

ARTICLE XXI

BOARD OF ZONING APPEALS

SECTION 5. POWERS AND JURISDICTION. The Board shall have the following powers and jurisdiction:

1. Appeals. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of these regulations.
 - a. Appeals to the Board may be taken by the person aggrieved, or by any officer, department, or Bureau of the government affected by any decision of the Zoning Administrator. Such appeals shall be filed with the Zoning Administrator within sixty (60) days after a ruling has been made by the Zoning Administrator. The Zoning Administrator shall forthwith transmit to the Secretary of the Board all papers constituting the record upon which the action appealed from is taken.
 - b. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, after the Notice of Appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent 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 Zoning Administrator on good cause, shown.
 - c. An appeal shall be sustained only if the Board finds that the administrative official's action was based on an erroneous finding of a material fact, or that he acted in an arbitrary or capricious manner or manifestly abused his discretion.
2. Variances. 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. Such variance shall not permit any use not permitted by the zoning regulations in such district.

- 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 piece 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. 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, property, or general welfare.
 - (5) The granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.
- a. In granting a variance, the Board may impose such conditions, safeguards and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations.
- b. Yard variances shall not be more than one-half of the required yard and shall not encroach upon the required setback for

adjacent buildings. Any limitation on sight distance and traffic safety will require denial of such variance.

3. Exceptions. To grant as an exception to the provisions of these zoning regulations, the establishment of special use permits that are expressly authorized to be permitted in a particular zoning district or districts. In no event shall exceptions to the provisions of the zoning regulations be granted where the exception contemplated is not specifically listed in the zoning regulations. Further, under no conditions shall the Board have the power to grant an exception when the conditions of this exception, as established by these regulations, are not found to be present.

a. The Board shall not grant an exception unless it shall, in each specific case, make specific written findings of fact directly based upon the particular evidence presented to it, that support conclusions that:

- (1) The proposed exception complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.
- (2) The proposed exception at the specified location will contribute to and promote the welfare or convenience of the public.
- (3) The proposed exception will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.
- (4) The location and size of the exception, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the exception will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the exception will so dominate the immediate neighborhood, consideration shall be given to:
 - (a) The location, nature and height of buildings, structures, walls, and fences on the site, and
 - (b) The nature and extent of landscaping and screening on the site.

- (5) Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations, and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.
 - (6) Adequate utility, drainage, and other such necessary facilities have been or will be provided.
 - (7) Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
 - b. In granting an exception, the Board may impose such conditions, safeguards and restrictions upon the premises benefited by the exception as may be necessary to reduce or minimize any potentially injurious effect of such exception upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations.
4. Conditions of Determination. In exercising the foregoing powers, the Board, in conformity with the provisions of this act, may reverse or affirm, wholly or partly, or may modify any order, requirement, decision or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a zoning certificate.

A majority of the Board shall constitute a quorum for the transaction of business, and a concurring vote of a majority of the entire Board shall be necessary to reverse any order, requirements, decision or determination of the Zoning Administrator, or to decide in favor of the applicant upon any matter which it is required to pass under these Regulations, or to affect any variation in such Regulation.