

ARTICLE 12
BOARD OF ZONING APPEALS

1. Formation: The word “Board” when used in this article shall mean Board of Zoning Appeals. The Board shall adopt rules of procedure as may be necessary and proper to govern its own proceedings; such rules shall not be in conflict with other laws, regulations or ordinances. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Board shall keep minutes of its proceedings, showing the description of evidence presented, the findings of fact by the Board, the decision of the Board, and 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 filed in the office of the City Clerk and shall be public record.

2. Powers and Jurisdiction: The Board shall have the following powers and jurisdictions:
 - A. Appeals: To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Planning and Zoning Department in the enforcement of these regulations.
 - (1) Appeals to the Board may be taken by the person aggrieved, or by any officer, department, or bureau of the government affected by any decision of the Planning and Zoning Department. Such appeal shall be filed with the Planning and Zoning Department within a reasonable time, as shall be prescribed. The Planning and Zoning Department shall forthwith transmit to the Secretary of the Board all papers constituting the record upon which the action appealed from is taken.

 - (2) An appeal stays all proceedings in furtherance of the action appealed from, unless the Planning and Zoning Department certifies to the Board, 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 or her opinion, cause imminent peril to life or property.

In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board, or by a court of record on application or notice to the Planning and Zoning Department.

 - B. Variances: To authorize in specific cases a variance from the specific terms of these regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these regulations shall be observed, public safety

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and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning regulations in such district.

- (1) Variances from these regulations may not be granted only in the following instances: **(Ord 2129)**
 - (a) To permit any use not permitted by the zoning regulations in such district.
 - (b) To permit structural types of signs prohibited by the zoning regulations.
 - (c) To permit increased square footage for accessory structures.
- (2) A request for a variance may be granted, upon a finding of the Board that all of the following conditions have been met. The Board shall make a determination on each condition, and the finding shall be entered in the record.
 - (a) The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or applicant. *The applicant must show his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of the specific piece of property, or where by reasons of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations severely limit the use of the property in the manner similar to that of other property in the zoning district where it is located. (Ord 2129)*
 - (b) The granting of the permit for the variance will not adversely affect the rights of adjacent property owners represented in the application.
 - (c) The strict application of the provisions of the zoning regulations of which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application. *Such hardship shall not be based solely upon economic considerations. (Ord 2129)*
 - (d) The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

- (e) The granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.
- (4) In granting a variance, the Board may impose such conditions, safeguards and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations.
- C. Granting a Substitution of a Nonconforming Use: The Board may grant such substitutions as provided in Article 9, Nonconformities.
- D. Conditions of Determinations: In exercising the foregoing powers, the Board, in conformity with the provisions of this act, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, and to that end shall have all the powers of the officer from whom the appeal is taken.

A majority of the Board shall constitute a quorum for the transaction of business, and a concurring vote of a majority of the entire Board shall be necessary to reverse any order, requirement, decision or determination of the Planning and Zoning Department, or to decide in favor of the applicant upon any matter which it is required to pass under these regulations, or to affect any variation in such regulation.

3. Applications:

- A. The procedure for requesting a hearing before the Board shall be as follows:
 - (1) All applications to the Board shall be in writing on forms provided by the Board.
 - (2) All applications shall be accompanied by an ownership list, obtained from county records, listing the legal description and the name and address of the owners of all property located within 200 feet of the boundaries of the property included in the application.
 - (3) The Board shall fix a reasonable time for the hearing of an application, and notice of the time, place and subject of each hearing shall be published in the official newspaper (as designated by the Governing Body) at least 20 days prior to the date fixed for the public hearing. A copy of the notice of public hearing shall be sent to each party of interest, each person on the ownership list, and each Planning Commission member.

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- (4) An application shall be accompanied by a filing fee as established by the Governing Body. A separate filing fee shall be required for each request.

B. In addition to the above requirements, certain applications require additional information, as determined by staff, as follows:

- (1) Appeals:

- (a) An application for an appeal shall be filed within 60 days after a ruling has been made by the Planning and Zoning Department.
- (b) A copy of the order, requirement, decision or determination of the Planning and Zoning Department, which the applicant believes to be in error, shall be submitted.
- (c) A clear and accurate written description of the proposed use, work or action in which the appeal is involved and a statement justifying the appellant's position.
- (d) Where necessary, a plot plan, drawn to scale, in duplicate, showing existing and proposed plans for the area in question shall be submitted.

- (2) Variances:

- (a) The applicant shall submit a statement, in writing, justifying the variance requested, indicating specifically the enforcement provisions of the zoning regulations from which the variance is requested, and outlining in detail the manner in which it is believed that this application will meet each of the five conditions as set out in Section 2.B.(3) of this article.
- (b) The applicant shall submit a sketch, in duplicate, drawn to scale and showing the lot or lots included in the application, the structures existing thereon, and the structures contemplated necessitating the variance requested. *Depending upon the application, a survey of the property that is the subject of the variance may be required at Staff's discretion.* All appropriate dimensions and any other information that would be helpful to the Board in consideration of the application should be included. **(Ord 2129)**

4. Performance: In making any decision varying or modifying any provision of the zoning regulations or in granting a variance from the district regulations, the Board shall impose such restrictions, terms, time limitations, landscaping, screening, and other appropriate safeguards as needed to protect adjoining property.

The Board may require a performance bond to guarantee the installation of improvements, such as parking lot surfacing, landscaping etc. The amount of the bond shall be based on a general estimate of cost for the improvements as determined by the Board and shall be enforceable by or payable to the Governing Body in the sum equal to the cost of constructing the required improvements.

In lieu of the performance bond requirement, the Board may specify a time limit for the completion of such required improvements and, in the event the improvements are not completed within the specified time, the Board may declare the granting of the application null and void after reconsideration.

5. Who May Appeal From the Board Decision: Any person, persons, department of the government, jointly or separately aggrieved by any decision of the Board may present to the District Court having jurisdiction, a petition, duly verified, stating that such decision is illegal in whole or in part, specifying the grounds of the illegality and asking for relief therefrom. Such petition shall be presented to the Court within 30 days after the date of filing the decision of the Board in the office of the City Clerk.

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