

**Page Replacement Packet for DZC Text Amendment 3 to  
the July 1, 2021 Code Publication:  
Reestablish the Board of Adjustment and Update  
Criteria**

Remove old pages	Insert new pages	Notes
<b>a. Cover/ToC</b> i to vi	<b>a. Cover/ToC</b> i to vi	<b>a.</b> Pages for page replacement
<b>b. Article 12,</b> TOC-i to TOC-ii	<b>b. Article 12,</b> TOC-i to TOC-ii	<b>b.</b> Pages for page replacement
<b>c. Article 12,</b> 12.2-3 to 12.2-8	<b>c. Article 12,</b> 12.2-3 to 12.2-10	<b>c.</b> Pages for page replacement
<b>d. Article 12,</b> 12.4-21 to 12.4-26	<b>d. Article 12,</b> 12.4-21 to 12.4-26	<b>d.</b> Pages for page replacement

NOTE: page numbering assumes 2-sided copy of the code. Pages with content that was amended contain a footer with the term "Amendment 3". Pages that do not have content changes do not contain the "Amendment 3" footer.

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# **DENVER ZONING CODE**

**Effective Date  
June 25, 2010**

**Restated in its Entirety on July 1, 2021**

**As Amended Through February 23, 2022**

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## **SECTION 12.2.5 DEVELOPMENT REVIEW COMMITTEE**

### **12.2.5.1 Creation**

The Development Review Committee ("DRC") shall consist of the Manager, the manager of the Department of Transportation and Infrastructure ("DOTI"), and the manager of Parks and Recreation, or their designated representatives, provided that additional agencies may participate at the discretion of the Manager.

### **12.2.5.2 Authority for Final Action**

The Development Review Committee is responsible for final action regarding:

- A. Site Development Plan Review
- B. Minor Deviations and Repeals of General Development Plans
- C. Large Development Review
- D. Infrastructure Master Plan

### **12.2.5.3 Review Authority**

The Development Review Committee shall review and make recommendations to the Zoning Administrator regarding:

- A. Zoning Permit Review, as the Zoning Administrator may determine on a case-by-case basis.

## **SECTION 12.2.6 BOARD OF ADJUSTMENT**

### **12.2.6.1 Authority for Final Action**

The Board of Adjustment is responsible for final action regarding:

- A. Variances (see Section 12.4.7);
- B. Appeals from Administrative Decisions (see Section 12.4.8); and
- C. Zoning Permit with Special Exception Review (see Section 12.4.9).

### **12.2.6.2 Creation; Alternates; Required Training**

- A. Consistent with the City Charter, city council hereby reestablishes the Board of Adjustment consisting of 5 members subject to the composition requirements set forth in this section. The members of the Board shall be appointed for a term of 5 years. The newly reestablished Board shall be seated no later than June 1, 2022. Two appointments to the Board of Adjustment shall be made by city council; two appointments shall be made by the mayor; and one appointment shall be made jointly by the mayor and city council.
- B. A member of the Board of Adjustment may be removed by their appointing authority only for cause upon written charges and after public hearing. The unexcused absence of any board member from three (3) consecutive meetings, unless the board chair has excused the absence for good and sufficient reasons as determined by the board chair, shall be deemed cause for removal upon written charges being made and after a public hearing.
- C. City council and the mayor each may appoint, for a term of 3 years, 1 alternate member of the Board of Adjustment in addition to the 5 members. When a member of the Board is recused or is absent, the alternate member appointed by city council shall be the first to act with full authority followed the next time an alternate is needed by the alternate appointed by the mayor, and rotating accordingly as their service is required on the Board. If, however, the alternate whose turn it is to serve is unable to participate, the other may serve instead, restarting the rotation with the unselected alternate as the next to be selected. Alternates may be removed for cause by their appointing authority.

- D. No member of the Board of Adjustment or an alternate member shall be on the staff of the Board or be employed by Community Planning and Development.
- E. The composition of the Board of Adjustment shall be as follows:
  - 1. At least one member shall be an architect.
  - 2. At least one member shall be a licensed attorney currently or formerly engaged in the practice of law, with a preference for attorneys with administrative law experience.
  - 3. At least one member shall have background and experience in urban planning, construction, engineering or development.
  - 4. Remaining members, if any, should have a demonstrated interest in zoning and land use.
- F. Relevant city agencies shall provide training to the Board of Adjustment on the following subjects as new members are appointed or upon major legal or policy updates:
  - 1. The Denver zoning code;
  - 2. Adopted land use, transportation, climate and housing plans of the City and County of Denver;
  - 3. Open meetings and decorum;
  - 4. Proper use of evidence and conducting a quasi-judicial hearing;
  - 5. Proper application of findings of fact as the basis for decisions;
  - 6. Diversity, equity and inclusion, as well as the Fair Housing, Civil Rights, and Americans with Disabilities Acts; and
  - 7. All members shall receive periodic supplemental training on the above topics and any additional topics as deemed necessary by the Chairperson of the Board.

#### **12.2.6.3 Staff**

The staff of the Board of Adjustment shall consist of a director and such other assistants as may be authorized by City Council. The director shall be the technical advisor to the Board of Adjustment and custodian of its records, shall conduct official correspondence, and generally supervise the clerical and technical work of the Board of Adjustment. The director shall be appointed by the Board of Adjustment and shall devote all time to the duties of the office. The salary of the director, the number of additional assistants, and the salaries of such additional assistants shall be fixed by City Council.

#### **12.2.6.4 Rules for Proceedings Before Board**

The Board of Adjustment shall adopt rules governing all proceedings before it. Such rules of the Board of Adjustment shall be maintained and available for public review in the office of director.

#### **12.2.6.5 Officers**

For the purpose of exercising the powers provided under this Code, the Board of Adjustment shall elect a chairperson and vice-chairperson.

#### **12.2.6.6 Oaths and Attendance of Witnesses**

The chairperson or, in the chairperson's absence, the vice-chairperson or acting chair shall administer oaths to or accept affirmations from all witnesses, and may compel the attendance of witnesses. A failure or a refusal to appear in response to a subpoena issued by the Board of Adjustment shall constitute a violation of this Code.



### **12.2.6.7 Stay of Effective Date of Orders**

- A. Whenever Community Planning and Development has issued an order to cease and desist from the operation of dwelling units in excess of the number authorized by this Code, and the Board of Adjustment also finds that literal enforcement of the provisions of this Code by reason of unique and exceptional circumstances including owner's physical condition, age, or other factors as deemed by the Board of Adjustment to be unique or exceptional, will result in unnecessary hardship, then the Board of Adjustment may order a delay, for no more than 5 years, of the enforcement of such order.
- B. Upon expiration of any delayed enforcement or other order, the Board of Adjustment may review, at a public hearing before the Board, an applicant's request for a further extension and grant any such extension not to exceed a cumulative total of 5 years from the date of the original order, should the Board of Adjustment find that condition(s) found in Section 12.2.6.7.A. still exists.
- C. All such actions by the Board of Adjustment shall be recorded in the real property records of the Denver County Clerk and Recorder. Such stay shall not be a variance on the use of a premises, shall be personal to the applicant therefor, shall only allow continued operation of the excess dwelling units by the persons occupying such unit at the time of the Board of Adjustment's original order, and shall not be transferable.

### **12.2.6.8 Six-Month Delay of Enforcement**

- A. Whenever Community Planning and Development has issued an order to cease and desist from any use not authorized by this Code, except as provided in Section 12.2.6.7, the Board of Adjustment, upon appeal, may find that the literal enforcement of the provisions will result in unnecessary hardship by reason of unique and exceptional circumstances, including but not limited to the owner's physical condition, age, and/or other factors as deemed by the board to be unique or exceptional. The Board of Adjustment may order a delay, for no more than 6 months, of the enforcement of such cease and desist order.
- B. Upon expiration of any order delaying enforcement of such cease and desist order, the Board of Adjustment may review, at a public hearing, an applicant's request for an additional 6 months' extension and grant only one such extension should the Board of Adjustment find that the unique and exceptional circumstances justifying the original order to delay still exist.
- C. All such actions by the Board of Adjustment shall be recorded in the real property records of the Denver County Clerk and Recorder. Such stay shall not be a variance on the use of a premises, shall be personal to the applicant, and shall not be transferable.

### **12.2.6.9 Limitations on Powers**

#### **A. Concurring Vote Required**

The concurring vote of 4 members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of any administrative official authorized to act under this Code, or to decide in favor of the applicant on any matter upon which the Board of Adjustment is required to pass under this Code or to grant a variance to this Code.

#### **B. Recording of Hearings and Findings of Fact**

- 1. All proceedings before the Board of Adjustment shall be recorded.
- 2. Every decision of the Board of Adjustment shall be based upon findings of fact and every finding of fact shall be supported in the record of its proceedings. The enumerated conditions herein shall be construed as limitations on the power of the Board of Adjustment. Mere recitation of the conditions unaccompanied by findings of specific facts shall not constitute compliance with this Code. All findings of fact shall be available for public review within 21 days from the date of the Board of Adjustment's final decision.

**C. Powers Strictly Construed**

Nothing herein contained shall be construed to empower the Board of Adjustment to amend the text of this Code, to effect changes in the Official Zoning Map, or to add to the specific uses permitted in any district. The powers of the Board of Adjustment shall be construed to strictly enforce this Code and the Official Zoning Map.

**12.2.6.10 Appeals from the Board of Adjustment to District Court**

**A. Procedure**

Any person or any taxpayer aggrieved, the City, or any officer or department of the City may have a decision of the Board of Adjustment reviewed in the manner provided by the Colorado Rules of Civil Procedure. The plaintiff in any appeal to District Court shall be responsible for all costs to prepare the Board of Adjustment's record for transmittal to the court, according to fees set by the Board, which shall be paid prior to transmittal of the record to the District Court.

**B. Effect of Appeal**

The filing of an appeal to District Court shall not stay proceedings upon the decision appealed from, unless the court grants a restraining order or stay.

**SECTION 12.2.7 CHERRY CREEK NORTH DESIGN ADVISORY BOARD**

**12.2.7.1 Creation**

- A. The Cherry Creek North Design Advisory Board shall consist of seven members appointed by the mayor.
- B. The board shall consist of the following individuals to be appointed by the mayor from a list of nominations provided by the board of Cherry Creek North Business Improvement district: three licensed architects and one licensed landscape architect who reside in Denver; one member of the board of Cherry Creek North Business Improvement District or its designated successor; one property owner from the district; and one retailer from the district.
- C. The members of the board shall be appointed by the mayor for a term of three years and shall serve at the pleasure of the mayor. Vacancies shall be filled within 30 days by the mayor from the date on which the vacancy occurs.

**12.2.7.2 Review Authority**

- A. Within the C-CCN zone districts, the Cherry Creek North Design Advisory Board shall review and make recommendations to the Development Review Committee or the Zoning Administrator as specified in adopted rules and regulations, as may be amended from time to time.

## **SECTION 12.2.8 DOWNTOWN DESIGN ADVISORY BOARD**

### **12.2.8.1 Creation**

- A. The Downtown Design Advisory Board shall consist of nine members appointed by the Mayor. The nine members shall include individuals from the following categories: four design professionals, including architects, landscape architects, and urban designers, at least one of whom shall be a landscape architect; one owner of property in the downtown area; three residents or community representatives of the downtown area; and one representative of the development/construction industry, including but not limited to engineers, contractors, and developers. All board members must be residents of Denver.
- B. The members of the board shall be appointed by the Mayor for terms of three years and shall serve at the pleasure of the Mayor. Terms of office shall be staggered by making the appointments so that approximately one-third of the members' terms expire each year. Vacancies shall be filled by the mayor within 30 days from the date on which the vacancy occurs.

### **12.2.8.2 Board Meetings**

- A. All meetings of the Downtown Design Advisory Board shall be open to the public and allow opportunity for public comment.

### **12.2.8.3 Review Authority**

- A. The Downtown Design Advisory Board shall review and make recommendations to the Development Review Committee or Zoning Administrator for all projects submitted for review within the Downtown Golden Triangle (D-GT), Downtown Arapahoe Square 12+ (D-AS-12+), Downtown Arapahoe Square 20+ (D-AS-20+), Downtown Central Platte Valley – Auraria Transition (D-CPV-T), Downtown Central Platte Valley – Auraria River (D-CPV-R), and Downtown Central Platte Valley – Auraria Center (D-CPV-C) zone districts, as specified in adopted rules and regulations, which may be amended from time to time.

## SECTION 12.2.9 SUMMARY TABLE OF AUTHORITY AND NOTICE

	REVIEW AND DECISION-MAKING AUTHORITY						TYPE OF PUBLIC NOTICE REQUIRED					
	<b>D = Decision-Making Authority</b> <b>R = Review and Recommendation Authority</b> <b>* = Public Hearing Required</b>						<b>■ = Notice Required</b> <b>Blank Cell = Notice Not Required</b>					
							Informational Notice			Notice of Public Hearing		
	Zoning Administrator	Manager	DRC	Board of Adjustment	Planning Board	City Council	Written and Posted Notice of Community Information Meeting	Written and Posted Notice of Receipt of Application	Posted Notice of Final Administrative Decision	Written	Posted	Published
Zoning Permit Review	D											
Zoning Permit Review with Community Information Meeting	D						■					
Zoning Permit Review with Informational Notice	D							■	■			
Site Development Plan Review	R	R	D/R See Sec. 12.4.3 for site development plans where DRC has review and recommendation authority		D* See Sec. 12.4.3 for site development plans that require public notice			■ See Sec. 12.4.3 for site development plans that require public notice	■ See Sec. 12.4.3 for site development plans that require public notice	■ See Sec. 12.4.3 for site development plans that require notice of a public hearing		
Zone Lot Amendment	D											
Administrative Adjustment	D											
Code Interpretation, Determination of Unlisted Use	D											
Comprehensive Sign Plan	D				R*			■	■	■	■	
Variance	R			D*			Refer to rules of Board of Adjustment					
Appeal of Administrative Decision	R			D*			Refer to rules of Board of Adjustment					
Special Exception	R	R		D*			Refer to rules of Board of Adjustment					
Official Map Amendment (Rezoning)		R			R*	D*	■ - Written Notice Only			■	■	■
Text Amendment	R	R			R*	D*				■		■
Infrastructure Master Plan	R		D									



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							Informational Notice			Notice of Public Hearing		
	Zoning Administrator	Manager	DRC	Board of Adjustment	Planning Board	City Council	Written and Posted Notice of Community Information Meeting	Written and Posted Notice of Receipt of Application	Posted Notice of Final Administrative Decision	Written	Posted	Published
Large Development Review			D				■					
Repeal of an Approved General Development Plan			D							■	■	
Regulating Plan	R	D										

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- e. Transportation requirements, including the modal split for people and freight, by volume type and characteristics of traffic generation to and from the site; trip purposes and whether trip purposes can be shared by other uses on the site;
- f. Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity, and the potential for shared parking with other uses;
- g. The amount and nature of any external effects generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation and fumes;
- h. Any special public utility requirements for serving the proposed use, including but not limited to water supply, waste water, pre-treatment of wastes and emissions required or recommended, and any significant power structures and communications towers or facilities; and
- i. The type and extent of impacts on adjacent properties created by the proposed use in comparison to impacts from other uses permitted in the zone district.

## **SECTION 12.4.7 VARIANCE**

### **12.4.7.1 When Authorized**

The Board of Adjustment may authorize variances from the terms of this Code pursuant to the charter, subject to terms and conditions fixed by the Board of Adjustment, as will not be contrary to the public interest where, owing to unusual conditions or disability or owing to a property's historic designation, or where a variance would produce a more compatible development, literal enforcement of the provisions of this Code will result in unnecessary hardship.

### **12.4.7.2 Related Procedure**

Under certain circumstances, modifications of this Code's standards may be permitted according to the Administrative Adjustment procedure in Section 12.4.5, without resort to this Variance procedure. The Zoning Administrator may grant administrative adjustments to relieve unnecessary hardship and practical difficulties, without review by the Board of Adjustment for a variance.

### **12.4.7.3 Limitations on Variances for Signs**

#### **A. General Limitations on Sign Variances**

No variance from the provisions of Division 10.10, Signs, on permitted signs shall be granted or authorized by the Board of Adjustment, which would result in any of the following:

1. Any variance from the provisions of Section 10.10.21, Outdoor General Advertising Devices;
2. An existing roof sign that is higher than 32 feet above grade or a new or existing projecting sign that is higher than 32 feet above grade;
3. A new roof sign;
4. A new projecting sign that exceeds 20 square feet in sign area in a Residential Zone District or in the MX-2x, MS-2x, or O-1 zone districts; or that exceeds 50 square feet in sign area in the MX-2A, MX-2, MX-3A, MX-3, MS-2, MS-3, I-MX, I-A, or M-IMX zone districts; or that exceeds 80 square feet in sign area in all other zone districts;
5. A new or existing projecting sign where more than 1 other sign is maintained or is to be maintained for the same primary use on the same building front;
6. A new or existing ground sign that is higher than 32 feet above grade, except that a variance permitting the maintenance of an existing ground sign that is not higher than 35 feet above grade may be granted where said ground sign and all other signs for the same primary use comply with all other applicable provisions of Division 10.10, Signs;

7. A new or existing sign with a sign area larger than that which is permitted under the provisions of Division 10.10, Signs, for the primary use in the zone district in which the primary use is or will be maintained, except that a variance permitting the maintenance of an existing sign with a sign area up to 50 percent larger than the maximum sign size permitted under the provisions of Division 10.10, Signs, for the primary use in the zone district in which the use by right is maintained may be granted where no other signs are maintained for the same primary use on the same building front and where the total area of signs maintained for the same primary use does not exceed that permitted under the applicable provisions of Division 10.10, Signs; or
8. A greater total area of signs than that which is permitted under the provisions of Division 10.10, Signs, for the primary use in the zone district in which the primary use is or will be maintained.

**B. Variances for Signs for Religious Assembly Uses**

Notwithstanding the limitations set forth in this Section 12.4.7.3, Limitations on Variances for Signs, the Board of Adjustment shall have the power to grant variances from the provisions of Division 10.10, Signs, for signs that identify religious assembly uses when such signs are located on the same zone lot as the religious assembly use.

**12.4.7.4 Review Process**

**A. Initiation**

The owner of the subject property or the owner's authorized agent may initiate an application for a variance.

**B. Application and Fees**

All applications for variance shall be filed in writing according to the rules of the Board of Adjustment. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Application.

**C. Public Hearing and Decision by Board of Adjustment**

1. Following notice and a public hearing according to the rules of the Board of Adjustment, the Board of Adjustment shall approve, approve with conditions, or deny the variance request based on whether the applicant has evidenced an unnecessary hardship according to the review criteria below, and subject to any limitations in Section 12.4.7.7 regarding variances for signs.
2. The Board may attach any condition to a variance approval necessary to protect the health, safety and welfare of the community and minimize adverse impacts on adjacent properties, including but not limited to a condition changing the location or dimensions of a proposed development directly related to the request for a variance.

**12.4.7.5 Review Criteria - Showing of Unnecessary Hardship**

The Board of Adjustment may grant a variance only if it finds that there is an unnecessary hardship whereby the application satisfies the criteria of **any one of** paragraph A. **or** B. **or** C. **or** D. **or** E. of this subsection **and** satisfies the criteria of Section 12.4.7.6, Review Criteria - Applicable to All Variance Requests.

**A. Disability**

1. There is a disability affecting the owners or tenants of the property or any member of the family of an owner or tenant who resides on the property, which impairs the ability of the disabled person to utilize or access the property.

**B. Unusual Physical Conditions or Circumstances**

1. There are unusual physical circumstances or conditions, including, without limitation:
  - a. Irregularity, narrowness or shallowness of the lot; or
  - b. Exceptional topographical or other physical conditions peculiar to the affected property; or
  - c. Unusual physical circumstances or conditions arising from an existing, nonconforming or compliant structure existing on the affected property; and
2. The circumstances or conditions do not exist throughout the neighborhood or zone district in which the property is located, or the circumstances or conditions relate to drainage conditions and challenges found consistently throughout the neighborhood or zone district in which the property is located; and
3. The unusual physical circumstances or conditions have not been created by the applicant.

**C. Designated Historic Property or District**

The property could be reasonably developed in conformity with the provisions of this Code, but the building has been designated as a Historic Structure or is in a designated historic district. As part of the review pursuant to D.R.M.C., Chapter 30 (Landmark Preservation), the approving authority has found that development on the Zone Lot conforming to this Code's regulations would have an adverse impact upon the historic character of the individual landmark or the historic district, if a historic district is involved.

**D. Compatibility with Existing Neighborhood**

1. The property could be reasonably developed in conformity with the provisions of this Code, but the proposed adjustment or variance will result in a building form that is more compatible, in terms of building height, siting, and design elements, with the existing neighborhood in which the subject property is located. In making a determination of whether the subject property, with the proposed variance, would be more compatible with the existing neighborhood, the decision-making body may choose not to consider primary or accessory buildings in the existing neighborhood that have been granted variances or administrative adjustments based on unusual physical circumstances or conditions of such properties.
2. "Existing neighborhood" shall mean:
  - a. For changes in building or site elements within the rear 35% of a zone lot: Any similar zone lot or building on a zone lot which is located on the same face block or on an adjacent face block (i.e., across a rear property line or rear alley).
  - b. For changes in building or site elements within the front 65% of a zone lot: Any zone lot or primary building on a zone lot which is located on the same face block or the face block across a public street from the subject building.
3. For purposes of a variance review only, the Board of Adjustment may consider similar buildings located beyond the same face block, opposite face block, or adjacent face block from the subject building if the Board deems doing so reasonable and necessary to make its determination of compatibility with the existing neighborhood. This allowance does not apply to review of a request for an administrative adjustment.

#### **E. Nonconforming or Compliant Uses in Existing Structures**

A variance to increase the floor area occupied by a nonconforming or compliant use in an existing structure may be granted only if the Board of Adjustment finds the following conditions to exist:

1. The use is a nonconforming or compliant use, as defined in this Code, and such use is in full compliance with all requirements under this Code applicable to nonconforming or compliant uses and is authorized to continue in operation and to exist;
2. The structure in which an increase in floor area is sought was in existence on the date on which the nonconforming or compliant use became nonconforming or compliant, and is in existence at the time of the hearing;
3. On the date on which the use became nonconforming or compliant, 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. The applicant 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 by the nonconforming or compliant use will not involve remodeling, changing or altering any load-bearing member of such structure; and
5. That, owing to exceptional and extraordinary circumstances, literal enforcement of the provisions of this Code will result in unnecessary hardship.

#### **12.4.7.6 Review Criteria - Applicable to All Variance Requests**

The Board of Adjustment may grant a variance only if the Board finds that, if granted, the variance:

- A. Would not authorize the operation of a primary, accessory, or temporary use other than those uses specifically enumerated as permitted primary, accessory, or temporary uses for the zone district in which the property is located.
- B. Would not grant a change to either (a) a waiver or condition attached to an approved rezoning, or (b) an approved PUD District plan that would constitute an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans and Permits, or (c) an approved GDP that would constitute an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans and Permits.
- C. Would not, other than allowed in Section 12.4.7.5.A. above to accommodate persons with disabilities, relate to either the persons, or the number of persons, who do, will, or may reside in a residential structure.
- D. Would not be justified solely on grounds of loss of a financial advantage, hardship that is solely financial, or a more profitable use of the property might be had if a variance is granted.
- E. Would not substantially impair the intent and purpose of this Code.
- F. Would not substantially impair the intent and purpose of the applicable zone district.
- G. Would not substantially or permanently impair the reasonable use and enjoyment or development of adjacent property.
- H. Would be the minimum change that would afford relief and would be the least modification of the applicable provisions of this Code.
- I. Would adequately addresses any concerns raised by the Zoning Administrator or other city agencies in their review of the application.



### 12.4.7.7 Requirements and Limitations After Variance Approval

#### A. Expiration

1. A variance authorizing construction shall expire unless substantial construction has started within 3 years and is completed within 5 years from the date the variance was granted. Upon the completion of construction, the variance shall run with the land.
2. For variances unrelated to construction, the variance shall run with the land unless the Board of Adjustment specifies otherwise as a condition of the variance.
3. A variance shall automatically lapse and have no further effect if the Zoning Administrator finds that redevelopment of the subject property makes compliance with this Code possible without the previously approved variance.

## SECTION 12.4.8 APPEAL OF ADMINISTRATIVE DECISION

### 12.4.8.1 Review Process

#### A. Initiation

1. Any person aggrieved or any officer or department of the City may appeal to the Board of Adjustment from any administrative order, requirement, or any decision or determination made by a Community Planning and Development administrative official in the enforcement of this Code.
2. Such appeal shall be filed within the time provided by the rules of the Board of Adjustment and must specify the particular grounds upon which the appeal is taken.

#### B. Application

##### 1. Appeal and Fees

All appeals of an administrative order or decision shall be filed in writing according to the rules of the Board of Adjustment. The appellant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

#### C. Effect of Appeal – Stay of Enforcement Proceedings

An appeal to the Board of Adjustment of a cease and desist order issued by Community Planning and Development 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 Community Planning and Development, by the Board of Adjustment or a court of proper jurisdiction.

#### D. Action by Zoning Administrator

Upon receipt of a notice of appeal, the Zoning Administrator 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.

#### E. Public Hearing and Decision by Board of Adjustment

Following notice and a public hearing according to the rules of the Board of Adjustment, the Board of Adjustment shall approve or deny the appeal based on the presumption and review criteria in Section 12.4.8.1.F below.

## **F. Presumption and Review Criteria**

### **1. Presumption**

Any order or decision of an administrative official authorized to act under this Code shall be presumed to be correct unless clear and convincing evidence introduced before the Board of Adjustment supports a contrary determination or finding.

### **2. Review Criteria**

The Board of Adjustment shall consider whether or not the action by the administrative officer complied with the applicable portions of this Code when approving or denying an administrative appeal.

## **SECTION 12.4.9 ZONING PERMIT WITH SPECIAL EXCEPTION REVIEW**

### **12.4.9.1 Applicability**

Zoning permit with special exception review is required for the following:

- A. Establishment, expansion or enlargement of any use listed as a “Special Exception” use (“ZPSE”) in the Use and Parking Tables found in Articles 3 through 9.
- B. Establishment, expansion or enlargement of any use where an applicable use limitation in Articles 3 through 9, or in Article 11, Use Limitations and Definitions, or any other provision of this Code, states that Special Exception review under this Section is required.

### **12.4.9.2 Review Process**

#### **A. Initiation**

The owner of the subject property or the owner’s authorized agent may initiate an application for a zoning permit with special exception review.

#### **B. Pre-Application Meeting**

A pre-application meeting with the Zoning Administrator is mandatory for review of a use qualifying as a zoning permit with special exception review under this Section. See Section 12.3.2, Pre-Application Meeting/ Concept Plan Review. Pre-application meetings for all other special exceptions are optional.

#### **C. Application and Fees**

##### **1. Submittal in Writing**

All applications for zoning permit with special exception review shall be filed in writing with the Zoning Administrator. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

##### **2. Concurrent Applications**

The applicant may submit an application for zoning permit with special exception review concurrent with other applications according to Section 12.3.3.9, Concurrent Applications. In no case, however, shall the City issue a building permit, as applicable, until the Board of Adjustment approves the special exception use and Community Planning and Development issues a zoning permit.

#### **D. Public Notice Requirements**

Public notice shall be required and provided according to the rules of the Board of Adjustment.

#### **E. Review, Referral, and Recommendation by Zoning Administrator**

1. The Zoning Administrator shall refer the application to the Board of Adjustment. The Board of Adjustment shall schedule the application for review and final decision at a public hearing, according to the rules of the Board of Adjustment.