

ORDINANCE AMENDMENT REVIEW SHEET

PC C+O

11/16

Item

D5

**Amendment:** C2O-2010-019 – NCCD variance and decision appeal at the Board of Adjustment.

**Description:**

Amend the City of Austin Land Development Code, to designate the Board of Adjustment as the body to (1) hear and decide a request for a variance from a requirement of the NCCD and (2) consider an appeal of a decision of the building official regarding a site development regulation prescribed by the NCCD.

**Background:**

The Board of Adjustment hears variance requests and interpretation appeals related to zoning. However, the City of Austin’s procedure does not authorize the BOA to hear requests in the cases involving Neighborhood Conservation Combining districts. This amendment, initiated by City Council, would authorize the BOA to hear requests for variances and interpretations appeals in all zoning cases, even those involving NCCD’s.

**Staff Recommendation:**

Staff recommends approval of the proposed code amendment. Allowing an avenue for variance requests and decision appeals is needed to bring all our zoning procedures in line with State law. The Board of Adjustment is the appropriate body to hear such matters.

**Planning Commission Action:**

**September 21, 2010:** The Codes and Ordinances Committee of the Planning Commission was briefed on Council action and the proposed code amendment.

**November 9, 2010:** The Planning Commission held a public hearing, returned the item to the Codes and Ordinances committee, and postponed action until December 14.

**November 16, 2010:** The Codes and Ordinances Committee of the Planning Commission is scheduled to discuss and act on the proposed code amendment.

**December 14, 2010:** The Planning Commission is scheduled for action.

**City Council Date and Action:**

**August 5, 2010:** City Council passes resolution 20100805-30 directing staff to initiate code amendments authorizing The City Manager is directed to process amendments authorizing the BOA to hear and decide:

- (A) Requests for a variance from the requirements of an NCCD; and
- (B) Appeals of a decision by the Building Official or director of Planning and Development Review regarding a site development regulation prescribed by an NCCD.

**November 18, 2010:** City Council to consider setting a public hearing for December 16, 2010.

**December 16, 2010:** Possible date for public hearing and action by City Council, pending their decision of November 18, 2010.

**Ordinance Number:**

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ORDINANCE NO.

1 AN ORDINANCE AMENDING CITY CODE SECTIONS 25-2-472, 25-2-473, AND  
2 25-2-475 TO AUTHORIZE APPEALS AND VARIANCES FROM  
3 REQUIREMENTS OF A NEIGHBORHOOD CONSERVATION COMBINING  
4 DISTRICT.

5  
6 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

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8 PART 1. City Code Section 25-2-472 (*Board of Adjustment Variance Authority*) is  
9 amended to read:

10 § 25-2-472 BOARD OF ADJUSTMENT VARIANCE AUTHORITY.

11 The Board of Adjustment shall hear and decide a request for a variance from a  
12 requirement of this chapter, or a Neighborhood Conservation Combining District adopted  
13 under this chapter, except as otherwise provided by the Code.

14  
15 PART 2. Subsection (A) of City Code Section 25-2-473 (*Variance Requirements*) is  
16 amended to read:

- 17 (A) A variance from the requirements of this chapter, or a Neighborhood  
18 Conservation Combining District adopted under this chapter, may be granted  
19 under this division if, because of special circumstances of a property, the strict  
20 application of this chapter deprives the property owner of privileges that are  
21 enjoyed by another person who owns property in the area that has the same  
22 zoning designation as the property for which the variance is requested.

23  
24 PART 3. City Code Section 25-2-475 (*Appeals*) is amended to read:

25 § 25-2-475 APPEALS.

26 A person may appeal a decision of the building official regarding a site development  
27 regulation prescribed by this subchapter, or by a Neighborhood Conservation Combining  
28 District adopted under this chapter, to the Board of Adjustment. After an appeal is filed,  
29 the building official shall provide the board with a copy of documents regarding the  
30 matter that has been appealed.

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32 PART 4. This ordinance takes effect on \_\_\_\_\_, 2010.

**PASSED AND APPROVED**

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\_\_\_\_\_, 2010

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Lee Leffingwell  
Mayor

**APPROVED:** \_\_\_\_\_  
Karen Kennard  
Acting City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk

*Draft*