

**CHAPTER 20. APPEALS; SPECIAL EXCEPTIONS;
VARIANCES; ADMINISTRATIVE EXCEPTIONS; PROCEDURES; LIMITATIONS.**

TABLE OF CONTENTS

<u>ARTICLE 1. APPEALS.</u>	2
Sec. 20.1.1. AUTHORITY; INTENT	2
Sec. 20.1.2. PROCEDURES.	2
<u>ARTICLE 2. SPECIAL EXCEPTIONS.</u>	3
Sec. 20.2.1. AUTHORITY; INTENT	3
Sec. 20.2.2. PROCEDURE	3
<u>ARTICLE 3. VARIANCES.</u>	4
Sec. 20.3.1. AUTHORITY; INTENT	5
Sec. 20.3.2. PROCEDURE	5
Sec. 20.3.3. SPECIAL CONDITIONS	6
Sec. 20.3.4. LIMITATION ON NUMBER OF APPEALS ON SAME ISSUE WITHIN CERTAIN TIME PERIOD.	6
Sec. 20.3.5. NUMBER OF VOTES NEEDED TO DECIDE IN FAVOR OF APPLICANT	7
Sec. 20.3.6. APPEALS FROM DECISION OF BOARD	7
Sec. 20.3.7. ORDER OF APPEALS.	7
<u>Article 4. Administrative Exceptions</u>	
Sec. 20.4.1 Authority; Intent	7
Sec. 20.4.2 Procedures	8

**CHAPTER 20. APPEALS; SPECIAL EXCEPTIONS;
VARIANCES; PROCEDURES; LIMITATIONS.**

ARTICLE 1. APPEALS.

Sec. 20.1.1. AUTHORITY; INTENT.

The Board of Adjustment shall have the authority 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 the applicable provisions of the Land Development Regulations, Appeals of this class may be taken by any person aggrieved or by any officer or bureau of the City affected.

Sec. 20.1.2. PROCEDURES.

20.1.2.1. Such appeal shall be taken within 30 days of the order, requirement, decision or determination appealed from, by filing with the Administrative Official from whom the appeal is taken, and with the Board, written notice of appeal specifying the grounds thereof. The appeal shall be in such form as prescribed by the rules of the Board. The Administrative Official from whom the appeal is taken shall, upon notification of the filing of the appeal, forthwith transmit to the Board all materials constituting the record upon which the action appealed from was taken.

20.1.2.2. The Board shall fix a reasonable time for a hearing, give due public notice thereof, and decide the same within a reasonable time. At the hearing, any party, except as provided otherwise, may appear in person or by agent or attorney.

20.1.2.3. Such appeals stay all work on the premises and proceedings in furtherance of the action appealed from, unless the Administrative Official from whom the appeal is taken certifies to the Board that, by reason of facts stated in the certification, a stay would cause imminent peril to life and property. In such case, proceedings or work 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 Administrative Official from whom the appeal is taken and on due cause shown.

20.1.2.4. In exercising the above powers, the Board may, so long as such action is in conformity with the terms of the applicable provisions of the Land Development Regulations, reverse or affirm, wholly or partly, or may 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 the powers of the Administrative Official from whom the appeal is taken.

ARTICLE 2. SPECIAL EXCEPTIONS.

Sec. 20.2.1. AUTHORITY; INTENT.

The Board of Adjustment shall have the authority to hear and decide only such special exceptions as it is specifically authorized to pass on by the terms of the Land Development Regulations; 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 the applicable provisions of the Land Development Regulations, or to deny special exceptions when not in harmony with the purpose and intent of the applicable provisions of the Land Development Regulations.

Sec. 20.2.2. PROCEDURE.

A special exception shall not be granted by the Board of Adjustment unless and until the requirements and conditions listed below have been examined and met.

20.2.2.1. A written application for a special exception is submitted indicating the chapter and section of the Land Development Regulations under which the special exception is sought and stating the grounds on which it is requested.

20.2.2.2. The Board of Adjustment shall make a finding that is empowered under the applicable provisions of the Land Development Regulations described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public interest nor be contrary to the intent and provisions of the Comprehensive Plan.

20.2.2.3. Such application has been submitted to and reviewed by the Planning Commission at 15 days prior to the Board public hearing and action on the application. Where the Planning Commission proposes conditions and safeguards in relation to such special exceptions, the Board shall not reduce such conditions and safeguards, but may add other conditions and safeguards in granting approval, except as provided elsewhere in the Land Development Regulations. Failure of the Planning Commission to report within 30 days of its first meeting following receipt of the application, unless a longer period has been agreed upon by the Board, shall be deemed an approval by the Planning Commission of such application.

20.2.2.4. Notice shall be given at least 15 days in advance of public hearing. The owner of the property of which the special exception is sought or his

agent shall be notified of the public hearing by mail. Notice of such hearings shall be posted on the property for which a special exception is sought, at the City hall and in one other public place at least 15 days prior to the public hearing. Written notice shall be mailed to all property owners within three hundred (300) feet of the subject property.

20.2.2.5. A public hearing shall be held. Any party may appear in person, or by agent or attorney. Before any special exception shall issue, the Board of Adjustment shall make written findings that it is empowered under the chapter and section of the applicable provisions of the Land Development Regulations described in the application to grant the special exception; that granting of the special exception will not adversely affect the public interest nor be contrary to the intent and provisions of the Comprehensive Plan; that there is compliance with specific rules governing individual special exceptions of the type involved; that the proposed development, with conditions and safeguards attached, would be generally compatible with adjacent properties and other properties in the district; and that satisfactory provision and arrangement has been made concerning the below listed conditions, where applicable:

20.2.2.5.1. Ingress and egress to the property and structures, with particular reference to automotive and pedestrian safety and convenience, traffic flow and access in case of fire or catastrophe;

20.2.2.5.2. Off-street parking and loading areas, refuse and service areas, with particular attention to item 20.2.2.5.1. above to effects on surrounding property;

20.2.2.5.3. Utilities; location, availability and compatibility;

20.2.2.5.4. Screening and buffeting; type, dimensions and location;

20.2.2.5.5. Signs, if any, and proposed lighting;

20.2.2.5.6. Required yards and other open space.

20.2.2.5.7. Among other conditions and safeguards, the Board of Adjustment may prescribe reasonable time limits within which actions shall be begun or completed, or both. Violation of any conditions or safeguards, when made part of the terms under which the special exception is granted, shall be deemed a violation of the Land Development Regulations.

ARTICLE 3. VARIANCES.

Sec. 20.3.1. AUTHORITY; INTENT.

The Board of Adjustment shall have the authority to authorize upon appeal in specific cases such variance from the terms of the Zoning and Subdivision Chapters of the Land Development Regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the applicable Land Development Regulations would result in unnecessary and undue hardship.

Sec. 20.3.2. PROCEDURE.

A variance of the terms of the applicable provisions of the Land Development Regulations shall not be granted by the Board of Adjustment unless and until the requirements and conditions listed below have been examined and met.

20.3.2.1. A WRITTEN APPLICATION FOR A VARIANCE IS SUBMITTED DEMONSTRATING:

20.3.2.1.1. 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;

20.3.2.1.2. That the special conditions and circumstances do not result from the actions of the applicant;

20.3.2.1.3. That granting the variance requested will not confer on the applicant any special privilege that is denied by the applicable provisions of the Land Development Regulations to other lands, buildings or structures in the same district;

20.3.2.1.4. That literal interpretation of the applicable provisions of the Land Development Regulations would deprive the applicant of rights commonly enjoyed by other other properties in the same district, under the terms of the Zoning and Subdivision Chapters of the Land Development Regulations, and would work unnecessary and undue hardship on the applicant.

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

20.3.2.2. Notice shall be given at least 15 days in advance of the public hearing. The owner of the property for which the variance is sought or his agent shall be notified of the public hearing by registered mail. Notice of such hearings shall be posted on the property for which a variance is sought, at the City Hall

and in one other public place at least 15 days prior to the public hearing. Written notice shall be given to all property owners within three hundred (300) feet of the subject property.

20.3.2.3 The public hearing shall be held. Any party may appear in person, or by agent or by attorney.

20.3.2.4. The Board of Adjustment shall be findings that the requirements of subsection 20.3.2.1. above have been met by the applicant for a variance.

20.3.2.5. 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.

20.3.2.6. 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 the applicable provisions of the Land Development Regulations, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare nor in conflict with the purpose and intent of the Comprehensive Plan.

Sec. 20.3.3. SPECIAL CONDITIONS.

20.3.3.1. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the applicable provisions of the Land Development Regulations, including time limits for beginning and completion of any action involved. 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 the Land Development Regulations and punishable as provided for thereunder.

20.3.3.2. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of the applicable provisions of the Land Development Regulations in the district involved, or any use expressly or by implication prohibited by the terms of the applicable provisions of the Land Development Regulations in such district.

20.3.3.3. Economic hardship, medical conditions or related circumstances shall not be grounds for issuance of a variance.

20.3.3.4. A variance shall not be granted for reduction of minimum lot width and for minimum lot area requirements for the district in which such lot or lots are located.

Sec. 20.3.4. LIMITATION ON NUMBER OF APPEALS ON SAME ISSUE WITHIN CERTAIN TIME PERIOD.

Whenever the Board has acted on a petition or request for administrative review, special exception or variance, the Board shall not then consider any petition or request for substantially the same action for a period of one year from the effective date of previous action on the petition or request.

Sec. 20.3.5. NUMBER OF VOTES NEEDED TO DECIDE IN FAVOR OF APPLICANT.

The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, 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 the applicable provisions of the Land Development Regulations, or to effect any variation in the application of the applicable provisions of the Land Development Regulations.

Sec. 20.3.6. APPEALS FROM DECISION OF BOARD.

Any person aggrieved by any decision of the Board, or any officer, department, Board, Commission or bureau of the City, may apply to the circuit court for judicial relief within 30 days after rendition of the decision by the Board. The election of remedies, trial de novo, governed by State laws of civil procedure, or application for writ of certiorari, shall be the burden of the applicant.

Sec. 20.3.7. ORDER OF APPEALS.

20.3.7.1. It is the intent of this Chapter that all questions of interpretation and enforcement shall be first presented to the Administrative Official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Administrative Official, and that recourse from the decisions of the Board of Adjustment shall be to the courts as provided by law.

20.3.7.2. It is further the intent of this Chapter that the duties of the City Commission in connection with this Chapter shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this Section and this Chapter.

Article 4. Administrative Exceptions

Sec. 20.4.1 Authority; Intent The Administrative Official shall have the authority to authorize upon request in specific cases such exceptions from the terms of the Zoning and Subdivision Chapters of the Land Development Regulations pertaining to RS-1, RS-2, RS-3 as will not be contrary to the public interest where, owing to existing nonconforming conditions, a literal enforcement of the provisions of the applicable Land Development Regulations would result in unnecessary and undue hardship.

Sec. 20.4.2 Procedures

An exception to the terms of the applicable provisions of the Land Development Regulations shall not be granted by the administrative official unless and until the requirements and conditions listed below have been examined and met.

20.4.2.1 A WRITTEN REQUEST AND SUPPORTING DATA FOR AN ADMINISTRATIVE EXCEPTION MUST BE SUBMITTED BY THE APPLICANT DEMONSTRATING:

20.4.2.1.1.1 That at least 65% of the surrounding like zoning has nonconformities of a similar nature. These existing nonconformities shall be within a 300' radius of the existing property line of the applicant.

20.4.2.1.1.2 That within the described **300'** radius, only properties of identical zoning designation shall be used to calculate the 65% of similar existing nonconformities.

20.4.2.2 ONLY THE FOLLOWING STANDARDS MAY BE REQUESTED FOR ADMINISTRATIVE EXCEPTIONS:

Nonconforming accessory uses and structures, minimum lot size, minimum yard requirements, maximum height of structures, minimum off-street parking and loading requirements, sign limitations, minimum square feet of living area, and setbacks.