

§ 14-16-4-4 APPEAL.

(A) Jurisdiction.

- (1) Appeal of declaratory rulings as to the applicability of the Zoning Code by the Zoning Enforcement Officer, or any action which is authorized by the Zoning Code and is made by the Planning Director is to the City Council through the Land Use Hearing Officer. Appeal of decisions of the Zoning Hearing Examiner is to the Board of Appeals. Upon denial of a Certificate of Appropriateness by the Mayor or Planning Director under the terms of § 14-16-2-25 or § 14-16-2-28 of this Zoning Code, the matter will be remanded to the Landmarks and Urban Conservation Commission for further consideration, if the applicant requests such remand within 15 days of denial.
- (2) Appeal of the following actions is to the City Council through the Land Use Hearing Officer:
 - (a) Any action which is authorized by the Zoning Code and is made by the Planning Commission;
 - (b) Denial of an application for the HO Historic Overlay Zone or UCO Urban Conservation Overlay Zone by the Landmarks and Urban Conservation Commission;
 - (c) A decision on a special use permit by the Landmarks and Urban Conservation Commission;
 - (d) Appeals of a decision of the Board of Appeals; and
 - (e) Appeals of a decision of the Development Review Board.
- (3) Once an appeal is filed, no prior decision rendered by the Zoning Enforcement Officer, the Zoning Hearing Examiner, the Planning Director, the Planning Commission, the Board of Appeals, the Development Review Board, or Landmarks and Urban Conservation Commission upon which the appeal is based may be unilaterally withdrawn, changed or modified by any of the above as they have lost jurisdiction to act on the matter.

(B) Application.

- (1) Administrative appeals shall be filed at the office of the Planning Department. Any zoning decision which can be appealed under the terms of division (A) above is final unless appeal is initiated by application to the city on prescribed forms within 15 days of the announced decision. The date of determination is not included in the 15-day period for filing an appeal, and if the 15th day falls on a Saturday, Sunday, or holiday as listed in § 3-1-12, the next working day is considered as the deadline for filing the appeal. Appeals of declaratory rulings to the City Council are not subject to the time limits on making an appeal as set forth above. Written decisions shall be issued by the Planning Department no later than five working days after an oral decision has been rendered.
- (2) The following persons shall have the right to file appeals of city planning, zoning and land use decisions:
 - (a) Where the decision appealed is a special exception, persons who were parties or could have been parties at the Zoning Hearing Examiner's hearing.
 - (b) Any person may appeal declaratory rulings by the Zoning Enforcement Officer.

- (c) Where the decision appealed is a conditional use for retail sale of alcoholic drink for consumption off premises where the portion of the building used for such business is within 500 feet of a residential zone, any person who owns a property interest within 500 feet of the subject site (excluding public right-of-way).
 - (d) In other cases, persons who own a property interest within 300 feet of the subject-site (excluding public right-of-way); and organized neighborhood associations (as provided in § 14-16-4-2(B)(2)(d)) if the boundaries of the association include any part of the subject-site or any land within 600 feet thereof (excluding public right-of-way).
 - (e) Any person who demonstrates a personal or pecuniary interest or property right adversely affected by the decision, which right or interest is more than merely nominal or remote.
- (3) In prosecuting or defending an appeal any person may be represented by an attorney, any other representative or may appear for him or herself. An attorney or other representative must have written authorization from the person being represented. Any attorney, other representative or person appearing for himself or herself must abide by orders of the appellate body and preserve appropriate decorum.
 - (4) Applications for an appeal shall clearly articulate the reasons for the appeal; appellants shall specifically cite and explain one or more alleged errors:
 - (a) In applying adopted city plans, policies, and ordinances in arriving at the decision;
 - (b) In the appealed action or decision, including its stated facts;
 - (c) In acting arbitrarily or capriciously or manifestly abusive of discretion.
 - (5) A permit dependent on a decision described in division (A) of this section shall not be issued until an appeal is decided or the time for filing the appeal has expired without an appeal being filed; however, if public hearing produces no objection of any kind to approval of an application, which application is approved, the deciding entity may allow issuance of a building permit before 15 days if the applicant agrees in writing to return the building permit if an appeal is duly filed. The appeal of a decision by the Planning Director to issue a building permit shall not result in the automatic revocation of the permit. The holder of the permit shall be on notice that the building permit may be withdrawn.

(C) Acceptance.

- (1) The City Council, upon accepting an appeal, shall refer the appeal to the Land Use Hearing Officer for a hearing. The Land Use Hearing Officer may place reasonable limitations on an appeal hearing at the beginning of the hearing in question. The Land Use Hearing Officer shall hear the appeal in accordance with rules adopted by the Council and shall enter a recommendation regarding the appeal after making appropriate findings of fact. The Land Use Hearing Officer may accept new evidence into the record. If the Land Use Hearing Officer's recommendation is that the appeal should be remanded, the Land Use Hearing Officer shall set forth the reason(s) for the remand and the matters to be reconsidered. The Land Use Hearing Officer shall forward the recommendation and findings to the Council within five days of the recommendation. The Council shall place the Land Use Hearing Officer's recommendation, including findings, on the agenda of the next regular full Council meeting at which land use, planning and zoning matters are heard following receipt of the Land Use Hearing Officer's recommendation. At the Council meeting, the Council shall vote whether to accept or reject the Land Use Hearing Officer's recommendation and findings. The

Council may accept a portion of the Land Use Hearing Officer's recommendation and findings and reject the remainder. A motion to reject or accept the Land Use Hearing Officer's recommendation and findings must be approved by a majority of the membership of the Council. If the Land Use Hearing Officer's recommendation is rejected or if a majority of the Council fails to either accept or reject the recommendation, the appeal shall be scheduled before the full Council no earlier than the next regular meeting of the full Council at which land use matters are heard. If only a portion of the Land Use Hearing Officer's recommendation and findings are rejected, only that portion shall be scheduled for hearing before the Council. The Council may accept new evidence. Prior to the Council hearing a matter, following the rejection of a LUHO recommendation, the LUHO hearing shall be transcribed and made a part of the record before the City Council.

- (2) The City Council may remand an appeal to the Planning Commission, Board of Appeals, Development Review Board, Planning Director or Landmarks and Urban Conservation Commission for rehearing and decision if it finds that rehearing would be likely to serve public policy and resolve the appeal. If the City Council remands an appeal to the Planning Commission, Board of Appeals, Development Review Board, Planning Director or Landmarks and Urban Conservation Commission, the Council shall state key findings of fact on which that action is based.
- (3) The Planning Commission, Board of Appeals, Development Review Board or Landmarks and Urban Conservation Commission shall hold a public hearing and make a decision relative to all appeals sent to it initially or remanded to it by the City Council as set forth elsewhere in this Zoning Code.
- (4) No public advertising or announcement of appeals is required beyond that specified in division (E)(4) of this section.
- (5) The City Council may approve the withdrawal of an appeal if it has received a written request to this effect from the appellant.

(D) Fee. A filing fee of \$55 to cover reasonable expenses shall accompany each appeal application. When an application is withdrawn, the application fee shall not be refunded. There shall be no filing fee on an appeal of the Planning Commission, the Board of Appeals, Development Review Board, Planning Director or the Landmarks and Urban Conservation Commission, on a decision remanded to it by the City Council.

(E) Hearing and Decision.

- (1) An appeal to the Board of Appeals shall have a public hearing opened within 45 days of the expiration of the appeal period and concluded within 75 days of the expiration of the appeal period; however, the appellate body may for good cause determine that the appeal hearing should be deferred beyond the 75-day period. An appeal to the City Council shall be introduced into the Council within 45 days of the expiration of the appeal period, the hearing opened within 60 days of the expiration of the appeal period, and concluded within 90 days of the expiration of the appeal period; however, the Council may for good cause determine that the appeal should be deferred beyond the 90-day period.
- (2) The general procedure for an appeal hearing is as follows:
 - (a) The appellate body, including the Land Use Hearing Officer, may hold a hearing on the entire record sent to it and reverse, affirm, or modify the decision appealed.

- (b) If it appears to the appellate body that some additional evidence is necessary for the proper disposition of the matter, it may allow evidence to be taken.
 - (c) The appellate body may remand the matter for reconsideration; if the appellate body remands the appeal, it shall state specifically the matters to be reconsidered and the reasons for remand on which that action is based.
 - (d) The presiding officer and the Land Use Hearing Officer may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony and cross-examination.
 - (e) Staff of the appellate body, other than employees of a city division which is the appellant or the appellee, may upon request of a member of the appellate body communicate with that member at any time and by any means; copies of any written materials shall be distributed to all parties. In addition to appearing before the body, any party to an appeal may provide written argument to the appellate body by submitting it through the staff of that body. The written argument shall not include new evidence and shall be submitted at least five days before the next hearing on the appeal with copies provided to any neighborhood association entitled to notice in the case and to all parties. Any appellate body may, by rule or regulation, increase the five day period. There should be no other communication, outside a hearing, with a member of an appellate body concerning a pending appeal. Any other communication that does occur shall be disclosed by the member of the appellate body who receives the communication.
 - (f) The appellate body hearing the appeal shall take action on the appeal at the conclusion of the hearing, and shall state and adopt key findings of fact. Appellate bodies other than the City Council shall adopt their findings immediately after taking action on the appeal. The City Council may, after taking action on the appeal, adopt findings at the conclusion of the hearing or at the next scheduled meeting of the City Council, provided a councillor who did not participate in the action taken on the appeal may not participate in the action to adopt the findings.
- (3) Special, additional appeal procedures apply when the matter is an appeal of a special exception or a zone map amendment:
- (a) All testimony at the hearing shall be under oath or affirmation.
 - (b) No member of the appellate body shall inspect the site with any party to the appeal or his representative.
- (4) The Planning Director shall give written notice of an appeal, together with a notice of the date, time, and place of hearing to the applicant, a representative of the opponents, if any are known, and the appellant.
- (5) Vote needed:
- (a) 1. When the Planning Commission has voted a change in zoning regulation and this action is appealed to the City Council, a majority of all members of the City Council is required to defeat an appeal and change the zoning regulation if the appeal is signed by each of the equitable owners of record of land comprising at least:
 - a. Twenty percent of the land proposed for change in zone; or

- b. Twenty percent of the land not proposed for zone change but within 100 feet, excluding public right-of-way, of the land proposed for change in zone.
 2. It is the burden of the persons asserting the applicability of this division (a) to show that it applies through clear and convincing evidence.
- (b) Unless division (a) above applies, a majority of all members of the City Council is required to reverse a determination by the Planning Commission, the Board of Appeals, the Development Review Board, the Planning Director or the Landmarks and Urban Conservation Commission.
- (c) A simple majority of the Planning Commission or the Board of Appeals is required to reverse a determination of the city staff.
- (d) For the purpose of this division (E), CHANGE IN ZONING REGULATION means one of the following:
1. Change in the identity of the mapped zones;
 2. Initial adoption of sector development plans or site development plans; or
 3. Amendment of such plans if and only if:
 - a. The land uses permitted would be changed;
 - b. A limitation as to maximum total floor area within the plan area would be changed by 10% or more;
 - c. Building height at a given place within the plan area would be changed by 10% or more and would be over 26 feet high; or
 - d. The permitted number of dwelling units would be changed.
- (6) If, in deciding an appeal, the City Council amends the zone map, the new zone must be one whose uses and density are within what is allowed in the proposed zone which has been advertised.
- (7) In acting on an appeal, the city reserves for all its appellate bodies, including the Land Use Hearing Officer, the portion of the city's zoning authority which allows the city to decide appeal based on the preponderance of the evidence, to reweigh the evidence in the record, and to accept supplementary evidence when appropriate. However, a city appellate body may adopt rules barring new evidence.
- (F) **Judicial Review.** The remedy for parties dissatisfied with the action of the City Council shall be in accordance with state law. The review shall be limited to the record made on the public hearings held pursuant to this Zoning Code.
- (G) The Council shall adopt regulations setting forth the qualifications of the Land Use Hearing Officer.
- (H) If the Land Use Hearing Officer has a conflict of interest regarding a particular appeal or a party to that appeal, the appeal shall be heard by the Council.

- (I) In any matter heard by the Council without the Land Use Hearing Officer, the Council may choose to have a Hearing Officer take testimony and make recommendations.
- (J) Any city appellate body, including the City Council and Land Use Hearing Officer, for a given case, may suspend any applicable procedural rule if doing so does not adversely impact any party's rights.

('74 Code, § 7-14-45) (Ord. 80-1975; Am. Ord. 86-1976; Am. Ord. 6-1977; Am. Ord. 31-1977; Am. Ord. 21-1978; Am. Ord. 38-1978; Am. Ord. 22-1980; Am. Ord. 53-1980; Am. Ord. 100-1980; Am. Ord. 69-1981; Am. Ord. 72-1981; Am. Ord. 68-1983; Am. Ord. 4-1984; Am. Ord. 75-1985; Am. Ord. 49-1987; Am. Ord. 73-1989; Am. Ord. 45-1990; Am. Ord. 38-1991; Am. Ord. 9-1992; Am. Ord. 16-1992; Am. Ord. 54-1992; Am. Ord. 59-1993; Am. Ord. 29-1995; Am. Ord. 23-2001; Am. Ord. 30-2002; Am. Ord. 20-2003; Am. Ord. 8-2005; Am. Ord. 1-2007; Am. Ord. 33-2008; O-13-63)