



Zoning Board of Adjustment Applications

❖ Administrator's Decision

- *Consideration of Appeals.* The ZBA shall hear and decide appeals where it alleged that there is an error in any order, requirement, decision, or determination by the Code Administrator in the administration of this ordinance. The ZBA may affirm or reverse such order, requirement, decision, or determination, in whole or in part, or may modify the same.
- *Timing and Content of Appeal.* A notice of appeal must be filed with the ZBA and the Code Administrator within thirty (30) days of the order, requirement, decision, or determination, and shall contain a statement of the grounds for the appeal.
- *Burden of Persuasion.* The applicant bears the burden of presenting evidence sufficient to allow the ZBA to reach conclusions and make findings to support a reversal or modification of an order, requirement, decision, or determination by the Code Administrator.

❖ Special Exception

- *Requisite Findings.* The ZBA shall grant an application for a special exception only where it confirms in writing each of the following findings:
 - The requested use is specifically authorized in this ordinance;
 - The requested use will not create undue traffic congestion or unduly impair pedestrian safety;
 - The requested use will not overload any public or private water, drainage, or sewer system or any other municipal system, nor will there be any significant increase in storm water runoff onto adjacent property or streets;
 - The requested use will not create excessive demand for municipal police, fire protection, schools, or solid waste disposal services.
 - Any requirements and standards for the use as set forth in Article 28-5, Supplemental Standards, of this ordinance are fulfilled;
 - Where the special exception is related to a nonconforming use or structure, the requirements and standards as set forth in Section 28-8-4(b), Change from One Nonconforming Use to Another by Special Exception, or Section 28-8-5(c), Replacement of Nonconforming Structures That Have Been Destroyed, or Section 28-8-5(d), Removal and Replacement of Certain Nonconforming Residential Structures, of this ordinance, are fulfilled;
 - The requested use will not create hazards to the health, safety, or general welfare of the public, nor be detrimental to the use of or out of character with the adjacent neighborhood;
 - The proposed location is appropriate for the requested use; and
 - The requested use is consistent with the spirit and intent of this ordinance and the Master Plan.
- *Burden of Persuasion.* The applicant bears the burden of presenting evidence sufficient to allow the ZBA to make findings required to support the granting of a special exception.

Code Administration



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❖ **Variance**

- The ZBA may authorize a variance from this ordinance only where the record supports the following:
- Special circumstances exist such that an unnecessary hardship would be imposed by a literal application and enforcement of the provisions of this ordinance, and the circumstances which create this hardship are that the provisions of this ordinance interfere with the reasonable use of the property considering the unique setting of the property in its environment, that no fair and substantial relationship exists between the general purposes of the ordinance and the specific provisions affecting the property, and that the variance would not injure the public or private rights of others;
 - The relief sought is the minimum necessary to result in reasonable use of the property;
 - Authorization of a variance will not be contrary to the public interest;
 - The spirit of this ordinance shall be observed and substantial justice done in the authorization of a variance; and
 - No diminution in the value of surrounding properties would be suffered as a result of the authorization of a variance.

❖ **Equitable Waiver**

- The ZBA shall hear and decide applications for an equitable waiver of a dimensional requirement pursuant to Section 28-4-1, Dimensional Standards, of this ordinance. An equitable waiver may be granted only where the ZBA confirms in writing each of the following findings based upon the evidence and arguments presented to it upon appeal:
- The violation was not noticed or discovered until after a structure in violation had been substantially completed, or a lot or other division of land in violation had been conveyed to a bona fide purchaser for value;
 - The violation was caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in the interpretation or administration of this ordinance by the Code Administrator;
 - The violation does not constitute a nuisance, diminish the value of properties in the area, or adversely affect any present or permissible future uses of the premises;
 - Presuming construction or investment in ignorance of the facts constituting the violation, the cost of correction far outweighs any public benefit to be gained in requiring the violation to be corrected; and
 - In lieu of the findings in Sections 28-9-3(e)(3)a. and b., the violation has existed for ten (10) years or more and no enforcement action has been commenced against the violation during that time.