

**HILLSBOROUGH COUNTY AVIATION AUTHORITY  
AIRPORT BOARD OF ADJUSTMENT  
RULES OF PROCEDURE**

**Adopted May 6, 2010**

**PURPOSE AND AUTHORITY**

The Hillsborough County Aviation Authority Airport Board of Adjustment (the "Board of Adjustment") was created by the Hillsborough County Aviation Authority Airport Zoning Regulations (the "Regulations") to hear and decide the following:

1. Appeals from any order, requirement, decision or determination made by the Airport Zoning Director in the application or enforcement of the Regulations;
2. Petitions for special exceptions;
3. Petitions for specific variances to height limits and restrictions on the use of land;
4. Petitions to declare an existing nonconforming use an airspace hazard; and
5. Petitions to declare an existing nonconforming use abandoned or more than 80 percent torn down, destroyed, deteriorated or decayed.

These Rules of Procedure of the Board of Adjustment (the "Rules") are adopted to carry out this purpose.

**MEMBERSHIP**

1. The Board of Adjustment consists of five members. The Authority Board of Directors ("Authority Board") will serve as the initial Board of Adjustment. The Authority Board, however, may establish by duly adopted resolution a separate Board of Adjustment in which case these Rules will be amended, if necessary.
2. Appointments to the Board of Adjustment are for a term of three years. Authority Board members will be reappointed automatically for consecutive terms on the Board of Adjustment, without further action of the Board, until termination of the member's term on the Authority Board.

## **OFFICERS AND MEETINGS OF THE BOARD OF ADJUSTMENT**

1. The chair of the Board of Adjustment will be the chair of the Authority Board or if the Authority Board is not serving as the Board of Adjustment pursuant to such procedure established by the Authority Board in so designating an alternative Board of Adjustment.
2. Meetings of the Board of Adjustment will be held at the call of the chair and at such other times as the Board of Adjustment may determine.
3. The chair will conduct the meetings and serve as the spokesperson for the Board of Adjustment. The vice chair of the Authority Board will fulfill the chair's duties in the absence of the chair.
4. The chair may not make a motion unless the chair yields the gavel to the vice chair or, in the absence of the vice chair; the chair yields the gavel to another Board of Adjustment member.
5. The chair, or the person acting as chair, is authorized to administer oaths to any witness in any matter coming before the Board of Adjustment.
6. Three members will constitute a quorum.
7. Each decision of the Board of Adjustment must be approved by a majority vote of the members present at a meeting in which a quorum is in attendance and voting.
8. The Board of Adjustment will keep minutes of its proceedings, showing the vote of each member upon each question; or if absent or failing to vote, indicating such fact, and will keep records of its examinations and other official actions, all of which will be immediately filed in the Central Records of the Authority and will be a public record.
9. No member will participate in any proceeding before the Board of Adjustment where the member, the member's immediate family or any business associate of the member has a financial interest in the land or structure involved in the proceeding or in any land or structure that may be a competing project with respect to such submitted land or project.
10. Except where provided by these Rules or the Regulations, Robert's Rules of Order will apply to Board of Adjustment meetings.

## HEARING OFFICER

1. There is hereby created the position of Hearing Officer to whom the Authority Board hereby delegates the power to conduct a full and open public hearing.
2. The duties of the Hearing Officer are to receive and analyze the submission of evidence and testimony at a full and public hearing and to provide findings and recommendations on same to the Board of Adjustment with regard to appeals and petitions for special exceptions, for variances, to declare existing nonconforming use an airspace hazard, and to declare an existing nonconforming use abandoned or more than 80 percent torn down, destroyed, deteriorated or decayed.
3. The Board of Adjustment will adopt the recommendation of the Hearing Officer, except as further provided herein.
4. The Authority Board will appoint one Hearing Officer from among three or more persons recommended by the Authority's Executive Director for a term not to exceed 2 years.
5. A Hearing Officer must have a degree in law and have been licensed to practice law by The Florida Bar for at least 7 years.
6. A Hearing Officer may not hold other appointive or elective office or position in government during his or her term.
7. A Hearing Officer may not be an employee of the Authority or other government agency in Hillsborough County.
8. The Hearing Officer will be compensated in the amount of \$100 per hour or such other amount as may be set by the Authority Board for presiding over scheduled hearings, deliberating results, writing findings of fact and conclusions of law, and editing and signing final recommendations.
9. The Authority's Development Program Services department will maintain all papers submitted to the Hearing Officer and will have the official custody of such papers, the Hearing Officer's findings and recommendation, and the record of all proceedings. All such files will be a public record.
10. Each person appointed as Hearing Officer is subject to the provisions of Section 112.3145, Florida Statutes, insofar as they relate to local officers. Such disclosure must be filed with the Supervisor of Elections. The failure to comply with the provisions of this subsection will constitute just cause for removal from office.

11. The Hearing Officer will have all powers necessary to conduct the hearings assigned to the Hearing Officer by these Rules.
12. The Hearing Officer will have the power to issue notices of hearings, administer oaths and take testimony and evidence as provided in these Rules.
13. It is the duty of the Hearing Officer to inquire fully into the facts of each case. In addition to the powers described above, the Hearing Officer will have the following powers and duties with respect to such cases:
  - a. To receive stipulations of fact, agreed to in writing, by the participants. Such stipulations, if filed, will be regarded and used as evidence at the public hearing. A Hearing Officer may, nevertheless, require such additional evidence deemed necessary.
  - b. To accept in lieu of originals, true copies of such documentary evidence as may be offered.
  - c. To request printed or written briefs to be filed on behalf of any of the participants in such hearings.
  - d. To dispose of procedural requests or similar matters.
  - e. To call, examine and cross-examine witnesses and to introduce into the record all relevant evidence.
  - f. To keep a record of all persons requesting notice of the decision in each case.
  - g. To receive oral testimony presented by all interested individuals.
  - h. To visit the property which is the subject matter of the petition.
  - i. To take such other action as may be necessary to provide all applicable hearing participants full due process of law.
14. No person who is or may become a party of record before the Hearing Officer nor anyone appearing on behalf of a party of record before the Hearing Officer will communicate or cause a third-party to communicate ex parte with the Hearing Officer about a matter currently before the Hearing Officer.
15. No member of the Board of Adjustment may communicate or cause a third-party to communicate ex parte with the Hearing Officer about a matter currently before the Hearing Officer. Communication between the

Hearing Officer and the Board of Adjustment must be undertaken only in accordance with the terms of these Rules.

16. Ex parte communications as contemplated herein do not include the required transmission of official documents by Authority staff pursuant to these Rules.
17. A Hearing Officer and any firm with which the Hearing Officer is or may become associated, is, for a period of one year from the date of termination of service as a Hearing Officer, expressly prohibited from acting as agent or attorney in any matter before any board, agent or other office of the Authority, involving property which was the subject of an appeal or petition during the time such person was in office.
18. The Hearing Officer must disqualify himself or herself from a case when it reasonably appears that he or she has a conflict of interest. The Authority Board may request the Authority's General Counsel to provide an attorney otherwise qualified to sit as a Hearing Officer for an individual case where a Hearing Officer is disqualified.
19. The Hearing Officer serves at the pleasure of the Authority Board and may be terminated upon ten-day written notice.

#### **TRANSMITTAL TO HEARING OFFICER**

1. Notices of appeal or petitions provided for in the Regulations will be transmitted to the Hearing Officer by Development Program Services to conduct the public hearing prior to consideration by the Board of Adjustment.
2. Upon receipt of a notice of appeal or petition for special exception or variance, Development Program Services will transmit same with copies of the record of the action appealed from or action requested to the Hearing Officer. Petitions by the Airport Zoning Director to declare existing nonconforming use an airspace hazard or to declare an existing nonconforming use abandoned or more than 80 percent torn down, destroyed, deteriorated or decayed also will be transmitted to the Hearing Officer.
3. Development Program Services will coordinate, schedule and advertise the public hearing before the Hearing Officer. Development Program Services will mail notice of the hearing before the Hearing Officer to all parties of record no less than 20 calendar days prior to the hearing date. This notice will include the time, date and location of the public hearing.

## HEARINGS BEFORE THE HEARING OFFICER

1. All hearings will be open to the public. An audio recording must be made of the hearing; however, verbatim transcript of the hearing is not required.
2. The Hearing Officer will determine whether a person or entity has standing at the public hearing in accordance with the Regulations. The Hearing Officer also will determine whether the notice of appeal or petition was filed in accordance with the Regulations.
3. At the time of filing a petition for variance, the petitioner must forward to the Florida Department of Transportation (FDOT) by certified mail, return receipt requested, a copy of the petition. FDOT will have up to 45 days from receipt of the petition to comment and to provide its comments or waiver of that right to the petitioner and the Authority. If the FDOT fails to provide its comments within 45 days of receipt of the petition, its right to comment is waived. The process by which the Hearing Officer will review any such petition may proceed only upon the receipt of FDOT's comments or waiver of that right as demonstrated by the filing of a copy of the return receipt with the Hearing Officer.
4. The appellant or petitioner is responsible for presenting such relevant and credible evidence in support of the appeal or petition for special exception or variance. The Airport Zoning Director is responsible for presenting such relevant and credible evidence in support of a petition to declare an existing nonconforming use an airspace hazard or to declare an existing nonconforming use abandoned or deteriorated.
5. At least 14 calendar days before the scheduled public hearing, the appellant or petitioner must provide to the Airport Zoning Director a list of evidence to be presented at the hearing and copies thereof and a summary of evidence to be presented by witnesses. The appellant or petitioner may submit along with the evidence a written request for the hearing to be held in the appellant or petitioner's absence. If the appellant or petitioner has provided the information required under this paragraph, at least 7 calendar days before the scheduled public hearing, the Airport Zoning Director will provide to the appellant or petitioner a list of evidence to be presented at the hearing and copies thereof and a summary of evidence to be presented by witnesses.
6. No evidence will be considered by the Hearing Officer except when presented during the scheduled public hearing.

7. The participants before the Hearing Officer will be the appellant or petitioner, the Airport Zoning Director or his or her designee, proponents in favor of the appeal or petition, and opponents against the appeal or petition, inclusive of the public and witnesses with relevant testimony.
8. The order of presentation before the Hearing Officer will be as follows:
  - a. Appellant or petitioner and witnesses.
  - b. Airport Zoning Director or designee, Authority staff and witnesses.
  - c. Proponents for the appeal or petition.
  - d. Opponents against the appeal or petition.
  - e. Staff recommendations.
  - f. Rebuttal by appellant or petitioner.
9. Hearings before the Hearing Officer will be informal. Reasonable cross-examination of witnesses will be permitted but limited to the scope of the direct testimony.
10. The “preponderance of the evidence” standard of proof will apply to hearings before the Hearing Officer.
11. The Hearing Officer is expected to complete findings and recommendations and forward same to Development Program Services for distribution to the parties within 10 calendar days of each hearing.

## **HEARINGS BEFORE THE BOARD OF ADJUSTMENT**

1. Upon receipt of the Hearing Officer’s findings and recommendations, Development Program Services will coordinate, schedule and advertise the public hearing before the Board of Adjustment. Development Program Services will mail notice of the hearing no less than 20 calendar days prior to the hearing date. This notice will include the time, date and location of the public hearing.
2. All hearings will be conducted at a Board of Adjustment meeting and open to the public.
3. The Board of Adjustment will hear oral presentations by the Airport Zoning Director or his or her designee and the appellant or petitioner, each of whom may be represented by legal counsel.
4. All speakers must identify themselves and give their property address prior to speaking.
5. All testimony will be under oath. The person acting as chair of the Board of Adjustment is authorized to administer oaths.

6. The order of presentation before the Board of Adjustment will be as follows:
  - a. Introduction by Airport Zoning Director or designee.
  - b. Appellant or petitioner's presentation.
  - c. Staff response.
  - d. Rebuttal by appellant or petitioner.
7. The Board of Adjustment reserves the right to limit testimony presented to ten minutes for each side. Such time limit may be extended for good cause. Any time limit imposed will be announced by the chair before the beginning of the hearing on the appeal or petition that will be subject to the limitations.
8. The Board of Adjustment reserves the right to pose questions of staff and appellant or petitioner at any time.
9. The Board of Adjustment may render its decision based on the findings and recommendations of the Hearing Officer. However, the Board of Adjustment may, but is not required to review the record of the Hearing Officer's public hearing. The record consists of:
  - a. The notice of appeal or petition and accompanying documents;
  - b. Staff reports and recommendations;
  - c. All exhibits and documentary evidence;
  - d. The summary, findings, conclusions and recommendations of the Hearing Officer;
  - e. The audio-taped recording of the hearing before the Hearing Officer; and
  - f. Verbatim transcript of the proceedings, if any.
10. The Board of Adjustment may only consider the record of the proceedings before the Hearing Officer. No additional evidence may be submitted to or considered by the Board of Adjustment. Ex parte communications also may not be considered by Board of Adjustment members.
11. Decisions of the Board of Adjustment will be rendered at the conclusion of each hearing and will be subsequently set forth in a written decision.

## **DECISIONS OF THE BOARD OF ADJUSTMENT**

1. The Board of Adjustment will have the authority to adopt the Hearing Officer's recommendation, to adopt the Hearing Officer's recommendation with modifications, to remand the case back to the Hearing Officer

or to reject the Hearing Officer's recommendation and make its own findings and ruling.

2. If the Board of Adjustment remands a case back to the Hearing Officer, the Board will specify the reason for the remand and specify the issues for the Hearing Officer to address.
3. The Board of Adjustment may reject the decision of the Hearing Officer only if all of the following criteria have been met:
  - a. The case has been remanded one time by the Board of Adjustment to the Hearing Officer; and
  - b. Based upon the record on appeal, the Board of Adjustment finds that one or more of the official findings of fact and the conclusions of law as found in the decision of the Hearing Officer is unsupported by competent and substantial evidence in the record or if the essential requirements of the law have not been followed; and
  - c. A unanimous vote of Board of Adjustment members present to reject the recommendation of the Hearing Officer.
4. If granting a request that will result in the issuance of a permit, the Board of Adjustment may impose reasonable conditions on the permit.

#### **APPLICABLE TO HEARINGS BEFORE THE HEARING OFFICER AND BOARD OF ADJUSTMENT**

1. One continuance may be granted by the Hearing Officer or Board of Adjustment to a party, if the continuance request is filed with the Airport Zoning Director at least 10 calendar days before the scheduled hearing date.
2. The Hearing Officer or Board of Adjustment, at its discretion, may continue a hearing at a public hearing without notice for unique circumstances.
3. The appellant or petitioner, the Airport Zoning Director or designee, witnesses and any person providing testimony at any public hearing must be identified and sworn in at the beginning of each hearing using substantially the following form: "Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?" Responses will be made a part of the record.

4. The Hearing Officer, Board of Adjustment and participants in a hearing may refer to applicable portions of the Regulations, Chapter 333, Florida Statutes and any applicable state or federal statute, rule or decision.
5. Any party appearing before the Hearing Officer or Board of Adjustment is entitled to have a stenographer or court reporter make a record of the proceedings, at the party's sole cost and expense.

#### **AMENDMENTS**

These Rules may be amended by Authority Board at any Board meeting.

#### **CONFLICT WITH LAW**

The Rules of Procedure of the Board of Adjustment, as outlined above, are supplemental to the provisions of the Regulations and Chapter 333, Florida Statutes. When the provisions of the Regulations or Chapter 333, Florida Statutes are in conflict with the Rules outlined above, the provisions of that Regulation or law will govern.