

Article 22 Zoning Board of Appeals

7.22.01 Membership of Zoning Board of Appeals

There is hereby established a Zoning Board of Appeals (ZBA) which shall perform its duties and exercise its powers as provided in Article VI of Act 110 of 2006, as amended, and in such a way that the objectives of this ordinance shall be observed, public safety secured, and substantial justice done. The Board shall consist of six (6) members appointed by the City Commission.

Appointments shall be as follows: Two (2) members appointed for a period of one (1) year; two (2) members appointed for a period of two (2) years; and two (2) members appointed for a period of three (3) years, respectively; thereafter each member to hold office for a full three (3) year term. In addition, the City Commission may appoint two (2) alternate members who may be called upon to serve in the absence of a regular member, or for the purpose of reaching a decision on a case in which a regular member has abstained for reasons of conflict of interest. Any vacancies in the Board shall be filled by appointment by the City Commission for the remainder of the unexpired term. The ZBA shall annually elect its own Chairman, Vice Chairman and Secretary. The compensation of the appointed members of the Board of Zoning Appeals may be fixed by the City Commission.

7.22.02 Procedures

- (a) **Applications.** Application for variance, appeal, interpretation or changes in non-conforming uses shall be submitted to the Planning Department at least twenty (20) days prior to the ZBA meeting at which it will be heard. Application fees shall be established by the City Commission as provided for in *Section 7.21.05* of this ordinance.
- (b) **Notice.** Notice of the hearing of an appeal, variance, or other matter before the ZBA shall comply with *Section 7.21.07* of this ordinance.
- (c) **Meetings**
- (1) Meetings of the ZBA shall be held at the call of the Chairman, and at such times as the ZBA may determine.
 - (2) The ZBA shall not conduct business unless a majority of the regular or alternate members of the ZBA are present.
 - (3) All meetings of the ZBA shall be open to the public.
 - (4) The city clerk or their representative shall keep minutes of the ZBA proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its findings, decisions, evidence presented at the hearing, proceedings at hearings and other official actions, all of which shall be filed as soon as they are available in the office of the city clerk and shall be a public record. Copies of the decisions of the Board of Appeals shall be furnished to the City Commission and Planning Commission.

- (5) The ZBA shall adopt rules of procedure for the operation of the Board and the conducting of hearings.
- (6) The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses.

(d) **Zoning Board of Appeals Decision**

- (1) Following the hearing on an issue brought before them the ZBA may only reverse an administrative decision or grant an applicant's request by a majority vote of the members of the ZBA.
- (2) In making a decision on a request, the ZBA shall state the basis for their decision, including any findings of fact and how those facts relate to the standards used by the ZBA in making their decision.
- (3) The ZBA shall return a decision upon each case within sixty (60) days of the filing of a complete request application unless an extension is agreed to by the applicant.

(e) **Conditions**

- (1) The ZBA may place conditions on an affirmative decision when such conditions:
 - a. Would ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity.
 - b. Would protect the natural environment and conserve natural resources and energy.
 - c. Would ensure compatibility with adjacent uses of land.
 - d. Would promote the use of land in a socially and economically desirable manner.
- (2) In determining appropriate conditions, the ZBA shall ensure that:
 - a. There is a rough proportionality between the costs to the developer to provide an improvement and the impact to be mitigated.
 - b. There is a reasonable connection between the condition imposed and the impact it is mitigating.
- (3) **Performance Guarantees.** The ZBA may require performance guarantees as a condition of approval as authorized in *Section 7.21.06* of this ordinance.

- (f) **Appeal of Zoning Board of Appeals decision.** Any person aggrieved by the decision of the ZBA in granting or denying a request may appeal the decision to Circuit Court.

- (g) **Resubmission.** An applicant may not resubmit an application for one (1) year following a decision, unless a change in circumstances or new facts relevant to the decision are presented.

7.22.03 Powers of the Zoning Board of Appeals

The ZBA shall have the authority to:

- (a) Grant variances from the requirements of this ordinance.
- (b) Interpret the zoning ordinance and the zoning map.
- (c) Permit a legal non-conforming use of land or structures to be changed to another non-conforming use under the procedures contained in *Section 7.20.08* of this ordinance.

7.22.04 Variances

- (a) The ZBA shall have the power to authorize variations to any requirement of this ordinance which can be expressed in terms of numbers. The ZBA may not authorize a use variance.
- (b) If a variance which is granted is not utilized within one (1) year of its granting, the variance shall be considered null and void and an application must be refilled if it is desired at a future date.
- (c) If a variance is denied, the ZBA shall not reconsider the same request, or a similar request that could have been granted during the original consideration, within a period of one (1) year.
- (d) A variance which is legally utilized and maintained runs with the property and any subsequent owners who legally continue the variance under its original or amended terms.
- (e) In consideration of all variances, the ZBA shall review each case individually as to its compliance with each of the following standards and may only approve variance requests which comply with all of the following:
 - (1) The standard for which the variance is being granted would unreasonably prevent the owner from using property for a permitted purpose or would render conformity unnecessarily burdensome; and
 - (2) The variance would do substantial justice to the applicant as well as to other property owners in the zoning district and a lesser relaxation of the standard would not provide substantial relief and be more consistent with justice to others; and
 - (3) The problem is due to circumstances unique to the property and not to general conditions in the area; and

- (4) The problem that resulted in the need for the variance was not created by the applicant or previous owners of the property; and
 - (5) Issuance of the variance would still ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done.
- (f) Sign variances may be granted for any one of the following conditions:
- (1) The applicant has demonstrated a variance is needed due to a practical difficulty on the site, such as varied topography, horizontal or vertical road curvature, or presence of structures or desired trees that limits visibility of a sign on the premises compared to similar sites with conforming signs in the same zoning district; or
 - (2) A variance is warranted due to the relatively large size of the site, frontage or building in comparison to other establishments in the same zoning district; or
 - (3) A variance would significantly improve the conformity of an existing sign; or
 - (4) The variance would permit a sign with historic significance to be retained.
- (g) To grant a sign variance for one of the conditions specified above in (f), all of the following standards must also be met:
- (1) The inability to conform with the regulations is due to a practical difficulty or unique condition that includes more than mere inconvenience or mere inability to attain a supposed higher financial return; and
 - (2) That the alleged practical difficulties or unique condition, or both, are exceptional and peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the City; and
 - (3) That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by the regulations, the individual practical difficulties that will be suffered by a failure to grant a variance, and the rights of others whose property would be affected by the allowance of the variance, and will not be contrary to the public purpose and general intent of these regulations; and
 - (4) The variance granted is the minimum necessary to allow the applicant to enjoy the same rights as other establishments in the same zoning district, have a reasonable outlet for free speech and meet the intent of the sign regulations; and
 - (5) The variance will not adversely affect the health, safety and welfare of the public.

7.22.05 Interpretation

The Planning Department and the Planning Commission are responsible for interpreting this ordinance as part of their responsibility as the primary administrators of the ordinance. They may

request the ZBA to interpret provisions of this ordinance as outlined below. Each such interpretation shall establish the precedent for future treatment of the issue being addressed. To achieve the objective of consistent enforcement of this ordinance, whenever an interpretation question arises which has been addressed previously by the ZBA, the earlier interpretation shall apply without requiring further action by the ZBA. The Planning Department shall keep a concise record of all interpretations made by the ZBA to facilitate such reference.

- (a) The ZBA may classify any activity which is not specifically mentioned in Articles 7.03 through 7.11 for any zoning district as a use by right or special use provided that said classification shall be consistent with the classification of similar uses and with the purpose and intent of each zoning district. In carrying out this interpretation, the ZBA may not interpret a specific use as being included in a broader class of uses if that specific use is listed separately in other zoning districts.
- (b) The ZBA may determine the off-street parking and loading space requirements of any use for which these requirements are not determinable by the Planning Commission as provided for in Article 7.15.
- (c) The ZBA may interpret any portion of this ordinance when the zoning administrator is unable to clearly determine its intent or effect.

7.22.06 Appeals

These appellate procedures are instituted to hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official or body charged with the enforcement of the zoning ordinance.

- (a) An appeal shall be filed with the officer from whom the appeal is taken and with the ZBA, through the zoning administration specifying the grounds for the appeal.
- (b) Applications for appeals of administrative actions shall be submitted to the Planning Department within thirty (30) days of the date of such actions.
- (c) The officer from whom the appeal is taken shall forthwith transmit to the ZBA all papers constituting the record upon which the appeal is taken.
- (d) An appeal stays all proceedings in furtherance of action appealed from, unless the officer from whom the appeal is taken certifies to the ZBA after the notice of appeal shall have been filed with them, that by reason of facts stated in the certificate, a stay would in their opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the ZBA, or by the Circuit Court, on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
- (e) The ZBA may reverse or affirm, wholly or partly, or may modify the order, requirements or determination appealed from and in making an order, requirement, decision or determination, shall have the powers of the officer or body from whom the appeal is taken.