

Article 24

BOARD OF ZONING APPEALS

Sections:

- 24-1. Formation
- 24-2. Powers and Jurisdictions
- 24-3. Application
- 24-4. Performance
- 24-5. Appeals of the Board's Decision

Section 24-1. Formation

- 24-1.01** A Board of Zoning Appeals is hereby created in accordance with State Statutes governing such creation. The word "Board" when used in this Article shall mean Board of Zoning Appeals. The Board shall adopt rules of procedure as may be necessary and proper to govern its own proceedings; such rules shall not be in conflict with other laws, ordinances or resolutions. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The Board shall keep minutes of its proceedings, showing the description of evidence presented, the findings of fact by the Board, the decision of the Board and 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 filed in the office of the Board immediately and shall be a public record.

Section 24-2. Powers and Jurisdictions

- 24-2.01** The Board shall have the following powers and jurisdictions:

1. **Appeals:** To hear and decide appeals where it is alleged there is an error to any order, requirement, decision or determination made by the Planning Director in the enforcement of these regulations.
 - a. Appeals to the Board may be submitted by the person aggrieved, or by any officer, department, or Bureau of the government affected by any decision or action of the Planning Director. Such appeal shall be filed within a reasonable time, as shall be prescribed by general rule of the Board and shall be submitted to the Planning Director together with a statement specifying the grounds for the appeal. The Planning Director shall transmit to said Board, all papers constituting the record for which the action or decision is being appealed.
 - b. An appeal stays all proceedings in furtherance of the action appealed from, unless the Planning Director certifies to the Board, after the Notice of Appeals shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause eminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board, or by a court of record on application or notice to the Planning Commission on good cause shown.

2. **Variance:** To authorize in specific cases a variance from the specific terms of these regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done.

a. The applicant must show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific of property at the time of the effective date of the District Zoning Regulations or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually prohibit the use of his property in the manner similar to that of other property in the zoning district where it is located.

b. Variances may include intensity of use, yard and height regulations only and are limited to the following:

1) A yard regulation variance shall not encroach upon the required setback for adjacent buildings.

2) One foot in height may be allowed for each one foot of additional building setback in addition to that required by the district regulation in which the property is located.

3) No variance to any yard or height requirements shall be granted which would allow for an encroachment into the setbacks necessary to preserve the projected right-of-way and improvements as shown in the Highway Corridor Management Plan.

c. A request for a variance may be granted, upon a finding of the Board that all of the following conditions have been met. The Board shall make a determination on each condition and the finding shall be entered in the record.

1) The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by an action or actions of the property owner or applicant.

2) The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.

3) The strict application of the provisions of the zoning regulations of which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

4) The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

- 5) The granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.

Section 24-3. Application

24-3.01 The procedure for requesting a hearing before the Board shall be as follows:

- a. All applications to the Board shall be in writing on forms provided by the Planning Director.
- b. The Board shall fix a reasonable time for the hearing of an application and notice of the time, place and subject of each hearing shall be published in the official newspaper (as designated by the governing body) at least 20 days prior to the date fixed for the public hearing. A copy of the notice of public hearing shall be sent to each party of interest and to the Planning Commission.
- c. An application shall be accompanied by a filing fee as established by Resolution of the Board of County Commissioners. A separate filing fee shall be required for each request.

24-3.02 In addition to the above requirements, certain applications require additional information as follows:

- a. Appeals:
 - 1) An application for an appeal shall be filed within 60 days after a ruling has been made by the Planning Director.
 - 2) A copy of the order, requirement, decision or determination of the Planning Director in which the appellant believes to be in error.
 - 3) A clear and accurate, written description of the proposed use, work or action in which the appeal is involved and a statement justifying the appellant's position.
 - 4) Where necessary, a plot plan, drawn to scale, in duplicate showing existing and proposed plans for the area in question shall be submitted.
- b. Variances:
 - 1) The applicant shall submit a statement, in writing, justifying the variance requested; indicating specifically the enforcement provisions of the zoning regulations from which the variance is requested, and outlining in detail the manner which it is believed that his application will meet each of the five conditions as set out in Section 22-2.01.2.c of this Article.
 - 2) The applicant shall prepare and submit in duplicate at the time of filing the application, a detailed plot plan drawn to scale, showing all existing and proposed structures, property lines with dimension, parking spaces, points of ingress and egress, driveways and any other information which would be helpful to the Board in consideration of the application.

Section 24-4. Performance

24-4.01 In making any decision varying or modifying any provisions of the Zoning Regulations, the Board may impose such restrictions, terms, time limitations, landscaping and other appropriate safeguards to protect adjoining property.

24-4.02 In lieu of the performance bond requirement, the Board may specify a time limit for the completion of such required improvements and in the event the improvements are not completed within the specified time, the Board may declare the granting of the application null and void after reconsideration.

The Board may require a performance bond to guarantee the installation of improvements such as parking lot surfacing, landscaping, etc. The amount of the bond shall be based on a general estimate of cost for the improvement as determined by the Board, and shall be enforceable by or payable to the Governing Body in the sum equal to the cost of constructing the required improvements.

Section 24-5. Appeals of the Board's Decision

24-5.01 Any person, persons, official, department or departments of government jointly or separately aggrieved by any order or decision of the Board may bring an action in the District Court to determine the legality of such order or decision within thirty (30) days after the date that the decision of the Board has been rendered.