

## *Attachment “B”*

### *SOME RELEVANT LAND DEVELOPMENT CODE REFERENCES*

*PETITION BA-17-05 VAR*

## **Sec. 30-51. - Single-family residential districts (RSF-1, RSF-2, RSF-3 and RSF-4).**

- (a) Purpose. The single-family districts are established for the purpose of providing areas for low density single-family residential development with full urban services at locations convenient to urban facilities, neighborhood convenience centers, neighborhood shopping centers and activity centers. These districts are characterized by single-family residential structures designed and located so as to protect the character of single-family residential neighborhoods.
- (b) Objectives. The provisions of these districts are designed to:
- (1) Protect and stabilize the essential characteristics of such existing development;
  - (2) Encourage such future development to occur on vacant land where the natural characteristics of such land are suitable for this type of development;
  - (3) Enable single-family development to occur at appropriate locations and with sufficient density so as to facilitate the provision of urban services and facilities in an economical and efficient manner;
  - (4) Encourage low density development where higher density development would be detrimental to the health, safety and welfare of the community by reason of environmental constraints, open space or other factors; and
  - (5) Discourage any activities not compatible with such residential development.
- (c) Permitted uses.
- (1) Uses by right.
    - a. Single-family dwellings and customary accessory buildings incidental thereto.
    - b. Occupancy of a single-family dwelling by one family.
    - c. Community residential homes, in accordance with article VI.
    - d. Family child care homes, in accordance with state law.
    - e. Adult day care homes, in accordance with article VI.
    - f. Home occupations, in accordance with article IV.
    - g. Large family child care homes, in accordance with article VI.
  - (2) Uses by special use permit.
    - a. Places of religious assembly, in accordance with article VI.
    - b. Private schools, in accordance with article VI.
    - c. Public schools, other than institutions of higher learning, in accordance with section 30-77, educational services district (ED).
- (d) General requirements. All structures and uses within this district shall also comply with the applicable requirements and conditions of section 30-56 and article IX.

- (e) Dimensional requirements. (See Table 1):

TABLE 1. DIMENSIONAL REQUIREMENTS FOR RSF DISTRICTS  
Principal Structures

	RSF-1	RSF-2	RSF-3	RSF-4
Maximum density	3.5 du/a	4.6 du/a	5.8 du/a	8 du/a
Minimum lot area	8,500 sq. ft.	7,500 sq. ft.	6,000 sq. ft.	4,300 sq. ft.

Minimum lot width at minimum front yard setback	85 ft.	75 ft.	60 ft.	50 ft.
Minimum lot depth	90 ft.	90 ft.	90 ft.	80 ft.
Minimum yard setbacks:				
Front	20 ft.	20 ft.	20 ft.	20 ft.
Side (interior)	7.5 ft.	7.5 ft.	7.5 ft.	7.5 ft.
Side (street)	10 ft.	10 ft.	7.5 ft.	7.5 ft.
Rear	20 ft.	20 ft.	15 ft.	10 ft.
Maximum building height	35 ft.	35 ft.	35 ft.	35 ft.

Accessory Structures<sup>1</sup>, Excluding Fences and Walls

Minimum front and side yard setbacks	Same requirements are for the principal structure.
Minimum yard setback, rear <sup>2</sup>	7.5 ft.
Maximum building height	25 ft.
Transmitter towers <sup>3</sup>	80 ft.

<sup>1</sup> Accessory screened enclosure structures whether or not attached to the principal structure may be erected in the rear yard as long as the enclosure has a minimum yard setback of three feet from the rear property line. The maximum height of the enclosure at the setback line shall not exceed eight feet. The roof and all sides of the enclosure not attached to the principal structure must be made of screening material.

<sup>2</sup> One preengineered or premanufactured structure of 100 square feet or less may be erected in the rear and side yards as long as the structure has a minimum yard setback of three feet from the rear or side property lines, is properly anchored to the ground, and is separated from neighboring properties by a fence or wall which is at least 75 percent opaque.

<sup>3</sup> In accordance with article VI.

(Ord. No. 3777, § 1, 6-10-92; Ord. No. 3955, § 10, 2-14-94; Ord. No. 960060, § 1, 6-8-98; Ord. No. 980990, § 1, 6-28-99; Ord. No. 041268, § 2, 8-22-05; Ord. No. 070619, § 1, 3-24-08)

## Sec. 30-354. - Board of adjustment.

- (a) Created. The board of adjustment is hereby created and shall consist of five members appointed by the city commission. Each member shall be appointed to a three-year term commencing on November 1 of the year appointed. Members may be reappointed for consecutive terms and may hold office after expiration of their term until a successor has been appointed and qualified. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant.
- (b) Requirements for members:

- (1) Experience. The membership of the board of adjustment shall, whenever possible, include at least three members with experience in the following areas:
    - a. Urban planning;
    - b. Architecture;
    - c. Landscape architecture;
    - d. Law;
    - e. Development; or
    - f. Construction.
  - (2) Residency. Members of the board of adjustment shall be and remain bona fide residents of the city. If at any time any members of the board of adjustment fail to be and remain a resident of the city, the person shall be automatically disqualified and removed from the board.
- (c) Officers and rules. The board of adjustment shall elect a chair from its membership, and adopt rules for the conduct of its affairs which shall be in full force and effect when approved by the city commission.
- (d) Powers and duties. The board of adjustment shall have the following powers and duties under this chapter and building chapter provisions of the city:
- (1) Administrative review. Unless otherwise specified in the Code of Ordinances, the board of adjustment shall have the power and duty to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official of the city in the enforcement of the land development code or building chapters. The board shall not have the power or duty to hear and decide appeals from any order, requirement, decision, or determination when such are made as part of, or are inherent in, a chapter 2, article V, division 8, notice of violation, or division 6, civil citation, issued by a code enforcement officer or sworn law enforcement officer, unless otherwise provided in this Code of Ordinances. This shall not preclude hearing and deciding requests for special exceptions or variances, which may include matters also at issue in a notice of violation or civil citation. Public notice shall be given in the manner specified in subsections (j) and (l).
  - (2) Special exceptions.
    - a. The board of adjustment shall have the power and duty to hear and decide only such special exceptions as are specifically authorized by the terms of the Code of Ordinances; to decide such questions as are involved in determining whether special exceptions should be granted; and to grant special exceptions with such conditions and safeguards as are appropriate under the Code of Ordinances; or to deny special exceptions when not in harmony with the purpose, intent and requirements of the Code of Ordinances.
    - b. A special exception is hereby defined as a granting of permission for a use or action where specific provisions for such special exceptions are made in the Code of Ordinances. Such exceptions would not be appropriate generally or without restriction throughout the zoning district or other section of the Code of Ordinances but, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, prosperity or general welfare.
    - c. A special exception shall not be granted by the board of adjustment unless and until:
      1. A written application for a special exception is submitted indicating the section of the zoning ordinance under which the special exception is sought and stating the grounds on which it is requested.
      2. Notice of public hearing on the special exception shall be given in the manner prescribed in subsections (k) and (l).
      3. The public hearing shall be held whereat any party may appear in person, or by agent or attorney.
      4. The board of adjustment shall make findings that it is empowered under the section of the Code of Ordinances described in the application to grant the special exception, and that the granting of the

special exception, with any appropriate conditions and safeguards that the board may deem necessary, will not adversely affect the public interest.

- d. In reaching its conclusion and in making the findings required in this section, the board of adjustment shall consider and weigh the intent, factors and standards delineated in the applicable portion of the Code of Ordinances, and shall show in its record such factors as were considered and the disposition made thereof. Further, the board shall find in the case of any of these factors and standards, where they may be relevant and applicable, and in the case of other factors which the board may find relevant and applicable, that the purposes and requirements for granting the special exception have been met by the applicant.
- e. In granting any special exception, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with the standards herein set out and in conformity with the Code of Ordinances. Violation of such conditions and safeguards, when made a part of the terms under which the special exception is granted, shall be deemed a violation of the Code of Ordinances punishable under applicable sections of the Code of Ordinances. In the granting of a special exception, the board of adjustment may prescribe a time limit within which the action for which the special exception is granted shall begin or be completed, or both. Failure to begin or complete, or both, such action within the time limit shall void the special exception.
- f. The board of adjustment shall not entertain any petition for a special exception within two years after the denial of a request for the same special exception for the same property.

(3) Variances generally.

- a. The board of adjustment shall have the power and duty to authorize upon appeal from the decision of the administrative official in specific cases such variance from the terms of the land development code and building chapters, except as otherwise provided for therein, as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the land development code or building chapters would result in unnecessary hardship.
- b. Authorization.
  - 1. Defined. A variance is hereby defined as a relaxation of certain terms of the land development code or building chapters where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant or any predecessor-in-interest of the property, a literal enforcement of those terms of the land development code or building chapters would result in unnecessary and undue hardship.
  - 2. Authorized variances. For the purpose of this chapter, a variance is authorized only for height of structures; size of yard setbacks; driveway widths, street line corner clearances, and property line edge clearances, as provided in section 30-336(15); and landscape and tree management and flood control provisions as provided in section 30-310.
  - 3. Restrictions on granting of variances. A variance shall not be granted:
    - i. For establishment or expansion of a use otherwise prohibited; or
    - ii. Because of the presence of nonconformities in the zoning district or adjoining districts; or
    - iii. Because of financial loss or business competition; or
    - iv. Because the property was purchased with the intent to develop or improve the property, and the intended development or improvement would violate the restrictions of the land development code or building chapter, whether or not it was known at the time of purchase that such development would be a violation.
- c. A variance from the terms of this chapter or building chapters shall not be granted unless and until:
  - 1. A written application for a variance is submitted demonstrating:
    - i. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.

- ii. That literal enforcement of the provisions of the land development code or building chapters would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the land development code or building chapters.
  - iii. That the special conditions and circumstances do not result from the action of the applicant.
  - iv. That granting the variance requested will not confer on the applicant any special privilege that is denied by this section to other lands, structures or buildings in the same district.
- 2. Notice of public hearing shall be given as required by subsections (j) and (l) and as may be required by this chapter or building chapters.
- 3. The public hearing shall be held whereat any party may appear in person or by agent or attorney.
- 4. The board of adjustment shall make findings that the requirements of this section have been met by the applicant.
- 5. The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
- 6. The board of adjustment shall further make a finding that the grant of the variance will be in harmony with the general intent and purpose of the land development code or building chapters, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- d. In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with the land development code or building chapters. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable according to applicable law.
- e. Under no circumstances shall the board of adjustment grant a variance under this chapter to permit a use not permitted generally or by special exception in the district involved, or any use expressly or by necessary implication prohibited by the terms of this chapter in the district.
- f. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts, shall be considered grounds for the issuance of a variance.
- g. Any variance granted shall expire within six months after the date of grant, unless a building permit based upon and incorporating the variance is issued within the aforesaid six-month period and construction has begun thereunder.
- h. The board of adjustment shall not entertain any petition for a variance within two years after the denial of a request for the same variance for the same property.
- (4) Decisions. In exercising any of the powers now or otherwise given to the board of adjustment, the board of adjustment may, so long as such action is in conformity with this section and the requirements of the land development code and building chapters, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the administrative official from whom the appeal is taken.
- (5) Additional duties. The board of adjustment shall perform such additional duties as may, by ordinance, be delegated to it and which shall pertain to the above assigned powers.
- (6) Special exceptions and variances deemed appeals. It is hereby declared for the purpose of the procedures outlined in subsection (h) that the term "appeals" as used in subsection (h) shall be deemed to include special exceptions and variances.
- (e) Meetings. The board of adjustment shall hold regular meetings at least once in each calendar month. Special meetings may be held upon the call of the chairman or upon the written request of any two members of the board. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records

of its examinations and all other official actions, which shall be filed immediately in the office of the board and which shall become public records.

- (f) Publication of agenda of hearings. A list of the hearings to be held at meetings of the board of adjustment shall be published in a newspaper of general circulation in the city at least ten days prior to each meeting.
- (g) Testimony before board. The chairperson of the board or, in his/her absence, the vice-chairperson, may administer oaths.
- (h) Process for appeals from administrative decisions.
  - (1) Unless otherwise provided for in this Code of Ordinances, appeals regarding a specific property where a person has a legal interest (affected person) must be taken to the board of adjustment by the affected person within 20 days from the date of the notice of the final administrative action by an administrative officer regarding any land development code or building chapter provision (chapters 6 and 30), which affects a specific property where the affected person has a legal interest, when that decision is adverse to his/her interest or by the applicant within 20 days from the time the building inspector refuses to issue any permit after application therefore has been duly made. Each notice of final administrative action shall include an explanation of the affected person's right to appeal and give the time period (20 days) for filing a petition for appeal to the board.
  - (2) All petitions for appeal containing or attaching the requisite information described in this paragraph shall be filed with the secretary of the board on forms prescribed by the board and shall be accompanied by all of the papers constituting the record upon which the action was taken. In addition, all petitions for appeal must include:
    - a. An explanation of how the petitioner's substantial interest is affected by the administrator's decision;
    - b. A statement of how and when the petitioner received notice of the administrator's decision;
    - c. A statement of all disputed issues of material fact or a statement that there are no disputed issues of material fact;
    - d. A concise statement of the ultimate facts alleged, including specific facts that the petitioner contends would warrant reversal by the board or would warrant modification of the administrator's decision; and
    - e. A statement of relief sought by the petitioner, stating precisely the remedy the petitioner seeks from the board.
  - (3) An appeal to the board of adjustment shall stay all collateral proceedings related to the action appealed from, including but not limited to collateral proceedings pending pursuant to chapter 2, article V, division 8, notice of violation, or division 6, civil citations, unless the officer from whom the appeal is taken shall certify to the board after the appeal has been filed that, by reason of facts stated in the certificate, a stay, in his/her opinion, would cause imminent peril to life or property, in which case proceedings on the collateral action shall not be stayed other than by order of the board or by a court of equity after notice to the officer from whom the appeal is taken and on due cause shown.
  - (4) The board shall hear and determine all appeals promptly after giving to all parties at least ten days' written notice of the time and place of the hearing, as is stated in this section. Any party in interest at a hearing may appear in person or be represented by an agent or attorney.
  - (5) a. Timely filed petitions stating there are no disputed issues of material fact shall be processed and heard as follows:
    - i. The board secretary shall schedule a quasi-judicial hearing of the matter before the board after giving all parties at least ten days written notice of the time and place of the hearing.
    - ii. All parties shall submit to the secretary of the board any documentary evidence intended to be introduced at the hearing on their behalf at least five business days prior to the hearing.
    - iii. At the hearing, the board shall provide all parties the opportunity to present written or oral evidence in support of the documentary evidence submitted on their behalf including the petition.

iv. If during the course of the proceeding a disputed issue of material fact arises then, unless waived by all parties, the proceeding under this subsection (5)a. shall be terminated and a proceeding under subsection (5)b., below, shall be conducted.

b. Timely filed petitions stating there are disputed issues of material fact shall be processed and heard as follows:

- i. The city, through the city attorney's office, shall arrange for the services of a hearing officer to conduct the formal quasi-judicial hearing.
- ii. In conducting the hearing to resolve disputed issues of material fact, the hearing officer shall have the power to administer oaths, issue subpoenas, compel the production of books, paper, and other documents, and receive evidence. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the hearing officer's recommended order, and to be represented by counsel or other qualified representative. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- iii. The hearing officer shall prepare a recommended order consisting of findings of fact, conclusions of law and affirmative relief, if applicable. The hearing officer shall transmit the recommended order to the board and all parties. Each party shall have 15 days from the date of the hearing officer's order to submit written exceptions to the hearing officer's recommended order. The order will be set on the next available board of adjustment agenda following the expiration of time to submit written exceptions and shall only be removed from the agenda for good cause shown. The board shall review such order and any written exceptions and may set forth any deficiencies it finds with respect to the order. Said deficiencies shall be limited to determinations that the findings were not based upon competent, substantial evidence, or that the proceedings on which the findings were based did not comply with the essential requirements of law. In reviewing such recommended order, the board shall not have the power to receive or consider additional evidence. The board shall have no power to reject or modify the findings of fact contained in the recommended order unless the board first determines from a review of the entire record and states with particularity in the order that the findings of fact were not based upon competent, substantial evidence or upon a showing that the proceedings on which the findings were based did not comply with the essential requirements of law. The board may either adopt the recommended order as the final order, or by a three-fourths majority vote of those present reject the hearing officer's recommendation.

(6) Upon reaching its decision, the board shall make such order as it shall deem to be proper to each case and to that end shall have all of the powers of the officer from whom the appeal was taken. Each order shall thereafter be reduced to writing and shall contain a full recital of the board in each case. A copy thereof shall be filed in the records of the board by its secretary.

- (i) Notification of hearing on variance. No variance shall be authorized by the board of adjustment upon appeal from the terms of this chapter unless a public hearing on the appeal has been held by the board after notice of the hearing has been given as follows: Where the variance is for some deviation from the zoning district regulations, all owners of property within 300 feet of the premises for which the variance is requested shall be notified of the hearing.
- (j) Notification of appeal alleging error by administrative official. In connection with appeals where it is alleged there is error in any order, requirement, decision or determination made by any administrative official in the enforcement of this chapter, notification shall be given to all owners of property within 300 feet of the premises which are involved in the appeal.
- (k) Notification of request for special zoning exception. In all cases of requests for special exceptions to the terms of this chapter which the board of adjustment is required to hear and decide, all owners of property within 300 feet of the premises for which the special exception is requested shall be notified of the hearing.
- (l) Notification time for mailing. Where notice to nearby property owners is required in connection with hearings, the notice shall be mailed to the property owner at least ten days before the date of the hearing. For this purpose the

owner of property shall be deemed to be the person who, with his/her address, is so shown on the tax rolls of the city.

(m) Rehearings.

- (1) Request for rehearing. A request for rehearing of any matter decided by the board of adjustment may only be submitted by the original petitioner or agent, the city manager or designee, the city commission, or an affected person, who presented oral or written testimony or evidence at the initial hearing. The request must be filed with the secretary of the board on a form provided by the secretary within ten days of the date the decision is made by the board. The request will be considered at the next scheduled meeting of the board at least 15 days after the request is filed.
- (2) Basis of request for rehearing. A request for rehearing shall only be granted if at least three members of the board find that the requester has demonstrated by competent substantial evidence that the board overlooked or failed to correctly interpret evidence presented at the initial hearing.
- (3) Procedure for scheduling rehearing. If the request for rehearing is granted by the board, the board shall hold the rehearing at its next regularly scheduled meeting, or at a special meeting convened by the board for that purpose at least 15 days after the request is granted. Notice of the rehearing shall be sent to all owners of property within 300 feet of the premises involved in the rehearing.

(n) **Appeals. Right to appeal board's decision in an administrative review.**

- (1) Any person aggrieved by a decision rendered by the board under administrative review may appeal the decision to the city commission by writ of certiorari within 30 days from the date the decision of the board is reduced to writing and sent by U.S. mail to such person. The appeal shall be made by filing a written notice of appeal within the above-prescribed time period with the clerk of the city commission. The notice shall set forth concisely the decision appealed from and the reasons or grounds for the appeal.
  - (2) The appeal shall be heard by the city commission at its next regular meeting, provided at least 14 days have intervened between the time of the filing of the notice of appeal and the date of such meeting. The city commission shall consider only evidence and testimony placed in the record before the board at its hearing and may hear oral argument by each party in support of or in opposition to the board's finding and decision. The city commission shall consider only whether due process was afforded the parties, whether the board applied the correct law, and whether the board's findings are supported by competent substantial evidence and shall then promptly make its decision and issue a final order affirming, amending or reversing the board's decision. The decision of the city commission shall be reduced to writing and shall constitute final administrative action. Appeals from decisions of the city commission may be made to the courts by writ of certiorari.
  - (3) Unless otherwise provided herein, any affected person aggrieved by any final administrative decision under this section may appeal the decision to a court of competent jurisdiction within 30 days of the date of the decision.
- (o) Implementation of board's decision. Any permit, authorization or other development order issued based on the board's decision prior to the end of the period for filing an appeal pursuant to subsection (d) is considered conditional. Any action taken during the appeal period is taken at the sole risk of the property owner, who may be required to undo any work done if the decision of the board is overturned either by a rehearing of the board, an appeal to the city commission, or in an appeal to a court of competent jurisdiction.

(Ord. No. 3777, § 1, 6-10-92; Ord. No. 951088, § 1, 7-8-96; Ord. No. 970453, §§ 2—5, 6-8-98; Ord. No. 021037, § 1, 7-14-03; Ord. No. 060109, § 1, 11-13-06; Ord. No. 130106, § 2, 12-19-13)

**Cross reference—** Buildings and building regulations, Ch. 6.