

ARTICLE 9. BOARD OF ADJUSTMENT

Section 1. Creation, appointment and organization.

There shall be a board of adjustment pursuant to the provisions of chapter 3 of title 22, Municipalities, of the Delaware Code Annotated (22 Del. C. § 301 et seq.).

Section 2. Powers and duties.

The board of adjustment shall have the powers and duties as specified in Delaware Code Annotated (22 Del. C. § 301 et seq.) and as articulated below:

- 2.1 *Variance.* The board shall have the authority to authorize variances from provisions of the zoning ordinance that are not contrary to public interest where the board determines that a literal interpretation of the zoning ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the zoning ordinance is observed and substantial justice done.
- 2.11 *Area variance.* A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the zoning ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:
- (a) The nature of the zone in which the property lies;
 - (b) The character of the immediate vicinity and the contained uses therein;
 - (c) Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
 - (d) Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.
- 2.12 *Use variance.* A variance shall be considered a use variance if it would permit a use of the subject property that would otherwise not be permitted on the subject property. In considering a request for a use variance, the board shall determine that the following criteria exist and document them in their findings of fact:
- (a) That there are physical conditions applying to the land or building for which the variance is sought, which conditions are peculiar to such land or building, and have not resulted from any act of the applicant or any predecessor in title; and
 - (b) That the aforesaid circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of all reasonable use of such land or building and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish this purpose; and

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- (c) That the granting of the variance under such conditions as the board may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this ordinance, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.

2.2 *Appeal of administrative order, requirement, decision, or determination.* The board shall have the authority to hear and decide appeals where it is alleged there is any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance. Appeals to the board may be made by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of an administrative officer.

Section 3. Procedure.

The powers and duties of the board of adjustment shall be exercised in accordance with the following procedure:

- 3.1 The board of adjustment shall not decide upon any appeal or variance without first holding a public hearing, notice of which hearing and of the substance of the appeal or application shall be given by publication in the official newspaper of the city at least ten days before the date of such hearing. In addition to such published notice, the board of adjustment shall cause notice to be given of the substance of every appeal for a variance, together with notice of the hearing thereon, by causing notices thereof to be mailed by postal card or other means at least ten days before the date of said hearing to the owners of all property abutting that held by the applicant in the immediate area (whether or not involved in such appeal) and all other owners within 200 feet, or such additional distance as the board of adjustment may deem advisable, from the exterior boundaries of the land involved in such appeal, as the names of said owners appear on the last completed assessment roll of the city. Any or all of the notices required by this subsection shall be issued by the office of the city planner on order of the board of adjustment or upon order of the chairperson of said board if the appeal is received when the board is not in session and the chairperson deems it necessary or desirable to expedite the public hearing on such appeal. Provided that due notice shall have been published as above provided and that there shall have been substantial compliance with the remaining provisions of the subsection, the failure to give notice in exact conformance herewith shall not be deemed to invalidate action taken by the board of adjustment in connection with the granting of any appeal or variance.
- 3.2 If the land involved in an appeal or application lies within 500 feet of the boundary of any other incorporated municipality, the city planner shall also transmit to the municipal clerk of such other municipality a copy of the official notice of the public hearing thereon not later than the day after such notice appears in the official newspaper of the city.
- 3.3 Unless work is commenced and diligently prosecuted within one year of the date of the granting of a variance, such variance shall become null and void.
- 3.4 All variance applications and appeals made to the board of adjustment shall be in writing, on forms prescribed by the board. All variance requests and appeals from an order, requirement, decision or determination made by an administrative official, board or agency of the city shall be accompanied by a fee as provided for in Appendix F—Fees and Fines. The board of adjustment may, in its discretion, return to the applicant part or all of the fee paid by him in the event that his appeal under section 2.2 Appeal of administrative order, requirement, decision, or determination hereof is partially or wholly successful. The fees filed in connection with applications under section 2.1 Variance shall not be returnable, regardless of disposition of the case by the board.

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- 3.5 Each variance application or appeal shall fully set forth the circumstances of the case. Every variance application or appeal shall refer to the specific provision of the ordinance involved, and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the same should be granted.
- 3.6 Every decision of the board of adjustment shall be recorded in accordance with standard forms adopted by the board, and shall fully set forth the circumstances of the case and shall contain a full record of the findings on which the decision is based. Every decision of the board shall be filed by case number, together with all documents pertaining thereto.
- 3.7 All the provisions of this ordinance relating to the board of adjustment shall be strictly construed. The board, as a body of limited jurisdiction, shall act in full conformity with all provisions of law and of this ordinance and in strict compliance with all limitations contained therein; provided, however, that if the procedural requirements set forth in this section have been substantially observed, no applicant or appellant shall be deprived of the right of application or appeal.
- 3.8 Whenever the board of adjustment denies an application for variance, such application for variance, or an application on the same property which is substantially similar, shall not be accepted for reconsideration by the board of adjustment sooner than one year from the date of denial.

(Ord. of 7-12-1982, § 4; Ord. of 6-24-1991; Ord. of 7-12-2004(2) ; Ord. of 4-28-2008(2); Ord. No. 2009-09, 6-22-2009; Ord. No. 2010-18, 8-9-2010)