

CHAPTER 1151 Board of Appeals

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1151.01 ESTABLISHMENT; MEMBERSHIP; TERM.

A Board of Appeals is hereby established in and for the City. Such Board shall consist of five members, appointed by Council, at least one of whom shall be a member of the City Planning Commission. One member shall be appointed for one year, one for two years, one for three years, one for four years and one for five years, and their successors shall be appointed for five years each. The term of the City Planning Commissioner shall expire at the same time as his term on such Commission expires. A member appointed to fill a vacancy shall serve for the unexpired term.

(Ord. A-2248. Passed 4-9-01.)

1151.02 HEARINGS; ORGANIZATION; RULES.

The hearings of the Board of Appeals shall be made public. However, the Board may go into executive session for discussion but not to vote on any case before it. The Board shall organize annually and elect a President, Vice-President and Secretary. The Board shall act by resolution in which three members must concur. The Board shall adopt, from time to time, such rules and regulations as it may deem necessary to carry into effect the provisions of this Zoning Code, all of which rules and regulations shall operate uniformly in all cases, and shall furnish a copy of the same to the City Manager. All of its resolutions and orders shall be in accordance therewith.

(Ord. A-2248. Passed 4-9-01.)

1151.03 POWERS AND DUTIES.

The powers and duties of the Board of Appeals shall be as follows:

- (a) Administrative Appeals. The Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the City Manager or his or her designee in the enforcement of this Zoning Code.
- (b) Variances.
 - (1) Variances on lots. The Board shall authorize, upon appeal, in specific cases, such variance from the terms of this Zoning Code as will not be contrary to the public interest, where, owing special conditions of the land (such as, an irregular shaped

lot; a lot of exceptional topography; or an exceptionally narrow, shallow or irregular lot, existing and of record at the time of the passage of this Zoning Code), a literal enforcement of the provisions of this Zoning Code will result in unnecessary hardship or practical difficulty.

- (2) Variations on existing or proposed buildings, structures, facilities and signs. The Board may grant the projection of an existing or proposed building, structure, facility or sign into a required yard or at a height greater than permitted, to secure an addition practical in its construction and arrangement. Such projection shall not exceed fifty percent (50%) of the required depth or width of the required yard, nor shall it exceed twenty five percent (25%) of maximum height or size regulations for the applicable use.
 - (3) Use variances not authorized. The provisions for variances within this Zoning Code shall not be construed to permit variances which shall in effect amend the use provisions in this Zoning code. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Zoning Code in the zoning district involved, or any use expressly or by implication prohibited by the terms of this Zoning code in such district.
- (c) Conditional Uses. The Board shall grant or deny conditional use permits, as provided in Chapter 1147 and Section 1151.07 of the Zoning Code.
- (d) Nonconforming Uses. The Board may permit the extension or substitution of a nonconforming use as provided in Chapter 1109 of the Zoning Code.
- (e) Additional Powers and Duties.
- (1) The Board may permit residence in an accessory building located in the rear of a principal building with no immediate street frontage only for domestic employees of residents of the principal building.
 - (2) The Board shall, in accordance with rules and regulations which may be adopted by it, determine all questions concerning the exact location of district boundary lines.
 - (3) The Board shall have the power to subpoena witnesses, administer oaths and punish for contempt and may require the production of documents under such regulations as it may establish.
- (Ord. A-2248. Passed 4-9-01.)

1151.04 MODIFICATION OF CODE APPLICATION; GRANTING OF VARIANCES.

Where the strict application of any provision of this Zoning Code could result in undue hardship or practical difficulty upon the owner of specific property, or where there is a reasonable doubt as to any provision of this Zoning Code or the Zone Map as applied to such property, the Board of Appeals, upon receipt of a request by such owner, may modify such strict application or interpret the meaning of this Zoning Code so as to relieve such hardship or difficulty. However, such modification and interpretation shall remain in harmony with the general purpose of this Zoning Code, so that the public health, safety, convenience, comfort, prosperity or general welfare will be conserved and substantial justice done. No variance in the application of the provisions of this Zoning Code shall be made by the Board relating to buildings, land or

premises not existing or to be constructed unless, after a public hearing, the Board makes specific findings that support conclusions as listed in Section 1151.06 of the Zoning Code.

(Ord. A-2248. Passed 4-9-01.)

1151.05 PROCEDURES AND REQUIREMENTS FOR ADMINISTRATIVE APPEAL.

- (a) Authorization. Section 1151.03(a) of the Zoning Code permits An appeal from a decision of the City Manager or his or her designee with respect to the interpretation or application of this Zoning Code. Such appeal may be taken to the Zoning Board of Appeals by any person aggrieved, or his or her agent, or by any officer of the City affected by such decision of the City Manager or his or her designee.
- (b) Notice of Appeal. Appeals to the Board shall be filed within twenty days after the decision of the City Manager or his or her designee by filing a written notice of appeal to the Board.
- (c) Stay of Proceedings. An appeal stays all proceedings to furtherance of the action appealed from, unless the City Manager or his or her designee from whom the appeal is taken certifies to the Board after the notice of appeal is filed with him or her, that by reason of facts stated in the application, a stay would in his or her 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 or by a court of record on application, on notice to the City Manager or his or her designee from whom the appeal is taken on due cause shown.
- (d) Hearing on Appeal. The Board shall select a time and place for the public hearing of an appeal and shall publish one notice of the time, place and date of such hearing in a newspaper of general circulation of the City at least seven days prior to the hearing, and give written notice thereof to all owners of property located within 200 feet in any direction of the property affected by the appeal.
- (e) Decision on Appeal. The Board shall have all powers of the City Manager or his or her designee with respect to such decision. The concurring vote of at least three members of the Board in attendance at the public hearing shall be necessary to reverse or modify any decision of the City Manager or his or her designee under this Zoning Code. The Board shall render a written decision containing relevant findings of fact without unreasonable delay after the close of the hearing, and in all cases, within forty-five days after the close of the hearing.

(Ord. A-2248. Passed 4-9-01.)

1151.06 PROCEDURES AND REQUIREMENTS FOR GRANTING OF VARIANCES.

- (a) Authorization. As permitted by Section 1151.03(b) of the Zoning Code, the Board may authorize, upon appeal in specific cases, such variance from the terms of this Zoning Code as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Zoning Code would result in undue hardship or practical difficulty. Variances from the regulations of this Zoning Code shall not be granted unless the Board makes specific findings of fact based directly on the particular evidence presented to it, which support conclusions that the standards and conditions imposed have been met by the applicant. Variances shall not be granted on

the grounds of convenience or profit, but only where strict application of the provisions of this Zoning Code will result in undue hardship or practical difficulty.

- (b) Appeal for Variance. Variances shall only be considered in cases where an application for a zoning permit has been previously filed with the City Manager or his or her designee and rejected. The applicant, or his or her agent, shall file an appeal for variance on forms provided by the City. The completed application form shall also be accompanied by one copy of a plot plan showing:
 - (1) The boundaries and dimensions of the lot.
 - (2) The size and location of existing and proposed improvements, including, but not limited to, buildings, structures, facilities, signs, lighting, accessways, walks, off-street parking spaces, loading berths and landscaping.
 - (3) The proposed use of all parts of the lot and improvements. The relationship of the variance requested to the standards set by this Zoning Code.
- (c) Public Hearing on Variance. The Board shall select a time and place for the public hearing on a variance application and shall publish one notice of the time, place and date of such hearing in a newspaper of general circulation of the City at least seven days prior to the hearing, and give written notice thereof to all owners of property located within 200 feet in any direction of the property affected by the variance application.
- (d) Standards for Variance. The Board shall not grant a variance unless it can, in each specific case, make specific findings of fact directly based upon the particular evidence presented to it, that support conclusions that:
 - (1) There are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or classes of use in the same vicinity and district.
 - (2) Such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and district but which is denied to the property in question.
 - (3) The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and district in which the property is located.
 - (4) The granting of such variance will not alter the land use characteristics of the vicinity and district, diminish the marketable value of adjacent land and improvements or increase the congestion in the public streets.
- (e) Modifications. In granting a variance, the Board may impose such modifications, safeguards and restrictions upon the premises benefitted by the variance as may be necessary to comply with the standards set forth in subsection (d) hereof to reduce or minimize potential injurious affects of such variance upon neighboring properties, and to carry out the general purpose and intent of this Zoning Code. Such modifications, safeguards and restrictions may be in the form of approval of a lesser variance for the projection, height or size of an existing or new building, structure, facility or sign than requested by the applicant, however, may not result in a use variance as prohibited by Section 1151.03(b)(3) of the Zoning Code.

- (f) Decision on Variance. The Board shall have all powers of the City Manager or his or her designee with respect to such decision. The concurring vote of at least three members of the Board in attendance at the public hearing shall be necessary to concur with, reverse or modify any decision of the City Manager or his or her designee. The Board shall render a written decision containing relevant findings of fact without unreasonable delay after the close of the hearing, and in all cases, within forty-five days after the close of the hearing.
- (1) In cases where the board concurs with the written recommendations and findings of the City Manager or his or her designee, such written recommendations and findings shall constitute the written decision of the Board.
 - (2) In cases where the Board's decision differs from the written recommendation and findings of the City Manager or his or her designee, the Board majority shall collectively, draft, approve, and formally submit written recommendations and findings based on their decision to the secretary of the board. Such written recommendations and findings shall be read verbatim by the president of the board at the same meeting in which they are formally submitted.
- (g) Period of Validity. A variance granted by the Board shall terminate at the end of one year from date on which the Board grants the variance, unless within such one year period, the applicable zoning permit is obtained.
- (Ord. A-2248. Passed 4-9-01; Ord. A-2419. Passed 1-24-05.)

1151.07 PROCEDURES AND REQUIREMENTS FOR CONDITIONAL USE PERMITS.

- (a) Authorization. Specifically listed conditional uses are provided within the zoning district regulations in recognition that such uses, although often desirable, will more intensely affect the surrounding area in which they are located than the permitted principal uses of such zoning district.
- The intent of the procedure for authorizing a conditional use is to set forth the development standards and criteria for locating and developing a conditional use in accordance with the nature of the surrounding area, conditions of development and with regard to appropriate plans.
- (b) Application for Conditional Use. Any person owning or having an interest in property may file an application to use such property for one or more of the conditional uses listed in Chapter 1147 of the Zoning Code, in the zoning district in which the property is situated. An application for conditional use permit shall be filed with the City Manager or his or her designee. The applicant, or his or her agent, shall file a conditional use application on forms provided by the City. The completed application form shall also be accompanied by one copy of a plot plan showing:
- (1) The boundaries and dimensions of the lot.
 - (2) The size and location of existing and proposed improvements, including, but not limited to, buildings, structures, facilities, signs, lighting, accessways, walks, off-street parking spaces, loading berths and landscaping.
 - (3) The proposed use of all parts of the lot and improvements.

- (4) The relationship of the conditional use requested to the standards set by this Zoning Code.
- (c) Public Hearing on Conditional Use. The Board shall select a time and place for the public hearing on a conditional use application and shall publish one notice of the time, place and date of such hearing in a newspaper of general circulation of the City at least seven days prior to the hearing, and give written notice thereof to all owners of property located within 200 feet in any direction of the property affected by the conditional use application.
- (d) Standards for Conditional Use. The Board shall not grant a conditional use unless it can, in each specific case, make specific findings of fact directly based upon the particular evidence presented to it, that support conclusions that:
 - (1) The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals or general welfare;
 - (2) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or will not substantially diminish and impair property value within the neighborhood;
 - (3) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district;
 - (4) Adequate utilities, access roads, drainage and other necessary facilities have been or are being provided;
 - (5) Adequate measures have been or will be taken to provide ingress and egress so designed to minimize traffic congestion in the public streets; and
 - (6) The conditional use will be located in a district where such use is permitted and that all requirements set forth in this Zoning Code and applicable to such conditional use will be met.
- (e) Additional Conditions. In granting a conditional use, Section 1147.06 of the Zoning Code permits the Board to impose additional conditions upon the premises benefitted by the conditional use as may be necessary to comply with the standards set forth in subsection (d) hereof to reduce or minimize potential injurious affects of such conditional use upon neighboring properties, and to carry out the general purpose and intent of this Zoning Code.
- (f) Decision on Conditional Use. The concurring vote of at least three members of the Board in attendance at the public hearing shall be necessary to grant a conditional use. The Board shall render a written decision containing relevant findings of fact without unreasonable delay after the close of the hearing, and in all cases, within forty-five days after the close of the hearing.
 - (1) In cases where the board concurs with the written recommendations and findings of the City Manager or his or her designee, such written recommendations and findings shall constitute the written decision of the Board.
 - (2) In cases where the Board's decision differs from the written recommendation and findings of the City Manager or his or her designee, the Board shall collectively, draft, approve, and formally submit written recommendations and findings based on their decision to the secretary of the board. Such written recommendations and

findings shall be read aloud by the president of the board at the same meeting in which they are formally submitted.

- (g) Period of Validity. A conditional use granted by the Board shall terminate at the end of one year from date on which the Board grants the conditional use, unless within such one year period, a zoning permit is obtained.

(Ord. A-2248. Passed 4-9-01.)

1151.08 FILING FEES FOR APPEAL.

Any petition, application or appeal on which the Board is required to act shall be accompanied by a filing fee as established by the administrative fee schedule published by the Department of Community Development, which shall be paid to the Finance Department, and no part of it shall be returnable to the petitioner, applicant or appellant.

(Ord. A-2248. Passed 4-9-01.)

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