

## Modernizing Zoning Variances: Summary of Proposed Text Amendment

| Article 10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Changes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <b>10.4.3.3 Reductions in Required Amount of Bicycle Parking</b><br>(EXISTING – MODIFIED)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Currently offered as an administrative adjustment, this would be a standard that could be modified without the administrative adjustment procedure.                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>10.5.4.4 Perimeter Surface Parking Lot Landscaping Standards</b><br>(EXISTING – MODIFIED)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Descriptions of authority of Zoning Administrator to allow certain alternative designs through an Administrative Adjustment being changed to allow them as an alternative by-right. Removes administrative adjustment process if the standards are met.                                                                                                                                                                                                                                                                                                            |
| Article 11                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Changes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>Use limitations for the following:</p> <p>11.3.1 Utility, Major Impact</p> <p>11.4.1 Arts, Entertainment and Recreation Uses</p> <p>11.4.5 Sports and/or Entertainment Arena or Stadium</p> <p>11.4.22 Heavy Vehicle / Equipment Sales, Rentals, and Services</p> <p>11.5.3 Contractors, Special Trade, General</p> <p>11.5.4 Contractors, Special Trade-Heavy/ Contractor Yard</p> <p>11.5.7 Service/Repair, Commercial</p> <p>11.5.10 Manufacturing, Fabrication, and Assembly – Heavy</p> <p>11.5.12 Sand or Gravel Quarry</p> <p>11.5.15 Railroad Facilities</p> <p>11.5.17 Terminal Freight, Air Courier Service</p> <p>11.5.18 Automobile Parts Recycling Business</p> <p>11.5.20 Recycling Center</p> <p>11.5.21 Recycling Plant, Scrap Processor</p> <p>11.5.22 Automobile Towing Service Storage Yard</p> <p>11.5.24 Vehicle Storage, Commercial</p> <p>11.10.17 Outdoor Storage, General</p> <p>11.10.18 Outdoor Storage, Limited</p> <p>11.11.3 Amusement/ Entertainment Uses</p> <p>(EXISTING – MODIFIED)</p> | <p>These use limitations refer to the authority of the Zoning Administrator to waive specific distance, density, and separation requirements. These individual references are proposed to be removed and replaced with a new type of administrative adjustment in Article 12. There are existing uses with limitations on distance, density, and separation requirements that do not currently allow a waiver of the requirements through the Zoning Administrator. This change would allow a waiver to occur through the administrative adjustment procedure.</p> |

| Article 12 Section                                                                                                                                                                                      | Changes                                                                                                                                                                                                                                                                                                                                                                                          |
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| <b>12.2.6 Board of Adjustment</b>                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>12.2.6.2 Creation; Alternates; Required training</b><br>(EXISTING - REVISED)                                                                                                                         | Sets expiration dates for current Board terms with the intent to stagger expiration dates of Board members to ensure at least one to two experienced members remain when others leave the Board.                                                                                                                                                                                                 |
| <b>12.2.6.9 Limitations on Powers</b><br>A. Concurring Vote Required<br>(EXISTING - REVISED)                                                                                                            | Sets required number of votes for approval of an appeal of a decision by the Zoning Administrator at 4 votes and reduces number of votes required for all other decisions from 4 to 3 votes.                                                                                                                                                                                                     |
| <i>Note: The listed changes to Division 12.2 have been included in the draft text amendment since the public draft was released, but were inadvertently omitted from this summary until April 2023.</i> |                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>12.4.5 Administrative Adjustments</b>                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>12.4.5.1 Purpose</b><br>(NO CHANGE)                                                                                                                                                                  | No Change                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>12.4.5.2 Permitted Administrative Adjustments</b><br>(REORGANIZED)                                                                                                                                   | New organization structure across all AAs: <ul style="list-style-type: none"> <li>• Applicability</li> <li>• Extent of adjustment authorized</li> <li>• Review criteria</li> </ul>                                                                                                                                                                                                               |
| A. Administrative Adjustments to Ensure Compliance with Overriding Laws<br>(EXISTING - EXPANDED)                                                                                                        | All federal or state law-based requests for zoning code exceptions will be processed as Administrative Adjustments. <ul style="list-style-type: none"> <li>• Section covers RLUIPA, “reasonable accommodations” under FHA and ADA, and a catch-all for other overriding federal or state law</li> </ul>                                                                                          |
| B. Administrative Adjustments for Historic Structures or Properties Located in a Landmark District<br>(EXISTING - EXPANDED)                                                                             | All requests for zoning code exceptions for landmarked properties and properties in landmark districts will be processed as Administrative Adjustments provided the Landmark Preservation Commission makes special findings justifying the exception. <ul style="list-style-type: none"> <li>• The Zoning Administrator is directed to approve the AA in these cases (no discretion).</li> </ul> |
| C. Administrative Adjustments for Public Utility Equipment Placement<br>(NEW)                                                                                                                           | Allows administrative adjustments to zoning code standards when needed to site necessary public utility equipment. This AA includes findings related to siting best practices, safe access, and impacts to subject or adjacent property.                                                                                                                                                         |
| D. Administrative Adjustments for Alternative Design for Open Space in Large Developments<br>(EXISTING - REORGANIZED)                                                                                   | Existing today, reorganized to fit new structure for all AAs.                                                                                                                                                                                                                                                                                                                                    |
| E. Administrative Adjustments for Location Limitations on Certain Zoning Uses<br>(EXISTING – MOVED and EXPANDED)                                                                                        | New provisions provide a consistent procedure and review criteria for all requests to waive or vary a proposed use’s applicable distance/spacing requirement. Staff ability to waive/vary such use limitations already exists in the DZC but is sprinkled inconsistently throughout Article 11 without reference to a process. This new                                                          |

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|                                                                                                                                 | provision provides a standardized approach and criteria to review all requests to waive or vary spacing/density limitations.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| F. Limited Tolerance for Construction Errors<br>(NEW)                                                                           | This allows staff to approve very limited exceptions to building form standards (but not height in stories) when construction errors occur related to a one- or two-unit dwelling, and there is evidence of good faith efforts to fix the mistake/comply before requesting the adjustment/exception. The adjustment must also be reasonable relative to the type, scale, or size of the error.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| G. Administrative Adjustments to Resolve Conflicts Between City Standards (NEW)                                                 | This allows the Zoning Administrator to waive the applicability of Section 1.1.3.3.A, Conflicting Provisions, which says that when two standards conflict, the most restrictive standard will apply. This allows the Zoning Administrator to grant an adjustment from a more restrictive zoning standard after weighing the relative benefits gained from the standards in conflict. This administrative adjustment may only be requested by the Manager of CPD.                                                                                                                                                                                                                                                                                                                                                                                                                |
| H. Administrative Adjustments to Certain Standards by Applicable Building Form<br>(EXISTING – REORGANIZED – REVISED – EXPANDED) | <ul style="list-style-type: none"> <li>Existing administrative adjustment table has been <u>reorganized</u> into 2 separate tables, listing various building form and zoning standards that may be adjusted, the extent of adjustment allowed, and the applicable review criteria / justifying circumstances that an applicant will need to evidence to get the adjustment.</li> <li>Key <u>revisions</u>: Increases in some of the percentage adjustments allowed and specifying which review criteria are necessary; amount of adjustment may now vary depending on which review criteria/justifying circumstance is used.</li> <li><u>New adjustments</u> added: Minimum zone lot width, minimum zone lot depth, siting of trash enclosures in MS zone district, AA for removing required parking spaces in order to provide city-required EV charging equipment.</li> </ul> |
| <b>12.4.5.3 Review Process</b>                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| A. Initiation<br>(NO CHANGE)                                                                                                    | No Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| B. Pre-Application Meeting<br>(NO CHANGE)                                                                                       | No Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| C. Application and Fees<br>(MINOR CLEAN-UP ONLY)                                                                                | No Substantive Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| D. Timing of Adjustment Requests<br>(EXISTING – REORGANIZED - REVISED)                                                          | This was section re-organized to present timing of application in chronological order. New subsection D.1. codifies current practice that allows an AA request prior to submittal of a development application. This allows applicants who know they will need an AA and don't want to go through a full project design/plan review                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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|                                                                                 | before knowing whether the adjustment can be approved (e.g., for a primary street setback).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| E. Review, Referral and Final Decision by Zoning Administrator<br>(NO CHANGE)   | No Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>12.4.5.4 Review Criteria</b><br>(REORGANIZED)                                | Previously, the specific review criteria for an administrative adjustment were primarily found (and cross-referenced in this section) in the Variance section of the code (Sec. 12.4.5.7). All review criteria / justifying circumstances for the various types of administrative adjustments have been moved into to this section.                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| A. Neighborhood Compatibility<br>(EXISTING – MOVED - EXPANDED)                  | Existing review criteria retained but definition of “existing neighborhood” for compatibility analysis expanded to match the same extent BOA may use for variances.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| B. Unusual Physical Conditions or Circumstances<br>(EXISTING – MOVED – REVISED) | <ul style="list-style-type: none"> <li>Added new examples of specific unusual physical conditions/circumstances that may justify an administrative adjustment: <ul style="list-style-type: none"> <li>Preservation of established trees</li> <li>Existence of compliant or nonconforming structures on the subject property or on an abutting zone lot: Added two examples of when an adjustment may be approved without an increase in the degree of noncompliance.</li> <li>Clarified when drainage conditions may be an unusual condition justifying an adjustment</li> </ul> </li> <li>Added a requirement that the unusual physical condition or circumstance is the cause for the adjustment to ensure a link between that condition and the request.</li> </ul> |
| C. Affordable Housing<br>(NEW)                                                  | <ul style="list-style-type: none"> <li>Adjustments may be approved when a project design would result in the creation of more income-restricted dwelling units than otherwise would be created without the requested adjustment.</li> <li>Additional criteria require findings that the intent of the varied standard would still be reasonably met, substantial impacts to abutting properties will be mitigated, and that concerns of the Zoning Administrator or other city agency have been addressed.</li> </ul>                                                                                                                                                                                                                                                  |
| D. Other Required Findings<br>(NEW)                                             | <p>This section directs readers to the two tables of Administrative Adjustments when additional review criteria may be required for certain specific adjustments.</p> <ul style="list-style-type: none"> <li>For example, minimum landscaping standards may be adjusted if one of two criteria listed only in the tables (see the “applicable review criteria” column) is met, <u>or</u> if the general Unusual Physical Conditions or Circumstances criteria is met.</li> </ul>                                                                                                                                                                                                                                                                                       |

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| <b>12.4.5.5 Requirements and Limitations After Administrative Adjustment Approval</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| A. Administrative Adjustments to Approved Plans or Permits<br>(NO CHANGE)             | No Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| B. Noted on Pending Application<br>(NO CHANGE)                                        | No Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| C. Expiration<br>(EXISTING - REVISED)                                                 | Added a new Section 1 that provides an expiration timeframe when an administrative adjustment is approved prior to an applicant submitting a complete application for a site development plan or zoning permit. The applicant must submit such development application within 180 days of the approved AA.                                                                                                                                                                                                                                                                                                         |
| <b>12.4.7 Variance</b>                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>12.4.7.1 Purpose</b><br>(REVISED)                                                  | Renamed to Purpose from “When Authorized.” Simplified purpose statement and removed reference to the term “unnecessary hardship” (latter is being replaced by term “justifying circumstance”).                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>12.4.7.2 Related Procedure</b><br>(REVISED - NEW)                                  | Revised to remove reference to the term “unnecessary hardship.”                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>12.4.7.3 Applicability and Limitations</b><br>(EXISTING - MOVED – REVISED)         | This section previously focused only on limits to variances for signs; other limitations on the BOA’s authority to grant variances were moved into this section to consolidate them in one place. Added new requirement to apply for an administrative adjustment if applicable prior to applying for a variance.                                                                                                                                                                                                                                                                                                  |
| <b>12.4.7.4 Review Process</b><br>(EXISTING – NEW – REVISED)                          | Added ability of public utility to initiate a variance request. A new requirement for a mandatory pre-application meeting between CPD staff and prospective variance applicant is proposed; this reflects best practice and responds to staff and public comments about inadequate applicant preparation for BOA public hearing and how to show compliance with review criteria.                                                                                                                                                                                                                                   |
| <b>12.4.7.5 Review Criteria</b><br>(EXISTING – REVISED – EXPANDED)                    | Removed references to term “unnecessary hardship,” replacing it with “justifying circumstances.”                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| A. Unusual Physical Conditions or Circumstances<br>(EXISTING – REVISED)               | <p>Added new examples of specific unusual physical conditions/circumstances that may justify a variance:</p> <ul style="list-style-type: none"> <li>• Preservation of established trees</li> <li>• Existence of a compliant or nonconforming structure</li> <li>• Clarified when drainage conditions may be an unusual condition justifying an adjustment</li> </ul> <p>Moved existing criteria to this subsection that requires BOA to find that any substantial impacts to abutting properties will be mitigated and that concerns raised by the Zoning Administrator or other agencies have been addressed.</p> |

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| B. Compatibility with Existing Neighborhood<br>(EXISTING - REVISED)                    | Removed existing text applicable only to administrative adjustments which limits staff to a narrower definition of “existing neighborhood” than the BOA. Clarified that the BOA has discretion to define the reasonable “existing neighborhood” in an evaluation of neighborhood compatibility that could justify a variance.                                                                                                                                                                                                                                                                                                   |
| C. Nonconforming or Compliant Uses in Existing Structures<br>(EXISTING – NO CHANGE)    | Minor edits to capitalize defined terms.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| D. Affordable Housing<br>(NEW)                                                         | <ul style="list-style-type: none"> <li>• The BOA may approve a variance when a project design would result in the creation of more income-restricted dwelling units than otherwise would be created without the requested variance.</li> <li>• Additional criteria require the BOA to find that the intent of the varied standard would still be reasonably met.</li> </ul>                                                                                                                                                                                                                                                     |
| E. Permits Issued in Error<br>(NEW)                                                    | Allows BOA to approve a variance when staff issues a zoning construction permit in error, the applicant reasonably relied on the permit, and the error is found only after construction is started when compliance would be unreasonably onerous and disproportionate to the type, scale, or size of the error. This criterion allows variances only to building form standards, excluding maximum height in stories.                                                                                                                                                                                                           |
| F. Limited Tolerance for Construction Errors<br>(NEW)                                  | Allows BOA to approve a variance when an error occurs during construction (i.e., not built according to approved plans/permits), construction has been substantially completed when the error is found, there are substantial and unreasonable difficulties in fully complying or fixing the error, and the effort or cost to fix the error is substantially disproportionate to the type, scale, or size of the error. This is the variance counterpart to the more narrowly defined administrative adjustment for construction errors.                                                                                        |
| 12.4.7.6 Review Criteria – Applicable to All Variance Requests<br>(EXISTING – REVISED) | <ul style="list-style-type: none"> <li>• Two criteria were relocated to the applicability section, where they were a better fit.</li> <li>• Other clarifications: <ul style="list-style-type: none"> <li>• In “C,” removed reference to persons with disabilities because these variances have been relocated to an administrative adjustment for overriding federal laws.</li> <li>• In “D,” which states that a variance cannot be justified solely on financial grounds, added a reference to 12.4.7.5, which provides certain instances in which financial considerations may be taken into account.</li> </ul> </li> </ul> |
| 12.4.7.7 Requirements and Limitations After Variance Approval<br>(EXISTING – REVISED)  | A new section allowing the extension of a variance beyond the original approval period has been added (up to a 2-year extension is allowed when reasons for delay in the start of construction are due to forces beyond the applicant’s control). This same 2-year                                                                                                                                                                                                                                                                                                                                                              |

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|  | allowance is in Former Chapter 59 but was unintentionally left out when the DZC was drafted. |
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