

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, ~~there shall be and hereby is created a 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 ~~by the mayor~~ for a term of 5 years. ~~Any vacancy which occurs in the Board of Adjustment shall be filled by the mayor for the unexpired term of any member whose term became vacant. 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. ~~Should a member of the Board of Adjustment fail to attend one-third of the meetings scheduled during any period of 12 consecutive months, that failure~~ ~~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 ~~between 1 to 53~~ years, ~~21~~ alternate members 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 ~~first~~ appointed by ~~the mayor~~ ~~city council~~ shall ~~be the first to~~ act with full authority. ~~The alternate members shall thereafter rotate or~~

~~substitute, one for the other, their service on the Board as the need arises; 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. Except as to attendance, the provisions with regard to removal for cause and vacancies shall apply to such alternates. Alternates may be removed for cause by their appointing authority.~~

- D. ~~The compensation of the members of the Board of Adjustment and the alternate members shall be fixed by City Council.~~ 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:
- At least one member shall be an architect.
 - 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.
 - At least one member shall have background and experience in urban planning, construction, engineering or development.
 - 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:
- The Denver zoning code;
 - Adopted land use, transportation, climate and housing plans of the City and County of Denver;
 - Open meetings and decorum;
 - Proper use of evidence and conducting a quasi-judicial hearing;
 - Proper application of findings of fact as the basis for decisions;
 - Diversity, equity and inclusion, as well as the Fair Housing, Civil Rights, and Americans with Disabilities Acts; and
 - 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.



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 development or use of the property cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district; however, loss of a financial advantage, hardship that is solely financial, or the fact that a more profitable use of the property might be had if a variance were granted are not grounds for a variance; and~~
4. 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, ~~and to that end the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.~~

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 the preponderance of the~~ 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.

