



City of Gainesville

City Hall
200 East University Avenue
Gainesville, Florida 32601

Text File

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...Title

Board of Adjustment (B)

The City Commission referred various issues associated with the Board of Adjustment to the Community Development Committee. The Committee has completed its discussion and recommends several changes to Board of Adjustment functions and processes.

..Explanation

On September 12, 2005, the City Commission referred to the Community Development Committee issues associated with the Board of Adjustment (BOA). The Community Development Committee discussed the BOA and its rules, processes and appeals procedures, on September 15, October 6, and November 3, 2005. The Committee discussed various possible changes to the BOA and how it works. The Committee considered one alternative of eliminating the BOA and transferring its responsibilities to other boards. Ultimately, the Board concluded that the best approach is to advertise the existing appointments to the BOA (the Community Development Department has notified neighborhoods that three positions are vacant or expired by November 1, 2005), and implement training for Board members, along with various changes to jurisdiction and appeals procedures.

..Fiscal Note

None

..Recommendation

Community Development Committee to the City Commission: 1) staff provide information to neighborhoods regarding vacancies on the BOA; 2) staff provide an orientation session for new BOA members and training for the BOA; 3) the City Commission initiate a petition to amend the Land Development Code to establish term limits for Board of Adjustment members; to establish preferred (not required) backgrounds or experience in urban planning, architecture, landscape architecture, law, development or construction for three out of the five Board of Adjustment members; to amend the appeals process for appeals of administrative decisions, so that after administrative appeal levels are exhausted, the appeal is to a hearing officer for recommendation to the BOA for a BOA hearing and decision if facts are in dispute, and to the BOA directly if facts are not in dispute (and with the BOA authorized in either case to overturn staff's decision only with an affirmative vote by 4 members of the BOA), with appeal of the BOA decisions on administrative decisions to the City Commission; and to eliminate the opportunity for reestablishment of uses once the use becomes nonconforming and then lapses for a period of nine months; 4) the City Commission authorize the City Attorney to prepare an ordinance to eliminate certain of the rarely used appeals to the BOA; 5) the City Commission

authorize the City Attorney's office and staff to prepare revised rules for the BOA consistent with the above changes once the City's codes are revised; and 6) remove this item from the referral list.

**Options Discussed by Community Development Committee
Regarding Board of Adjustment**

- At this time Neighborhood Planning staff has posted information on the neighborhood list-serve about current vacancies, in addition to the usual advertising to the Clerk's office. The City Commission should have three new appointments to make in October assuming there are enough applicants.
- Staff plans to hold an orientation session for new BOA members and would hold annual training.
- The City Commission could initiate a petition to amend the Land Development Code to establish term limits for BOA members.
- The City Commission could initiate a petition to amend the Land Development Code to establish preferred backgrounds (not required) such as urban planning, architecture, landscape architecture, engineering, law, development or construction.
- The City Commission could initiate a petition to amend the appeals process for appeals of administrative decisions, so that after administrative appeal levels are exhausted, the appeal is to a hearing officer for recommendation to the BOA for a BOA hearing and decision if facts are in dispute, and to the BOA directly if facts are not in dispute (and with the BOA authorized in either case to overturn staff's decision only with an affirmative vote by 4 members of the BOA), with appeal of the BOA decisions on administrative decisions to the City Commission.
- BOA rules will be updated for consistency with the Land Development Code.
- A petition should also be initiated to eliminate some of the rarely used appeals to the BOA, such as any code enforcement related appeals under Chapter 13 or 16 of the City Code.
- The City Commission may wish to initiate a petition to amend the Land Development Code to eliminate the opportunity for reestablishment of nonconforming uses. If this is done, then once a nonconforming use had lapsed for nine months, the only uses allowed under current zoning will henceforth be allowed, with no right to request reestablishment of the previous nonconforming use.

CITY OF GAINESVILLE BOARD OF ADJUSTMENT

Code Section	Type of Action Authorized	Specific Authority
Appendix F	Appeals	Airport Hazard Zoning Regulations. Appeals from the permitted uses, restricted uses and prohibited uses in the noise overlay zone. May grant airport obstruction variance under certain criteria and conditions. (See s. 333.10, FS)
6-242	Airport Obstruction Variance Appeals	Appeals of the code enforcement official's decision or order of noncompliance (downtown minimum property standards).
13-211	Appeals	BoA performs duties of appeals boards on code enforcement officer's decision or order of noncompliance (Commercial Building Code).
16-27	Appeals	BoA performs duties of appeals boards for dangerous building, hazardous land, unsafe equipment, or absent or malfunctioning grease trap or grease interceptor violations.
23-102	Variances	BoA may grant variances from restrictions and provisions for construction and removal of driveways.
26-140	Appeals	BoA may grant or deny appeals to impound a vehicle and impose of costs.
26-141	Extension of Time	BoA may grant or deny petitions for extension of time on a hearing for impoundment of a vehicle and imposition of costs, stating its findings.
30-58	Appeals	BoA may hear appeals of home occupation permit revocation.
30-85	Special Exceptions	BoA may grant or deny petitions for a special exception for one mobile home as a principal structure to be used as a temporary dwelling on a conforming lot of record with certain conditions and requirements being met under the code.
30-252	Special Exceptions	BoA may grant or deny petitions to modify landscaping requirements for vehicular use areas; may grant commercial tree removal permits.
30-303	Special Permits	BoA may grant or deny a special permit for development of single-family lots, accessory structures, and drives.
30-310	Variances	BoA may grant or deny a variance to the landscape and tree management requirements based on demonstrated hardship.
30-327	Appeals	BoA may uphold or reverse decision of a CEO in determining unlawful or prohibited signs.
3-346	Reestablish nonconforming use	When a nonconforming use of a structure, or structure and premises in combination, is discontinued, vacant, abandoned or not used for nine consecutive months, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located; provided, the board of adjustment may permit the reestablishment of the nonconforming use where it is determined by the board of adjustment after public hearing that the design, construction and character of the building is not suitable for uses permitted in the district in which such nonconforming use is situated.

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30-354	Administrative Review Appeals Special Exceptions Variances Appeal	Section of Code specifically regarding the Board of Adjustment.	
s.553.775, FS		Appeal of building inspector may be taken to the local board of appeals (if such board exists) after which the commission shall review decisions of local building officials and local enforcement agencies regarding interpretations of the Florida Building Code.	

Proposed New Procedure to Appeal Certain Administrative Decisions

Prepared by: Office of the City Attorney
November 2, 2005

Decision of Administrative Official

- Relates only to building or land development code.
- Must affect specific real property.
- Affected person must have a legal interest in the real property.
- Administrative decision must be adverse to his/her interest in the property.
- Administrative decision must relate to the denial of a permit for which an application for permit is filed.



Formal Notification of Administrative Action

Notification to include:

- Notice of Administrative Action
- Date of Final Administrative Action
- Identification of Affected Person
- Legal Interest
- Explanation of Appeal Rights
- Deadline to Appeal the Final Administrative Action



In order to appeal the Administrative Action, a petition must be filed.

All petitions must include the following:

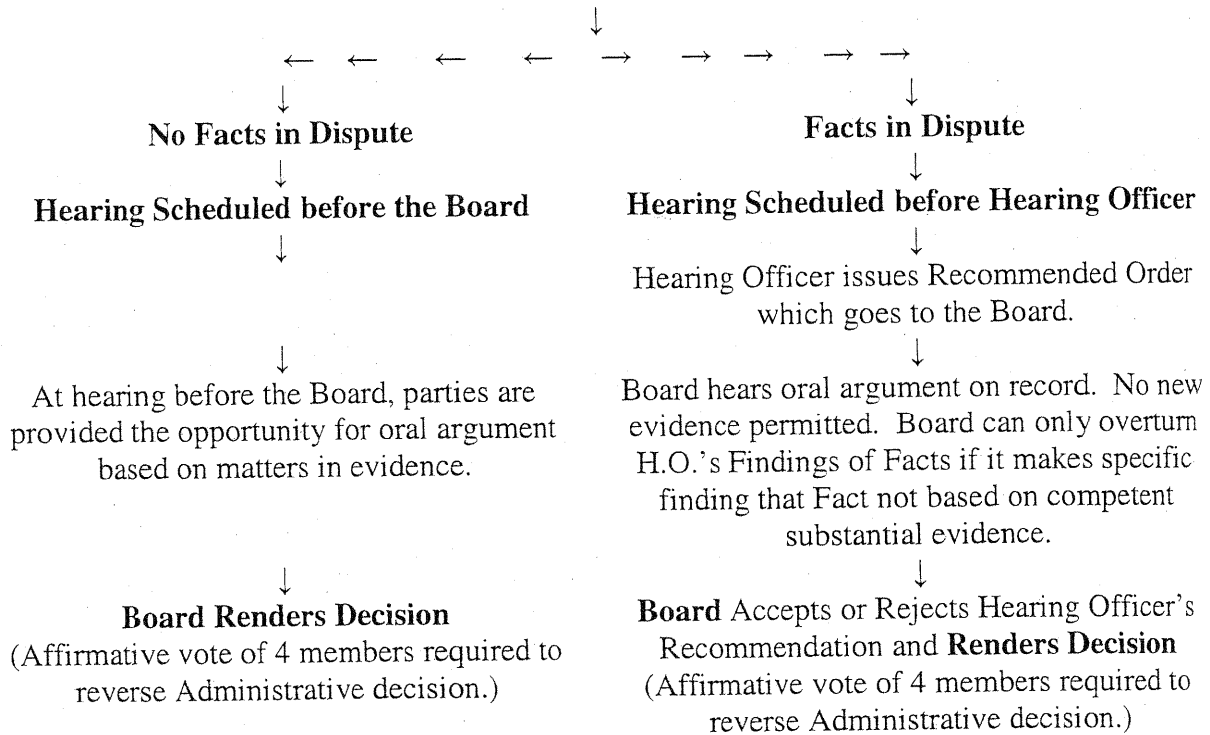
An explanation of how the petitioner's substantial interests are affected by the Administrator's determination;

A statement of when and how the petitioner received notice of the Administrator's decision;

A statement of all disputed issues of material fact. If there are NO DISPUTED ISSUES OF FACT, the petition must so indicate;

A concise statement of the ultimate facts alleged, including specific facts the petitioner contends warrant reversal or modification of the Administrator's proposed action;

A statement of relief sought by the petitioner, stating precisely the action petitioner wishes the Administrator to take with respect to the Administrator's proposed action.



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Thirty Days to Appeal to **City Commission** by Writ of Certiorari

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Oral Argument Presented by Parties For or Against Board's Recommendation

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City Commission issues Final Order

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Appeal to **Circuit Court** by Writ of Certiorari