

violation shall continue shall constitute a separate offense and shall be punishable hereunder. **[Amended 3-2-1964]**

- F. Other remedies. In addition to the foregoing remedies, the city may institute any appropriate action or proceeding to prevent or restrain any violation of this ordinance.

§ 103-18. Board of Appeals.

- A. Creation and organization. A Board of Appeals, consisting of five members appointed by the Mayor, is hereby established as constituted and empowered under Section 81 and 81-a of the General City Law. One member of said Board shall be designated by the Mayor to act as Chairman. The City Clerk shall be the Clerk of the Board of Appeals.
- B. Powers and duties. The Board of Appeals shall have all the power and duties prescribed by law and by this ordinance, which are more particularly specified as follows:
- (1) Interpretation. Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this ordinance, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
 - (2) Variances. Where there are practical difficulties or unnecessary hardships in carrying out the strict application of this ordinance, the Board of Appeals may vary or modify the requirements of this ordinance relating to the use or the arrangement of buildings or structures so that the spirit of this ordinance shall be observed, public safety and welfare secured and substantial justice done. In granting any variance, the Board of Appeals shall prescribe any conditions that it deems to be necessary or desirable. No variance in the strict

application of any provision of this ordinance shall be granted by the Board of Appeals unless it finds:

- (a) That there are special circumstances or conditions, fully described in the findings, applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood and are not self-created by any person having an interest in the property or the result of mere disregard for or ignorance of the provisions of this ordinance, and that said circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of such land or building;
 - (b) That, for reasons fully set forth in the findings, the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that will accomplish this purpose;
 - (c) That the granting of the variance will be in harmony with the general purpose and intent of this ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (3) The following types of cases shall be construed as eligible for consideration as hardship cases within the meaning of this ordinance.
- (a) Unusual size and shape of lot, Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property, at the time of the effective date of this ordinance, or by reason of exceptional topographic conditions

or other exceptional physical difficulties in the development of such piece of property, the literal enforcement of the requirements of this ordinance pertaining to yards or other space relationships would result in peculiar practical difficulties or exceptional undue hardship upon the owner of such property. No use variance shall be granted in such case.

- (b) Lots in two districts. Where a district boundary divides a lot in single or joint ownership of record at the time such line is adopted, the Board of Appeals, under such conditions that will safeguard the character of the more restricted district, may permit the regulations for the less restricted portion of such lot to extend not more than 25 feet into the less restricted portion, provided that access to the lot is from the frontage on a street or highway in the less restricted portion.
- (c) Adjacent nonconforming uses. Where adjacent to a lot on both sides, in the case of an interior lot, or on both the side and rear of the lot or on all of the corners of an intersection in the case of a corner lot, there are buildings or uses which do not conform to regulations prescribed in this ordinance for the district in which said lot is located. In considering such appeal, the Board shall give due regard to the nature and conditions of all adjacent uses and structures: and, in granting any such appeal, the Board may impose special requirements and conditions for the protection of conforming uses and the ultimate removal of nonconforming uses and structures. In any case, the variance as to the use or uses permitted on any lot, whether principal or accessory shall not allow a use or combination of uses more intensive or less restricted than any use which is legally

existing on premises immediately adjacent on either side of said lot, or of premises on any other corner of the intersection in the case of a corner lot.

- (d) Nonconforming building time elapsed. Where, because the principal building on any premises was originally lawfully erected and intended for a principal use which would now be a nonconforming use in the district in which located, and the right to continue, establish or reestablish such nonconforming use in such building is denied by the provisions of § 103-16 of this ordinance, the literal enforcement of such time would result in peculiar and exceptional practical difficulties or exceptional and undue hardship upon the owner of such property. In considering any such appeal, the Board shall give due regard to the age and condition of such building and its adaptability for or convertibility to a conforming use. In approving any such appeal the Board shall specify the time limit during which such grant of a variance shall be effective, which time limit shall in no case exceed the estimated useful life of such building. In case the building has been condemned by the Building Inspector and ordered to be demolished, the Board shall not grant any such appeal.
- (4) Special use permits. All applications for a special use permit shall be subject to the following procedures and standards: **[Amended 3-21-1989]**
- (a) Site plan. All applications for a special use permit shall include a site plan and shall be made to the Board of Appeals. Prior to the Board of Appeals taking action on a special use permit application, the Board of Appeals shall refer such application, together with a site

plan, to the Planning Commission for review. The Planning Commission shall review both the special use permit application and the site plan and provide a written recommendation to the Board of Appeals.

- [1] The review by the Planning Commission shall consider and address the consistency of the special use permit proposal and site plan with regard to:
 - [a] The goals and policies of the City's Comprehensive Plan and the provisions of this chapter.
 - [b] Adjacent land use(s), the character of the neighborhood, traffic conditions, parking, utility systems, drainage and other matters which affect the public health, safety and general welfare.
 - [c] The ability of the site to be adequately served by essential public facilities and services, including but not limited to: sanitary sewers, public water supply, stormwater drainage, street capacity, police protection, fire suppression services and public schools.
 - [d] The adequacy of any proposed open space or recreational areas on the site, where applicable, to meet the needs of the residents of the development.
- [2] Within 45 days of the receipt of a complete application for site plan approval, the Planning Commission shall issue a written report to the Board of Appeals. If

the Planning Commission deems that a public hearing on the site plan is in the best interest of the City, the Planning Commission shall have 90 days from its receipt of the application to provide its report to the Board of Appeals.

- [3] A site plan shall be approved by the Planning Commission for each special use permit before a building permit may be issued.
- (b) Dimensional variances. In the event a site plan results in the need for dimensional variances, the Board of Appeals will consider such variance application only after the Planning Commission has completed its review of the site plan and has informed the Board of Appeals as to the minimum variance necessary to accommodate the site's layout.
- (c) Existing violation. No permit shall be issued for a special use for a property where there is an existing violation of this ordinance.
- (d) Expiration. A special use permit shall be deemed to authorize only one particular special use. The special use permit approved shall expire if action to develop the special use is not commenced within six months of issuance or if the special use shall cease for more than one year for any reason.
- (e) Standards.
- [1] The Board of Appeals shall not authorize any permit under the provisions of this section unless it finds in each case that the proposed use:

- [a] Will be in harmony with the comprehensive plan set forth in this ordinance and with the general purposes and intent of this ordinance;
 - [b] Will not tend to depreciate the value of adjacent property;
 - [c] Will not create a hazard to health, safety or the general welfare;
 - [d] Will not alter the essential character of the neighborhood nor be detrimental to the residents thereof; and
 - [e] Will not otherwise be detrimental to the public convenience or welfare.
- [2] In considering an application, the Board of Appeals shall take into account the following:
- [a] Accessibility of the property in relation to existing and proposed streets and the effect of the special use on area traffic patterns;
 - [b] The nature and intensity of the operation and its compatibility with surrounding development;
 - [c] The means by which surrounding properties will be protected from any objectional influences, such as noise, glare or dust, which may be produced by such special use.

C. Procedure.

- (1) General.
 - (a) The Board of Appeals shall have the power to adopt rules of procedure not inconsistent with law or ordinance.
 - (b) The meetings of the Board shall be held at such times as it shall determine from time to time. The Chairman may call a meeting at any time, or two members may call a meeting by filing a copy of such call with the Clerk, directing him to notify the other members of the Board of the time, place and purpose of such meeting. All meetings of the Board shall be public, but the Board shall have a right to consider matters involving the public welfare in executive session, provided that no action in relation to such matters is taken except in public session and by open vote.
 - (c) The concurring vote of four members of such Board shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector or to decide in favor of the applicant any matter upon which it is required to pass under this ordinance or to effect any variation in this ordinance.
- (2) Filing appeals and applications.
 - (a) Appeal for interpretation. An appeal to the Board of Appeals from any ruling of the Building Inspector may be taken by any person aggrieved or by an officer, department, board or bureau of the City. Such appeal shall be taken within such time as shall be prescribed by the Board by general rule, by filing with the officer from whom the appeal is taken and with the Clerk of the Board of Appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith

transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

- (b) Appeal for variance and applications. An appeal for variance or an application for any matter upon which the Board of Appeals is required to pass may be made to the Building Inspector by the owner or tenant of the property for which such appeal or application is sought.
- (3) Public hearing.
- (a) The Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give due and public notice thereof by publication in the official paper of the City of a notice of such hearing at least five days prior to the date thereof and shall, at least five days before such hearing, mail notice thereof to the petitioner and shall decide such appeal or matter within a reasonable time after such hearing. Upon the hearing, any party may appear in person, by agent or by attorney.
 - (b) Every decision of the Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case.
- (4) Stay of proceedings. Any appeal to the Board of Appeals shall stay all proceedings in furtherance of the action appealed from as provided in § 81 of the General City Law.
- (5) Fees. Any appeal or application to the Board of Appeals shall be accompanied by a fee of \$50. **[Amended 5-16-1960; 2-6-1979; 3-21-2000]**