

Sec. 14-9 - Appeal and variance procedures

(a) *Appeals.*

(b) The board of adjustment shall have the authority to hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of any of the provisions of this chapter other than the platting and subdivision requirements of article III, the public easement requirements of article VI, the public utility requirements of article VIII, the storm drainage requirements of article IX, and the driveway requirements of article XI. Any of the following persons may appeal to the board of adjustment a decision made by an administrative official:

(1) A person aggrieved by the decision; or

(2) Any officer, department, board or bureau of the municipality affected by the decision.

The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed within a reasonable time as determined by the rules of the board. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed. An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown. The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing as provided by section 14-10 and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal within a reasonable time. The board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination, and for that purpose the board has the same authority as the administrative official.

(b) *Variances.* The board of adjustment may authorize in specific cases a variance from the terms of this chapter other than the platting and subdivision requirements of article III, the public easement requirements of article VI, the public utility requirements of article VIII, the storm drainage requirements of article IX and the driveway requirements of article XI. The city council may authorize in specific cases a variance from the platting and subdivision requirements of article III, the public easement requirements of article VI, the public utility requirements of article IX, and the driveway requirements of article XI. **Neither the board of adjustment nor the city council may authorize a variance from the terms of this chapter unless it finds, in writing, after a hearing, that the variance is not contrary to the public interest, that, due to special conditions, a literal enforcement of this chapter's provisions would result in unnecessary hardship, and that in granting the variance, the spirit of this chapter will be observed and substantial justice will be done.** The board or the city council shall set a reasonable time for the hearing on the request for a variance, and shall give public notice of the hearing, as provided by section 14-10, and due notice to the parties.

(c) *Vote required.* The concurring vote of four members of the board of adjustment or the city council, as the case may be, is necessary to:

- (1) Reverse an order, requirement, decision or determination of an administrative official;
 - (2) Decide in favor of an applicant on a matter which the board is required to pass under this chapter; or
 - (3) Authorize a variance from the terms of this chapter.
- (Ord. No. 95-04, § 1(108), 2-20-95)

Sec. 14-10. Public notice procedure.

(a) *Purpose.* The purpose of this section is to establish the minimum requirements for notice to be given with respect to procedural actions required elsewhere in this chapter and amendments to the official zoning map.

(b) *Notice of public hearing.* Notice of a public hearing by the city shall be given as established in this subsection (b). Notice shall be required for amendment to the official zoning map, appeals for variances or as otherwise required by chapter. Where the public hearing is on the application of a private individual or developer (applicant), the applicant shall pay all costs of notice. Where the public hearing is initiated by the city, the city shall assume the costs of publication.

(1) Where an amendment to the official zoning map or to the zoning regulations is proposed, notice of the public hearing shall be given by publication one time of a legal notice in a newspaper of general circulation in the city at least 16 days prior to the date of the hearing. Appeals and requests for variances do not require published notice, but all other notice procedures established by this chapter shall apply.

(2) Written notice of a public hearing shall be provided to adjacent property owners, as follows:

a. Mailed notice. Written notice shall be given at least 11 days in advance of the public hearing. All owners of real property, as shown by the most recent tax roll of the city, within 200 feet of the property on which the change is proposed shall be given notice by mail. The notice is served by its deposit, properly addressed with postage paid, in the United States mail. The written notice shall contain the following information:

1. The date, time and place of the hearing.
2. A description reasonably calculated to inform a person of the location of the property which is the subject of the hearing.
3. The sections of the chapter that are pertinent to the hearing procedure.
4. Written documents may be examined and written comments accepted during normal business hours in the office of the city secretary at city hall.

b. Posted notice. At least ten days prior to the date of the hearing, the applicant shall cause to be placed on the property which is the subject of the hearing signs indicating the type of relief sought or the proposed change in status of the property and the day, time and place of the hearing. The signs shall be placed at not more than 300-foot intervals across the property line fronting on existing streets and must be clearly visible from the street. Each sign shall be located no more than ten feet from the property line and shall be no smaller than 18 inches by 24 inches.

(Ord. No. 95-04, § 1(109), 2-20-95)