

June 2022 Town Code Amendments Related to the Board of Adjustment

Section 1. Chapter 2 (Mayor and Council), Article 5 (Boards and Committees), Section 2-5-3 (Board of Adjustment) is hereby amended to read as follows:

Section 2-5-3

Board of Adjustment -8-188-583-623-646-654-685-2016-05-2020-03

~~Creation and Membership.~~ The Board of Adjustment as previously established is hereby continued in full force and effect, and there is established herewith a Board of Adjustment which shall consist of seven members, each of whom shall be appointed for a term of three years. The word "Board" when used in this article shall mean the Board of Adjustment. Members of said Board shall be appointed by the Mayor subject to confirmation by majority vote of the Town Council. All persons seeking to be appointed or re-appointed to a term on the Board of Adjustment shall file a written application for such appointment or re-appointment with the Mayor on or before the date set by the Town of the year that the term subject to appointment would become vacant. However, this written application requirement does not apply to an appointment to serve the balance of a term which has become vacant prior to the expiration of the term. Vacancies shall be filled for the unexpired term of the member whose place has become vacant. The Board of Adjustment shall, at its first meeting in April of each year, elect one of its members to serve as its Chairman designate. The member designated to be Chairman shall be approved or disapproved for the Chairmanship by the Town Council within thirty (30) days of the election of the Board of Adjustment. If the

Chairman designate is approved for the Chairmanship by the Town Council, he shall become the Chairman immediately upon such approval, and he shall serve as Chairman of the Board (1) until a successor as Chairman is elected and approved in the following year, or (2) until the Chairmanship shall, for any reason, become vacant. If the Chairman designate is disapproved for the Chairmanship by the Town Council, the Board of Adjustment shall, at its next meeting after such Council disapproval, elect another one of its members to serve as its Chairman designate, and the member so designated shall be approved and become the Chairman or be disapproved pursuant to the procedures described herein. If, for any reason, the position of Chairman becomes vacant, then the Board at its next meeting after such position becomes vacant, shall elect a Chairman designate for the remainder of the term, and the member so designated shall be approved and become the Chairman or be disapproved pursuant to the procedures described herein. No member shall serve as Chairman of the Board for a period of time in excess of two (2) consecutive years.

~~B. Board of Adjustment, Meeting, Administration of Oaths, and Compelling Attendance of Witnesses.~~ All meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. All meetings of the Board shall be open to the public. The Chairman, or in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses.

~~C. Rules and Regulations, Records, Procedures, Limitations.~~ 176-2020-03

The Town Council shall have power to make and publish, by Council Resolution for time to time, rules and regulations to govern Board proceedings and to carry into effect the provisions of this section. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that

~~fact, and shall also keep records of its examinations and other official actions. Every rule, regulation, or every amendment or repeal thereof, and every order, requirement, decision, or determination of the Board shall immediately be filed in the office of the Board and in the office of the Town Clerk and shall be a public record.~~

~~1. Appeal of a Ruling of~~ Generally. There shall be a Zoning Administrator, with the responsibility to interpret the Zoning Ordinance and the authority to provide administrative relief from the provisions thereof. There shall also be a Board of Adjustment, with the responsibility to hear appeals of the decisions of the Zoning Administrator and ~~the authority to grant variances~~ from the provisions of the Zoning Ordinance. The word "Board" when used in this Section shall mean the Board of Adjustment.

A. Zoning Administrator.

1. The Community Development Director shall be the Zoning Administrator. If no person is then serving in said capacity, the Town Manager or authorized designee shall serve as the Zoning Administrator.^{81_144_176_685}
- ~~2. Application for appeal to the Board of Adjustment for relief from the rulings of the Zoning Administrator of the Town, in which it is alleged there is an error in an order, requirement or decision made by the Zoning Administrator in the enforcement of the zoning ordinance, may be made by any aggrieved person or by any officer, department, board or bureau of the municipality affected by a decision of the Zoning Administrator by filing with the Zoning Administrator and with the Board, within thirty (30) days after the Zoning Administrator's ruling, a notice of appeal specifying the grounds thereof together with an application form and payment of the appeal prescribed in the Town of Paradise Valley Fee Schedule. The Community Development Director shall be the The Zoning Administrator for purposes of this article.~~

2. Variance¹⁷⁶

- ~~a. The Board may authorize such variances from and exceptions to the strict application of the terms of this section as are in harmony with its general purposes and intents, if it shall find that the granting of such variances and exception will serve not merely as a convenience to the applicant but are necessary to alleviate some demonstrable hardship or difficulty so great as to warrant a variance under the circumstances.~~
- ~~b. The commencement of construction, alteration, repair, removal, or demolition of any building or structure without first obtaining a duly licensed building permit from the Town of Paradise Valley shall not constitute a demonstrable hardship under this section, and a variance shall not be granted for such reason alone.~~

3. Appeal From Board.

~~A person aggrieved by a decision of the Board, including a Town officer, may, at any time within thirty (30) days after the decision of the Board or, if reviewed by the Town~~

~~Council, within 30 days of the Town Council decision, bring a special action in the Superior Court of Maricopa County for the purpose of reviewing the Board's decision, pursuant to the "Rules of Procedure for Special Actions." Commencement of the special action shall not stay proceedings upon the decision appealed from unless the court shall otherwise order.~~

~~4. The Board of Adjustment May Not:~~^{176, 188}

~~a. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the Zoning Ordinance provided the restriction in this paragraph shall not affect the authority to grant variances.~~

~~b. Grant a variance if the special circumstances, hardship or difficulty applicable to the property are self-imposed by the property owner, or predecessor, special circumstances, hardship, or difficulty which arise out of misunderstanding or mistake are not grounds for a variance.~~

~~D. Zoning Code Interpretations:~~⁵⁸³

~~1. The Community Development Director shall be responsible for interpretation of the Paradise Valley Zoning Ordinance. Interpretations may be considered if there is a question of clarity of any development standard or other provision of this ordinance, or a review is required within the permitted use categories of a specified zone district. at all times, including upon receipt of a complete application therefore.~~

~~i. A complete application shall:~~

~~1. Be made on a form prescribed by the Zoning Administrator; and~~

~~2. An application clearly stating Clearly state the section requiring interpretation, or the characteristics of the desired use and zone zoning district in which it is proposed to be located shall be; and~~

~~3. Be submitted on a form prescribed by the Community Development Director along with payment of the required fee before an interpretation will be made. All requests for written interpretations shall be filed in the Community Development Department.~~

~~ii. 3. The Community Development Director Zoning Administrator shall issue a written interpretation within ten (10) working days of the submission of a completed complete application and request for interpretation. All,~~

~~iii. Records of all interpretations shall be maintained in the Community Development Department records.~~

~~iv. 4. Prior to determining that a use is permitted within a specific zoning district, the Community Development Director Zoning Administrator shall~~

find that:

1. ~~a.~~ The use is described and included in the zoning district; or
2. ~~b.~~ The intensity of the use will not adversely affect other properties within the zoning district; ~~or~~ and
3. ~~c.~~ If there is more than one principal use, all of the principal uses are permitted and ~~that~~ the combination of uses will not alter the basic land use characteristics of each principal use or create a different use than that which would otherwise be prohibited.

~~E~~ Administrative Relief. ^{583_654}

3. ~~1.~~ The ~~Community Development Director~~ Zoning Administrator may authorize administrative relief ~~to a property owner in the Town of Paradise Valley~~ of up to ten (10) percent of any development standard contained in Article X, and for solar device installations only, Article XXII, of the ~~Town Zoning Code~~ Ordinance, unless specifically restricted elsewhere in this ~~ordinance. For gates on hillside properties, administrative relief may be authorized as described in subsection (i) below~~ Section. Administrative relief shall be ~~subject to~~ authorized in writing, with specific findings consistent with the following requirements ~~and limitations of this Section, upon receipt of a complete application therefore.~~

i. A complete application shall:

1. ~~a.~~ An application shall be submitted (and the fee set forth in the Town of Paradise Valley Fee Schedule, as such may be amended from time to time, shall be paid) by the property owner requesting administrative relief, Be made on a form prescribed by the Community Development Director for such, identifying Zoning Administrator; and
2. Clearly identify the proposed improvement to the property that is subject to the request; and
3. Be submitted along with payment of the required fee.

- ii. ~~b.~~ Notice shall be made by first class mail, postmarked at least five (5) days prior to the proposed date of determination by the ~~Community Development Director~~ Zoning Administrator, to adjacent property owners determined by the ~~Community Development Director as~~ Zoning Administrator to be potentially affected by the request for administrative relief;

iii. Prior to authorizing administrative relief, the Zoning Administrator shall find that:

1. ~~c.~~ The proposed improvement requiring relief will not be detrimental

to the property requesting relief, any adjacent property, or the Town;
~~as determined by the Community Development Director; and~~

2. ~~d.~~ The relief granted is the minimum required to meet the needs of the proposed improvement, ~~as determined by the Community Development Director; and~~

3. ~~e.~~ The relief ~~shall~~is not ~~be~~ contrary to the purpose and intent of ~~this ordinance; and~~ the Zoning Ordinance.

iv. ~~f.~~ Administrative relief related to a particular property may only be requested once during an eighteen (18) consecutive month period and only twice during the period of ownership by a recorded owner of the property; ~~the.~~ The term “owner” is to be interpreted for ~~purposes of this section~~ purpose to include any person, firm, corporation, partnership, joint venture, trust, or any related persons, parties, firms, corporations, partnerships, joint ventures or trusts, including any successor trusts where the beneficiaries included are the same as any of the persons included as an owner above or as a beneficiary of any preceding trusts.

v. ~~g.~~ The relief requested ~~is~~ shall be limited to livable primary and accessory structures and walls, gates, and fences. ~~It~~ Administrative relief is not applicable to:

1. ~~i.~~ New home construction, except to request relief related to an inadvertent error;i

2. ~~ii.~~ Properties that are subject to special use permits;i

3. ~~iii.~~ Floor area ratio limitations;i

4. ~~iv.~~ Tennis or other types of sport courts;i or

5. ~~v.~~ Gazebos or other similar structures.

vi. ~~h.~~ The ~~Community Development Director~~ Zoning Administrator may impose reasonable conditions upon any administrative relief granted, to ensure that the public health, safety, and general welfare are protected and substantial justice is done.

vii. ~~i.~~ Relief for gates on hillside properties may be allowed. ~~Such relief shall only be granted for the location,~~ to allow the gates to be as close as necessary to the property line when the topography of the lot precludes them from meeting the setback. Consideration shall be given to proper stacking of vehicles for public safety. No increase in height or size or other deviations ~~of~~ from the code shall be granted for gates on hillside properties.

B. Board of Adjustment.

1. ~~2. Any relief authorized by the Community Development Director shall be documented with findings consistent with the standards above and filed with the building permit records, subdivision case file, or other department files, as appropriate.~~ The Board shall consist of seven (7) members, each of whom shall be appointed for a term of three (3) years. Members of the Board shall be appointed by the Mayor subject to confirmation by majority vote of the Town Council.
 - i. All persons seeking to be appointed or re-appointed to a term on the Board shall file a written application for such appointment or re-appointment with the Mayor on or before the date set by the Town. However, this written application requirement does not apply to an appointment to serve the balance of a term that has become vacant.
 - ii. At its first meeting in April of each year, the Board shall elect one of its members to serve as its Chair, subject to approval by the Town Council. If the Chair is disapproved by the Town Council, the Board shall, at its next meeting after such Council disapproval, elect another member to serve as its Chair, subject to approval by the Town Council. If, for any reason, the position of Chair becomes vacant, then the Board at its next meeting after such position becomes vacant, shall elect a Chair for the remainder of the term, subject to approval of the Town Council. Each Chair shall be elected for a period of one (1) year, and no member shall serve as Chair for more than two (2) consecutive years.
2. Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine. All meetings of the Board shall be open to the public. The Chair, or the Acting Chair in the absence of the Chair, may administer oaths and compel the attendance of witnesses.
3. The Town Council shall have power to make and publish, by Council Resolution from time to time, rules and regulations to govern Board proceedings and to carry into effect the provisions of this section. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact, and shall also keep records of its examinations and other official actions. Every rule, regulation, or amendment or repeal thereof, and every order, requirement, decision, or determination of the Board shall immediately be filed in the office of the Board and in the office of the Town Clerk and shall be a public record.
4. The Board may grant variances from the provisions of the Zoning Ordinance.
 - i. A variance may be granted only upon finding by sufficient evidence:
 1. That there are special circumstances applicable to the property, which may include circumstances related to the property's size, shape, topography, location, or surroundings; and

2. That the special circumstances applicable to the property were not self-imposed or created by the property owner; and
3. That ~~the strict application of the Zoning Ordinance~~ will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district.

ii. The Board may not grant a variance:

1. That will ~~make any changes in the uses permitted in any zoning classification or zoning district; or~~
2. ~~F. Appeals.~~⁵⁸³ That will constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which such property is located.

5. ~~All decisions and interpretations by the Community Development Director performed in accordance with Section 2-5-3.E may be appealed to the Board of Adjustment in accordance with the procedures prescribed in Section 2-5-3.C. The~~ Board shall be responsible to hear appeals of the decisions of the Zoning Administrator, upon the receipt of a complete application therefore. A complete application shall:

- i. Be made on a form prescribed by the Zoning Administrator; and
- ii. Clearly identify the decision by the Zoning Administrator from which the applicant requests relief; and
- iii. Be submitted along with payment of the required fee.

C. Appeal from the Board of Adjustment. ~~A person aggrieved by a decision of the Board, at any time within 30 days of the decision or, if the decision is reviewed by the Town Council, within 30 days of that review, may bring a special action in the Superior Court of Maricopa County. Commencement of a special action shall not stay enforcement of the relevant decision, unless the Superior Court shall otherwise order.~~