

ARTICLE II. ADMINISTRATION AND ENFORCEMENT*

DIVISION 1. GENERALLY

Sec. 59-16. Rules of construction.

- (a) Words, phrases and terms defined herein shall be given the defined meaning.
- (b) Words, phrases and terms not defined herein, but defined in the building code of the city, shall be construed as defined in such code.
- (c) Words, phrases and terms neither defined herein nor in the building code of the city shall be given their usual and customary meanings except where the context clearly indicates a different meaning.
- (d) The text of this chapter shall control captions, titles and maps.
- (e) Where any requirement of this chapter results in a fraction of a unit, a fraction of five-tenths or more shall be considered a whole unit and a fraction of less than five-tenths shall be disregarded.
- (f) The word "shall" is mandatory and not permissive; the word "may" is permissive and not mandatory.
- (g) Separation measurement: When measuring a required separation, distance shall be determined from the nearest point of a structure or part of a multiple use structure occupied by the use requiring separation to the nearest point of a structure or part of a multiple use structure occupied by a use from which the separation is to be effected or established. Only when a significant part of the use is operated outside of a completely enclosed structure shall a separation be measured from the nearest point of the zone lot occupied by the use requiring separation to the nearest point of a structure or part of a multiple use structure occupied by a use from which the separation is to be effected or established.
(Ord. No. 218-97, eff. 4-18-97)
(Code 1950, § 611.4-1)

Sec. 59-17. Termination of authorizations to erect, alter, occupy or use land or structures.

Every authorization and permission, of whatever kind and nature and however obtained, heretofore granted by the city or any department, board, agency, officer or employee thereof to use or occupy any land or to design, erect, alter, use or occupy any structure in any manner other than in full compliance with all provisions of this chapter shall terminate and expire on the effective date of the ordinance from which this section was derived and shall not thereafter be renewed or revived. Nothing herein contained shall require any change in the plans, construction or designated use of a building for which a building permit has been heretofore legally issued and the construction of which building shall have actually begun within ninety

***Cross reference**—Administration generally, Ch. 2.

(90) days of the date of such permit and the ground story framework of which building, including the second tier of beams, shall have been completed within one (1) year of the date of such permit and which entire building shall be completed, according to such plans as are filed, within two (2) years from the effective date of the ordinance from which this section was derived; provided, however, that any permit which does not authorize the alteration or erection of a designated building on the basis of complete plans and specifications shall not be deemed a building permit and shall not come within the foregoing exclusion.

(Code 1950, § 611.4-2)

Sec. 59-18. Pending actions and proceedings.

All actions and proceedings pending in any court of record and in the state supreme court on the effective date of the ordinance from which this section was derived shall be treated until the conclusion of such actions and proceedings as though all prior applicable zoning ordinances and amendments thereto were in full force and effect. All other actions and proceedings, of every kind and nature and whether judicial or administrative, pending on the effective date of the ordinance from which this section was derived shall be governed by the provisions of this chapter.

(Code 1950, § 611.4-3)

Sec. 59-19. Offenses and liabilities preserved.

All offenses committed and all liabilities incurred prior to the effective date of the ordinance from which this section was derived shall be treated as though all prior applicable zoning ordinances and amendments thereto were in full force and effect for the purpose of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities.

(Code 1950, § 611.4-4)

Sec. 59-20. Effect of other ordinances and regulations.

Wherever higher or more restrictive standards are established by the provisions of any other applicable statute, ordinance or regulation than are established by the provisions of this chapter, the provisions of such other statute, ordinance or regulation shall govern.

(Code 1950, § 611.4-5)

Sec. 59-21. Effect of private covenants.

Nothing herein contained shall be construed to render inoperative any restrictions established by covenants running with the land unless such restrictions are prohibited by or are contrary to the provisions of this chapter.

(Code 1950, § 611.4-6)

Sec. 59-22. District regulations to be uniform, procedure for land divided by district boundary lines and access across district boundary lines.

(a) The regulations established in this chapter shall apply uniformly to all geographical areas having the same district classification and bearing the same symbol or designation on the official map.

(b) If a district boundary line divides an area of land held in one (1) ownership of record on the date the district boundary line was established, then:

- (1) Each parcel of land of the area so divided may be used in conformity with and subject to the regulations herein established for the district in which each such parcel of land is located; or
- (2) If the area is divided into two (2) or more parcels of land, the entire area may be used in conformity with and subject to the regulations herein established for the district in which one such parcel of land is located, if such parcel contains more than one-half of the entire area; or
- (3) If the area is divided into two (2) equal parcels of land, the entire area may be used in conformity with and subject to the regulations herein established for the district in which either of such parcels of land is located.
- (4) The provisions of subsections (1)—(3) shall not apply to any parcel of land containing more than six thousand (6,000) square feet and resulting from the establishment of a district boundary line dividing an area of land held in one (1) ownership of record on the date the district boundary line was established, and instead each parcel of land in excess of six thousand (6,000) square feet shall be used only in conformity with and subject to the regulations herein established for the district in which such parcel of land is located; provided, however, that if a building containing a use by right exists on the area of land held in one (1) ownership of record on the date the district boundary line was established and the building was divided by the aforesaid district boundary line, the provisions of this subsection (4) shall not apply and the use of such parcel of land shall be governed by the procedure set forth in subsections (1)—(3).

(c) Notwithstanding the provisions of section 59-22(a) or (b), access across parcels of land with different district classifications shall be governed by this section 59-22(c). In order to promote appropriate development in all zone districts, access across a parcel of land to another parcel of land with a different district classification is permitted except that access to a parcel of land not located in a residential district across a parcel of land located in a residential district shall not be permitted unless the zoning administrator determines that

- (1) Such access is compatible or could be made compatible with any existing or allowed uses on the parcel of land in the residential district; and
- (2) Traffic, noise, pollution and other impacts of such access are or can be mitigated.

The zoning administrator may impose conditions on the approval of such access in order to ensure that the impacts of traffic, noise, pollution and other external effects of such access to a parcel of land not located in a residential district are mitigated so as to protect the residential character of the parcel of land located in a residential district. If the use of the parcel of land not located in a residential district changes so as to alter the access or otherwise impact the use of the parcel of land located in the residential district, the zoning administrator may terminate the right to access the parcel of land not located in a residential district across the parcel of land located in the residential district or may impose additional conditions on the continued

access. All other provisions of the district in which each such parcel of land is located shall apply. An owner requesting such access shall file a request with the zoning administrator and the provisions of section 59-41(b) shall be followed.

(Code 1950, § 611.4-7; Ord. No. 91-04, § 1, eff. 2-19-04; Ord. No. 468-05, § 1, eff. 7-15-05)

Sec. 59-23. Locating district boundary lines not readily determinable from official map.

If for any reason the location of any district boundary line is not readily determinable from the official map, the location of the district boundary line shall be fixed by the department of zoning administration in accordance with the following provisions. Where more than one (1) of the following provisions are applicable in any given situation, the first enumerated applicable provision shall prevail over all other provisions:

- (1) Where a district boundary line is located with reference to a fixture or monument, the location of such fixture or monument shall control;
- (2) Where a district boundary line is given a position within a street or alley right-of-way or channelized waterway, the district boundary line shall be deemed to be in the center of such street or alley right-of-way or channelized waterway;
- (3) Where a district boundary line is shown as approximately following platted lot lines, the district boundary line shall be deemed to coincide with such platted lot lines;
- (4) Where a district boundary line is shown by a specific dimension, such specific dimension shall control;
- (5) Where a district boundary line extends in the direction of the length of a block, the district boundary line shall be deemed to coincide with the center line of such block;
- (6) Where a district boundary line divides a platted lot or crosses unsubdivided property, the location of the district boundary line shall be fixed from the scale of the official map.

(Code 1950, § 611.4-8)

Sec. 59-24. Statute of limitations for city only.

All actions by the city to restrain, correct or abate the unlawful location, bulk or gross floor area of or in a structure and alleged to result from the unlawful issuance of a permit to erect or alter such structure shall be brought within three (3) years after the issuance of the particular permit alleged to have been unlawfully issued and not after that period.

(Code 1950, § 611.4-9)

Sec. 59-25. Zone lot for existing structures and uses.

The land area occupied by a use or the building site heretofore designated and occupied by each structure existing on the effective date of the ordinance from which this section was derived shall, for the purposes of this chapter, be deemed the zone lot for such use or structure and shall be continuously provided and maintained therefor in accordance with the provisions

of this chapter for uses or structures in the district in which each such use or structure is located. Upon application to and approval by the department of zoning administration, the boundaries and area of a designated zone lot may be amended if full compliance with all requirements of this chapter can be maintained.

(Code 1950, § 611.4-10)

Sec. 59-26. Prohibitions.

(a) *Limitations on all land and structures.* No land shall be used or occupied and no structure shall be designed, erected, altered, used or occupied except in conformity with all regulations established in this chapter and upon performance of all conditions herein set forth.

(b) *Limitations on sales and rentals of all land and structures.* No person and no officer or employee thereof (either as owner or as participating principal, agent, servant or employee of such owner) shall sell, rent or lease or offer or attempt to sell, rent or lease any land or structure upon the representation, falsely made and known to be false, that such land or structure may be used or occupied in a manner or for a use prohibited by this chapter.

(c) *Limitations on municipal agencies.* No permit, certificate, license or other document or oral approval, the use of which may be subject to the provisions of this chapter, shall be issued by any department, agency or board of the city until the department of zoning administration shall have certified that the use to be made of the permit, certificate, license, other document or oral approval is in full compliance with the provisions of this chapter.

(d) *Zoning permit to erect or alter structures.* No structures shall be erected or altered until a zoning permit for such erection or alteration shall have been issued by the department of zoning administration. Such permit shall be valid for a period of one hundred eighty (180) days after which period the permit shall lapse and become void unless a building permit has been issued within said period and is not thereafter canceled.

(e) *Zoning permit to use or occupy structures.* No structure shall be used or occupied until a zoning permit for such use and occupancy shall have been issued by the department of zoning administration.

(f) *Zoning permit for change of use.* Neither the use of or the uses upon any land nor the use of or the uses within any structure shall be changed until a zoning permit for such change of use shall have been issued by the department of zoning administration.

(g) *Zoning permit for signs.* No sign shall be erected, altered or maintained until a zoning permit therefor shall have been issued by the department of zoning administration except in those instances where the requirement for a zoning permit is expressly waived.

Such permit shall be valid for a period of sixty (60) days after which period the permit shall lapse and become void unless a building permit has been issued within said period and is not thereafter canceled.

(h) *Limitation on sales of dwelling units.* After January 1, 1979, for the purpose of converting an existing multiple unit dwelling into condominium ownership pursuant to the Condominium Ownership Act, Article 33 of Title 38, Colorado Revised Statutes 1973, as amended, no person and no officer or employee thereof (either as owner or as participating principal, agent, servant or employee of such owner) shall transfer the ownership of any individual dwelling unit in the multiple unit dwelling, which is occupied by a tenant, except to the then tenant thereof, separate and apart from a sale of the entire multiple unit dwelling, until each person who is a tenant in any individual dwelling unit in the multiple unit dwelling has been given ninety (90) days' prior notice of the intent to sell the particular individual dwelling unit, provided, that if a tenant voluntarily vacates such individual dwelling unit within the ninety (90) day period, a transfer of title to the individual dwelling unit may take place immediately upon such vacating. Notwithstanding anything to the contrary set forth in this subsection, this subsection shall not be applicable to the transfer of ownership of any individual dwelling unit pursuant to an agreement of sale entered into prior to January 1, 1979, if such agreement of sale provides for the transfer of ownership of such individual dwelling unit to take place on or before March 31, 1979.

(i) *Zoning permit for a parking area.* No new parking area, no expansion of an existing parking area and/or no change of use or gross floor area of a structure that increases the off-street parking requirements shall be permitted until a zoning permit for the parking area shall have been issued by the department of zoning administration.

(j) *Moratorium*. No zoning permit authorizing a reduction in zone lot size to less than a 75 foot width at the front setback line and less than an area of 9,300 square feet shall be issued or approved by the department of zoning administration for a period of 180 days from the date of filing of this ordinance in the office of the city council for the following described area: (Complete legal description on file in the office of the city clerk).

(Ord. No. 891-96, eff. 10-18-96; Ord. No. 123-97, eff. 2-28-97; Ord. No. 393-97, eff. 6-27-97; Ord. No. 1-98, eff. 1-9-98; Ord. No. 153-98, eff. 3-20-98; Ord. No. 282-00, eff. 4-14-00)

(k) *Moratorium*. No zoning permit to use, occupy and/or erect a structure exceeding thirty-five (35) feet in height on any of the properties in the area described below, shall be issued by the department of zoning administration until after March 31, 1999. This moratorium shall apply to all properties currently zoned R-4 and lying within the area bounded by the following:

North: 17th Avenue

South: Colfax Avenue

East: Williams Street

West: Park Avenue

(Ord. No. 914-96, eff. 11-1-96; Ord. No. 28-97, eff. 1-17-97; Ord. No. 502-97, eff. 8-8-97; Ord. No. 898-97, eff. 12-19-97; Ord. No. 694-98, eff. 10-16-98)

(l) *Gateway regional systems development fee*: No zoning permit for an applicable zone lot, except a zoning permit only for a sign or fence, shall be issued until the regional systems development fee established by the Gateway Regional Metropolitan District on land within the Gateway Regional Metropolitan District has been paid for the subject zone lot.

(Ord. No. 428-98, eff. 7-3-98)

(Code 1950, § 611.2-1; Ord. No. 525-83, eff. 10-5-83; Ord. No. 407-84, eff. 8-29-84; Ord. No. 251-85, eff. 5-22-85; Ord. No. 497-85, eff. 10-1-85; Ord. No. 568-85, eff. 11-7-85; Ord. No. 605-85, eff. 11-14-85; Ord. No. 138-86, eff. 3-26-86; Ord. No. 140-86, eff. 3-26-86; Ord. No. 248-86, eff. 5-6-86; Ord. No. 554-87, eff. 10-14-87; Ord. No. 221-88, eff. 4-19-88; Ord. No. 88-89, eff. 3-8-89; Ord. No. 166-89, eff. 4-3-89; Ord. No. 227-89, eff. 5-9-89; Ord. No. 657-89, eff. 11-15-89; Ord. No. 191-90, eff. 4-6-90; Ord. No. 270-90, eff. 5-25-90; Ord. No. 167-91, eff. 3-15-91; Ord. No. 200-91, eff. 3-29-91; Ord. No. 381-91, eff. 6-14-91; Ord. No. 548-91, eff. 8-2-91; Ord. No. 797-91, eff. 11-8-91; Ord. No. 535-92, eff. 8-7-92; Ord. No. 733-92, eff. 10-23-92; Ord. No. 717-94, eff. 9-16-94; Ord. No. 37-95, eff. 1-27-95; Ord. No. 158-95, eff. 3-17-95; Ord. No. 182-95, eff. 3-24-95; Ord. No. 931-95, eff. 11-17-95; Ord. No. 967-95, eff. 12-1-95; Ord. No. 41-97, eff. 1-17-97)

Sec. 59-27. Violations.

(a) Wherever by the provisions of this chapter the performance of any act is required or the performance of any act is prohibited or wherever any regulation, dimension or limitation is imposed on the use or change of use of or upon any land or on the erection or alteration of any structure or the use or change of use of such structure or the uses within such structure, a

failure to comply with the provisions of this chapter shall constitute a violation of this chapter. Every day on which a violation exists shall constitute a separate violation and a separate offense.

(b) It shall be unlawful and shall be deemed a strict liability offense for any owner, lessee, occupant, or agent of an owner, lessee, or occupant to allow or permit to exist, or to otherwise let happen a violation of the zoning ordinances on the land or in the structure to which the owner, lessee, occupant, or agent has legal or equitable title or right of possession.

(Ord. No. 221-88, eff. 4-19-88)

(Code 1950, § 611.2-2)

Sec. 59-28. Remedies.

(a) *General Penalties.* Any person violating any provision of this chapter shall be subject to the general penalties provided by section 1-13 of this Code, by action brought in a court of appropriate jurisdiction.

(b) *Additional remedies.* In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this chapter, in addition to, or in lieu of, any administrative remedy allowed by the Code, the city or any proper person may institute any appropriate action or proceedings to prevent or enjoin such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of the building, structure or land or to prevent or enjoin any illegal act, conduct, business or use in or about such premises. The imposition of any penalty hereunder, including any inspection for compliance fee, shall not preclude the city or any proper person from instituting any appropriate action or proceeding to require compliance with the provisions of this chapter and with administrative orders and determinations made hereunder. [Ord. No. 859-03, § 1, eff. 11-19-03, repealed former subsection (b), administrative penalties, and § 2 renumbered subsection (c) as new subsection (b).]

(Code 1950, § 611.2-3; Ord. No. 35-95, eff. 1-27-95; Ord. No. 370-02, § 1, eff. 5-17-02; Ord. No. 859-03, §§ 1, 2, eff. 11-19-03)

Sec. 59-29. Vested property rights.

Approval of a district plan for a PUD by city council following notice and a public hearing shall constitute a site specific development plan which triggers a vested property right pursuant to 24-68-102(4), C.R.S. Such property right shall not vest until ninety (90) days after the effective date of the ordinance approving the PUD. Pursuant to 24-68-104(1), C.R.S., a property right which has been vested shall remain vested for a period of three (3) years. A notice advising the general public of the site specific development plan approval and the creation of a vested property right shall be published no later than fourteen (14) days after the effective date of the ordinance approving the PUD. Every PUD district plan shall contain a statement that a vested property right shall be created ninety (90) days after the effective date of the ordinance approving the PUD.

(Ord. No. 389-88, eff. 6-28-88)

Sec. 59-30. Reserved.

Editor's note—Ord. No. 431-95, § 1(a), adopted June 19, 1995, and effective June 23, 1995, deleted, in effect repealed, § 59-30, which pertained to transition rule and derived from Ord. No. 425-93, effective June 11, 1993.

Secs. 59-31—59-35. Reserved.

DIVISION 2. DEPARTMENT OF ZONING ADMINISTRATION*

Sec. 59-36. Creation.

There shall be and hereby is created a department of zoning administration, hereinafter in this division called the "department."

(Code 1950, § 611.5-1)

Sec. 59-37. Management and staff.

The zoning administrator shall be the officer in full charge of the department and shall devote his/her entire time to the duties of the office. The zoning administrator shall be appointed by the mayor and shall hold office at the pleasure of the mayor. The salary of the zoning administrator, the staff of assistants and the salaries of such assistants shall be fixed by council. No member of the staff of the department, including the zoning administrator, shall be employed by or be a member of the board of adjustment.

(Code 1950, § 611.5-2)

Sec. 59-38. Duties and powers.

(a) *Administration.* There is hereby vested in the department the duty of administering this chapter and the power necessary for such administration, incidental to which duty and power the department shall:

- (1) Intervene, when deemed desirable by the zoning administrator, for and on behalf of the city, in public hearings before the board of adjustment, participate in such hearings, and have decisions of the board reviewed in a court of proper jurisdiction when, in the judgment of the zoning administrator and with the approval of the mayor, such review is desirable;
- (2) Propose and recommend to council the enactment of amendments to this chapter for the purpose of improving administration and enforcement of this chapter;
- (3) Propose and recommend to council the enactment of amendments to the official map as made desirable or necessary by judicial or administrative proceedings or as deemed desirable or necessary because of changed or changing conditions. All amendments proposed hereunder shall be subject to the limitations and procedure hereinafter set forth under the amendment procedure;

***Cross reference**—Administration generally, Ch. 2.

- (4) Review all applications for zoning permits, certificates and approvals of special plans hereunder; approve or disapprove such applications and issue zoning permits, certificates and approvals of special plans; as a part of this review the administrator may forward applications to other agencies for review.

(Ord. No. 126-91, eff. 3-1-91)

- (5) Receive all applications for amendments to this chapter and to the official map; refer such applications to the proper agencies for examination and submit to council all such applications together with the recommendations of the examining agencies and any recommendations by the department deemed desirable or necessary;
- (6) Establish and administer rules and regulations for proceedings with and within the department, together with regular forms and reasonable filing deadlines for such proceedings, and a schedule of fees for processing amendments, issuing permits and certificates, performing inspections to determine compliance with written orders, and recording those matters and things required by this chapter to be recorded;

(Ord. No. 370-02, § 2, eff. 5-17-02)

- (7) Maintain a map showing the current zoning classification of all land in the city;
- (8) Record with the clerk all matters and things required by this chapter to be recorded;
- (9) Maintain written records of all actions taken by the department under this chapter;
- (10) a. Determine and impose limitations on accessory uses and structures not covered in sections 59-87 and 59-88. In fulfilling this responsibility the zoning administrator shall determine what uses are common and customary to a specific use by right and if the use is incidental to the specific use by right; and impose limitations which shall be uniform throughout the zoning district on specific accessory uses taking into consideration the intensity of the accessory use, numbers, the space required by the accessory use and the effect on adjacent property. The matters which may be regulated shall include, but shall not be limited to the following:
1. Numbers of animals, except as specifically listed in sections 59-87(b)(2)c.1. and 2. maintained as accessory to a single-unit dwelling or dwelling unit in a multiple-unit dwelling;
 2. Types and intensity of repairs accessory to a use by right; and
 3. Size, area and number of structures accessory to a use by right, except as specifically permitted or excluded by section 59-88.
- b. The zoning administration shall maintain a record, indexed by use by right and zoning district, of all determinations regarding accessory uses, and such determinations shall not be considered a rule and regulation subject to article VI of chapter 2.

(Ord. No. 250-80, eff. 5-23-80; Ord. No. 145-82, eff. 4-5-82)

- (11) Review applications for permits related to overheight fences and walls. Notwithstanding the regulations limiting the height of fences and walls established by the zoning

ordinances, the zoning administrator may grant a permit for overheight fences and walls upon application in specific cases providing the following procedure and the provisions of section 59-41(b) are followed:

- a. Reserved.
- b. Reserved.
- c. In deciding to approve or disapprove the application, the zoning administrator may approve the application providing a finding is made that:
 1. The proposed fence or wall will not adversely affect traffic safety or appropriate use of adjacent property.
 2. An overheight fence in the front setback is less than fifty (50) percent solid over its entire area;
 3. The fence is necessary to provide security, privacy or protection from traffic impacts such as noise or lights;
 4. The fence is not out of scale with other fencing on the block;
 5. The fence does not detract from the safety or pedestrian character of the right-of-way; and
 6. The fence is not in any front setback area adjacent to a parkway.
(Ord. No. 605-06, § 1, eff. 9-22-06)
- d. Reserved.
(Ord. No. 32-82, eff. 2-8-82)
- e. Special consideration shall be given to applicants seeking permits for eight (8) foot overheight fences due to the requirements of section 8-52 (dangerous dogs).
(Ord. No. 215-87, eff. 4-28-87)

(12) *Administrative exceptions.* Subject to the limitations and conditions enumerated herein, the zoning administrator shall have and exercise the power to grant the following administrative exceptions. The procedures set forth in section 59-41(b) shall apply.

- a. *Nonconforming uses.* To authorize, upon application in specific cases, an exception permitting an increase in either or both the land area or the floor area in a structure or structures occupied by a nonconforming use, subject to terms and conditions fixed by the zoning administrator, as are necessary and essential to enable the owner of the use to comply with lawful requirements of the federal, state or municipal governments. Every exception authorized hereunder shall be personal to the applicant therefore and shall not be transferable, shall run with the land only after the construction of any authorized structure or structures and only for the life of such structure or structures. No exception shall be authorized hereunder unless the zoning administrator shall find that the following conditions exist:
 1. That the use is a nonconforming use as defined by this chapter, is in full compliance with all requirements of this chapter applicable to nonconforming uses and is not a nonconforming use which, by the provisions of this chapter, is to be terminated by operation of law;

2. That the exception is necessary and essential to enable the owner of the use to comply with lawful requirements of federal, state or municipal governments.
- b. *Business structures.*
1. To authorize, upon application in specific cases, subject to terms and conditions fixed by the zoning administrator and subject to the conditions hereinafter set forth, an exception permitting the operation in an existing structure located in any residential district or in the B-1 or B-2 districts of:
 - i. One (1) or more uses by right enumerated for the B-2 district;
 - ii. A shop for custom work;
 - iii. A shop for the fabrication of articles to be sold at retail on the premises;
 - iv. A printing shop employing not more than five (5) persons; or
 - v. Specialty food packaging or processing shop employing not more than five (5) persons.
 2. Every exception authorized pursuant to this section 59-38(a)(12)b. shall be personal to the applicant therefor and shall not be transferable. No exception shall be authorized hereunder unless the zoning administrator shall find that the following conditions exist:
 - i. That the applicant is the owner of the subject structure;
 - ii. That the structure was originally designed for a business use and not for residential occupancy;
 - iii. That the structure involved was erected prior to November 8, 1956;
 - iv. That the structure involved can be occupied by the proposed use without remodeling, changing or altering any load-bearing member of the structure;
 - v. If the structure is located in a residential district, that a registered architect or engineer certifies that it is impractical to remodel the structure involved so that the structure could be occupied by a use by right enumerated for the district in which such structure is located.
 3. In addition to such terms and conditions as may be fixed by the zoning administrator, the following matters and things shall be imposed as conditions upon each and every exception authorized hereunder:
 - i. No load-bearing member involved shall be remodeled, changed or altered;
 - ii. Every use and all uses in the structure involved shall comply with the limitations on external effects applicable to uses in the district in which the structure is located;
 - iii. For every use and for all uses operated in the structure involved, there shall be provided off-street parking and off-street loading space in the amount and in the manner required for each such use in the most

restricted district in which each such use is an enumerated use by right; provided, however, that upon proof that full compliance could not be achieved, the zoning administrator may waive so much of those requirements as are impossible of fulfillment; and

- iv. Every use and all uses in the district involved shall comply with limitations on permitted signs applicable to uses in the B-2 district.
- 4. Every exception authorized hereunder shall be effective for a period of one (1) year from the date of the authorization, such exception to be renewable annually by the department of zoning administration upon a finding by that department: that all conditions imposed upon the exception have been performed and that the structure involved is not obsolete or substandard under any applicable ordinance of the city to the extent that the cost of placing such structure in lawful compliance with the applicable ordinance exceed fifty (50) percent of the replacement cost of such structure on the date of renewal.
- c. *Human services.* To authorize, upon application in specific cases, subject to terms and conditions fixed by the zoning administrator and subject to conditions hereinafter set forth, an exception permitting foster family care for not more than eight (8) children simultaneously in connection with the operation of a single unit dwelling or dwelling unit in a multiple unit dwelling. Such exception authorized hereunder shall be personal to the applicant therefor and shall not be transferable. No exception shall be authorized hereunder unless the zoning administrator shall find the following conditions exist:
 - 1. That the applicant for the foster family care and the location for the foster family care has the approval of the department of human services;
 - 2. That the single unit dwelling or dwelling unit in a multiple unit dwelling in which the foster family care is proposed is located in a residential district;
 - 3. That the exception is necessary and desirable to provide a service or a facility which would contribute to the general well being of the community;
 - 4. Every exception authorized hereunder shall be effective for a period of one (1) year from the date of the authorization. Such exception to be renewable annually by the department of zoning administration upon a finding by that department that all conditions imposed upon the exception have been performed.

(Ord. No.459-06, § 2, eff. 7-21-06)
- d. *Historic structures.* To authorize, upon appeal in specific cases, subject to terms and conditions fixed by the zoning administrator and pursuant to the conditions hereinafter set forth, an exception permitting the operation in an existing structure or an addition which has been approved by the landmark preservation commission located in the R-3 district, of the following: (a) an office; to wit, any

office in which chattels or goods, wares or merchandise are not commercially created, displayed, exchanged or sold; or (b) a fine arts gallery in which are displayed and sold individual works of fine art.

1. *Findings*: No exception shall be authorized hereunder unless the zoning administrator shall find that all the following conditions exist:
 - i. That the applicant is the owner of the subject structure;
 - ii. That the subject structure was erected prior to November 8, 1956;
 - iii. That the subject structure has been designated as a landmark pursuant to and as set forth in chapter 30 and that such designation has been confirmed in writing by the landmark preservation commission through the provisions of chapter 30;
 - iv. That a development plan meeting the guidelines of section 59-619(b)(2) (site facilities) has been prepared for the subject zone lot and reviewed by the landmark preservation commission. Such plan shall prescribe a form of site development or preservation that is compatible with the visual characteristics of the designated structure. The commission's recommendations on the development plan shall be reviewed and considered by the zoning administrator.
2. *Conditions*: In addition to such terms and conditions as may be fixed by the zoning administrator, the following matters and things shall be imposed as conditions and requirements upon each and every exception authorized hereunder:
 - i. Every use and all uses in the subject structure shall comply with limitations on external effects of uses by right in the district in which the structure is located;
 - ii. For each use and for all uses operated in the subject structure the provisions of article VI of this chapter on off-street parking requirements shall be in full force and effect unless modified by the zoning administrator after considering the intent and purpose of chapter 30 and the need to maintain the quality of adjacent properties and the surrounding neighborhood;
 - iii. Each structure approved under the provisions of this section may have not more than two (2) wall signs, each of which sign shall not exceed one (1) square foot in area and which may not be illuminated or animated;
 - iv. The total number of persons residing and/or working in the structure shall not exceed one (1) person for each three hundred (300) square feet of gross floor area of said structure;
 - v. That if the use is to be a fine arts gallery that such individually created art works shall meet the acceptable standards of the community as exemplified by works displayed in the municipal art museum.

- vi. The development plan shall be adopted or revised and adopted by the zoning administrator, shall be filed with the department of zoning administration and shall regulate the development and/or maintenance of the zone lot. Any development and/or maintenance of such zone lot which is done in violation of the standards or guidelines of the landmark commission may justify the reconsideration of the landmark designation by the commission. If the structure is no longer designated as a landmark, any exception granted under this section 59-38(a)(12)d. shall terminate and become null and void.
- e. *Keeping of animals.* In addition to the animals permitted by the zoning administrator, the zoning administrator may authorize, upon application in specific cases, subject to terms and conditions fixed by the board and pursuant to the conditions hereinafter set forth, an exception permitting the keeping of animals in connection with the operation of a single unit dwelling or a dwelling unit in a multiple unit dwelling. Such exception shall be personal to the applicant therefor. Notwithstanding other provisions of chapter 59, which limit the number of animals, the breeding of animals may be permitted.
- 1. The application shall be filed in the name of the land owner.
 - 2. The owner/tenant seeking the exception must occupy the subject property as his/her primary residence;
 - 3. The animal shall be kept solely as a pet; a hobby; for educational, research, rehabilitation or propagation purposes; or for the production of food products for personal consumption by the resident;
 - 4. The application shall contain provisions which ensure that the exception will not substantially or permanently injure the appropriate use of adjacent conforming property. In determining that this condition will be met, the zoning administrator shall consider the following factors:
 - i. The type of animal to be kept;
 - ii. The number to be kept;
 - iii. The maximum size of the animal;
 - iv. The space or area in which the animal is to be kept and whether or not other animals may occupy that same space;
 - v. The methods by which any sanitation problems will be controlled;
 - vi. The methods by which abutting residents will be protected from any nuisance; and
 - vii. The applicant's intent to allow reproduction.
 - 5. The applicant shall have written approval from the department of environmental health;

6. The applicant shall have written approval from the division of wildlife, Colorado Department of Natural Resources, if applicable, for species of animals considered to be wildlife;
 7. The applicant shall have notified abutting owners about the proposed animal and shall have requested letters of support or petitions of consent from such owners. If any of said owners fail to consent, the zoning administrator shall consider the circumstances, including any letters or petitions of opposition. Further, the zoning administrator shall give serious consideration to any letter from a physician stating that a resident living nearby is allergic to some feature of the proposed animal and may have a serious reaction if exposed to such animal.
 8. Any structure erected for the shelter of such animal shall comply with all regulations for the zone district in which such property is located. If a variance is required for any such structure, an application for a variance must be made to the board of adjustments. Any such structure shall be maintained in accordance with the building and housing codes and shall be subject to inspection by the building inspection division and the department of environmental health.
 9. An approved exception for an animal shall not be valid until the applicant has executed an agreement listing the terms and conditions fixed by the zoning administrator and the applicable conditions set forth above. Such agreement shall be recorded with the clerk and recorder. The permit for an approved exception shall expire at such time as the applicant no longer resides at the property, or discontinues the keeping of subject animal.
 10. Upon receipt of a complaint from an abutting property owner, the department of zoning administration shall investigate. If any deviations from the conditions listed in the agreement exist, an order may be issued terminating the exception. The order may then be appealed to the board of adjustments for review.
- f. *Exception for existing dwelling units.* To authorize, upon application in specific cases, subject to terms and conditions fixed by the zoning administrator and subject to the conditions hereinafter set forth, an exception permitting the operation of dwelling units in excess of the number authorized by this chapter in an existing structure located in an R-0, R-1, R-2 or R-2-B district. Every exception authorized hereunder shall run with the land but only for the life of such structure. No exception shall be authorized hereunder unless the zoning administrator shall find that the following conditions exist:
1. That the structure containing the excess number of dwelling units was erected prior to May 24, 1958;
 2. That each of the dwelling units has been continuously occupied and maintained since May 24, 1958;

3. That the structure has been certified by the building inspection division to be in such condition that the occupancy of the dwelling units meets the requirements of the building code and the housing code.
- g. *Outdoor recreational facilities.* To authorize, upon application in specific cases subject to terms and conditions fixed by the zoning administrator and pursuant to the conditions hereinafter set forth, an exception permitting the operation of an outdoor recreational facility in any residential district as part of a community recreational facility.
1. *Findings required.* No exception shall be authorized hereunder unless the zoning administrator shall find that all the following conditions exist:
 - i. That the proposed outdoor recreational facility is located on the same zone lot and operated by the same owner and or operator of the existing community recreational facility and that the applicant is the owner of record or has the permission of the owner of record to operate the proposed outdoor recreational facility;
 - ii. That the outdoor recreational facility occupies no more than ten (10) percent of the zone lot on which it is located;
 - iii. That adequate off-street parking is provided by the existing community recreational facility to support the needs of the outdoor recreational facility;
 - iv. That no other such outdoor recreational facility on a different zone lot is located within five hundred (500) feet of the proposed use as measured along the block front from zone lot line to zone lot line;
 - v. That the hours of operation shall be 8:00 a.m. to one-half ($\frac{1}{2}$) hour after sunset. Lighting shall be limited to cutoff type security lighting capable of being equipped with side guard housing, when necessary to prevent backlighting from washing onto any adjacent residential properties. The maximum illumination shall not exceed one-half ($\frac{1}{2}$) foot candles spread over the area of the outdoor recreational facility.
 - vi. That the outdoor recreational facility is operated and controlled in such a manner to prevent unauthorized use of the facility outside of the permitted hours of operation;
 - vii. That the outdoor recreational facility shall have no outdoor amplified sound devices.
 2. *Submittal requirements.* In making a determination, the zoning administrator may require that the applicant submit for review the following information or items: site plan, elevations, photographs and/or architectural renderings.
 3. *Operational requirements.*
 - i. Signs visible from the public rights-of-way are limited to no more than three (3) signs providing directional or cautionary information not exceeding four (4) square feet per sign in area and not more than six (6) feet in height above grade;

- ii. The landscaping shall be continuously maintained including necessary watering, weeding, pruning, pest control and replacement of dead or diseased plant material. Replacement of dead or diseased plant material shall occur within thirty (30) days of such event during the growing season of April 1 to October 1, all other times replacement shall occur within forty-five (45) days of the start of the following growing season; but, in any event, replacement time shall not exceed one (1) year;
- 4. *Permit required.* The renewal of each such exception shall be accomplished on an annual basis upon a finding by the zoning administrator that all the conditions imposed upon the exception have been performed.
- h. *Retail uses in I-1 and I-2 zones.* To authorize, upon application in specific cases, subject to the terms and conditions fixed by the zoning administrator, and limitations and conditions in this section h., an exception permitting the sale at retail in existing structures located in the I-1 or I-2 zone districts. All of the following criteria must be met:
 - 1. The following uses shall not be allowed:
 - i. Adult amusement or entertainment;
 - ii. Bookstore, adult;
 - iii. Eating place with adult amusement or entertainment;
 - iv. Photo studio, adult;
 - v. Sexually oriented commercial enterprise;
 - vi. Theater, adult;
 - vii. Body art establishment.
 - 2. The applicant must be the owner of the subject structure;
 - 3. The structure must have been erected prior to November 8, 1956;
 - 4. For every use and for all uses operated in the structure involved, there shall be provided off-street parking and off-street loading space in the amount and in the manner required for each such use in article VI, "off-street parking requirements" and article VII, "off-street loading requirements"; provided, however, that upon proof that full compliance cannot be achieved, the zoning administrator may waive those requirements;
 - 5. Every use and all uses in the structure shall comply with the limitations on permitted signs for the zone district in which the structure is located;
 - 6. No retail package liquor business, not existing or operating on August 31, 1997, shall be established, operated, or maintained within one thousand (1,000) feet of another such business, including a liquor store or a drugstore licensed to sell package liquors.
 - 7. No retail package liquor business, not existing or operating on July 31, 2000, shall be established, operated, or maintained within one thousand (1000) feet of a community corrections facility.

- i. *Recycling collection station.* To authorize, upon application in specific cases, subject to terms and conditions fixed by the zoning administrator and pursuant to the conditions hereinafter set forth, an exception permitting the operation of a recycling collection station for paper, household items, glass, plastic, aluminum or other materials in any business district other than the B-1 district and in any industrial zone district within five hundred (500) feet of a residential zone district. Such use may be permitted as an individual use within its own separate zone lot, or in association with other uses on a single zone lot.
 1. *Required conditions:* No exception shall be authorized hereunder unless the zoning administrator shall find that all the following conditions exist:
 - i. That the applicant is the owner or lessee of the subject property;
 - ii. That all proposed structures, collection boxes, vans or parked trailers will be located adjacent to each other and will occupy a total of no more than one thousand two hundred (1,200) square feet of ground area;
 - iii. That collected materials will be stored within an enclosure which completely obscures the public view of the stored materials, and that the station will be attended on a regular basis to maintain the property in a clean, litter free condition;
 - iv. That a minimum of three (3) off-street parking spaces will be provided adjacent to the collection area or structures;
 - v. Reserved.
 - vi. That signs shall be regulated by the provisions of the district in which the station is located;
 - vii. That in case the materials handled at the station are glass or metallic, such station shall be equipped with soundproof materials and/or located an adequate distance from adjacent dwellings;
 - viii. That the applicant will limit the operation of the station to the hours of 8:00 a.m to 8:00 p.m.
 2. *Requirement for annual renewal:* Every exception authorized hereunder shall be effective for a period of one (1) year from the date of authorization, such exception to be renewable annually by the department of zoning administration upon a finding by the department that all conditions imposed upon the exception have been performed; provided, however, that upon the receipt of a written complaint from any resident within four hundred (400) feet of the station, the administrator shall determine the validity of the complaint on the basis of the required conditions listed above and, if necessary, an evaluation by the department of environmental health of the sound levels produced by the station operation, and shall cancel the use permit if it is determined that the collection station is creating a nuisance for nearby residents or is failing to perform according to all the conditions imposed on the operation.

- j. *Second kitchen in a single unit dwelling.*
1. To authorize, upon application in specific cases, subject to terms and conditions fixed by the zoning administrator and pursuant to the conditions hereinafter set forth, an exception permitting the operation of a second kitchen in a single unit dwelling. No exception shall be authorized unless the zoning administrator shall find that the following conditions exist:
 - i. That the applicant is the owner of the subject structure and uses the structure as his/her primary residence;
 - ii. That the second kitchen shall be used only by the residents or domestic servants;
 - iii. That the applicant complies with all provisions of the Denver Building and Fire Code in the construction of the kitchen;
 2. An approved exception for a second kitchen shall not be valid until the applicant has executed an agreement listing the terms and conditions fixed by the zoning administrator and the three (3) conditions set forth above. Such agreement shall be recorded with the clerk and recorder. The permit for an approved exception for a second kitchen shall expire twelve (12) months after approval by the zoning administrator and may be renewed for a twelve-month period upon a finding by the zoning administration that the applicant is complying with all the conditions of the zoning administrator's approval. Each such permit shall be valid for a period of not more than twelve (12) calendar months and shall not be limited in the number of times such permit may be renewed. The permit for an approved exception shall expire at such time as the applicant no longer resides at the subject property.
- k. *Seasonal plant sales facility.*
1. To authorize, upon application in specific cases, subject to terms and conditions fixed by the zoning administrator and pursuant to the conditions hereinafter set forth, an exception permitting the operation of a seasonal plant sales facility in all business districts. No exception shall be authorized hereunder unless the zoning administrator shall find that all of the following conditions exist:
 - i. That the applicant is the owner of the subject property or has written consent of the owner to submit an application under this exception;
 - ii. That the proposed facility shall be operated wholly or partially within an approved temporary structure which is not a motor vehicle or trailer;
 - iii. That the proposed facility not including parking encompasses an area of no more than one (1) acre;
 - iv. That the purpose of the proposed facility is to sell at retail horticultural items including, without by way of limitation, bedding plants, plant

- containers, seeds, small trees and bushes, and accessories therefor; sales of agricultural chemical and fertilizer products will be permitted but only if prepackaged;
- v. That the period for seasonal retail sales at the facility commence no earlier than April 1 of a calendar year and end no later than October 31 of such year;
 - vi. That parking shall be provided to encompass a minimum area equal to one-half ($\frac{1}{2}$) the covered and uncovered retail sales area proposed at the facility; the parking surface shall be either paved or shall consist of a dust-free road base or acceptable gravel base material; and the ground area to be occupied by the proposed use shall not reduce the area occupied by the required parking of an existing permitted use on the zone lot by more than ten (10) percent;
 - vii. That access to the proposed facility shall be through approved curb cuts and shall provide appropriate ingress and egress areas to preclude traffic congestion on adjacent streets;
 - viii. That a security fence will be installed around the entire area of the proposed facility consisting of an approved fencing material such as wire mesh at a height of not less than six (6) feet;
 - ix. That any advertising signage at the proposed facility shall be in place only during the proposed operations of the facility; signage shall be limited to a maximum of fifty (50) square feet per face with no more than two (2) signs for each street frontage of the proposed facility; and all signs shall be non-portable and shall conform to district setback requirements;
 - x. That adequate utilities including water and electricity, as well as restroom facilities for the employees of the applicant, are available at or can be provided to the facility;
 - xi. That lighting shall be provided for evening and night operations; and
 - xii. That the proposed facility shall be operated in a manner that does not emit any obnoxious or dangerous degrees of heat, light, glare, or fumes beyond any boundary line encompassed by the facility.
2. The exception authorized hereby shall be effective for the period indicated in the application but not to exceed the seven-month period as set forth in section 59-38(a)(12)k.1.v., above, and shall be renewable annually by the department of zoning administration upon a finding by the department that all conditions imposed upon the use exception have been satisfied and that any problems which may have occurred during the preceding seasonal period have been resolved.

1. *Bed and breakfast lodging.* To authorize, upon application in specific cases subject to terms and conditions fixed by the zoning administrator and pursuant to the conditions hereinafter set forth, an exception permitting the operation of a bed and breakfast lodging in the R-3 or R-3-X district.
 1. *Findings required.* No exception shall be authorized hereunder unless the zoning administrator shall find that all the following conditions exist:
 - i. That the structure is a designated structure for preservation or is located in a district that has been designated as a district for preservation pursuant to and as set forth in chapter 30;
 - ii. That the applicant is the owner of record and that he/she uses the structure as their principal residence;
 - iii. That the structure contains no more than ten (10) guestrooms or suites and that the use of the dining room shall be restricted to use by overnight guests, employees, the owner's family and/or nonpaying guests;
 - iv. That off-street parking shall be provided at a ratio of one (1) parking space for each of the following: Each guestroom or suite, each nonresident employee and the owner; provided, however, the zoning administrator may reduce this ratio by up to twenty (20) percent of the requirement if evidence is given which indicates the ratio is excessive;
 - v. That no other such lodging is located within five hundred (500) feet of the proposed use as measured along the block front from zone lot line to zone lot line;
 - vi. That the structure contains a minimum of one thousand (1,000) square feet of gross floor area and that no guestroom or suite contains less than one hundred (100) square feet of floor area; and
 - vii. That any proposed addition to the structure shall not exceed a height of thirty-five (35) feet and shall have been reviewed by the Denver Landmark Preservation Commission.
 2. *Submittal requirements.* In making its determination, the zoning administrator may require that the applicant submit for review the following information or items: Site plan, elevations, photographs and/or architectural renderings.
 3. *Operational requirements.*
 - i. The lodging shall provide breakfast as part of the room price;
 - ii. The interior and exterior of the structure shall be maintained in a manner which reflects the original architectural character of the building, and the property shall be landscaped in a manner that protects the appearance and value of surrounding properties and neighborhoods and improves environmental conditions thereby promoting the general welfare. The landscaping shall be continuously

- maintained which includes necessary watering, weeding, pruning, pest control and replacement of dead or diseased plant material. Replacement shall occur in the next planting season; but, in any event, replacement time shall not exceed one (1) year;
- iii. Signs. The sign regulations of section 59-548 (R-3 and R-3-X regulations) shall apply; provided, however, that the maximum sign area permitted on any one (1) street front shall not exceed ten (10) square feet. The maximum height of any ground sign shall be four (4) feet;
 - iv. Related retail sales may be conducted within the structure; however, the floor area allocated to this retail use shall not exceed ten (10) percent of the gross floor area of the structure. Access to this retail area shall be limited to use by overnight guests only;
 - v. No social activities, such as weddings, receptions, private parties or similar events, will be permitted unless at least ninety (90) percent of the participants are overnight guests.
4. *Permit required.* The renewal of each such use exception shall be accomplished on an annual basis upon a finding by the zoning administrator that all the conditions imposed upon the exception have been performed and that the facility will not substantially or permanently injure the appropriate use of nearby conforming property.
- m. *Telecommunication towers.* To grant in specific cases subject to terms and conditions fixed by the zoning administrator, the placement of towers and their associated telecommunications support facilities in residential zone districts, within one hundred (100) feet of a residential zone district or within five hundred (500) feet of another tower.
1. *Findings required:* No exception hereunder shall be granted unless the zoning administrator finds that the proposed tower is necessary and essential to providing the applicant's telecommunication service.
 2. *Conditions:* In granting such exception the zoning administrator shall place such conditions on the exception as will advance the goals contained in section 59-84(a). Such conditions may include but are not limited to:
 - i. Moving the location of the tower or antenna to a more appropriate available site;
 - ii. Using a different technology that will lessen the impact of the tower or antenna;
 - iii. Requiring an appropriate alternative tower structure: or
 - iv. Other actions which will disguise or otherwise lessen the impact of the tower or antenna.
- n. *Child care home, large.* To authorize, upon application in specific cases, subject to terms and conditions fixed by the zoning administrator and subject to conditions

hereinafter set forth, an exception permitting child care in a single-unit dwelling or a dwelling unit in a multiple-unit dwelling, providing less than twenty-four (24) hour care of seven (7) to twelve (12) children.

(Ord. No. 340-06, § 3, eff. 6-9-06)

1. *Findings required:* No exceptions shall be authorized hereunder unless the zoning administrator shall find that the following conditions exist:
 - i. That the applicant is the owner or has written permission of the owner of the subject property;
 - ii. That the proposed home is the applicant's primary place of residence;
 - iii. That the applicant has obtained or will obtain upon granting of the exception all licenses and certifications required by the state and the city;
 - iv. That the proposed home complies with the building and fire codes and all regulations established by community planning and development;
 - v. That no other large child care home is located within four hundred (400) feet of the proposed home;
 - vi. That the architectural design of any new structure for the proposed home is not substantially inconsistent with the character of the surrounding neighborhood;
 - vii. That the proposed home complies with all the requirements of the district in which it is to be located, excepting any legally nonconforming structure which existed at the time of the passage of the ordinance from which this subsection was derived;
 - viii. That the applicant shall implement and maintain an ongoing traffic management program that ensures that the operation of the proposed home will not create traffic or parking problems in the neighborhood as a result of either the additional traffic introduced or the drop-off and pick-up of children, and that off-street parking shall be provided for each member of the staff on duty unless it is clearly proven that such off-street parking provisions should be modified by the zoning administrator.
2. *Additional conditions and requirements:* In addition to such other terms and conditions as may be fixed by the zoning administrator, the following shall be imposed as conditions and requirements upon each and every exception authorized hereunder:
 - i. That the proposed home shall provide full-time supervision of the children in the home during hours of operation;
 - ii. That the proposed home shall comply with the limitations on external effects as established for uses by right in the district in which it is located.

3. Renewal required of exception: Every exception authorized hereunder shall be effective for a period of one (1) year from the date of authorization, such exception to be renewable annually by the department of zoning administration upon a finding by the department that all conditions imposed upon the exception have been performed. A notice shall be sent by the zoning administrator to the permittee thirty (30) days prior to the required date of renewal.

(Ord. No. 495-05, § 1, eff. 7-22-05)

- o. *Wind energy conversion system.* To authorize, upon appeal in specific cases, subject to the terms and conditions fixed by the zoning administrator and subject to the conditions hereinafter set forth, which conditions must be demonstrated to exist by the applicant, an exception permitting the operation of a wind energy conversion system on any zone lot which is not adjacent to and does not have a single unit dwelling, duplex or rowhouse. No exception shall be authorized hereinunder unless the zoning administrator shall find that the following conditions exist:

1. That the applicant is the owner of the property and has submitted a site plan of the property which shows the location of the proposed system;
2. That the proposed system, including guy wires and blades, shall not encroach into any setback space, and in no event shall be within ten (10) feet of the front zone lot line;
3. That, if the proposed system is not on a zone lot adjacent to a zone lot with a single unit dwelling, duplex or rowhouse, the proposed system, including blades, shall extend no further than thirty-five (35) feet above the highest point of existing buildings on the zone lot or any building within one hundred (100) feet of the zone lot or sixty (60) feet above the ground, whichever is higher, provided, however that in no event may the system extend more than seventy-five (75) feet above the building on which mounted.
4. That all power transmission lines shall be located underground or inside a structure;
5. That climbing access to the structure shall be limited by means of a fence six (6) feet high around the tower base with a locking gate or by limiting tower climbing apparatus to no lower than thirteen (13) feet from the ground, and that at least one (1) sign shall be posted at the base of the tower with the following warning: "WARNING Wind Energy Electrical Generating System";
6. That any system with a capacity in excess of one hundred (100) kilowatts shall not be located along the major axis of an existing microwave communications link where the operation of the system is likely to produce an unacceptable level of electromagnetic interference;

7. That the proposed system shall not create a detrimental effect on nearby properties through electromagnetic interference, physical appearances or noise, either by loudness or frequency; and
8. That the proposed system shall not substantially or permanently injure the appropriate use of adjacent conforming property.

(Ord. No. 53-08, § 3, eff. 2-8-08)

(13) Reserved. [Ord. No. 468-05, § 4, eff. July 15, 2005, repealed subsection (13) which formerly pertained to review of applications for permit for filming operations and derived from Ord. No. 895-92, eff. Dec. 4, 1992; Ord. No. 530-93, eff. July 16, 1993.]

(14) Review applications for permits related to encroachments of ground mounted air conditioning units or other similar mechanical equipment, excluding ground mounted evaporative coolers, into required building separations, side setback or rear setback spaces not exceeding three (3) feet. Notwithstanding the regulations limiting the placement of ground mounted air conditioning units or other similar mechanical equipment, excluding ground mounted evaporative coolers, established by the zoning ordinance, the zoning administrator may grant a permit for ground mounted air conditioning units or other similar mechanical equipment units, excluding ground mounted evaporative coolers, upon application in specific cases providing the following procedure and the provisions of section 59-41(b) are followed:

(Ord. No. 695-07, § 1, eff. 11-30-07)

- a. Reserved.
- b. Reserved.
- c. In order to approve the application, the zoning administrator shall find that the proposed air conditioning unit or other similar mechanical equipment:
 1. Does not generate more than seventy-five (75) decibels of ambient sound according to the manufacturer's specifications;
 2. Does not exceed four (4) feet in height or ten (10) square feet in area per unit;
 3. Has adequate screening to conceal it from view from adjacent properties and public rights-of-way by means of landscaping and/or fencing;
 4. Reserved.
 5. Does not exceed a total of two (2) such units; and
 6. The location of the unit minimizes the impacts upon adjoining properties.

(Ord. No. 449-97, eff. 7-18-97)

(15) Reserved. [Ord. No. 468-05, § 6, eff. July 15, 2005, repealed subsection (15) which formerly pertained to review of applications for permit to park/store recreational vehicles and derived from Ord. No. 855-97, eff. Dec. 5, 1997.]

- (16) Review applications for permits to construct detached accessory structures used for the parking of motor vehicles in the R-0, R-1, R-2, and R-2-B zone districts. Notwithstanding the requirement for zone lots to have at least one (1) front line, the zoning

administrator may grant a permit for detached accessory structures used for the parking of motor vehicles on carriage lots in specific cases provided the following procedures and conditions are satisfied:

(Ord. No. 1024-02, § 7, eff. 12-20-02)

- a. The procedures of section 59-41b shall be followed in processing applications under this section 59-38(a)(16).
- b. In deciding to approve, approve with conditions or deny the application, the zoning administrator shall consider written comments of all interested parties, the impact of the proposed detached accessory structure used for the parking of motor vehicles on the adjoining properties and whether the proposed detached accessory structures used for the parking of motor vehicles is done in a manner that respects the prevailing character of the neighborhood, and may grant the permit provided the proposed detached accessory structures used for the parking of motor vehicles meets the following requirements and standards:
 1. Ownership of the subject carriage lot or portion thereof: The applicant shall be the owner of the subject carriage lot or portion thereof and shall have their principal residence located in the block surrounding the subject carriage lot or portion thereof. The granting of the permit shall be personal to the applicant therefor;
 2. Minimum lot area: The carriage lot or portion thereof used for the detached accessory structures used for the parking of motor vehicles shall be at least twenty-five (25) feet wide at the alley line and shall contain not less than one thousand (1,000) square feet in area;
 3. Setbacks: Detached accessory structures used for the parking of motor vehicles shall set in from the alley line the minimum distance necessary to provide a total alley or aisle width of twenty (20) feet for structures that are entered or accessed directly from the alley, and shall set in not less than five (5) feet from every other boundary line of the said carriage lot or portion thereof;
 4. Structural requirements: Detached accessory structures shall comply with all of the other ordinance requirements for the use, location, size and operation of detached accessory structures for the zone district in which it is located and shall have no utilities other than electricity; and
 5. Operation: Shall only be used by other conforming uses by right located on the block surrounding the carriage lot; and the carriage lot or portion thereof shall be maintained in good condition, free of weeds, trash and debris.
- c. Upon receipt of a complaint from an abutting property owner, the department of zoning administration shall investigate. If any deviations from the conditions listed in the permit exist, an order may be issued terminating the permit.

(Ord. No. 127-98, eff. 3-6-98; Ord. No. 459-06, § 3, eff. 7-21-06)

- (17) Reserved. [Ord. No. 468-05, § 7, eff. July 15, 2005, repealed subsection (17) which formerly pertained to review of applications for permit relating to open space, height, bulk limits, setbacks and dormers in excess of the district regulations in the R-MU-20, R-MU-30, C-MU-10, C-MU-20, and C-MU-30 zone districts and derived from Ord. No. 598-99, eff. Aug. 13, 1999; Ord. No. 781-98, eff. Nov. 13, 1998.]
- (18) [Ord. No. 859-03, § 4, eff. 11-19-03, repealed subsection (18), pertaining to appointment of enforcement hearing officers to conduct reviews of administrative penalties and derived from Ord. No. 370-02, § 3, eff. 5-17-02.]

(b) *Enforcement.* There is hereby vested in the department the duty of enforcing this chapter and the power necessary for such enforcement, incidental to which duty and power the department shall:

- (1) Conduct investigations and surveys to determine compliance or noncompliance with the provisions of this chapter, including reinvestigations of any land or structure to determine if a violation under an earlier notice or order has been corrected. Incidental to such investigations and surveys, an authorized representative of the department may enter into and upon and cause any land or structure to be inspected and examined. A failure or a refusal to permit such entry and inspection, after the issuance by the department of an order therefor, shall constitute a violation of this chapter. Additionally, the right to entry and inspection may be enforced by application to and proper orders from a court of proper jurisdiction;
- (2) Issue written orders requiring compliance with the provisions of this chapter. Such orders shall be served personally or by mail upon the person deemed by the department to be violating the provisions of this chapter; provided, however, that if such person is not the owner of the land on or the structure in which the violation is deemed to exist or have occurred, a copy of the order shall be sent by mail to the owner of such land or structure, the owner to be determined from the tax roll for the preceding tax year in the office of the deputy county treasurer. In the case of a structure containing individual units owned by different owners, a copy of the order shall be sent by mail to the individual unit owner deemed by the department to be violating the provisions of this chapter; and a copy of the order shall be sent to the corporation, organization or association which either owns or controls the common areas. In case a violation occurs in the common areas of such a development, the order shall be sent by mail to the officers of the corporation, organization or association which either owns the common areas or is responsible under the condominium declaration for the maintenance and control of such common areas. The date of mailing shall be deemed the date of service of any order served by mail;
- (3) Issue notices of violation for noncompliance with the provisions of this chapter;
- (4) Institute, in courts of proper jurisdiction, proceedings to enforce the provisions of this chapter, administrative orders and determinations made hereunder, and settlement

agreements made hereunder. [Ord. No. 859-03, § 6, eff. 11-19-03, repealed subsection (4), pertaining to negotiation of settlements of administrative penalties, and § 7 renumbered former subsection (5) as new subsection (4).]

(Ord. No. 370-02, § 4, eff. 5-17-02)

(Code 1950, § 611.5-3; Ord. No. 18-85, eff. 1-23-85; Ord. No. 859-03, §§ 3—7, eff. 11-19-03; Ord. No. 468-05, §§ 2—7, eff. 7-15-05)

Sec. 59-39. Appeals from the department.

(a) *Procedure.* Any person aggrieved or any officer or department of the city may appeal to the board of adjustment from any order or decision of the department; any neighborhood organization registered pursuant to section 41-19 of the Revised Municipal Code shall be considered an aggrieved person if the affected area falls within the neighborhood it represents.

Such appeal shall be taken by filing with the department and with the board of adjustment, within the time provided by the rules of the board, a notice of appeal specifying the particular grounds upon which the appeal is taken. Upon receipt of a notice of appeal, the department shall transmit to the board of adjustment all of the original documents and materials, or true copies thereof, constituting the record upon which the order or decision appealed from was based.

(Ord. No. 238-94, eff. 4-1-94)

(b) *Effect of appeal.* An appeal to the board of adjustment of a cease and desist order issued by the department shall stay all enforcement proceedings of the cease and desist order unless the zoning administrator certifies that, by reason of the facts stated in the certificate, a stay in the zoning administrator's opinion would cause imminent peril to life or property. When such a certificate is filed, proceedings shall not be stayed except by a restraining order granted, after due notice to the department, by the board of adjustment or a court of proper jurisdiction. (Code 1950, § 611.5-4; Ord. No. 625-05, § 2, eff. 9-2-05)

Sec. 59-40. Schedule of fees to be charged by department.

The department is authorized to establish and collect fees as set forth herein. Upon a finding by the zoning administrator that, owing to exceptional or extraordinary circumstances, the collection of the fees set forth herein will result in unnecessary hardship, said fees may be modified or waived by the zoning administrator.

(Ord. No. 719-99, eff. 10-1-99)

(a) *Fees to accompany certain applications.* In addition to any other fees herein provided, the following fees shall be collected by the department prior to the filing of the following applications. For purposes of calculating fees, any fraction of an acre shall be rounded up to the nearest whole acre.

- (1) Amendment to language of ordinance: five hundred dollars (\$500.00), which fee includes the cost of required publications in the official newspaper.

(2) Amendment to official zoning map: The maximum fee shall be fifty thousand dollars (\$50,000.00), which fee includes the cost of required publications in the official newspaper and the cost of signs for posting.

a. Standard:

- (i) Less than 1 acre = \$1,000.00
- (ii) 1 acre (43,560 sq. ft.) or more = \$1,000.00 plus \$500.00 per each additional acre or portion thereof in excess of the first acre.
- (iii) Waivers or conditions in standard amendment to zoning map = an additional fee of \$500.00 for the first acre, plus \$100.00 per each additional acre or portion thereof in excess of the first acre.

b. Planned Unit Development (PUD):

- (i) Less than 1 acre = \$1,000.00
- (ii) 1 acre or more = \$1,500.00 plus \$500.00 per each additional acre or portion thereof in excess of the first acre.

(Ord. No. 705-87, eff. 12-11-87; Ord. No. 719-99, eff. 10-1-99)

(b) *Fees relating to permits or certificates.* In addition to any other fee herein provided, the following fees shall be collected by the department prior to the issuance of any of the following permits or certificates:

- (1) Certificate of occupancy—temporary, ten dollars (\$10.00).
(Ord. No. 577-83, eff. 11-9-83)
- (2) Certificate authorizing use by temporary permit ten dollars (\$10.00).
(Ord. No. 14-85, eff. 1-15-85)
- (3) [Ord. No. 14-85, eff. 1-15-85, added permit fee for second kitchen; repealed by Ord. No. 742-88, eff. 12-12-88]
- (4) Application for a use and construction permit involving the transfer of development rights from a structure designated for preservation pursuant to and as set forth in chapter 30 of the Revised Municipal Code, seventy-five dollars (\$75.00).
(Ord. No. 224-85, eff. 5-1-85)
- (5) All other applications for use and construction permits shall be charged according to the following schedule:

<i>Valuation of Construction Work</i>	<i>Fee</i>
\$1.00 to \$500.00	\$10.00
\$501.00 to \$2,000.00	\$25.00
\$2,001.00 to \$50,000.00	\$35.00 plus \$0.50 per \$1,000.00 in valuation or fraction thereof
\$50,001.00 to \$100,000.00	\$100.00 plus \$0.50 per \$1,000.00 in valuation or fraction thereof

(e) *Fees relating to the Gateway District.* The department is authorized to establish fees for processing the various plans, applications, certificates and/or permits required by sections 59-341 through 59-352, the Gateway district regulations, of this chapter. Such fees shall be based on reasonable costs and expenses incurred by the department in assisting applicants. (Ord. No. 368-93, eff. 5-21-93)

(f) *Fees relating to administrative review.* The department is authorized to establish fees for the administrative review required by section 59-38(a)(12) and section 59-22 of this chapter. (Ord. No. 425-93, eff. 6-11-93; Ord. No. 91-04, § 2, eff. 2-19-04)

(g) *Fees relating to the B-5 and B-5-T districts.* The department is authorized to establish fees for processing the various plans, applications, certificates and/or permits required by sections 59-216 through 59-227, the B-5 and B-5-T district regulations, of this chapter. Such fees shall be based on reasonable costs and expenses incurred by the department in assisting applicants. (Ord. No. 780-94, eff. 10-14-94; Ord. No. 439-07, § 2, eff. 8-20-07)

(h) *Fees relating to Enumerated Overlay Districts.* The department is authorized to establish fees for processing the various plans, applications, certificates and/or permits required by article IV, division 21, overlay districts, of this chapter. Such fees shall be based on reasonable costs and expenses incurred by the department in assisting applicants.

(i) *Fees relating to inspections.* The department is authorized to establish fees for inspections to determine compliance as provided for by subsection 59-38(b)(1) of this chapter. Such fees shall be based on reasonable costs and expenses incurred by the department in conducting the compliance inspection. [Ord. No. 859-03, § 8, eff. 11-19-03, repealed subsection (i), pertaining to fees related to administrative penalties and derived from Ord. No. 370-02, § 5, eff. 5-17-02, and § 9 renumbered former subsection (j) as new subsection (i).] (Ord. No. 370-02, § 5, eff. 5-17-02) (Ord. No. 780-94, eff. 10-14-94) (Code 1950, § 611.5-5; Ord. No. 314-82, eff. 6-25-82; Ord. No. 859-03, §§ 8, 9, eff. 11-19-03; Ord. No. 895-03, §§ 2—5, eff. 12-2-03)

Sec. 59-41. Administrative procedures.

(a) Whenever specified in this chapter, the procedures for notification and review as set forth in this section shall be utilized.

(b) Review of applications for administrative exceptions and special permits. The zoning administrator may grant a permit for administrative exceptions and special permits upon application and subject to specific criteria as listed in the controlling ordinance sections that regulate such structures and uses, providing the following procedure is satisfied:

- (1) The applicant shall submit a complete application containing all information specified in the controlling section or required by the zoning administrator. The application shall include a statement justifying the need for the proposal, describing undo hardship, if any, and explaining the benefit gained from the proposal.

- (2) The zoning administrator shall send a copy of the application and a notice form to registered neighborhood associations whose boundaries encompass or are within two hundred (200) feet of the subject property, and to the city councilperson for the subject property. Such notice shall explain in detail the nature of the proposal, shall give directions for submitting comments, and shall state that the decision of the zoning administrator shall be posted on the affected property for fifteen (15) days as soon as it is effective. Such sign shall describe how an appeal from the decision of the zoning administrator may be filed and state that any appeal must be filed within fifteen (15) days, and shall provide contact information for obtaining the standards and criteria that will govern the appeal. At the zoning administrator's discretion, the zoning administrator may solicit comments from appropriate city agencies.
- (3) In addition to the notice required above, the applicant shall post the property in a conspicuous location for 10 days with a sign provided by the zoning administrator. Such sign shall describe the proposal, give directions for submitting comments to the zoning administrator within thirty (30) days from the beginning of the posting period and state that the zoning administrator's decision shall be posted at the same location for fifteen (15) days as soon as it is effective.
- (4) In deciding to approve, approve with conditions or disapprove the proposed construction or use, the zoning administrator shall consider relevant comments of all interested parties and may approve the application providing a finding is made that the proposal will meet all qualifying requirements of the controlling section and will not substantially or permanently injure the appropriate use of adjacent conforming properties. The zoning administrator may attach any condition to the permit necessary to protect the health, safety and welfare of the community and minimize adverse impacts on adjacent properties.
- (5) Upon reaching a decision to approve an application the zoning administrator shall cause the applicant to post the property with a copy of the decision for a period of fifteen (15) days. The applicant shall post the property in a conspicuous location with a sign provided by the zoning administrator. The effective date of the zoning administrator's approval and the start of the fifteen day period during which appeals may be made to the board of adjustment shall be the first day of the posting of the sign. Such sign shall describe how an appeal from the decision of the zoning administrator may be filed and state that any appeal must be filed within fifteen (15) days, and shall provide contact information for obtaining the standards and criteria that will govern the appeal.
(Ord. No. 459-06, § 4, eff. 7-21-06)
(Ord. No. 468-05, § 8, eff. 7-15-05)

Secs. 59-42—59-50. Reserved.

DIVISION 3. BOARD OF ADJUSTMENT*

Sec. 59-51. Creation; alternates.

There shall be and hereby is created a board of adjustment, hereinafter in this division called the "board," consisting of five (5) members. The members of the board shall be appointed by the mayor for a term of five (5) years and may be removed only for cause upon written charges and after public hearing. The members of the board serving on the effective date of the ordinance from which this section was derived shall be and constitute the board hereunder, and each member thereof shall serve the balance of the term to which that member was appointed. Any vacancy which occurs in the board shall be filled by the mayor for the unexpired term of any member whose term became vacant.

The mayor may appoint for a term of five (5) years two (2) alternate members of the board in addition to the five (5) members above provided. When a member of the board is recused or is absent, the alternate member first appointed by the mayor shall act with full authority. The alternate members shall thereafter rotate or substitute, one (1) for the other, their service on the board as the need arises. The provisions, with regard to removal and the filling of vacancies, shall apply to such alternates. The compensation of the members of the board and the alternate members shall be fixed by council. No member of the board or an alternate member shall be on the staff of the board or be employed by the department of zoning administration.

Should a member of the board fail to attend one-third ($\frac{1}{3}$) of the meetings scheduled during any period of twelve (12) consecutive months, that failure shall be deemed cause for removal upon written charges being made and after a public hearing. The secretary to the board shall make written charges in such case.

(Code 1950, § 611.6-1; Ord. No. 38-95, eff. 1-27-95)

Charter reference—Board of adjustment, § B1.19.

Sec. 59-52. Staff.

The staff of the board shall consist of a technical-secretary and such other assistants as may be authorized by council. The technical-secretary shall be the technical advisor to the board and custodian of its records, shall conduct official correspondence and generally supervise the clerical and technical work of the board. The technical-secretary shall be appointed by the board and shall devote his/her entire time to the duties of the office. The salary of the technical-secretary, the number of additional assistants and the salaries of such additional assistants shall be fixed by council. No member of the staff shall be a member of the board or be employed in or by the department of zoning administration.

(Code 1950, § 611.6-2)

***Cross references**—Administration generally, Ch. 2; boards, commissions and committees generally, § 2-126 et seq.

Sec. 59-53. Rules for proceedings before board.

The board shall adopt rules governing all proceedings before it. Such rules shall provide and require that:

- (1) Public notice shall be given of all hearings and all hearings shall be open to the public;
- (2) Due notice of all hearings shall be given to parties in interest and to the department of zoning administration which department shall be permitted to intervene, for and on behalf of the city, in all public hearings;

- (3) At any public hearing a representative of the department of zoning administration and any other interested party may appear in person or by agent or by attorney, offer evidence and testimony and cross-examine witnesses;
- (4) All witnesses shall be sworn or shall affirm their testimony in the manner required in courts of record;
- (5) All evidence and testimony shall be presented publicly. The board may take judicial notice of facts to the same extent and in the same manner as courts of record and may consider any relevant facts within the personal knowledge of any member of the board which are stated into the record by such member;
- (6) For each case or matter heard, the board shall cause a record of its proceedings to be prepared. The record of proceedings shall include all documents and physical evidence considered in the case together with notes of all public proceedings, said note to be made stenographically or by recording equipment. The notes shall include, but need not be limited to, the verbatim testimony offered by all witnesses in the case. Transcripts shall be prepared in all cases where required to inform absent board members prior to voting for decision, and for all cases where the decision of the board is appealed to courts, and, in the event any person, or any department or agency of the city desires a transcript, said transcript shall be prepared at the expense of the person, department or agency requesting the same. The record of proceedings shall include a finding of fact by the board on each of the conditions listed under section 59-54 as precedent to the granting by the board of the relief sought. The findings shall specifically cross-reference each subsection to which they pertain. The record of proceedings shall not include the deliberations or discussions of the board at private or executive sessions, but shall show grounds for each decision and the vote of each member upon each question, or, if absent or failing to vote, shall indicate such fact. The record of proceedings shall be filed in the office of the board within two (2) weeks after the date of the filing of the decisions on the matter by the board, in the office of the board, and shall be a public record.

(Ord. No. 576-81, eff. 11-18-81)

(Code 1950, § 611.6-3)

Sec. 59-54. Powers.

Subject to the limitations enumerated herein, the board shall have and exercise the following powers; in the exercise of its powers, the board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made and, to that end, shall have all the powers of the officer or department from whom the appeal is taken:

(Ord. No. 1110-96, eff. 1-1-97; Ord. No. 434-97, eff. 7-11-97)

- (1) *Administrative review.* To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter.

(2) *Variances:*

- a. *Uses by right.* To authorize, upon appeal in specific cases, such variances from the terms of this chapter, subject to terms and conditions fixed by the board, as will not be contrary to the public interest where, owing to exceptional and extraordinary circumstances, literal enforcement of the provisions of this chapter will result in unnecessary hardship. A variance granted prior to September 3, 1982, shall lapse and become void unless construction has started by December 31, 1987. A variance granted on or after September 3, 1982 shall lapse and become void unless the construction has started within three (3) years from the date that said variance was granted and is completed within five (5) years from the date that said variance is granted. A two-year extension of these time periods may be granted by the zoning administrator upon a showing of proof by the owner that the project was delayed by economic or physical problems beyond his control. Upon the completion of construction, the variance shall run with the land. No variance shall be authorized hereunder unless the board shall find that all of the following conditions exist:

(Ord. No. 121-80, eff. 3-28-80; Ord. No. 477-82, eff. 9-3-82; Ord. No. 292-86, eff. 5-27-86)

1. That the variance will not authorize the operation of a use other than those uses specifically enumerated as uses by right for the district in which is located the property for which the variance is sought;
2. That, owing to exceptional and extraordinary circumstances, literal enforcement of the provisions of this chapter will result in unnecessary hardship;
3. That the circumstances aforesaid were not created by the owner of the property and are not due to or the result of general conditions in the district in which the property is located;
4. That the development or use of the property for which the variance is sought, if limited by a literal enforcement of the provisions of this chapter, cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district;
5. That the variance will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;
6. That the variance will not alter the essential character of the district in which is located the property for which the variance is sought;
7. That the variance will not weaken the general purposes of this chapter or the regulations herein established for the specific district;
8. That the variance will be in harmony with the spirit and purposes of this chapter;
9. That the variance will not adversely affect the public health, safety or welfare;

10. That the applicant has adequately addressed any concerns raised by the department of zoning administration or other city agencies.

(Ord. No. 425-93, eff. 6-11-93)

b. *Nonconforming uses.* To authorize, upon appeal in specific cases and subject to terms and conditions fixed by the board, a variance permitting an increase of the floor area occupied by a nonconforming use in an existing structure. No variance shall be authorized hereunder unless the board shall find that all of the following conditions exist:

1. That the use is a nonconforming use as defined by this chapter, is in full compliance with all requirements of this chapter applicable to nonconforming uses and is authorized to continue in operation and to exist;
2. That the structure in which an increase in floor area is sought was in existence on the date on which the nonconforming use became nonconforming and is in existence at the time of the hearing;
3. That on the date on which the use became a nonconforming use, it (the use) was in occupancy and in operation on a portion of the floor area of the structure in which an increase in floor area is sought;
4. That the applicant for the variance does not propose or intend to enlarge the existing structure, does not propose or intend to increase the floor area of such structure and that any authorized increase in occupancy of floor area will not involve remodeling, changing or altering any load-bearing member of said structure;
5. That, owing to exceptional and extraordinary circumstances, literal enforcement of the provisions of this chapter will result in unnecessary hardship;
6. That the circumstances aforesaid were not created by any owner or operator of the use; or by the applicant for the variance;
7. That the circumstances aforesaid are unique to the applicant for the variance and are not applicable generally to all nonconforming uses;
8. That the variance will not further injure the appropriate use of adjacent conforming property in the same zoning district;
9. That the variance will not alter the essential character of the zoning district in which is located the nonconforming use for which the variance is sought;
10. That the variance will not weaken the general purposes of this chapter or the regulations herein established for the specific district;
11. That the variance will be in harmony with the spirit and purposes of this chapter;
12. That the variance will not adversely affect the public health, safety or welfare.

Case law annotation—If a building is destroyed or partially destroyed to change the use from a nonconforming use to a more restrictive nonconforming use, the person requesting the

building permit is in the same position as the owner of unimproved land. The change of the building cuts off the rights if the building is substantially destroyed during the change. *Denver v. Board of Adjustment*, 31 Co. A. 324, 505 P. 2d 44, (Colo. App. Div. II, 1972).

(3) *Exceptions:*

a. [Ord. No. 2-83, eff. 1-11-83; Ord. No. 347-89, eff. 7-10-89; Ord. No. 384-93, eff. 5-28-93, repealed adult community corrections facility]

b—k. Reserved. [Repealed by Ord. No. 495-05, § 2, eff. July 22, 2005.]

1. *Wind energy conversion systems on zone lots adjacent to or on zone lots with single unit dwellings, duplexes or rowhouses.* To authorize, upon appeal in specific cases, subject to the terms and conditions fixed by the board and subject to the conditions hereinafter set forth, an exception permitting the operation of a wind energy conversion system on any zone lot adjacent to or with a single unit dwelling, duplex or rowhouse. No exception shall be authorized hereinunder unless the board shall find that the following conditions exist:

1. That the applicant is the owner of the property and has submitted a site plan of the property which shows the location of the proposed system;
2. That the proposed system, including guy wires, will not encroach into any setback space and will be no closer than ten (10) feet to any property line; provided, however, that for any zone lot not containing a single unit dwelling, duplex or row house, the ten foot setback only applies to zone lot lines abutting zone lots with a single unit dwelling, duplex or row house; other setbacks shall be as per the basic zonings.
3. That the proposed system will extend no further than thirty (30) feet above the highest point of existing buildings on the zone lot, unless the zone lot does not have a single unit dwelling, duplex or rowhouse, in which case the proposed system will extend no further than thirty-five (35) feet above the highest point of existing buildings on the zone lot, or sixty (60) feet above the ground, whichever is higher;
4. That all power transmission lines shall be located underground or inside a structure and that the proposed system, will consist of a tubular pole tower if the proposed system is to be a horizontal axis system;
5. That climbing access to the structure shall be limited by means of a fence six (6) feet high around the tower base with a locking gate or by limiting tower climbing apparatus to no lower than thirteen (13) feet from the ground, and that at least one (1) sign shall be posted at the base of the tower with the following warning: "WARNING Wind Energy Electrical Generating System";
6. That any system with a capacity in excess of one hundred (100) kilowatts shall not be installed in a residential zone and shall not be located along the

major axis of an existing microwave communications link where the operation of the system is likely to produce an unacceptable level of electromagnetic interference;

7. That the proposed system will not create a detrimental effect on nearby properties through electromagnetic interference, physical appearances or noise, either by loudness or frequency; and
8. That the proposed system will not substantially or permanently injure the appropriate use of adjacent conforming property.

(Ord. No. 443-81, eff. 9-4-81; Ord. No. 53-08, § 4, eff. 2-8-08)

m—t. Reserved. [Repealed by Ord. No. 495-05, § 2, effective July 22, 2005.]

u. *Outdoor eating area exception.* To authorize, upon appeal in specific cases, subject to terms and conditions fixed by the board and subject to conditions hereinafter set forth, an outdoor eating area accessory to an eating place that has a business structure exception, is a legal nonconforming use, or is a use by right subject to limitation L1 located within fifty (50) feet of the boundary of any RS-4, R-X, R-0, R-1, R-2, R-2-A, R-2-B, R-3 or R-3-X zone district.

1. *Finding required.* No exceptions shall be authorized hereunder unless the board shall find that the following conditions exist:
 - i. That the applicant is the owner, or has written permission of the owner(s) of the subject property.
 - ii. That the application contains provisions which ensure that the exception will not substantially or permanently injure the appropriate use of neighboring conforming properties.
 - iii. That the hours of operation of the outdoor eating area beyond 6 p.m., and the sale and consumption of alcohol beverages at any time on the outdoor eating area, may only be allowed by the board of adjustment upon consideration of the following factors:
 1. Neighboring uses.
 2. Seating capacity.
 3. Type of food or drink.
 4. The ambient noise generated by the patio, including whether outdoor speakers will be authorized.

The board may restrict sale and consumption of alcohol beverages on the outdoor eating area for all, none, or only some of the permitted hours of operation.

- iv. The outdoor eating area shall be contiguous to the eating place to which it is accessory (also note outdoor eating area may encroach into the right-of-way with approval of the City and County of Denver).

- v. The outdoor eating area shall be clearly delimited by fences, temporary walls or plant materials and also may have temporary canvas, nylon or similar material roof.
 - vi. No required off-street parking spaces shall be used for the outdoor eating area.
 - vii. There shall be no glare from lighting on the zone lot projected onto residential uses. To ensure glare is controlled, all external lights shall have full cut off fixtures. Light trespass onto residential uses shall not exceed three-tenths (.3) of a foot candle.
2. *Submittal requirements.* In making its determination, the board may require that the applicant submit for review the following information or items: site plan, elevations, photographs, and/or architectural renderings.
 3. *Renewal required of exception.* Every exception authorized hereunder shall be effective for a period of one (1) year from the date of authorization, such exception to be renewable annually by the zoning administrator upon a finding by the department that all conditions imposed upon the exception have been performed and that the operation of an outdoor eating area has not and will not substantially or permanently injure the appropriate use of adjacent conforming property. If any written complaints have been received by community planning and development during the preceding year the property owner shall post notification of such renewal for not less than thirty (30) days. Such posting shall be on a sign meeting specifications approved by the zoning administrator and posted at a location on the property as approved by the zoning administrator. The zoning administrator shall not act on the renewal until the sign has been properly posted for said thirty (30) days.

(Ord. No. 365-04, § 1, eff. 6-9-04; Ord. No. 228-05, § 2, eff. 4-15-05)

- (4) *Oaths and attendance of witnesses.* For the purpose of exercising the powers herein enumerated, the board shall elect a chairperson and vice-chairperson. The chairperson or, in the chairperson's absence, the vice-chairperson shall administer oaths to or accept affirmations from witnesses and may compel the attendance of witnesses. A failure or a refusal to appear in response to a subpoena issued by the board shall constitute a violation of this chapter.
- (5) *Stay of effective date of orders.* Whenever the department of zoning administration has issued an order to cease and desist from the operation of dwelling units in excess of the number authorized by this chapter, and the board also finds that literal enforcement of the provisions of this chapter by reason of unique and exceptional circumstances including owner's physical condition, age, or other factors as deemed by the board to be

unique or exceptional, will result in unnecessary hardship then and in that event the board may order a delay, for a period of not to exceed five (5) years, of the enforcement of such order. Upon expiration of any delaying enforcement or other order, the board may review, at a regular hearing before the board, an applicant's request for a further extension and grant any such extension not to exceed five (5) years, should the board find that condition still exists. All such actions by the board shall be recorded in the office of the clerk. Such stay shall not be a variance on the use of a premises, shall be personal to the applicant therefor and shall not be transferable.

(Ord. No. 670-81, eff. 12-18-81)

- (6) *Six-month delay of enforcement.* Whenever the department of zoning administration has issued an order to cease and desist from any use not authorized by this chapter, except as provided in subsection (5), above, the board, upon appeal, may find that the literal enforcement of the provisions will result in unnecessary hardship by reason of unique and exceptional circumstances including owner's physical condition, age, and/or other factors as deemed by the board to be unique or exceptional. In that event the board may order a delay, for a period of not to exceed six (6) months, of the enforcement of such cease and desist order. Upon expiration of any order delaying enforcement of such cease and desist order, the board may review, at a regular hearing before the board, an applicant's request for an additional six (6) months' extension and grant only one (1) such extension should the board find that the conditions still exist. All such actions by the board shall be recorded in the office of the clerk and recorder of the city. Such stay shall not be a variance on the use of a premises, shall be personal to the applicant therefor and shall not be transferable.

(Code 1950, § 611.6-4; Ord. No. 895-03, §§ 6, 7, eff. 12-2-03)

Sec. 59-55. Limitations on powers.

(a) *Concurring vote required.* The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass under this chapter or to effect any variation in this chapter.

(b) *Findings of fact.* Every decision of the board shall be based upon findings of fact and every finding of fact shall be supported in the record of its proceedings. The enumerated conditions required to exist on any matter upon which the board is required to pass under this chapter or to effect any variation in this chapter shall be construed as limitations on the power of the board to act. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific facts shall not be deemed findings of fact and shall not be deemed compliance with this chapter.

(c) *Powers strictly construed.* Nothing herein contained shall be construed to empower the board to change the terms of this chapter, to effect changes in the official map or to add to the specific uses permitted in any district. The powers of the board shall be so construed that this chapter and the official map are strictly enforced.

(d) *Limitations as to permitted signs.* No variance or exception to and no deviation from the provisions of article V of this chapter on permitted signs shall be granted or authorized by the board which would result in any of the following:

- (1) Any variance or exception to or deviation from the provisions of division 3 of article V of this chapter on outdoor general advertising devices;
- (2) An existing roof sign which is higher than thirty-two (32) feet above grade or a new or existing projecting sign which is higher than thirty-two (32) feet above grade;
- (3) A new roof sign;
- (4) A new projecting sign which exceeds twenty (20) square feet in sign area in a residential district or in the B-1, B-A-1, O-1, or O-2 districts; which exceeds fifty (50) square feet in sign area in the B-2, B-3 or I-0 districts; or which exceeds eighty (80) square feet in sign area in all other districts;
- (5) A new or existing projecting sign where more than one (1) other sign is maintained or is to be maintained for the same use by right on the same building front;
- (6) A new or existing ground sign which is higher than thirty-two (32) feet above grade except that a variance permitting the maintenance of an existing ground sign which is not higher than thirty-five (35) feet above grade may be granted where said ground sign and all other signs for the same use by right comply with all other applicable provisions of article V of this chapter;
- (7) A new or existing sign with a sign area larger than that which is permitted under the provisions of article V of this chapter for the use by right in the district in which the use by right is or will be maintained except that a variance permitting the maintenance of an existing sign with a sign area up to fifty (50) percent larger than the maximum sign size permitted under the provisions of article V of this chapter for the use by right in the district in which the use by right is maintained may be granted where no other signs are maintained for the same use by right on the same building front and where the total area of signs maintained for the same use by right does not exceed that permitted under the applicable provisions of article V of this chapter;
- (8) A greater total area of signs than that which is permitted under the provisions of article V of this chapter for the use by right in the district in which the use by right is or will be maintained.

(e) *Variations for signs for churches.* Notwithstanding the limitations set forth in subsection (d) on limitations as to permitted signs, the board shall have the power to grant variances from the provisions of article V of this chapter on permitted signs for signs which identify churches when such signs are located on the same zone lot as the church.

(f) *Presumption.* Any determination or finding of the zoning administrator shall be presumed to be correct until evidence is introduced which would support a contrary determination or finding.

(Ord. No. 145-82, eff. 4-5-82)

(Code 1950, § 611.6-5; Ord. No. 895-03, §§ 8, 9, eff. 12-2-03)

Sec. 59-56. Appeals from the board.

(a) *Procedure.* Any person aggrieved, any taxpayer, the city or any officer or department of the city may have a decision of the board reviewed in the manner provided by rules relating to civil proceedings. No such review shall be granted unless a petition therefor, duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality, is presented to a court of record within thirty (30) days after the filing of the decision in the office of the board. The board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or such portions thereof as may be called for. The return shall concisely set forth such other facts as may be pertinent and material to the decision appealed from and shall be verified.

(b) *Effect of appeal.* The issuance of a writ on a petition hereunder shall not stay proceedings upon the decision appealed from but the court, on application after notice to the board and on due cause shown, may grant a restraining order.

(Code 1950, § 611.6-6)

Case law annotation—The city and zoning administrator are proper parties to bring a decision of the board of adjustment before the district court and ultimately appeal to the court of appeals. *Denver v. Board of Adjustment*, 31 Co. A. 324, 505 p. 2d 44 (Colo. App. Div. II, 1972).

Sec. 59-57. Schedule of fees to be charged by the board.

(a) *Filing fees.* The board shall collect for each case filed a fee as set forth below:

(1) For enclosures of balconies of individual units of multiple unit dwellings a fifty dollar (\$50.00) fee shall be charged.

(2) For the following a one hundred dollar (\$100.00) fee shall be charged:

a. Appeal of cease and desist orders from neighborhood inspection services for zoning violations involving inoperable or dismantled vehicles or trash or junk on the property.

b. Subject matter relating to the existing area or size of the zone lot, for example:

1. Preschool play area;
2. Parking that is unpaved or unscreened;
3. Deficiencies in the number or size of parking spaces;
4. Excess gross floor area (except see 59-57(a)(1) for Enclosure of balconies of individual units);
5. Open space deficiencies;
6. Landscape deficiencies;
7. Excess number of dwelling units and any additional violations resulting therefrom;
8. Spacing of structures in a planned building group.

c. Home occupations;

- d. Appeal of the zoning administrator's decision under sections 59-38(a)(11), 59-38(a)(12) and 59-38(a)(14);
 - e. Matters relating to number, size or placement of sheds and carports.
- (3) For subject matter relating to persons or personal items on the zone lot a one hundred and fifty dollar (\$150.00) fee shall be charged:
- a. Oversized vehicles;
 - b. Excess number of vehicles;
 - c. Detached campers, trailers and boats;
 - d. Fences, over height or non-approved materials;
 - e. Signage;
 - f. Unrelated persons living in the residence.
- (4) For subject matter relating to proposed or previously modified structure(s) on the zone lot, a fee of two hundred dollars (\$200.00) shall be charged:
- a. Bulk plane;
 - b. Setback;
 - c. Accessory structure features inconsistent with a use by right;
 - d. Exceeding maximum allowed height;
 - e. Garage and canopy widths;
 - f. Size (length, width, height) of accessory structures other than sheds or carports;
 - g. Second use by right structure;
 - h. Residential structures less than six hundred (600) square feet.
- (5) For the following subject matter a fee of three hundred dollars (\$300.00) shall be charged:
- a. Separation of uses;
 - b. Amending and/or combining zone lots and resulting violations(s);
 - c. Uses other than uses by right except as herein provided (includes accessory uses and nonconforming uses);
 - d. Administrative review of a decision by the zoning administrator other than appeals under section 59-57(a)(2);
 - e. Any other appeal not specifically included in sections 59-57(a)(1) through 59-57(a)(5).

(Ord. No. 580-82, eff. 10-29-82; Ord. No. 128-83, eff. 3-15-83; Ord. No. 639-83, eff. 12-1-83)

(b) When more than one (1) of the above categories is applicable to one (1) case, only the largest fee shall apply, plus an additional fee of fifty dollars (\$50.00) shall be charged when the applicant had taken action in violation of chapter 59 prior to issuance of a required permit.

Further, in the event the applicant fails to pick up and post the notification of appeal sign which failure requires rescheduling, an additional fee of fifty dollars (\$50.00) shall be assessed for each time such rescheduling is required.

(c) *Rehearing/reinstatements.* For each rehearing/reinstatement granted by the board, a fee equal to one-half ($\frac{1}{2}$) of the original filing fee shall be collected.

(d) *Refunds.* For each case withdrawn at least thirty (30) days prior to the scheduled hearing date, a refund of up to fifty (50) percent may be granted. There shall be no refund of the filing fee for cases withdrawn less than thirty (30) days prior to the scheduled hearing date; provided, however, upon finding by the board that an order or denial is issued in error and that order or denial is rescinded by the department, or the finding of other unique and/or exceptional circumstances, the board, by majority vote, may order the refund of all or a portion of the filing fee paid.

(Ord. No. 639-83, eff. 12-1-83)

(Code 1950, § 611.6-7; Ord. No. 120-80, eff. 3-28-80; Ord. No. 313-82, eff. 6-25-82; Ord. No. 25-88, eff. 1-19-88; Ord. No. 496-05, § 1, eff. 7-22-05)

Secs. 59-58—59-76. Reserved.