Before Your Hearing

Post Your Notification Sign so that it is 1. Located at the front of the property and easily read from the street; 2. Posted outside the structure, preferably on the lawn, NOT leaning on the porch or wall; 3. Placed firmly on the stakes so it won’t bend or blow away; 4. No more than 15 feet back from the sidewalk or curb; 5. Between 1 and 12 feet off the ground; 6. If posted without stakes directly on a fence or window, on the OUTSIDE of the fence or window, 7. Posted for the full 10 days up to your hearing day, and 8. Posted so it is possible to remove it and return it to the Board’s office on the day of the hearing. POSTING OF YOUR NOTIFICATION SIGN IS VERY IMPORTANT AND IS YOUR RESPONSIBILITY. YOU COULD BE ASSESSED AN ADDITIONAL $50 FILING FEE IF YOUR FAILURE TO POST ON TIME MEANS YOUR CASE MUST BE RESCHEDULED FROM ITS ORIGINAL DATE.

IF ALL property owners cannot attend the hearing, a Power of Attorney OR Notarized Document must be provided for any property owner who cannot attend. A tenant MUST provide a Power of Attorney (individual or corporate) from the owner of the property at the time of the hearing, or the case may be rescheduled or dismissed. The Board’s office staff can supply Power of Attorney forms for co-owners, individuals, and corporations (including churches, non-profit organizations and businesses).

Site Plan: For all appeals involving new construction, an accurate, dimensioned site plan showing property lines and setbacks with existing and proposed construction, or one full-size set of plans and elevations, should be presented at filing. The office may also accept plans and elevations, or a site plan, at the time of picking up your sign. For appeals of orders, do not provide a survey plot plan to the Board’s staff unless you have already have one.

On All Major New Construction: Submit a scaled, detailed site plan with elevations showing materials. The Board will make its decision based on the plans filed, so make sure the plans show exactly what you want to build. You may require the services of a professional architect, engineer or designer. If you change your plans, make sure that the Board’s staff receives copies in time to contact Development Services, and update your file and the subject matter of the case. It may also be necessary for you to update your written statement in the file. You may want to bring your architect and/or builder with you to the hearing to help answer technical questions and respond to proposed solutions.

For Second Story Additions with north, east or west side bulk plane or setback violations: It may be helpful to provide a solar study to show the light impact on your neighbors.

Neighborhood Support: Neighborhood support can be very important to your case. For new construction, explain your appeal to your neighbors and show them your plans. Try to obtain approval from them in writing. They can sign a petition you have prepared, sign your plans, or write a letter. If they want, they may attend your hearing. CONTACT YOUR NEIGHBORS AS SOON AS POSSIBLE AFTER YOU FILE. Do not wait until the posting period two weeks before your hearing, when it may be too late to reach them or have any meaningful discussion.

Registered Neighborhood Organizations (RNO): Contact the Registered Neighborhood Organizations (R.N.O.s) in your area. We will send you their names, addresses, and contact information. Ask if they want you to present your project at their monthly meeting and ask for their position. As a part of the Board’s process, they have already been sent a copy of your application and may have concerns.

Exhibits for the Hearing: The Board asks for six (6) copies of photos, letters, small format plans (11’ by 17’) or other supporting documentation, one for each Board member and one for the City staff. Please present these multiple copies in stapled packets, three-ring binders or bound folders. The Board’s office has binders that can be loaned to Appellants for use at the hearing. Do not submit multiple copies of loose documents at the hearing, as this will delay the process: the staff must stamp each item and its copies individually. Note: Exhibits become the property of the Board, and are held for 30 days after the hearing. Copies of exhibits are recycled after 30 days unless Appellants request in writing that they are to be returned after the hearing.
The Hearing

The Board consists of five citizens who are appointed by the Mayor. An Assistant City Attorney and representatives of Zoning Administration and Neighborhood Inspection Services will appear for the City of Denver. The Board meets on Tuesdays, and the hearings generally start at 9:00 a.m. Hearings are typically scheduled in 20-30 minute periods, although they may be longer. Sometimes one or more cases will take longer than expected, causing some delay.

What is the Hearing Procedure?

- The Chair calls the case. You are asked to stand and give your name, address and relationship to the case. **(Tenants & Architects:** Remember to bring your Power of Attorney signed by the property owner, if the owner cannot appear in person.) **AT THIS TIME,** give the Board’s Technical Secretary (Staff) any documents you want entered into evidence and presented to the Board. **DO NOT WAIT UNTIL THE END OF HEARING TO PRESENT YOUR EXHIBITS!**
- The City representatives and the Assistant City Attorney are given the opportunity to intervene.
- An oath or affirmation of truth is taken by you and by those who wish to testify.
- The Staff is asked if the premises have been properly posted with the notification sign. If the answer is no, the Board may choose to continue the case to another date.
- The Staff presents the exhibits. Everything given to the Board as an exhibit is a public record, and you will be given copies of the exhibits to review. Your statement from the appeal application will be read into the record or presented to the Board.
- **You present your case and the grounds on which you are entitled to relief.**
- The Board and the City may ask questions; and neighbors, representatives from Registered Neighborhood Organizations, and City Council members may testify in support or opposition and present evidence.
- Closing statements are accepted.
- The Chair closes the case and entertains a motion by the Board members.

**NOTE: THE BOARD USUALLY RENDERS A DECISION ABOUT YOUR CASE IMMEDIATELY. DO NOT LEAVE THE HEARING ROOM AFTER THE CASE IS CLOSED. WAIT FOR THE DECISION!**

**Legal Counsel:** You are not required to have legal counsel for any Board case, although you may be represented by an attorney if you like. On complex or technical cases, legal counsel is recommended. The Board or staff cannot recommend a specific attorney or give you legal advice.

**Language Interpreter:** If you do not feel comfortable understanding and communicating in English, you should bring someone with you who can communicate with the Board.

**Demeanor:** Because hearings can sometimes be stressful, emotions may run high. Be patient, courteous, and respectful. Apparel that is appropriate for a court of law is proper. Cell phones and pagers are to be turned off during the hearing. Loud or personal conversations are not appropriate. Note that the hearing is being recorded and that the microphones will pick up background noise.

**Burden of Persuasion:** You must convince the Board of your right to relief. According to the Zoning Code, a Denial of a permit or an Order to Cease and Desist is considered correct until evidence is introduced that would lead the Board to decide otherwise. Bring any evidence you think will help the Board decide in your favor. As stated above, if your evidence is not already in the file, be sure to give it to the Board at the beginning of the hearing so the members have time to review it. If you are submitting written statements at the hearing, it saves time if you provide a copy for each Board member.

**The Board’s Decision:** According to the Zoning Code, four of the five members of the Board must vote in your favor for you to receive what you are requesting. Most decisions are made at the end of the hearing. Sometimes the Board takes the case under advisement to review the evidence presented and discuss your case in private executive session, holding over any decision, sometimes until the next week or later. You can phone the Board’s office after 3:00 p.m. that day to find the outcome of your case. When the decision is made, the Board’s decision is typed and mailed to parties designated by the Code.
After the Hearing

If your case is continued to another date:
The Board continues cases to give applicants time to make changes to the original plans or to submit new evidence. **READ YOUR DECISION CAREFULLY TO FIND OUT WHAT YOU NEED TO DO. If you need to revise your plans, please submit the new plans to the Board at least two weeks before your new hearing date so any changes to your application and your notification sign can be prepared. If there are many changes to the subject, you may need to submit a revised statement to the Board, also at least two weeks before the hearing.** Be sure to save your public notification sign for reposting.

If you receive a Variance:
Within two to three days, the Board’s staff will mail you a signed copy of your decision to take to the Building and Zoning Departments. Before you begin construction, you must obtain the necessary permits, and you will need the decision letter from the Board. **Under the current code, your Variance will expire unless substantial construction is started within 3 years and is completed within 5 years from the date the Variance was granted. THE BOARD DOES NOT DETERMINE WHAT IS MEANT BY SUBSTANTIAL CONSTRUCTION. You must request an opinion from the Zoning Administrator if you have any questions about this issue.**

If you do NOT receive a Variance: You must now prepare and submit compliant plans to Zoning.

If you do NOT receive a Variance and/or are given time to comply: You must come into compliance by the date set by the Board. If you cannot come into compliance by that date, you may request one additional extension of time by filing a new case with the Board’s office. The Board only grants these requests if the circumstances warrant, and if you can demonstrate that significant progress has been made. **There is no guarantee that you will be granted this extension, so make every reasonable effort to come into compliance within the time granted.**

Reconsideration/re-hearing, or modification of a decision by the Board: Under the Board’s Revised Rules of Procedure at Article VI, no application dismissed or denied by the Board will be considered again unless a written request for Reconsideration is filed. You may also request a modification if a Variance that was granted now requires a minor alteration.

- If you disagree with the Board’s decision to deny your request, you must fill out and file the Board’s Reconsideration form, in which you present new information that could not have been presented at the initial hearing and explain why it was not available or not submitted then.
- If you want a modification due to a minor revision of your approved plans, no special form is required. However, the request should be written, and the revised plans must be submitted to the Board’s office with your written request.
- After receiving a request for either reconsideration or a modification, the Board will review it on its Supplemental Agenda. This is not a formal hearing and you are not required to attend. Four affirmative votes are needed for the request to be granted.
- If a reconsideration is granted, the case will be reheard. All parties appearing at the original hearing are notified of the new hearing date and time. **The Code requires the Appellant to pay half of the original filing fee for a rehearing or reinstatement unless the Board specifically waives the fee.**
- If a modification is granted, a new Board decision will be issued recognizing the new plans as the approved plans for the Variance. **There is no additional fee for a modification.**

Appeals to District Court:
Anyone who believes that a decision of the Board was in error may file a civil appeal with the Denver District Court under Colorado Rule of Civil Procedure 106(a) 4. This appeal must be filed within 28 days of the date of the Board’s decision. By Colorado law, failing to file in that time bars any appeal to a higher court. If you file such an appeal, you are also required by law to pay the Board’s office for preparing the transcript of the hearing and the official court record.