

ARTICLE 6 BOARD OF ADJUSTMENT

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Section 6.1 Establishment of the City Board of Adjustment

(a) Appointment: There is hereby established in the municipality a City Board of Adjustment (referred to in this Article as "the Board") with the powers and duties hereinafter set forth. Such Board shall be composed of five members. The chief executive shall appoint the members of the Board for a term of three years, subject to confirmation by the governing body, provided, however, that when the first appointment is made hereunder, the term of office of two of said members shall be one year, the term of office of two of said members shall be two years, and the term of office of one of said members shall be three years. At least one of said members shall also be a member of the Planning Commission. All members of the Board shall serve as such without compensation.

(b) Removal and Vacancies: A member of the Board, once qualified, shall thereafter be removed during his term of office only for cause upon written charges and after public hearing held before the governing body. In the event of the death, resignation, or removal of any member before the expiration of his term, a successor shall be appointed in the manner described above for the unexpired portion of his term.

Section 6.2 Procedure of the Board

The Board shall elect its own chairman and shall adopt rules or procedures consistent with these regulations and pertinent statutes. 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, may administer oaths and compel the attendance of witnesses. All meetings, deliberations, and voting 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 record of its examinations and other official actions, all of which shall be immediately filed in the office of the Clerk and shall be a public record. The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

Section 6.3 Conflict of Interest

Any member of the Board who shall have an interest in any property or in the decision relating to such property, which shall be the subject matter of, or affected by, a decision of the Board, shall be disqualified from participating in the discussion, decision, or proceeding of the Board in connection therewith.

Section 6.4 Appeals to the Board

6.4.1 Appeals in General

Appeals to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the unit of government affected by any decision of the Inspecting Officer in administering these regulations. Such appeal shall be taken within ten days after the date of the decision by filing with the Inspecting Officer and with the Board a written notice of appeal specifying the grounds thereof. The Inspecting Officer shall forthwith transmit to the Board certified copies of all papers constituting the record of such matter, together with a copy of the ruling or order from which such appeal is taken.

6.4.2 Hearing

The Board shall fix a reasonable time for the hearing of the appeal. Notice of the hearing shall be given as provided in Section 6.4.4 hereof. At the hearing, any party may appear in person or by agent or by attorney. The Board shall decide the appeal in a reasonable time.

6.4.3 Notice of Hearing

(a) Time of Notice: In all cases where notice is required, it shall be given at least 30 days before the date of the hearing.

(b) Type of Notice Required:

(1) In all appeals, the Board shall give written notice to the Planning Commission.

(2) In all cases of applications for conditional use permits, variances, or other appeals effecting a particular lot or particular lots, rather than a zoning district as a whole or the territorial jurisdiction as a whole, all of the following means shall be used for giving notice:

a. publication in a newspaper of general circulation in the City;

b. mailing written notice to all owners of property within a 300 foot radius of the exterior boundary of the subject property. This list of names with their addresses of all owners of record of property within three hundred (300) feet of the effected property shall be prepared by a licensed abstractor.

c. posting on the property of a sign whose dimensions, design, content, and location shall conform with specifications established by the Board.

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(3) In all cases, the required notice shall contain:

- a. present zoning classification of the property and the nature of the appeal, variance, or exception requested; and
- b. date, time, and place of the hearing.

In the case of the required published notice and mailed notice, the notice shall also contain:

- a. Legal description of the property, and
- b. the street address or approximate location in the municipality.

(4) Except for notice to the Planning Commission, responsibility for giving proper and timely notice and paying all costs thereof shall be that of the applicant.

6.4.5 Stay of Proceedings

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken 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, in his opinion, would cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board or a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown.

Section 6.5 Powers and Duties of the Board

6.5.1 General Powers of the Board

In exercising its powers, other than its miscellaneous powers, the Board may, in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

6.5.2 Administrative Review Power of the Board

The Board shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Inspecting Officer in the enforcement of these regulations, subject to the provisions of Section 6.4.

6.5.3 Power of the Board to Grant Conditional Use Permits

(a) Power to Grant: The Board shall have the power to hear and decide applications for conditional use permits for only such uses for which these regulations require such a permit. Where a conditional use permit is required and granted, it shall be issued prior to issuance of a building permit or a certificate of occupancy, and shall be issued subject to the specific conditions upon which the Board has determined to grant the permit.

(b) Application for Permit: The applicant shall submit a written application for a conditional use permit indicating the section of these regulations under which the permit is sought, stating the grounds on which a permit is requested, and submitting a site plan showing the proposed development.

(c) Public Hearing on the Application: The Board shall hold a public hearing, as provided in paragraph 6.4.3.

(d) Board of Adjustment Action on Application: The Board shall make written findings certifying that the application complies with the pertinent individual conditions of use as set forth in Article 3, that any additional conditions of use specified in the granting of the permit are compatible with the general provisions of these regulations, as well as the provisions for the district in which such use is permitted, and that satisfactory provisions and arrangements have been made concerning the following, where applicable:

- (1) safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site.
- (2) safety from fire hazard and measures for fire control.
- (3) protection of adjacent property from flood or water damage.
- (4) noise-producing elements and glare of vehicular and stationary lights and effects of such lights on the established character of the neighborhood.

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(5) location, lighting, and types of signs and relation of signs to traffic control and adverse effects on adjacent properties.

(6) street size and adequacy of pavement width for traffic reasonably expected to be generated by the proposed use around the site and in the immediate neighborhood.

(7) adequacy of parking as determined by requirements of these regulations for off-street parking facilities in the use district in which the site is located; location of ingress and egress points for parking and off-street loading spaces; and protection of public health by surfacing on all parking areas to control dust.

(8) such other measures as will secure and protect public health, safety, morals, and general welfare.

(e) Board of Adjustment Finding: The Board shall consider the application and site plan and shall grant or deny the application. In granting an application, the Board shall impose such requirements and conditions, in addition to those expressly stipulated in these regulations for the particular use, as the Board may deem necessary for the protection of adjacent properties and the public interest.

(f) Expiration of Conditional Use Permit: Authority to issue building or occupancy permits pursuant to the granting of a conditional use permit shall expire two years after the granting of the conditional use permit, except when the following conditions have been met:

(1) building permits have been issued, materials have been acquired, and the foundation of at least one building has been placed on the site, or

(2) where no construction is required, an occupancy permit has been issued, and actual operation of the use has been started.

After authority for issuance of a building or occupancy permit, pursuant to the granting of a conditional use permit, has expired by default, no building or occupancy permit shall be issued except under a conditional use permit grant pursuant to a new application.

6.5.4 Power of the Board to Authorize Variances

(a) The following provisions relate to the general power of the Board to authorize variances:

(1) The Board shall have the power to authorize in specific cases such variances from the terms of the ordinance, other than as to use, as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done; and

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(2) A variance from the terms of the ordinance may be granted, as provided in this article, only upon a finding by the Board that:

a. the application of the ordinance to the particular piece of property would create an unnecessary hardship;

b. such conditions are peculiar to the particular piece of property involved; and

c. relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the ordinance or the Comprehensive Plan.

(3) Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of these regulations in the district involved, or any use expressly or by implication prohibited by the terms of these regulations in said district.