



Legislation Text

File #: 060109., **Version:** 1

BOARD OF ADJUSTMENT RULES, PROCEDURES AND APPEALS (B)

Ordinance No. 0-06-53; Petition 18TCH-06 PB

An ordinance of the City of Gainesville, Florida, relating to the establishment and jurisdiction of the Board of Adjustment; amending section 30-354; establishing term limits for members, establishing minimum preferred requirements for members, amending the appeals process; amending subsection 30-346(d), removing the allowance that the board of adjustment may permit the reestablishment of a nonconforming use after the use has been discontinued or abandoned for nine consecutive months; deleting and repealing in its entirety obsolete board of adjustment appeals processes stated at sections 6-242 and 13-211, relating to the commercial building code; repealing obsolete board of adjustment appeals processes and criminal ordinance violations processes stated at section 30-327, relating to the sign regulations as stated in the Land Development Code; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

The City Commission adopt the proposed ordinance.

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

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 Committee concluded that the best approach is to advertise the existing appointments to the BOA, and implement training for BOA members, along with various changes to jurisdiction and appeals procedures.

The Plan Board heard and approved this petition on July 20, 2006. The Plan Board believes that the BOA can operate in an improved manner, in part, by adopting the following text amendments:

- > Establish term limits for BOA members.
- > Establish preferred (not required) backgrounds or experience in urban planning, architecture, landscape architecture, law, development or construction for 3 out of 5 BOA members.
- > Amend the process for appeals from administrative (staff) decisions.

(This change would require that after all staff appeal levels are exhausted, the appeal would go to a hearing officer if the facts are in dispute, and then to the BOA. If the facts are not in dispute and all staff appeals are exhausted, the appeal would go directly to the BOA. The appeal of a BOA decision on a staff decision could then be appealed to the City Commission. The Commission would review the record of the hearing below, and determine if the Board's decision: 1) denied due process; 2) applied the correct law; and 3) the findings are supported by competent substantial evidence. Currently, all appeals go only to the BOA, and none go to a hearing officer.)

- > Specify additional informational requirements regarding petitions for appeal.
- > Amend City codes so that once a nonconforming use lapses for 9 months, there can be no possibility of appealing to re-establish the use. (Currently, a lapsed non-conforming use can be re-established by a decision of the BOA.)

> Eliminate rarely used appeals to the BOA pertaining to signs and commercial buildings.

CITY ATTORNEY MEMORANDUM

Should the Commission adopt the ordinance on first reading; the second and final reading will be held on Monday, November 13, 2006.