

BOA CodeNEXT working group meeting May 3, 2017

Notes & Recommendations

Board of Adjustment

23-1B-2020 (B.3.b). Composition and Structure - This section creates an Appeals Panel as a subset of the Board of Adjustment.

The Board is concerned that not all Council Members/Council Districts will have representation in an appeals process that may affect multiple districts.

Until more information is presented as to the makeup, members, and scope of the Appeals Panel, the Board opposes this structure.

23-1B-2020 (C). Duties and Functions - Parking variances are omitted from the Duties and Functions; occurs later in 2B-40-4030(C) Findings for Parking and Loading Variances.

23-1B-2020 (D.2.b). Voting Requirements – Appeals Panel.

The Board is concerned that not all Council Members/Council Districts will have representation in an appeals process that may affect multiple districts.

Until more information is presented as to the makeup, members, and scope of the Appeals Panel, the Board opposes this structure.

23-2C: Notice

23-2C-1020.

Table 23-2C-1010.A. The draft reduces notification requirements.

The Board strongly opposes any reduction in notification periods.

23-2C-2020(B.3.c). Interested Parties.

The Board suggests revising the text to read “Is an officer or designated representative of an environmental or neighborhood organization...”

23-2F: Quasi-Judicial and Administrative Relief

23-2F-2020. Exempt Residential Uses and Structures

23-2F-2020.B Applicability - Exempt Residential Uses and Structures. This establishes the Exemption date for Non-Complying Residential Structures as Jan. 1, 2008, which had previously been 25 years and which temporary 10-year period is due to expire in June. It also gives the director the discretion to issue a Certificate of Occupancy without BoA review. Appears in conflict with dates in Special Exception - Type 2, 23-4B-2040.

The Board should discuss the dates and the ability of the Director to grant the exception.

23-2F-2030. Minor Adjustments. This section allows an administrative approval of a 10% deviation in height, building coverage and setback if errors are made during construction.

The Board recommends the Director's discretion be limited to a maximum of 5% before requiring a Variance or Special Exception.

23-2F-2040. Alternative Equivalent Compliance – this allows the Director the discretion to approve minor changes in Design Standards for building placement and site configuration.

While 23-2F-2030(G) addresses and specifically disabuses the AEC as precedent, the Board recommends that all Alternative Equivalent Compliance be subject to notification requirements.

23-2I: Appeals

23-2I-1030. Deadlines for appeals of administrative decisions (25-1-182) have been shortened from 20 days after decision to 14 days when notice of decision is required and to 7 days when notice of decision is not required.

In consideration of, and in conjunction with, the requirements of 23-2I-2010(A), for appeals under 23-2I-2020(B), cases being referred to the Board of Adjustment, the Board opposes reduction in notification for administrative decisions, particularly so for administrative decisions for which notice is not required.

23-2I-2050. Ex Parte Contacts Prohibited. This section broadens the current proscriptions on ex Parte communications of the Board of Adjustment to other Boards and Commissions hearing appeals.

Due to the nature of other Boards and Commissions and the inequitable application of the prohibition to the public and interested parties and not to the applicant, applicant's agent or others representing the applicant, the Board recommends no change to the existing requirements.

23-2I-3020(A). This section incorporates the Board's Rules and Bylaws regarding Appeals, with a change in language to 'first available meeting for which timely notification can be provided' (paraphrase) which affords latitude of interpretation with respect to postponements (this is also acknowledged in 23-2I-2050(A.1)).

The Board will want to discuss and consider the impact and potential reconciliation of the Rules and Bylaws if this language moves forward.

23-2I-3030. This section strengthens requirements for the timely submittal of Appeals material prior to a hearing.

The Board recommends support.

23-2I-3040(B). Staff Report and Case File - this section requires the staff report and case file be timely submitted for review according to 23-2I-2030, however 23-2I-3040(C) states the code interpretation itself satisfies the requirement for a staff report.

The Board recommends a full staff report be required for code interpretations Appeals cases.

23-21-3050. Conduct of Appeal Hearing – this is consistent with the current operation of the BoA.; the Board's Rules establish relevant time allowances, the opportunity for rebuttal testimony, and the ability of the Chair to make relevant and equitable adjustments to allotted time. Nevertheless, a clarification/reconciliation of a perceived conflict with respect to rebuttal testimony is necessary.

Other than as noted above, the Board has no objection to this section.

23-21-4010. Action on Appeal –this is consistent with the current operation of the Board and is included in the Rules; Rules updates and reconciliation with the final text will be necessary if the language here remains.

23-21-4020(A). Appellate Burden - This provision restricts the ability of the Board to take action on an Appeal by placing an additional requirement of 'clear and convincing evidence' on an appellant; while this may ultimately be subjective and dependent on the sophistication and skill of the presenter, it will leave the Board in the position of defending the actual evidence presented by an appellant in addition to the Board's final determination.

The Board opposes the inclusion of the phrase "clear and convincing evidence".

23-4B-2. Code Interpretations

23-4B-2030. Administrative Appeal – No comment.

23-4B-4 Criteria for Variances and Special Exceptions

23-4B-4030. Special Exception - Type 1 (Conditional Use Permit in conjunction with recommendation/approval of Land Use Commission); this is under the purview of the Appeals Panel. The Appeals Panel and previous related comments notwithstanding, this is an appropriate responsibility for the Board.

23-4B-4040. Special Exception - Type 2. This is the traditional Special Exception; needs to be reconciled with 23-2F-2020.B, otherwise this has the support of the Board.

23-4B-4050. Special Exception - Type 3. This Special Exception affords the Board the opportunity to grant an exception based on a City permitting error, obtained ostensibly without bad faith on the part of the applicant or the owner. Ultimately this is the same as any variance after the fact and the Board can either approve or deny depending on the circumstances presented, and the Board can impose conditions the same as with any other Variance; other than questions re the application fees and counsel, the Board should support this.