

BOARD OF ADJUSTMENT
For related information, see F.S. §120.542.

Board Established. A Board of Adjustment is hereby established.

Duties. The Board of Adjustment (BOA) is a **quasi-judicial board** which has the following duties:

- **Administrative Reviews.** Hear and decide appeals from any decision by the Building Official regarding any portion of City Code Chapter 30 (Land Development Regulations (LDRs)).
- **Variances.** Hear and decide requests for variances, which are exceptions made to certain LDR provisions. Variances remain with a property even when ownership changes (variances “run with the land”).

Number of Members. 5 primary members and 2 alternates

Term of Office. 3 years

Financial Disclosure. Limited financial disclosure is required for this board. See “Financial Disclosure” in Section 3 of this Handbook.

Supporting Staff/Recording Secretary. Community Development Department (or other staff approved by the City Manager)

Regular Meetings. 1st Monday of each month at 6:00 p.m. in the Council Chamber (or other time and/or place approved by the City Manager)

BOA Forms. See attached forms for variance and administrative-review

actions. **Additional Provisions.**

(a) Administrative review of Building Official’s decision(s) regarding land development regulations.

- (1) **Appeal procedure.** Any person aggrieved by such a decision may appeal to the board. The appeal shall be in writing, specify the grounds for appeal, and be filed with the Building Official within 30 days after the decision is rendered.
- (2) **Effect of appeal.** An appeal stays all actions involving the appealed decision, unless the Building Official certifies to the board that the Official believes a stay would pose imminent peril to life or property. In that event, actions shall not be stayed except by injunction entered by a court of competent jurisdiction after notice to the Building Official.
- (3) **Board authority.** Consistent with the land development regulations and the powers of the Building Official, the board may reverse, affirm, or modify any part of the appealed decision and make any other decision or interpretation it deems appropriate.

(b) Variances.

- (1) **Permissible subject matter.** The board may grant variances for the following matters only: structure size and height, lot size and area, yard size and amount of open space, setbacks, fences, and landscaping.
- (2) **Eligible applicants.** Only the following may request a variance:
 - a. The owner(s) of at least 75 percent of the property or an agent they have authorized through a properly-executed power of attorney;
 - b. The City Council;
 - c. The Planning Advisory Board; and
 - d. Any department of the City.

- (3) **Criteria.** The board shall be governed by the following criteria when deciding whether to grant a variance.
- a. **Written application.** A written application for a variance must be submitted demonstrating all of the following criteria:
1. A **special circumstance** exists which is peculiar to the land or structure involved (i.e., not applicable to other lands or structures in the same zoning district), and is not the result of the applicant's actions. However, a variance is not precluded if the special circumstance was created by those who:
 - (i) Were acting in full compliance with all government regulations in effect when the special circumstance was created; or
 - (ii) Detrimentially relied on a permit issued in error through no fault of their own and who demonstrate such detrimental reliance to the board; **OR**
 2. In lieu of the foregoing special circumstance, a **compelling health factor** exists regarding the owner-occupant or any of owner's immediate family members residing on the property. A compelling health factor shall mean a permanent and life-threatening disease which cannot be cured or a permanent injury which cannot be rehabilitated. Immediate family members shall mean lineal ascendants or descendants, spouse, or siblings. The applicant shall provide the board with written verification of the compelling health factor from a Florida-licensed physician; **AND**
 3. Literal interpretation of the land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and work unnecessary hardship on the applicant; **AND**
 4. Applicant's reason justifies granting the variance, and the variance is the minimum that will allow reasonable use of the land or structure under present zoning; **AND**
 5. The variance will be in harmony with the general intent of the land development regulations and the district in which the property is located and will not be detrimental to the neighborhood or the public welfare.
- b. **Other restrictions.**
1. No variance shall be granted based on the existence of:
 - (i) A nonconforming use of property in the same zoning district, or
 - (ii) Any use of property in other zoning districts.
 2. A variance shall not establish or expand any use prohibited in any zoning district in the City.
 3. A variance shall not be granted if the special circumstance in **(b)(3)a.1.** above was created by failure of the applicant or any previous owner of the property to obtain any required permit.
- (4) **Variance Modifications.** While a variance request is being considered by the board, the applicant may modify the request to obtain a lesser variance. In addition, the board may approve a lesser variance on its own initiative. The board may also prescribe conditions and safeguards consistent with the land development regulations as a part of any variance, and the violation of such conditions and safeguards shall be subject to enforcement by law.
- (5) **Variance Effective period.** Any required building permit(s) must be obtained within six months of the variance approval date; after that time, the variance is void.

(c) **Public hearings.** A public hearing shall be held for each requested variance and administrative review. A completed application and filing fee must be received by the Building Official at least 30 days before the scheduled hearing.

(1) **Notice.**

- a. At least 15 days before the public hearing, notice of the hearing shall be posted on the subject property and at City Hall and published in a newspaper of general circulation within the City.
- b. The City shall provide courtesy notices, by mail or in person, to the owners of all property located within 250 feet of the subject property. In case of notice by mail, such notice shall be mailed at least 10 days before the hearing date. Failure to mail or receive such courtesy notice shall not affect any proceeding or action taken under this Handbook's provisions for the Board of Adjustment.

(2) **Representation.** At the hearing, any party may appear in person or be represented by an agent or attorney.

(3) **Witnesses.** The chair may compel the attendance of witnesses; and the chair, if a notary, or the staff secretary to the board may administer oaths.

(4) **Applicant's right to full board.** If a five-member board is not present, the applicant has the right to request that the hearing be continued until a five-member board is present.

(5) **Quorum.** *Four* members shall constitute a quorum for the Board of Adjustment.

(6) **Required Vote.** The approval of variance requests and appeals of Building Official decisions requires an affirmative vote of at least *four* BOA members. All other matters require a *majority vote* (at least three BOA members).

(7) **Board decisions.** The Building Official shall promptly mail written confirmation of board decisions to the applicant's last known address. Any decision by the board may be reviewed within 30 days as provided by law.

[End Board of Adjustment]

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