

June 2022 Town Code Amendments Related to the Board of Adjustment

Adopted June 9, 2022

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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

- A. 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.
- B. 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.
 2. The Zoning Administrator shall be responsible for interpretation of the Zoning Ordinance 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. Clearly state the section requiring interpretation, or the characteristics of the desired use and zoning district in which it is proposed to be located; and
 3. Be submitted along with payment of the required fee.
 - ii. The Zoning Administrator shall issue a written interpretation within ten (10) working days of the submission of a complete application.
 - iii. Records of all interpretations shall be maintained.
 - iv. Prior to determining that a use is permitted within a specific zoning district, the Zoning Administrator shall find that:
 1. The use is described and included in the zoning district; or
 2. The intensity of the use will not adversely affect other properties within the zoning district; and
 3. If there is more than one principal use, all of the principal uses are

permitted and 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.

3. The Zoning Administrator may authorize administrative relief of up to ten (10) percent of any development standard contained in Article X, and for solar device installations only, Article XXII, of the Zoning Ordinance, unless specifically restricted elsewhere in this Section. Administrative relief shall be authorized in writing, with specific findings consistent with the requirements of this Section, 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. 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. Notice shall be made by first class mail, postmarked at least five (5) days prior to the proposed date of determination by the Zoning Administrator, to adjacent property owners determined by the 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. The proposed improvement requiring relief will not be detrimental to the property requesting relief, any adjacent property, or the Town; and
2. The relief granted is the minimum required to meet the needs of the proposed improvement; and
3. The relief is not contrary to the purpose and intent of the Zoning Ordinance.

- iv. 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 term "owner" is to be interpreted for this 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. The relief requested shall be limited to livable primary and accessory structures and walls, gates, and fences. Administrative relief is not applicable to:
 - 1. New home construction, except to request relief related to an inadvertent error;
 - 2. Properties that are subject to special use permits;
 - 3. Floor area ratio limitations;
 - 4. Tennis or other types of sport courts; or
 - 5. Gazebos or other similar structures.
- vi. The 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. Relief for gates on hillside properties may be allowed, 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 from the code shall be granted for gates on hillside properties.

C. Board of Adjustment.

- 1. 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. 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. 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.
- D. 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.