

ARTICLE H. – BOARD OF APPEALS

Sec. 8-3163. - Powers and duties generally.

- (a) *Appeals from administrative actions.* The board of appeals shall hear and decide upon appeals where it is alleged there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this chapter, or from any decision of the historic district board of review and metropolitan planning commission site plan reviews.
- (b) *Request for permission to establish uses.* The board of appeals shall hear and decide upon requests for permission to establish uses upon which the board of appeals is required to pass under the terms of this chapter. The application to establish such use shall be approved on a finding by the board of appeals that:
 - (1) The proposed use does not affect adversely the general plans for the physical development of the city, as embodied in this chapter, and in any master plan or portion thereof adopted by the mayor and aldermen.
 - (2) The proposed use will not be contrary to the purposes stated for this chapter.
 - (3) The proposed use will not affect adversely the health and safety of residents and workers in the city.
 - (4) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.
 - (5) The proposed use will not be affected adversely by the existing uses.
 - (6) The proposed use will be placed on a lot of sufficient size to satisfy the space requirements of such use.
 - (7) The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use such facility, vehicular movement, noise or fume generation or type of physical activity.
 - (8) The standards set forth for each particular use for which a permit may be granted have been met.

Provided, that the board of appeals may impose or require such additional restrictions and standards as may be necessary to protect the health and safety of workers and residents in the community, and to protect the value and use of property in the general neighborhood.

Provided, that the proposed use shall be subject to the minimum area, setback and other locational requirements of the zoning district in which it will be located.

Provided, that the proposed use shall be subject to the off-street parking and service requirements of this chapter.

Provided, that wherever the board of appeals shall find, in the case of any permit granted pursuant to the provisions of this chapter, that any of the terms, conditions or restrictions upon which such permit was granted are not being complied with, the board shall rescind and revoke such permit after giving due notice to all parties concerned and granting full opportunity for a public hearing.

- (c) *Request for a variance.* The board of appeals may authorize, upon appeal in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will, in an individual case, result in unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done; provided, however, a variance shall not be granted for a use of land or building or structure that is prohibited by this chapter in the district in question. Such variance may be granted in an individual case upon a finding by the board of appeals that:

- (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.
 - (2) The application of this chapter to this particular piece of property would create an unnecessary hardship.
 - (3) Such conditions are peculiar to the particular piece of property involved.
 - (4) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this chapter.
- (d) *Request for extension of nonconforming use.* The board of appeals may authorize, upon appeal in specific cases, an extension of an existing nonconforming use involving an increase in either or both the land area or the floor area in a building or buildings occupied by a nonconforming use. Such extension may be granted in an individual case upon a finding by the board of appeals that:
- (1) The use is nonconforming according to these regulations.
 - (2) The use conforms to the requirements of section 8-3163 (b), Request for permission to establish uses.
 - (3) A nonconforming use of land where no building or structure is involved may be extended only within the legal boundaries of the lot of record which existed at the time when the use became nonconforming.
 - (4) A nonconforming use which utilizes a building or structure may be expanded only within the area of the building or structure existing at the time when the use became nonconforming and only when such building or structure or portion thereof is clearly designed to house the same kind of use.

(Code 1977, § 8-3123)

Sec. 8-3165. - Appeals.

- (a) *Who may appeal.* Appeals from an administrative action as set forth in section 8-3163(a) to the board of appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the governing authority affected by any such administrative action. Such appeals shall be filed no later than 30 days after the date of notification of the decision appealed from, by filing with the zoning administrator and with the board of appeals a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken.
- (b) *Legal proceeding stayed.* An appeal stays all legal proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board of appeals 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 and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the zoning administrator and on due cause shown.
- (c) *Presentation of evidence.* The appellant and any public agency or private individual shall be entitled to present evidence on matters before the board of appeals, and the board may request technical service, advice, data or factual evidence from the planning commission and the governing authorities for assistance in reaching decisions.
- (d) *Extent of board of appeals' power.* The board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination of the zoning administrator, and to that end shall have all the powers of the zoning

administrator. The board of appeals may direct the issuance of a permit. It shall be the duty of the zoning administrator to carry out the decision of the board of appeals.

- (e) *Board of appeals' decisions invalid after 12 months.* No decision of the board of appeals permitting the use of a building or land shall be valid for a period longer than 12 months; provided, that wherever such use is dependent upon the erection or operation of a building, the board may extend the time for good cause thereon.

(Code 1977, § 8-3125)