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# Modernizing Zoning Variances Text Amendment

Second Reading / Public Hearing

May 22, 2023

# Today's Meeting

- Project Background, Purpose, and Outreach
- Process changes
- Administrative Adjustments
- Variance Review Criteria
- Review Criteria for Text Amendments
- Recommendation

# Project Background

- Phase 1: Board appointment procedure, make-up requirements and qualifications
- Phase 2:
  - Charter amendment
  - Text amendment

# Text Amendment Purpose

*Streamline how zoning relief is granted while balancing zoning with other city priorities*

- Focus on common situations
  - One- and two-unit residential (over 80% of requests)
  - Requests often focus on making existing homes more useful for owners/occupants
- Balance split of authority
  - Board or CPD staff

# Project Timeline

- Feb. 7:** Board of Adjustment Discussion
- Feb. 15:** Planning Board Informational Item
- March 15:** Planning Board Action Item
- April 11:** Land Use, Transportation and Infrastructure Committee
- April 24:** First Reading
- May 2:** Board of Adjustment Update
- May 30:** Effective Date (if adopted)

# Process Changes

- **NEW:** Former Chapter 59:
  - One- and two-unit residential uses can access DZC variance and AA procedures
  - All FC59 uses can access AAs for ADA and FFHA
- **NEW:** Mandatory pre-application meeting with CPD for variances
- **REVISED:** Votes required for approval
  - 4 votes to overturn ZA decision (admin. appeals), 3 votes for approval of all other actions

# Update Administrative Adjustment Thresholds

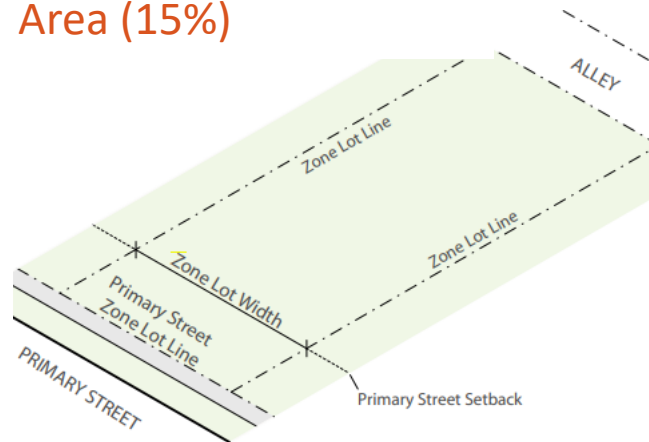
- Reorganizes AA table and updated thresholds for eligibility
- Creates new adjustments

## Zone Lot

Width (5% → 10%)

Depth (15%)

Area (15%)



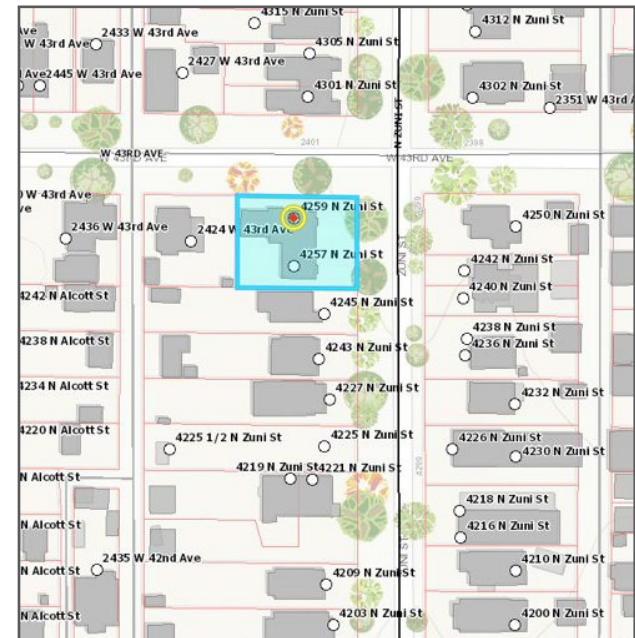
# Update Administrative Adjustment Thresholds

Split of allowed adjustments based on review criteria

## Primary Street Setback

Neighborhood Compatibility → No Limit

Unusual Physical Conditions → 20%





# Administrative Adjustment Changes

Unnecessary hardship → Justifying Circumstances  
Updated & New Review Criteria

- Neighborhood Compatibility
- Unusual Physical Conditions or Circumstances
- **NEW: Affordable Housing**
- **NEW: Additional criteria in the AA eligibility table**

# Administrative Adjustment Changes

## New Standalone Adjustments:

- Meet overriding laws (RLUIPA, ADA, FFHA, or other federal or state law)
- Historic Structures or Properties Located in a Landmark District
- **NEW: Public Utility Equipment Placement**
- **NEW: Location Limitations on Certain Zoning Uses**
- **NEW: Limited Tolerance for Construction Errors**
- **NEW: Resolve Conflicts Between City Standards**

# Update Administrative Adjustment Review Criteria

## NEW: Limited Tolerance for Construction Errors

### Extent of Adjustment Authorized

- No more than a 25% decrease of the side interior, side street, or rear setback standard
- No more than a 10% decrease of a primary street setback
- No more than a 1-foot vertical or horizontal encroachment through the applicable bulk plane envelope
- No more than a 1-foot increase in height in feet
- No more than a 5% increase in building coverage

# Update Administrative Adjustment Review Criteria

## NEW: Affordable Housing

1. The proposed development or design would result in more Income Restricted Units than would be created without the administrative adjustment;
2. The adjustment to the subject standard cannot be accomplished through any specific incentives available in this Code or in mandates for the provision of Income Restricted Units under other City laws;
3. The purpose of the adjusted standard will still be achieved or substantially advanced if the adjustment is approved;
4. Would not substantially or permanently impair the reasonable use and enjoyment or development of the subject property or adjacent property;
5. The proposed design addresses any concerns raised by the Zoning Administrator or other city agencies in their review of the request.

NOTE: Criteria 1-3 also appear in variances section.

# Variance Review Criteria

## Unnecessary hardship → Justifying Circumstances Update Review Criteria

- Unusual Physical Conditions or Circumstances
- Neighborhood Compatibility
- Nonconforming or Compliant Uses in Existing Structures
- **NEW: Affordable Housing**
- **NEW: Permits Issued in Error**
- **NEW: Limited Tolerance for Construction Errors**

# Variance Review Criteria

## NEW: Permits Issued in Error

1. A zoning permit for construction was issued wherein the Applicant or Zoning Administrator made an error in measurement, calculation or application of one or more Building Form Standards found in Articles 3 through 9 of this Code, excluding maximum height in stories;
2. Start of Construction has begun as that term is defined in Article 13 of this Code, and the building element at issue (allowed only because of the error in the permit approval) has been substantially constructed;
3. The permittee reasonably relied on the approved zoning permit for construction in good faith; and
4. Given the stage of completed construction, the effort or cost to comply with the zoning standard is substantially disproportionate to the type, scale, or size of the error/violation.

## 12.4.7.6 – Review Criteria Applicable to All Variance Requests

In addition to showing a justifying circumstance, all variance requests must meet the following general criteria – **CLARIFIED**:

- A. Would not relate to either the persons, or the number of persons, who do, will, or may reside in a residential structure.
- B. Except as allowed in Section 12.4.7.5, would not be justified solely on grounds of loss of a financial advantage, hardship that is solely financial, or a more profitable use of the property might be had if a variance is granted.
- C. Would not substantially impair the intent and purpose of this Code.
- D. Would not substantially impair the intent and purpose of the applicable zone district.
- E. Would not substantially or permanently impair the reasonable use and enjoyment or development of the subject property or adjacent property.
- F. Would be the minimum change that would afford relief and would be the least modification of the applicable provisions of this Code.
- G. Would adequately address any concerns raised by the Zoning Administrator or other City agencies in their review of the application.

# Former Chapter 59

**NEW:** ‘Bridge amendment’ to allow land that retains Former Chapter 59 zoning designation:

- To access “reasonable accommodation” AA to meet overriding federal laws (ADA and FFHA)
- To access DZC administrative adjustment and variance procedures (*only for one- and two-unit dwelling uses*)



# Review Criteria for Text Amendments

## 1. Consistency with Adopted Plans

- Comprehensive Plan 2040 (2019)
- Blueprint Denver (2019)



## 2. Public Health, Safety and Welfare

Further public health safety and welfare by implementing adopted policies by providing greater flexibility to address evolving needs like accessibility, affordable housing, and preservation of existing structures, and by creating more predictable, transparent city processes.

## 2. Uniformity of District Regulations and Restrictions

Will result in processes and regulations that are uniform within each zone district and will produce greater uniformity in process across procedures.

# Recommendation

Staff recommends approval of the bill amending the Denver Zoning Code, finding that the applicable review criteria have been met; and

Staff recommends approval of the bill amending the Denver Revised Municipal Code, finding that the applicable review criteria have been met.