2025, 05/01/2028, 05/01/2031, 05/01/2034, 05/01/2037, etc.

Term #5 –12/01/2025, 12/01/2028, 05/01/2031, 05/01/2034, 05/01/2037, etc.

At no time shall a Board member's term be defined as anything other than that which is listed above. At no time shall a term have more than one Board member assigned to it.

To maintain this Term List as perpetually current, the City Clerk shall annually update the expiration dates set forth in this Appendix to remove each reference to a lapsed calendar year and to add another future expiration date to the term from which that reference is removed. These administrative updates to Appendix A shall not require the review or approval of the Board to become effective.