

Chapter 3

BOARD OF ADJUSTMENT

10-3-1: MEMBERSHIP; TERMS:

There is hereby created a board of adjustment, which shall consist of five (5) members, each to be appointed by the mayor with the advice and consent of the city council, for a term of five (5) years; provided, that the term of one member shall expire each year. Any member may be removed for cause by the city council upon written charges and after a public hearing, if such public hearing is requested. Vacancies shall be filled for the unexpired term of any member whose term has not been completed. (Ord. 6-18-81A, 6-18-1981; amd. 2003 Code)

10-3-2: ORGANIZATION; MEETINGS; RECORDS:

The board of adjustment shall organize and elect a chairman and adopt rules in accordance with the provisions of this title. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, shall conduct all meetings and may administer oaths and compel the attendance of witnesses. All meetings shall have minutes kept of its proceedings showing the vote, indicating such facts, and shall have records kept of its examinations and other official acts, all of which shall be filed immediately in the office of the board and shall be a public record. "Robert's Rules Of Order" shall be followed in the conduct of meetings whenever applicable. (Ord. 6-18-81A, 6-18-1981)

10-3-3: POWERS AND DUTIES:

The board of adjustment shall have judicial power to interpret the provisions of this title. It shall also have administrative duties to grant variances, special exceptions or conditional use permits as follows: (Ord. 6-18-81A, 6-18-1981)

A. Interpret Ordinance And Map:

1. Intent: It is the intent of this provision to provide a way whereby applicants who believe that the planning and zoning administrator is in error or does not interpret the provisions correctly to obtain a relief from such error in an expeditions and inexpensive manner without having to resort to the courts. (Ord. 6-18-81A, 6-18-1981; amd. 2003 Code)

2. Duty To Interpret: The board of adjustment shall hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, decision or refusal made in the enforcement of this title. The board of adjustment shall also interpret the zone map and boundaries thereof in cases of dispute or disagreements.

B. Grant Variances: The board of adjustment may authorize, upon appeal, variances from the terms of this title pertaining to area and width of lot, size of yards and height and size of buildings, where owing to special conditions peculiar to the property a literal enforcement of the provision of this title would result in a hardship which is unnecessary in carrying out the intent of this title. Before any variance can be granted, however, it must be shown that:

1. The variance will not substantially affect the comprehensive plan of zoning and that adherence to the strict letter of this title will cause difficulties and hardships upon the petitioner which are unnecessary in order to carry out the purposes of this title.
2. Special circumstances are attached to the property covered by the application that do not apply to other property in the same zone.
3. Because of said special circumstances, property covered by the application is deprived of privileges possessed by other properties in the same zone; and that the granting of a variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
4. The difficulties and hardships were not created by any act of the appellant subsequent to the effective date of the regulation appealed from.

C. Grant Certain Special Exceptions Or Conditional Uses:

1. Intent: There are certain uses which are not permitted within particular zones unless they are made to comply with conditions which are compatible with other uses in the same zone. It is the intent of this provision to authorize the board of adjustment to use its discretion in prescribing these conditions. However, the board of adjustment may not authorize a conditional use unless such use is specifically permitted by the terms of this title.
2. Duty To Prescribe Conditions: The board of adjustment shall hear and decide requests for "special exceptions", but only when authorized by the terms of this title to do so. In deciding whether or not to grant a special exception, the board of adjustment shall be guided by the conditions set forth in this title with respect thereto, which conditions shall be deemed to be the minimum standards which must be complied with.

D. May Attach Reasonable Conditions: The board of adjustment may attach reasonable conditions or requirements to the granting of a variance, special exception or conditional

use which the petitioner must comply with as a condition of the grant of approval. A time limit of one year shall be attached to the exercise or nonexercise of any grant, unless specifically extended by action of the board.

- E. May Reverse Or Affirm Enforcing Office: In performing the duties and powers as set forth herein, the board of adjustment is hereby empowered to reverse, affirm wholly or partly, or modify the order, requirement, decision or determination of the enforcing office, and may make such order or requirement as ought to be made; provided, however, that in interpreting and applying the provisions of this title, the requirements contained herein shall be deemed to be the minimum requirements for the purpose set forth. (Ord. 6-18-81A, 6-18-1981; amd. 2003 Code)

10-3-4: AUTHORITY LIMITED:

The powers and duties of the board of adjustment are limited to judicial and administrative matters as set forth in this title. The board of adjustment shall not have the authority to amend this title, nor to correct what it may consider to be an unwise requirement. Nevertheless, the board of adjustment shall have powers and duties as set forth in this title and, within the limitations and intent of the provisions of this title, shall perform the duties and shall have the power to perform these acts as herein set forth. (Ord. 6-18-81A, 6-18-1981)

10-3-5: VOTE:

The concurring vote of three (3) members of the board of adjustment shall be necessary to decide upon any matter upon which it is required to pass. (Ord. 6-18-81A, 6-18-1981)

10-3-6: APPLICATION TO APPEAR BEFORE BOARD:

Any citizen or person, or any officer of a department of the municipality, may appeal to the board of adjustment by filing a request in writing with the planning and zoning administrator, and by paying a fee in such amount as established by resolution of the city council, provided such appeal is made within thirty (30) days from the grant or refusal of a building permit by the planning and zoning administrator. The request to appear before the board of adjustment shall be made on forms furnished by the planning and zoning administrator. (Ord. 6-18-81A, 6-18-1981; amd. 2003 Code)

10-3-7: PROCEDURE:

- A. Upon receipt of the application, the planning and zoning administrator shall forthwith transmit to the board of adjustment all papers constituting the record upon which the notice appealed from was taken. The board of adjustment shall review the application and shall return the same to the planning and zoning administrator with its decision pertaining thereto within thirty (30) days. Failure to return said application within thirty (30) days shall constitute approval. An appeal stays all proceedings in furtherance of the action appealed from, unless the planning and 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 to the planning and zoning administrator and on due cause shown.
- B. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof by publication of notice at least five (5) days prior to the date of the hearing, as well as notice by mail to adjacent property owners within three hundred feet (300'), and decide the same within a reasonable time. Any party may appear at the hearing in person, by agent or by attorney. (Ord. 6-18-81A, 6-18-1981; amd. 2003 Code)

10-3-8: ACTION OF BOARD:

The board of adjustment shall make determinations in harmony with the provisions of this title and shall notify the planning and zoning administrator of the action taken. (Ord. 6-18-81A, 6-18-1981)

10-3-9: RECOURSE FROM BOARD DECISION:

Any person aggrieved by any decision of the board of adjustment may have and maintain a plenary action for relief therefrom in any court of competent jurisdiction; provided, that petition for such relief is presented to the court within thirty (30) days after the filing of such decision by the office of the board of adjustment. (Ord. 6-18-81A, 6-18-1981)

