

SECTION 16

BOARD OF ADJUSTMENT:
ESTABLISHMENT AND PROCEDURE: POWERS AND DUTIES: AND
APPEALS FROM THE BOARD OF ADJUSTMENT

16.1 A Board of Adjustment is hereby established, which shall consist of five members to be appointed by the city council, each for a term of three years. Members of the Board of Adjustment may be removed from office by the city council for cause upon written charges and after public hearing. Vacancies shall be filled by resolution of the city council for the unexpired term of the member affected.

16.1.1 Proceedings of the Board of Adjustment: The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this ordinance. Meetings 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 shall be open to the public.

The Board of Adjustment 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 a public record and be immediately filed in the office of the Board.

16.1.2 Hearings: Appeals: Notice: Appeals to the Board of Adjustment concerning interpretation or administration of this ordinance may be taken by any person aggrieved by any officer or bureau of the governing body of the city affected by any decision of the administrative official. Such appeals shall be taken within a reasonable time, not to exceed 60 days or such lesser period as may be provided by the rules of the Board, by filing with the administrative official and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The administrative official shall forthwith transmit to the Board all papers constituting the record upon which the action appeal form was taken.

The Board of Adjustment shall fix a reasonable time for the hearing of appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

16.1.3 Stay of Proceedings: An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion cause imminent peril to life and property. In such case proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a

court of record on application on notice to the administrative official from whom the appeal is taken and on due cause shown.

16.2 The Board of Adjustment shall have the following powers and duties:

16.2.1 Administrative Review: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the administrative official in the enforcement of this ordinance.

16.2.2 Special Exceptions: Conditions Governing Applications: Procedures: To hear and decide only such special exceptions as the Board of Adjustment is specifically authorized to pass on by the terms of this ordinance; to decide such questions as are involved in determining whether special exceptions should be granted; and to grant special exceptions with such conditions and safeguards as are appropriate under this ordinance, or to deny special exceptions when not in harmony with the purpose and intent of this ordinance. A special exception shall not be granted by the Board of Adjustment unless and until:

- a) A written application for a special exception is submitted indicating the section of this ordinance under which the special exception is sought and stating the grounds on which it is requested.
- b) Notice shall be given at least 15 days in advance of public hearing. The owner of the property for which special exception is sought or his agent shall be notified by mail. Notice of such hearings shall be posted on the property for which special exception is sought, at the city hall, and in one other public place at least 15 days prior to the public hearing.
- c) The public hearing shall be held. Any party may appear in person, or by agent or attorney.
- d) The Board of Adjustment shall make a finding that it is empowered under the section of this ordinance described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public interest.
- e) Before any special exception shall issue, the Board shall make written findings certifying compliance with the specific rules governing individual special exceptions and that satisfactory provision and arrangement has been made concerning the following, where applicable:

- 1) ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
- 2) off-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district;
- 3) refuse and service areas, with particular reference to items in (1) and (2) above;
- 4) utilities, with reference to locations, availability, and compatibility;
- 5) screening and buffering with reference to type, dimensions, and character;
- 6) signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
- 7) required yards and other open space;
- 8) general compatibility with adjacent properties and other property in the district.

16.2.3 Variances: Conditions Governing Applications; Procedures: To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship. A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:

- a) A written application for variance is submitted demonstrating:
 - 1) that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
 - 2) That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.
 - 3) That the special conditions and circumstances do not result from the actions of the applicant.
 - 4) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.

No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

- b) Notice of public hearing shall be given as in Section 16.2.2 above.
- c) The public hearing shall be held. Any party may appear in person, or by agent or by attorney.
- d) The Board of Adjustment shall make findings that the requirements of Section 18.1 have been met by the applicant for a variance.
- e) The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
- f) The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under the sections of this ordinance.

Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

- 16.2.4 Board has Powers of Administrative Official on Appeals; Reversing Decision of Administrative Official: In exercising the above mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirements, 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 the powers of the administrative official from whom the appeal is taken.

The concurring vote of four members of the Board shall be necessary to reverse any order, requirements, decision, or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance.

- 16.3 Appeals from the Board of Adjustment: Any person or persons, or any board, taxpayer, department, board, or bureau of the city aggrieved by any decision of the Board of Adjustment may seek review by the District Court in the manner provided by the laws of the state.