

SECTION 42 - BOARD OF ADJUSTMENT

42.1 GENERAL PROVISIONS

- 42.1.1 A Board of Adjustment is hereby established by the County Board of Commissioners.
- 42.1.2 The Board of Adjustment shall adopt rules in accordance with the provisions of this Regulation. Meetings of the Board of Adjustment shall be held at the call of the Chairman and at such other times as the Board of Adjustment may determine. The Chairman, or in his/her absence the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the County Clerk, and shall be a public record.
- 42.1.3 Appeals to the Board of Adjustment may be petitioned by any persons aggrieved, or by any officer, department, board or bureau of the County affected by any decision of the Planning Director within 30 days of such decision. The appeal shall be filed with the County Clerk accompanied by a filing fee as established in the "Master Fee Schedule for the Planning and Building Department" adopted by the County Board.

42.2 AUTHORITY: THE BOARD OF ADJUSTMENT IS GRANTED THE FOLLOWING AUTHORITY:

- 42.2.1 To hear and decide appeals where any property owner is aggrieved by the action of any officer, department, board or bureau of the County in the adoption and provisions of this regulation.
- 42.2.2 To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by the Director of Planning in the enforcement of this Regulation. Except, the board of adjustment shall have no authority to hear and decide appeals regarding special use permits or special exceptions which may be granted by the County Board of Commissioners.
- 42.2.3 To authorize upon appeal in specific cases such variances or exceptions from the terms of the Regulation as will not be contrary or substantially detrimental to the public interest, general purpose, or intent of this regulation.
- 42.2.4 No variance shall allow the use of property for purposes not authorized within the applicable zoning district.
- 42.2.5 To hear and decide, in accordance with the provisions of any regulation, requests for the interpretation of any map, or for decisions upon other special questions upon which the Board of Adjustment is authorized to act by this regulation.
- 42.2.6 Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the adoption of the zoning regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted resolution under this resolution would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning regulations.

The board shall set out findings of fact based on evidence and testimony that the following conditions exist or would result:

1. The strict application of the zoning regulation would produce undue hardship;
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
3. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and,
4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations of the regulations for the purpose of convenience, profit or caprice.

No variance shall be authorized unless the Board Adjustment finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the regulations.

In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with the provisions of said sections, 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 shall be proper and to that end shall have the power of the officer or agency from who the appeal is taken.

The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any resolution or to effect any variation in such resolution.

- 42.2.7 The Board of Adjustment will interpret the provisions of this regulation in such a way as to carry out its intents and purposes and to adopt from time to time such rules as it may deem necessary to carry out the provisions of said regulation. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.
- 42.2.8 A request for a variance may be initiated by a property owner or his/her authorized representative by filing an application with the office of the County Clerk upon forms prescribed for this purpose. The application shall be accompanied by a non-refundable fee as established in the "Master Fee Schedule for the Planning and Building Department" adopted by the County Board. At the time of submittal of a variance application, the applicant also shall present the office of the County Clerk a certified address list from a title company of those persons who own property within 300 feet of the subject site. Notice of the variance or exception application request to property owners within 300 feet of the property which is the subject of the variance or exception. Applicants shall also be required to pay a Mailing Fee as established in the "Master Fee Schedule for the Planning and Building Department" adopted by the County Board for such written notices to be sent to area property owners. All fees are required to be paid in advance of scheduling the application with the Board of Adjustment. No hearings shall be held by the Board of Adjustment on any appeal until notice thereof has been given by publication of notice of said hearing in a legal newspaper for at least 10 days prior to the date of said hearing.

42.3 **APPEAL**

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any officer, department, board, or bureau of the County, may present to the district court for the County a petition, duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within fifteen days after the filing of the decision in the office of the County Clerk.