

ZONING HEARING EXAMINER RULES OF PROCEDURE - April 2019

A. Introductory

1. Governance of Meetings and Hearings. These Rules of Procedure (“Rules”) for the Zoning Hearing Examiner (“ZHE”) of the City of Albuquerque (“City”) shall control the conduct of business by the ZHE.
2. Conflicting Authority. In the event of a conflict between these Rules, City ordinances or resolutions of the City Council, and/or state or federal laws, City ordinances, resolutions of the City Council, and/or state or federal laws shall control.
3. Conflict of Interest. The ZHE shall recuse him/herself from hearing a matter if a conflict of interest exists or appears to exist, including, for example, a direct or indirect financial conflict of interest, or if circumstances exist which would impair or appear to impair the independence of judgment of the ZHE. However, the ZHE has a duty to hear cases presented to him/her and recusal should only occur for good reason.
4. ZHE Recusal Procedure. In the event that the ZHE is recused from hearing a matter, he/she shall not be present in the hearing room when the matter is heard. Additionally, the ZHE shall not draft or aid in the drafting of the Notice of Decision (“Decision”). The ZHE shall issue a Notice of Recusal and Appointment of Substitute.
5. ZHE Ex Parte Communication. The ZHE shall not engage in “ex parte communication” about the merits of any filed or prospective application requiring quasi-judicial proceedings before the ZHE, with any person or organization interested in such application. For purposes of these rules, an ex parte communication shall be defined as a substantive communication, outside the public hearing process, between the ZHE and any member of the public regarding the merits of the application. Communications with the staff of the Planning Department, Zoning Enforcement Office or the City Attorney’s Office shall not be considered ex parte communication, provided that such communications are not relied upon to make factual determinations. However, when the City is the applicant, there shall be no communication with Planning Staff or any other City Staff, except for the City Attorney’s Staff. Attendance at meetings, seminars, open houses or other similar functions, in which a pending or prospective application is discussed incidentally or in general terms for information purposes only, without any communications being directed to or by the ZHE, shall not constitute an ex parte communication. However, such an incident shall be disclosed by the ZHE at the public hearing on said application. The ZHE who has engaged in ex parte communication shall recuse him/herself from hearing the application. The ZHE shall disclose any instance of an attempted ex parte communication; however, any such attempt should not, in and of itself, be grounds for recusal. The staff of the ZHE is permitted to discuss the application with the applicant or any interested party, and this communication shall not be considered “ex parte communication.”
6. ZHE hearings are Quasi-Judicial.
7. ZHE Fact Finding Investigations. The ZHE shall not conduct independent fact-finding investigations of any property that is the subject of a quasi-judicial proceeding before the ZHE. However, a cursory site visit by the ZHE to generally familiarize that ZHE with the location and environs of such a property that does not include an independent fact finding investigation is permitted.

B. Application

1. ZHE Receipt of Application Information. Any information or material received by the ZHE or staff of the ZHE from any person or organization shall be placed in the public file and be available for inspection to all interested parties. Copies of all such materials shall be submitted to the ZHE Staff and be included within the file of the application and subject to review by all interested parties.

2. ZHE Application Information. The ZHE has the authority to determine if an Application is complete. Applications that are inadequate or lacking relevant information (including but not limited to an accurate site plan) are grounds for deferral. Misleading or false information included within an application are grounds for denial. Such determinations are in the ZHE's discretion.

3. Application and Site Plan. Each application shall be accompanied by at least one copy of an accurate site plan, building development plan, sketch or other related information, as required by the ZHE.

4. 12 Month Rule. An application for the same special exception on the same site may not be considered within 12 months of the date of final City action on a prior application.

5. ZHE Application Fee. The City Council establishes application fees for applications listed in Table 6-4- 1 of the Integrated Development Ordinance. No fee shall be required for an application filed by the City.

6. The applicant and interested parties to an application before the ZHE may provide written material to the ZHE up to 6 days (Wednesday at 5:00 pm) prior to the hearing. Violation of the 6 day rule may be grounds for continuance or deferral by the ZHE.

C. Hearing

1. Signs Advertising the Public Hearing. The applicant shall post and maintain one or more signs, as provided and where instructed by the Planning Director, at least 15 days before the date of the hearing. The applicant is responsible for removing such sign within five days after the hearing is completed. Failure to properly post signs is grounds for deferral.

2. Agency Comments. Prior to the hearing, the Planning Director shall request City departments and other agencies which he/she judges would be interested to comment on the application. Comments received shall be submitted to the ZHE and shall be part of the hearing record.

3. Witnesses & evidence presented by the ZHE. The ZHE may call witnesses and introduce papers on his own volition during the public hearing.

4. Testimony Under Oath. All testimony at the ZHE public hearing shall be under oath or affirmation.

5. Record of the ZHE Hearing. The Planning Director shall make a full record of the hearing by sound recording; any person shall have the opportunity to listen to, copy, or transcribe the recording at any reasonable time at the office of the Planning Director. Summary minutes shall be kept of all ZHE hearings and they shall be kept available for public inspection.

6. Continuance or Deferral of a ZHE Hearing. An advertised hearing may be continued or deferred to a time and place announced at the hearing without re-advertising or reposting of signs. A continuance or deferral may be granted for good cause shown. The first request by an applicant for a continuance or deferral shall be liberally granted.

7. ZHE Public Hearing Testimony. At the public hearing, applicants shall be allowed 5 minutes to testify regarding their application, and other interested parties shall be allowed 2 minutes. The applicant shall be allowed 2 minutes for rebuttal at the conclusion of all testimony provided by interested parties. The ZHE may grant additional time for good cause, e.g. (representing a group or organization).

8. ZHE Authority to Establish Rules for Testimony at a Public Hearing. The ZHE has the authority to limit repetitive, irrelevant or inappropriate testimony, and evidence that is presented at a ZHE public hearing. The ZHE and speakers shall confine their remarks to the relevant matters pertaining to the application. The ZHE shall not take into consideration testimony or evidence presented during a public hearing that is not relevant to the application. The ZHE, subject to these rules, shall be permitted to amend the procedure of a public hearing, provided that the amendments are reasonable and do not violate municipal, state or federal law.

9. Cross Examination of Applicant(s)/Interested Parties during a Public Hearing. The ZHE shall permit reasonable and relevant cross examination of any applicant or interested party that testifies at a ZHE public hearing. The cross examination questions shall be directed at the ZHE who shall re-direct the question towards the person under cross examination. The cross examination shall be limited to two minutes in duration. A person subject to cross examination is not obligated to answer any of the questions, however may choose to do so. The ZHE has discretion to limit the time allotted to cross examine.

10. No written material or new evidence shall be admitted after the close of the public hearing. The ZHE may keep an application open for a brief period for submission of additional material requested by the ZHE. If an application has been deferred or continued, an applicant may submit additional written material up to 6 days prior to the next public hearing.

D. Decision

1. Notice of Decision of the ZHE. The ZHE shall act on an application within 15 days of the conclusion of the hearing. He/she shall prepare a written Decision, which includes the key findings of fact. This Decision shall be made part of the record. Each material finding shall be supported by substantial evidence or, if it is noted on the record, by the personal knowledge of or inspection of the ZHE.

2. Conditions of Approval. The ZHE, may, when approving a special exception, impose conditions necessary to meet the stated criteria for granting special exceptions.

E. Appeal

1. Appeals Filed upon ZHE Matters. Once an appeal is filed by an applicant or any interested parties, the ZHE, no longer has jurisdiction to act on the matter.

2. Appeals of ZHE Matters. An appeal must be filed with the Planning Director within 15 consecutive days, excluding holidays listed in Part 3-1-12 of ROA 1994 (Legal Holidays), after the decision. The date that the decision was made is not included in the 15-day period for filing an appeal.

The appeal shall specifically state the section of this IDO, City regulation, or condition attached to a decision that has not been interpreted or applied correctly

3. Eligibility of Persons to File an Appeal. The following persons shall have the right to file an appeal from the ZHE: any person(s) who were parties or could have been parties at the ZHE hearing.

F. Amendment of Rules

1. Amendment of the Rules. These rules may be amended by the ZHE at a public hearing of the ZHE, provided written notice of the proposed changes and their time of consideration is given to all affected parties at least one week in advance and the public and others are properly notified, pursuant to the Public Boards, Commissions and Committees Ordinance, Section 2-6-1-4(C) of the Albuquerque Code of Ordinances.