

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2022

COUNCIL BILL NO. CB22-0093
COMMITTEE OF REFERENCE:
4 Land Use, Transportation & Infrastructure

5 A BILL

6
7 **For an ordinance reestablishing the board of adjustment and updating board**
8 **requirements and procedures.**
9

10 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

11 **Section 1.** That section 12.2.6.2 of the Denver Zoning Code shall be amended by deleting
12 the language stricken and adding the language underlined to read as follows:

13
14 **12.2.6.2 Creation; Alternates; Required Training**

15 A. Consistent with the City Charter, ~~there shall be and hereby is created a city council~~
16 hereby reestablishes the Board of Adjustment consisting of 5 members subject to the composition
17 requirements set forth in this section. The members of the Board shall be appointed ~~by the mayor~~
18 for a term of 5 years. ~~Any vacancy which occurs in the Board of Adjustment shall be filled by the~~
19 ~~mayor for the unexpired term of any member whose term became vacant.~~ The newly reestablished
20 Board shall be seated no later than June 1, 2022. Two appointments to the Board of Adjustment
21 shall be made by city council; two appointments shall be made by the mayor; and one appointment
22 shall be made jointly by the mayor and city council.

23 B. A member of the Board of Adjustment may be removed by their appointing authority
24 only for cause upon written charges and after public hearing. ~~Should a member of the Board of~~
25 ~~Adjustment fail to attend one-third of the meetings scheduled during any period of 12 consecutive~~
26 ~~months, that failure~~ The unexcused absence of any board member from three (3) consecutive
27 meetings, unless the board chair has excused the absence for good and sufficient reasons as
28 determined by the board chair, shall be deemed cause for removal upon written charges being
29 made and after a public hearing.

30 C. City council and ~~the mayor~~ each may appoint, for a term of ~~between 1 to 5~~ 3 years,
31 2 1 alternate members of the Board of Adjustment in addition to the 5 members. When a member
32 of the Board is recused or is absent, the alternate member ~~first~~ appointed by ~~the mayor~~ city council
33 shall be the first to act with full authority. ~~The alternate members shall thereafter rotate or~~
34 ~~substitute, one for the other, their service on the Board as the need arises.~~ followed the next time

1 an alternate is needed by the alternate appointed by the mayor, and rotating accordingly as their
2 service is required on the Board. If, however, the alternate whose turn it is to serve is unable to
3 participate, the other may serve instead, restarting the rotation with the unselected alternate as the
4 next to be selected. Except as to attendance, the provisions with regard to removal for cause and
5 vacancies shall apply to such alternates. Alternates may be removed for cause by their appointing
6 authority.

7 D. ~~The compensation of the members of the Board of Adjustment and the alternate~~
8 ~~members shall be fixed by City Council.~~ No member of the Board of Adjustment or an alternate
9 member shall be on the staff of the Board or be employed by Community Planning and
10 Development.

11 E. The composition of the Board of Adjustment shall be as follows:

12 1. At least one member shall be an architect.

13 2. At least one member shall be a licensed attorney currently or formerly engaged in the
14 practice of law, with a preference for attorneys with administrative law experience.

15 3. At least one member shall have background and experience in urban planning,
16 construction, engineering or development.

17 4. Remaining members, if any, should have a demonstrated interest in zoning and land
18 use.

19 F. Relevant city agencies shall provide training to the Board of Adjustment on the
20 following subjects as new members are appointed or upon major legal or policy updates:

21 1. The Denver zoning code;

22 2. Adopted land use, transportation, climate and housing plans of the City and County of
23 Denver;

24 3. Open meetings and decorum;

25 4. Proper use of evidence and conducting a quasi-judicial hearing;

26 5. Proper application of findings of fact as the basis for decisions;

27 6. Diversity, equity and inclusion, as well as the Fair Housing, Civil Rights, and Americans
28 with Disabilities Acts; and

29 7. All members shall receive periodic supplemental training on the above topics and any
30 additional topics as deemed necessary by the Chairperson of the Board.

31

32 **Section 2.** That section 12.4.7 of the Denver Zoning Code shall be amended by deleting the
33 language stricken and adding the language underlined to read as follows:

1 **Section 12.4.7 VARIANCE**

2 **Section 12.4.7.5 – Review Criteria - Showing of Unnecessary Hardship**

3 B. Unusual Physical Conditions or Circumstances

4 1. There are unusual physical circumstances or conditions, including, without limitation:

5 a. Irregularity, narrowness or shallowness of the lot; or

6 b. Exceptional topographical or other physical conditions peculiar to the affected
7 property; or

8 c. Unusual physical circumstances or conditions arising from ~~an existing~~
9 nonconforming or compliant structure existing on the affected property; and

10 2. The circumstances or conditions do not exist throughout the neighborhood or zone
11 district in which the property is located, or the circumstances or conditions relate to drainage
12 conditions and challenges found consistently throughout the neighborhood or zone district in which
13 the property is located; and

14 ~~3. The development or use of the property cannot yield a reasonable return in service,
15 use or income as compared to adjacent conforming property in the same district; however, loss of a
16 financial advantage, hardship that is solely financial, or the fact that a more profitable use of the
17 property might be had if a variance were granted are not grounds for a variance; and~~

18 4. The unusual physical circumstances or conditions have not been created by the
19 applicant.

20

21 **12.4.7.6 Review Criteria - Applicable to All Variance Requests**

22 The Board of Adjustment may grant a variance only if the Board finds that, if granted, the
23 variance:

24 A. Would not authorize the operation of a primary, accessory, or temporary use other than
25 those uses specifically enumerated as permitted primary, accessory, or temporary uses for the zone
26 district in which the property is located.

27 B. Would not grant a change to either (a) a waiver or condition attached to an approved
28 rezoning, or (b) an approved PUD District plan that would constitute an "amendment" under Section
29 12.3.7.2, Amendments to Approved Applications, Plans and Permits, or (c) an approved GDP that
30 would constitute an "amendment" under Section 12.3.7.2, Amendments to Approved Applications,
31 Plans and Permits.

32 C. Would not, other than allowed in Section 12.4.7.5.A. above to accommodate persons
33 with disabilities, relate to either the persons, or the number of persons, who do, will, or may reside
34 in a residential structure.

1 D. Would not be justified solely on grounds of loss of a financial advantage, hardship that
2 is solely financial, or a more profitable use of the property might be had if a variance is granted.

3 ~~D.E.~~ Would not substantially impair the intent and purpose of this Code.

4 ~~E.F.~~ Would not substantially impair the intent and purpose of the applicable zone district.

5 ~~F.G.~~ Would not substantially or permanently impair the reasonable use and enjoyment or
6 development of adjacent property.

7 ~~G.H.~~ Would be the minimum change that would afford relief and would be the least
8 modification of the applicable provisions of this Code.

9 ~~H.I.~~ Would adequately addresses any concerns raised by the Zoning Administrator or other
10 city agencies in their review of the application.

11 **Section 3.** That section 12.4.8. F.1. of the Denver Zoning Code shall be amended by deleting
12 the language stricken and adding the language underlined to read as follows:

13 **12.4.8 APPEAL OF ADMINISTRATIVE DECISION**

14 **E. Public Hearing and Decision by Board of Adjustment**

15 Following notice and a public hearing according to the rules of the Board of Adjustment, the
16 Board of Adjustment shall approve or deny the appeal based on the presumption and review criteria
17 ~~below in Section 12.4.8.F below, and to that end the Board of Adjustment shall have all the powers~~
18 ~~of the officer from whom the appeal is taken.~~

19
20 **F. Presumption and Review Criteria**

21 **1. Presumption.**

22 Any order or decision of an administrative official authorized to act under this Code shall be
23 presumed to be correct unless clear and convincing ~~the preponderance of the~~ evidence introduced
24 before the Board of Adjustment supports a contrary determination or finding.

25
26 **Section 4.** That section 59-2, Denver Revised Municipal Code, concerning Former Chapter
27 59 shall be amended by adding a new paragraph (c)(14) to read as follows:

28 (c) No changes shall be enacted to the provisions of former chapter 59 after June 25,
29 2010; however, regulation of lands retaining their zoning designation under the former chapter 59
30 shall incorporate the following requirements of the Denver Zoning Code:

31 (14) For purposes of administering former chapter 59, Section 59-51, the creation and
32 alternatives of the Board of Adjustment shall follow the procedures and requirements of Denver
33 Zoning Code Section 12.2.6.2.

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