

## 22.21 BOARD OF ADJUSTMENT

(a) Created; Powers and Duties. There is created within and for the City a Board of Adjustment with the powers and duties as hereinafter set forth.

Upon organization of the board, the board shall succeed to the duties and responsibilities of the board of zoning appeals.

Ord. No. 2741 12/03/84

Ord. No. 3445 03/20/00

(b) Composition, Appointment, Terms and Absences of Members; Officers; Quorum.

(1) The board shall be composed of seven members, citizens of the City, each appointed by the Mayor with the approval of Council for a term of three years. A present member shall serve out his or her term at which time a new appointment shall be made for a term of three years. The sixth appointee shall serve until April 3, 1978, and the seventh appointee shall serve until April 3, 1979; thereafter new appointments to fill the positions shall be made for a period of three years. The term of any alternate member shall end upon the appointment of the sixth and seventh members of the board.

(2) Any member who misses 40% of the duly called meetings within twelve consecutive months or misses three consecutive duly called meetings within twelve consecutive months shall be automatically removed from the board.

Ord. No. 3001 11/06/89

(3) Action of the board in the exercise of its power shall be taken only as follows: Five votes concurring in a decision if seven members are present, four votes concurring in a decision if either five or six members are present. A quorum shall be five members.

(4) The board shall select a chairman and a vice-chairman from its membership to serve for a term of one year. A secretary shall be appointed and removed by the City Manager. The secretary shall not be a member of the board.

Ord. No. 2798 04/21/86

(c) Powers with Respect to Zoning Matters and Official Maps.

(1) The board has the power to hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative officer in the enforcement of the zoning ordinance, to hear requests for variances from the requirements of the zoning ordinance pursuant to Minnesota Statutes, Section 462.357, subd. 6. The board may not permit as a variance any use that is not permitted under the zoning ordinance for property in the zone where the affected person's land is located. The board may impose conditions in the granting of variances to insure compliance and to protect adjacent properties. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Ord. No. 3879 9/19/2011

(2) After an official map has been adopted and filed, the issuance of building permits by the City shall be subject to the provisions of Minnesota Statutes, Section 462.359. Whenever any street or highway is widened or improved, or any new street is opened, or interests in lands for other public purposes are required by the City, the City is not required in such proceedings to pay for any building or structure placed without a permit, or in violation of conditions of a permit within the limits of the mapped street or outside of any building line that may have been established upon the existing street or within any area thus identified for public purposes. The adoption of the official map does not give the City any right, title or interest in areas identified for public purposes thereon, but the adoption of the map does authorize the City to acquire such interests without paying compensation for buildings or structures erected in such areas without a permit or in violation of the conditions of a permit. If a permit for a building in such location is denied, the board shall have the power upon appeal filed with it by the owner of the land to grant a permit for building in such location in any case in which the board finds, upon the evidence and the arguments presented to it:

- a. That the entire property of the appellant of which such area identified for public purposes forms a part cannot yield a reasonable return to the owner unless such a permit is granted, and
- b. That balancing the interest of the City in preserving the integrity of the official map and of the comprehensive plan and the interest of the owner of the property in the use of his property and in the benefits of ownership, the grant of such permit is required by consideration of justice and equity. In addition to the notice of hearing required elsewhere in this chapter, a notice shall be published in the official newspaper once at least 10 days before the day of the hearing. If the board authorizes the issuance of a permit, the City Council shall have six months from the date of the decision of the board to institute proceedings to acquire such land or interest therein, and if no such proceedings are started within that time, the administrative officer responsible for issuing building permits shall issue the permit if the application otherwise conforms to City ordinances. The board shall specify the exact location, ground area, height and other details as to the extent and character of the building for which the permit is granted.

(d) General Power. Without limiting or qualifying the foregoing powers, the board has the power to permit the extension of a district where the boundary line of a district divides a lot in single ownership as shown of record; to permit a street laid out actually on the ground in a manner different than shown on an official map to remain as laid out; to grant an exception to off-street parking requirements when it is determined that the size and shape of a lot or area to be built on is such that such requirement cannot be met and that such exception will not create undue traffic congestion in the adjacent streets; to grant an exception to setback and area requirements where the slope of the land on 20 percent or more of a lot or lots to be built on exceeds 10 percent where such slope interferes with the reasonable development of the property for the uses permitted in the district in which the lot is located; provided, however, that whenever an exception is granted, new setback and area requirements for the lot or lots covered by the exception shall be specifically set forth in the decision of the board.

(e) Exercise of Powers. In the exercise of its powers, the board may, in whole or in part, affirm or reverse or modify or amend any order, requirement, decision or determination of an administrative officer; it may impose a condition or conditions preceding or subsequent to insure compliance and/or to protect others and for such period as it may determine, each decision shall be in keeping with the spirit and intent of the law applicable to the matter under consideration; the board shall consider the effect of its decision on the environment, the effect upon others of the public, and all matters relating to the public health, safety, comfort, morals and general welfare.

Ord. No. 4051 06/07/2017