



Board of Adjustment

Appeal Application Packet



BOARD OF ADJUSTMENT 2012 MEETING SCHEDULE

Application submitted
by 4:00 pm ON or BEFORE

Will be heard at
the meeting held on

December 14th, 2011	January 25th, 2012
January 18th, 2012	February 29th, 2012
February 15th, 2012	March 28th, 2012
March 14th, 2012	April 25th, 2012
April 18th, 2012	May 30th, 2012
May 16th, 2012	June 27th, 2012
June 13th, 2012	July 25th, 2012
July 18th, 2012	August 29th, 2012
August 15th, 2012	September 26th, 2012
September 19th, 2012	October 31st, 2012
October 17th, 2012	November 28th, 2012
November 7th, 2012	December 19th, 2012**

****EARLY DUE TO HOLIDAY**

Please contact the City of Sarasota's Building, Zoning & Code Compliance Department Administrative Assistant at 941-954-4147 for additional information about the meeting schedule, the specifics of this application or other information that you need to complete your application for a variance. **Packets must be delivered to Shane Johnson, Development Review Coordinator, City Auditor and Clerk's Office.**



REQUIREMENTS FOR FILING PETITIONS

MEETING INFORMATION

1. The Board of Adjustment holds their monthly meetings on the last Wednesday of every month beginning at 1:30 PM in the City Commission Chambers, unless otherwise posted.
2. The deadline for submittal of the application packets is **4:00 p.m. six (6) weeks prior** to the public hearing. Please refer to the meeting schedule on page (2) of this packet for specific dates.
3. The application packets must be submitted to the Clerk's Office in its entirety by the deadline noted above.
4. The information must be submitted in **nine (9) separate packets, one being an original** to be distributed by City staff to all individuals who are required to review them. Each packet must contain ALL information requested in this application and associated checklist(s). Wherever possible, please avoid the use of staples and bindings in your packets. City staff must disassemble your submission for proper inclusion in the overall Board of Adjustments meeting information packets supplied to each Board member. All packets submitted become the property of the City of Sarasota.
5. **If the information is not complete, clear and legible the petition will not be accepted.**

PLEASE SUBMIT THE FOLLOWING ITEMS

- A completed Administrative Appeal Form (pages four and five of this Appeal Application Packet).
- A letter stating what is being requested, including an explanation of circumstances, history and reasons that the Board of Adjustment should grant your appeal.
- Any written materials you have received from the City of Sarasota that confirm or verify the decision, order, requirements or interpretation that you are appealing.
- Check made payable to the City of Sarasota for the fee deposit shown below.
- If the petitioner is the agent for the aggrieved party, include a signed letter from the aggrieved person authorizing the agent to act on his or her behalf in the appeal proceedings.

FEE REQUIRED * * * AT TIME OF APPLICATION

- Administrative Appeal \$1097.00 plus \$500 Escrow

***** FEES ARE NON-REIMBURSEABLE**



ADMINISTRATIVE APPEAL FORM

Please provide all of the information requested in the spaces provided.

1. **NAME OF THE AGGRIEVED PERSON** _____

2. **ADDRESS OF THE AGGRIEVED PERSON** _____

3. **PHONE NUMBER OF THE AGGRIEVED PERSON** _____

4. **IF THE AGGRIEVED PERSON WILL BE REPRESENTED BY AN AGENT**, include a letter from the aggrieved person stating that the agent is authorized to act on his or her behalf, and please provide:

4.1. Name of the authorized agent _____

4.2. Address of the authorized agent _____

4.3. Phone number of the agent _____

5. **STREET ADDRESS AND LEGAL DESCRIPTION** of the property affected by the decision, order, requirement or interpretation that is being appealed:

5.1. Street Address _____

5.2. Legal Description including PIN _____

6. **ZONING OF THE PROPERTY** affected by the decision being appealed _____

7. **DATE THE WRITTEN DECISION WAS RENDERED** which is being appealed _____

8. **PLEASE STATE WHAT DECISION, ORDER, REQUIREMENT OR INTERPRETATION IS BEING APPEALED.** As noted above, you must include all written materials (including correspondence, plans, etc.) you have received from the City of Sarasota that confirm or verify the decision, order, requirement of interpretation that you are appealing. If the space below is not sufficient, you may attach a separate sheet as needed.



BILLABLE FEE RESPONSIBILITY FORM

The undersigned, as the aggrieved party, or the Agent of Record for the aggrieved party, or other party, acknowledges responsibility for any expenses incurred by this petition. This also includes the proper distribution of any refund that may be available at the end of the petition process.

AUTHORIZED AGENT(S) OR DESIGNATED RESPONSIBLE INDIVIDUAL:

Name: _____

Address: _____

City, State, Zip: _____

Telephone: _____

Signed this _____ day of _____, _____.

Signature: _____

DESIGNATED INDIVIDUAL TO RECEIVE REFUNDS AND/OR BILLINGS:

Name: _____

Address: _____

City, State, Zip: _____

Before me personally appeared this day _____ to me well known, or who has produced identification, to be the Person(s) described in and who executed the foregoing authorization and has acknowledged before me that _____ executed said authorization for the purposes therein expressed.

WITNESS, my hand and seal, this _____, day of _____, _____.

Notary Public
(notary seal to appear below or to the left)



APPEAL RULES & PROCEDURE

ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT I HAVE RECEIVED A COPY OF THE BOARD OF ADJUSTMENT RULES OF PROCEDURE AND I UNDERSTAND IT IS MY OBLIGATION TO READ THEM PRIOR TO ANY SCHEDULED HEARING.

THE CITY OF SARASOTA WILL POST A NOTICE SIGN AT THE PARCEL WHERE THE VARIANCE OR APPEAL IS BEING REQUESTED. I UNDERSTAND THAT THIS SIGN MUST REMAIN POSTED UNTIL THE BOARD OF ADJUSTMENTS COMPLETES ITS HEARING ON THIS APPLICATION.

I UNDERSTAND THAT THIS VARIANCE MAY NOT BE AMENDED OR CHANGED IN ANY RESPECT WITHOUT THE APPROVAL OF THE BOARD OF ADJUSTMENT PURSUANT TO A PETITION DULY FILED AND HEARD BY THE BOARD. THIS PROHIBITION INCLUDES ANY CHANGE TO THE DESCRIPTION OF THE VARIANCE AS WAS SET FORTH IN THE SUPPORTING MATERIALS FILED WITH THE BOARD OR AS PRESENTED ORALLY TO THE BOARD. A PETITION TO AMEND THIS VARIANCE SHALL BE FILED AND PROCESSED ACCORDING TO ALL PROCEDURAL AND SUBSTANTIVE REQUIREMENTS PERTAINING TO THE GRANTING OF A VARIANCE TO INCLUDE THE PAYMENT OF THE FEE SET FORTH IN ARTICLE IV, DIVISION 6 OF THE ZONING CODE OF THE CITY OF SARASOTA, AS AMENDED OR REVISED.

TIME LIMITS:

UNLESS THE BOARD DECIDES THERE ARE SPECIAL CIRCUMSTANCES:

20 MINUTES WILL BE ALLOWED FOR PETITIONER'S PRESENTATION;

15 MINUTES WILL BE ALLOWED FOR QUESTIONS;

15 MINUTES WILL BE ALLOWED FOR REBUTTAL.

Signed

Date



RULES OF PROCEDURE

CITY OF SARASOTA

BOARD OF ADJUSTMENT

Rules of Procedure supplied for your reference only. **Please do not include in packets.**

I. PURPOSE

It is the intent of these procedural rules to provide an equitable and efficient procedure for the consideration by the Board of Adjustment of quasi-judicial matters and to provide due process to petitioners and other parties seeking quasi-judicial determinations of the Board of Adjustment.

II. DEFINITIONS

Board: means the Board of Adjustment.

Days: means calendar days, unless otherwise indicated.

Applicant: is a person, corporation or other legal entity who files with the City Auditor and Clerk an application pertaining to a variance, an appeal of an interpretation of the Zoning Code by the Manager of Building, Zoning and Code Enforcement or any other quasi-judicial matter.

III. GENERALLY

A. OFFICERS

1. Officers shall be selected and shall serve as provided for in Article III, Div. 3, of the Zoning Code of the City of Sarasota (1998) and Chapter 2, Article V of the Sarasota City Code. As provided in Section 2-263 of the City Code, the Chairman and Vice-Chairman shall be elected for a one-year term and may not serve consecutive terms in the same chairmanship position.
2. A vacancy occurring in any office shall be filled by a majority vote of the remaining Board members and such new officers shall hold their office until the first regular meeting in January of the next calendar year.
3. The employee of the City appointed by the City Manager shall be the permanent Secretary to the Board.
4. The Chairman, or in his absence, the Vice-Chairman, shall preside at all meetings and hearings of the Board and decide all points of order and procedure.

B. MEETINGS

Meetings shall be held as provided for in Article III, Division 3, of the Zoning Code of the City of Sarasota and Chapter 2, Article V of the Sarasota City Code.

C. ATTENDANCE

1. Board members must attend all regular and special Board meetings as required by Article III, Division 3, of the Zoning Code of the City of Sarasota and Chapter 2, Article V of the



RULES OF PROCEDURE

CITY OF SARASOTA

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Sarasota City Code. As provided for in Section 2-264 of the City Code, a Board member shall be automatically removed from Board membership at such time as the member's absences exceed twenty-five (25) percent of all scheduled Board meetings, including workshop meetings, in a given year unless the Board, by majority vote, plus one, waives an absence by finding that unusual circumstances exist which warrant a waiver.

2. Attendance of Board members at all meetings shall be taken by the Secretary to the Board, or his designee, and the reason for the absence of any Board member shall be recorded by the Secretary.

D. BOARD AGENDA

1. Items which require publication of notice of hearing may be placed on the Board agenda at any time prior to four weeks in advance of the date of the Board meeting at which the item will be considered. Thereafter, items which do not require published notice may be added to the agenda only with the approval of the Board Chairman.
2. Copies of the Board agenda shall be placed at the rear of the City Commission chambers for public inspection prior to each Board meeting. The agenda will also be made available to the public at the Building, Zoning & Code Enforcement Department prior to each scheduled meeting.
3. Notices of all public hearings and the agenda shall be posted at City Hall three (3) days in advance of the scheduled meeting.

IV. ORDER OF BUSINESS AT BOARD MEETINGS

- A. Call to order and roll call.
- B. Approval of minutes.
- C. Disclosure of ex-parte communications or site visit relating to any quasi-judicial matter on the agenda (Resolution No. 96R-857).
- D. Swearing of all persons.
- E. Public hearings
 1. Unfinished business;
 2. New business.
- F. Workshop on topics requiring Board consideration, but not requiring public hearing.
- G. Presentation of topics by Board members.
- H. Presentation of topics by the City administration or legal counsel to the Board.



RULES OF PROCEDURE

CITY OF SARASOTA

BOARD OF ADJUSTMENT

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I. Scheduling of special meetings.

J. Adjournment.

V. PROCEDURAL RULES

A. GENERALLY

1. All applications shall be submitted on forms approved by the Board, which shall be completed in their entirety.
2. All applications shall be submitted in the name of the owner, resident or occupant, or all owners, residents, or occupants in the case of property owned, resided in or occupied by more than one person, or other entity, or resident, or occupant.
3. The person filing the application shall appear in person or by an authorized agent or by an attorney.
4. Withdrawal of application - An Applicant may withdraw the application at any time prior to the publication of Notice of Hearing. In such event the application may be refiled subject to payment of all costs and fees associated with the filing of such application, subject to the sixty (60) day time limitation for the taking of an appeal.

After the publication of the Notice of Hearing, if Applicant should elect to withdraw the application, the Applicant shall give written notification of same to the Board's Secretary, which shall be received by the Board's Secretary, during regular business hours, no later than five (5) working days prior to the date set for the hearing thereon. Such a withdrawal of the application shall be without prejudice. In such event, the application may be refiled subject to payment of all costs and fees associated with the filing of such application, subject to the sixty (60) day time limitation for the taking of an appeal. However, if any such application for a variance is withdrawn in that manner on two occasions, then no further application for a variance of any type for the subject property shall be filed within one (1) year of the second dismissal. If any application for an appeal is withdrawn in that manner on two (2) occasions it shall be deemed denied with prejudice.

Furthermore, no application may be withdrawn less than five (5) working days prior to the hearing, on the day of the hearing or during the hearing thereon. In the event that the Applicant does not appear, refuses to proceed or cannot proceed, for any reason whatsoever, the application shall be deemed denied and no further application for a variance of any type for the subject property shall be filed within one (1) year of such denial. An application for an appeal shall be deemed denied with prejudice. Nothing contained in this rule, however, shall limit the power of the Board to consider and grant a continuance as provided for in Rule V. F. 3.

- B. PARTIES - The following shall be considered parties in each required quasi-judicial hearing: (a) the City; (b) the Applicant and (c) any affected person (as hereinafter defined) who has sought



RULES OF PROCEDURE

CITY OF SARASOTA

BOARD OF ADJUSTMENT

Rules of
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and obtained Party Status.

C. AFFECTED PERSON - An affected person is:

1. An owner, resident or other occupant of real property located within five hundred (500) feet of the real property which is the subject of a quasi-judicial matter, the owner's, resident's, or occupant's designated representative or a designated representative of the neighborhood association whose members consist of such owners, residents or occupants. Such distance shall be measured in a straight line from the nearest property boundary of the zoning lot(s) which is the subject of a quasi-judicial hearing to the nearest property boundary of the zoning lot owned or occupied by the affected person. The term "designated representative" shall mean a person who has written authorization to represent an owner, resident, or occupant or neighborhood association. In the case of a neighborhood association, the authorization shall be signed by an officer or member of the board of directors of the neighborhood association; or
2. A person who will suffer a negative effect to a protected interest as a result of the quasi-judicial action sought by the Applicant. Although the affected person's interest may be shared in common with other members of the community at large, the affected person's interest shall exceed in degree the general interest in community good that is shared by all persons.

Examples of affected person's interests may include:

- a. Negative traffic impact resulting from the proposed use with respect to surrounding uses;
- b. Whether the physical appearance of the proposed use is compatible with the character of surrounding uses;
- c. Whether any noise that would be emitted from the proposed use will be detrimental to surrounding uses;
- d. When there is an appeal of an interpretation of a zoning district requirement made by the Manager of Building, Zoning and Code Enforcement whether the person owns, resides upon or occupies property located in the same zoning district.

D. NOTICES OF QUASI-JUDICIAL HEARING - Notices of quasi-judicial hearings shall be in accordance with provisions of Section IV-202 of the Zoning Code (1998).

E. PRE-HEARING PROCEDURES

1. Request for Party Status - Any person seeking Party Status shall file a Request for Party Status with the Secretary to the Board at least five (5) days prior to the quasi-judicial hearing. The Request for Party Status shall contain the following information:
 - a. The reasons or basis entitling the filer to Party Status;



RULES OF PROCEDURE

CITY OF SARASOTA

BOARD OF ADJUSTMENT

Rules of
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- b. Names and addresses of witnesses the filer intends to call at the hearing, during the presentation of filer's evidence or in rebuttal;
 - c. The names and addresses of expert witnesses to be used, if any, including a statement of the expert's qualifications;
 - d. A summary of the facts to be presented by filer personally or by use of a witness or expert; and,
 - e. The estimated amount of time the filer requires to make the presentation, including time for rebuttal and summation.
2. Applicant's Disclosures - The Applicant shall file with the Secretary to the Board at least four (4) weeks prior to the quasi-judicial hearing, the following:
- a. Names and addresses of witnesses the Applicant intends to call at the hearing, during the presentation of Applicant evidence or in rebuttal;
 - b. The names and addresses of expert witnesses to be used, if any, including a statement of the expert's qualifications;
 - c. A summary of the facts to be presented by Applicant personally or by use of a witness or expert;
 - d. Copies of all reports, studies, letters, documentary evidence and summaries of evidence to be used, if any; and,
 - e. The estimated amount of time the Applicant requires to make the presentation, including time for rebuttal and summation.

In the event the Applicant fails to make such filing, the Secretary shall not place the petition on the agenda for the next regularly scheduled meeting of the Board.

3. The Applicant shall submit supplemental information no later than ten (10) days prior to a scheduled public hearing.
4. Copies of Reports and Summary of Evidence - The Secretary to the Board shall maintain copies of reports, studies, other documentary evidence and summaries of evidence on each quasi-judicial matter which shall be available for public inspection and copying.
5. Time Limits for Presentations - Based upon the time estimates disclosed in Request for Party Status; the Applicant's Disclosures; the complexity of the subject of the quasi-judicial hearing; and the number of petitions to be scheduled for a particular Board meeting, the Board may establish time limits for the presentations, including rebuttal,



RULES OF PROCEDURE

CITY OF SARASOTA

BOARD OF ADJUSTMENT

Rules of
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F. GENERAL CONSIDERATIONS

1. Failure to File Request for Party Status or Applicant's Disclosure - In the event a person fails to file a timely Request for Party Status or should the Applicant fail to timely file full prior disclosure, including all of the documentary evidence or reports as required in paragraph E.2. or E.3., a request may be made of the Board to waive the requirement. In determining whether to waive the requirement, the Board shall consider whether the granting of Party Status or allowing the Applicant to proceed without full prior disclosures will unduly delay the proceedings or substantially prejudice the position of another Party. If the only testimony will be that of the Party and no witnesses, expert witnesses or documentary evidence will be submitted, Party Status may be granted. Where the Party, or an Applicant who failed to make a complete disclosure, intends to call witnesses, expert witnesses, or submit documentary evidence not previously disclosed, the Board shall weigh the impact of the proposed evidence against the prejudice to Parties that may result. If there is little or no prejudice resulting from the grant of Party Status or waiver of the pre-submittal requirements, the Board may grant Party Status or waive pre-submittal requirements. However, the Board may continue the quasi-judicial matter to a subsequent meeting in order to provide all Parties, and the Board, an opportunity to consider and review the evidence allowed by virtue of a waiver.
2. Qualifications of Expert Witnesses - Based upon a review of the qualifications of expert witnesses as presented for the record, the Board will determine what weight is to be given to the testimony of the experts. The Board shall not be required to make a specific ruling as to the witnesses' expertise.
3. Continuances - A continuance may be requested by a Party upon demonstrating that the continuance is necessary to provide rebuttal testimony or to provide time to review documentary evidence. The Board may continue the public hearing on its own initiative, upon finding that any testimony, documentary evidence, or other evidence presented at the quasi-judicial hearing justifies allowing time for additional research or review for the benefit of the Board to assist in an appropriate resolution of the matter being presented. At any time that the Board determines the scheduling or timing of the matter pending before the Board warrants a continuance to another date or time, the Board shall order such continuance.
4. All non-parties who wish to testify shall complete a "Request to Speak" form and deliver same to the Secretary of the Board.

G. ORDER OF PRESENTATION

1. Opening of Public Hearing
 - a. The Chair announces the name of the Applicant and the number of the quasi-judicial matter to be heard.
 - b. After the Applicant and the Applicant's representative(s), if any, are seated at the Board of Adjustment table, the Chair announces the quasi-judicial matter is now open for the purpose of receiving oral or documentary evidence for the record.



RULES OF PROCEDURE

CITY OF SARASOTA

BOARD OF ADJUSTMENT

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2. Opening Matters and Preliminary Remarks
 - a. The Board's attorney explains the quasi-judicial process, including the role of persons granted Party Status and citizens and the procedure for rebuttal and asking questions.
 - b. The Board shall make a determination as to those entitled to Party Status.
3. The Board shall specify time limits on presentations including rebuttal; identify the Applicant(s) and other Parties to the proceedings; and announce the order of presentation.
4. Except for appeal hearings, the Secretary to the Board shall describe the application.
5. The Secretary to the Board, or his or her designee, shall swear any previously unsworn persons.
6. Presentation of Case In Chief
 - a. The Applicant, the City, and any other persons may present testimony and documentation to the Board. Only the Applicant, City and any person granted Party Status, may examine witnesses and may conduct cross-examination of other persons who provided testimony. Only the Applicant, persons granted Party Status and the City may provide rebuttal testimony.
 - b. The order of presentation shall be as follows:
 1. City
 2. Applicant
 3. Persons granted Party Status
 4. Non-parties in favor of the application
 5. Non-parties against the application
 6. Remarks of Board members - Board members may make remarks for the record concerning factual matters which are not already contained in the record, in recognition of the fact that Board members may have personal knowledge pertaining to the physical characteristics of a site, its surroundings, and other circumstances relevant to the matter being heard.
 7. Rebuttal by City, Applicant and persons granted Party Status
7. Closing of Public Hearing - The chair announces that the quasi-judicial matter is now



RULES OF PROCEDURE

CITY OF SARASOTA

BOARD OF ADJUSTMENT

Rules of
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closed for the purpose of receiving oral or documentary evidence for the record.

8. Absent Board Member - Any member of the Board who was absent from a prior meeting in which the quasi-judicial matter was heard but is participating in the final decision shall review the record, including the minutes of the prior proceeding and shall acknowledge the review, on the record, prior to the Board taking a vote.
9. Decision
 - a. Deliberation Phase - The Board shall deliberate on the evidence presented at the hearing.
 - b. Prior to rendering a final decision, the Board may continue the matter to a future meeting in order to afford the Board sufficient time to review the record prior to voting on the matter.
 - c. Final Decision - The Board, after deliberating, shall make an appropriate motion and shall vote thereon.
 1. A minimum of three (3) affirmative votes shall be required to grant a variance, with or without conditions or safeguards, or to grant an appeal, with or without specified conditions.
 2. In the event any motion for a final decision on a petition for a variance or an appeal fails to achieve the affirmative vote of three (3) Board members, and no further action by the Board to achieve three (3) affirmative votes on a petition for a variance or an appeal can be obtained, then such petition or appeal shall be automatically continued to the next regularly scheduled meeting or a special meeting scheduled for that purpose. No petition or appeal shall be automatically continued more than once.
 3. At the Board meeting during which the continued petition for variance or appeal is considered, if any motion to approve the application, with or without conditions or safeguards, or to grant the appeal, with or without specified conditions, fails to achieve three (3) affirmative votes and no further action by the Board to achieve three (3) affirmative votes at such meeting can be obtained, then such petition for variance or appeal shall be deemed denied.
- H. Preparation of the Order - The Secretary to the Board shall prepare the final order or resolution for approval by the Board based upon the deliberations and decision of the Board.

VI. RECORD

The record maintained by the Secretary to the Board shall consist of:

- A. The application, site and development plan or development plan, if any, and all accompanying



RULES OF PROCEDURE

CITY OF SARASOTA

BOARD OF ADJUSTMENT

Rules of
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- documents submitted by the Applicant;
- B. City staff reports and recommendations;
 - C. All correspondence on file with the Secretary to the Board prior to the public hearing including written communication to members of the Board and City staff, if any;
 - D. Agenda packet of Board pertaining to the petition or appeal;
 - E. Resumes and/or statements of qualifications of City staff, City consultants, and expert witnesses previously filed with the City Auditor and Clerk;
 - F. All exhibits and documentary evidence submitted for the record by Parties during the presentation of the evidence of the Party during the quasi-judicial hearing.
 - 1. In instances where it is necessary to present oversized exhibits, exceeding 24 inches by 36 inches, a reduced duplicate of the exhibit, which is not mounted on a backboard, shall be submitted for the record.
 - 2. A reduced duplicate shall be verified by the Secretary to the Board as an accurate duplication of that submitted during the quasi-judicial hearing.
 - 3. Should a Party require that an original document be returned, the Secretary to the Board shall make necessary copies and then may return the original document. A request for the return of the original document shall be made at the time of submittal during the quasi-judicial hearing.
 - G. All comments, exhibits and documentary evidence previously entered into the record at a prior Board meeting on the quasi-judicial matter.
 - H. The video tape, audio tape recording and minutes of the public hearing(s) before the Board.
 - I. Any transcripts of the proceeding, properly certified by a court reporter or other qualified person and filed by any party with the Secretary to the Board.
 - J. The following codes of the City of Sarasota:
 - 1. Zoning Code of the City of Sarasota (2000) as adopted by Ordinance No. 02-4357;
 - 2. The prior Zoning Code of the City of Sarasota (1998) as adopted by Ordinance No. 98-4076;
 - 3. The prior Zoning Code of the City of Sarasota, a/k/a Zoning Code (1974) as amended;
 - 4. Sarasota City Code;
 - 5. Comprehensive Plan of the City of Sarasota (also known as the Sarasota City Plan);



RULES OF PROCEDURE

CITY OF SARASOTA

BOARD OF ADJUSTMENT

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6. Engineering Design Criteria Manual;
7. All of the building or structural maintenance codes and any City of Sarasota local amendments thereto as adopted in Chapters 11 and 14 of the Sarasota City Code.

VII. REHEARINGS:

All decisions on quasi-judicial matters shall be final upon the execution of the Order or resolution by the Chairman (or in the absence of the Chairman, the Vice-Chairman) of the Board and its filing with the City Auditor and Clerk. Except in the instance of fraud or willful misrepresentation by any Party, no rehearing or reconsideration will be permitted for any reason.

VIII. PRIOR RULES:

Upon adoption, these rules shall supersede all prior rules adopted by the Board of Adjustment. All such prior rules shall be repealed.

IX. AMENDMENTS:

These Rules of Procedure may be amended by a majority vote of the Board members.

ADOPTED this 25th day of September, 2002.

ATTEST:

(signed) Timothy Litchet
Secretary to the Board

(signed) Elmer G. Berkel
Chairman
City of Sarasota Board of Adjustment

(signed) Billy E. Robinson
City Auditor and Clerk