

## PURPOSE OF BOARD OF ADJUSTMENT

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**2-301: Establishment of Board of Adjustment.** There is hereby created a Board of Adjustment of five members to be appointed by the Mayor with the advice and consent of the City Council. The Mayor may also appoint, with the advice and consent of the City Council, one alternate member who shall sit as a member of the board at the call of the chair of the Board of Adjustment in the temporary absence of a regular member. At least three members of this board must be present to form a quorum.

**2-302: Term of Office.** Each member and alternate member shall serve for a term of five years, provided that the term of members of the first Board shall be such that the term of one member shall expire each year. The term of office of each member shall commence the first day of February in the year in which the member is appointed. Any vacancy occurring on said Board by reason of death, resignation, removal or disqualification shall be filled in the same manner as an original appointment for the unexpired term. The Mayor may remove any member of the Board of Adjustment for cause if written charges against the member are filed with the Mayor and after public hearing, if such hearing is requested by the member.

**2-303: Organization and Procedure.**

- (1) The Board of Adjustment shall organize and elect a Chair and adopt rules for its activities in accordance with this Code. Meetings of the Board shall be held at the call of the Chair and at such times as the Board may determine. The Chair, or in his or her absence the acting Chair, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall 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 shall keep records of its examinations and other official actions; all of which shall be immediately filed in the office of the Board and shall be public record.
- (2) The concurring vote of three members of the Board of Adjustment is necessary to reverse any order, requirement, decision, or determination of any administrative official or agency or to decide in favor of the appellant.
- (3) Decisions of the Board of Adjustment become effective at the meeting in which the decision is made, unless a different time is designated in the Board's rules or at the time the decision is made.

**2-304: Duties and Powers.** The Board of Adjustment shall have the following powers:

- (1) To hear and decide appeals from any error in any order, requirement, decision or determination made by the administrative official in the enforcement of the zoning ordinance.
- (2) To hear and decide special exceptions to the terms of the zoning ordinance, but only when specifically authorized to do so under the terms of the zoning ordinance.
- (3) To hear and decide variances from the terms of the zoning ordinance.
- (4) To hear and decide appeals from Planning Commission decisions regarding conditional use permits.

**2-305: Appeals to Board.**

- (1) Appeals to the Board of Adjustment may be taken by any person or entity adversely affected or by an officer, department, board or bureau of the City affected by any decision of the Zoning Administrator or other administrative officer or agency in administration or interpretation of the zoning ordinance. Such appeal shall be taken within a period not to exceed 45 days from the date of the decision appealed from by filing with the Zoning Administrator and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.
- (2) An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Adjustment or by the district court on application and notice and on due cause shown.
- (3) The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and shall decide the same within a reasonable time. Upon the hearing, any party may appear in person, by agent or by attorney.
- (4) In exercising the above mentioned powers, the Board may, in conformity with the provisions of this Code, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as it deems proper, and to that end shall have all the powers of the Zoning Administrator and such other powers as herein provided.
- (5) The person or entity making the appeal has the burden of proving that an error has been made.
- (6) Only zoning decisions applying the zoning ordinance may be appealed to the Board of Adjustment. A person may not appeal, and the Board of Adjustment may not consider, any zoning ordinance amendments. Appeals may not be used to waive or modify the terms or requirements of the zoning ordinance, except as specifically allowed by the ordinance.

**2-306: Variances.**

- (1) Any person or entity desiring a waiver or modification of the requirements of the zoning ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the Board of Adjustment for a variance from the terms of the zoning ordinance.
- (2) The Board of Adjustment may grant a variance only if:
  - (a) literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance; and
  - (b) there are special circumstances attached to the property that do not generally apply to other properties in the same zone; and
  - (c) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
  - (d) the variance will not substantially affect the general plan and will not be contrary to the public interest; and
  - (e) The spirit of the zoning ordinance is observed and substantial justice done.
- (3) In determining whether or not enforcement of the zone would cause unreasonable hardship under subsection (2), the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship:
  - (a) is located on or associated with the property for which the variance is sought; and

- (b) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
- (4) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection (2), the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.
- (5) In determining whether or not there are special circumstances attached to the property under subsection (2), the Board of Adjustment may find that special circumstances exist only if the special circumstances:
  - (a) relate to the hardship complained of; and
  - (b) deprive the property of privileges granted to other properties granted in the same district.
- (6) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- (7) Variances run with the land.
- (8) The Board of Adjustment or any other body may not grant use variances.
- (9) In granting a variance, the Board of Adjustment may impose additional requirements on the applicant that will:
  - (a) mitigate any harmful effects of the variance; or
  - (b) serve the purpose of the standard or requirement that is waived or modified.

**2-307: District Court Review of Board of Adjustment Decisions.**

- (1) Any person or entity adversely affected by any decision of the Board of Adjustment may petition the District Court for a review of the decision.
- (2) In the petition for review, the petitioner may only allege that the Board of Adjustment's decision was arbitrary, capricious, or illegal.
- (3) The petition is barred unless it is filed within 30 days after the Board of Adjustment's decision becomes effective.
- (4) The Board of Adjustment shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders, and, if available, a true and correct transcript of its proceedings. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.
- (5) Review of the Board of Adjustment's decision shall be done by the court in the manner and upon the standards provided by law.
  - (6) The filing of a petition for review by the District Court does not stay the decision of the Board of Adjustment. Before filing the petition for review, the aggrieved party may petition the Board of Adjustment to stay its decision. Upon receipt of a petition for a stay, the Board of Adjustment may order its decision stayed pending District Court review if the Board of Adjustment finds it to be in the best interest of the City. After the petition is filed, the petitioner may seek an injunction staying the Board of Adjustment's decision.