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Board of Adjustment Training



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Board of Adjustment

- A Quasi-judicial administrative body that functions on the level between enforcement officers (staff) and the Courts.
- The Board interprets the meaning and spirit of City Code Title 10 (Zoning Code).
- The Board does not have authority to make or change zoning law.





Duties of the Board of Adjustment

- Hears and decides appeals in which it is alleged there is an error in an order, requirement, or decision made by staff in the enforcement of the Zoning Code.
- Hears and decides requests for variances from the terms of the Zoning Code in accordance with the findings.
- Reverse or affirm, wholly or in part, or modify the order, requirement, or decision of staff and make such order, requirement, decision, or determination as necessary.





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Relationship to Staff

- Staff works for the Board but is not hired by Board.
- Staff liaison (Zoning Code Manager) works under the direction of the Planning Director
- Board may seek information from staff, ask for recommendations or actions, and rely on the staff's expert knowledge
- It is not within the Board's authority to direct staff to prepare a new General Plan or Zoning Code





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Authority for Planning

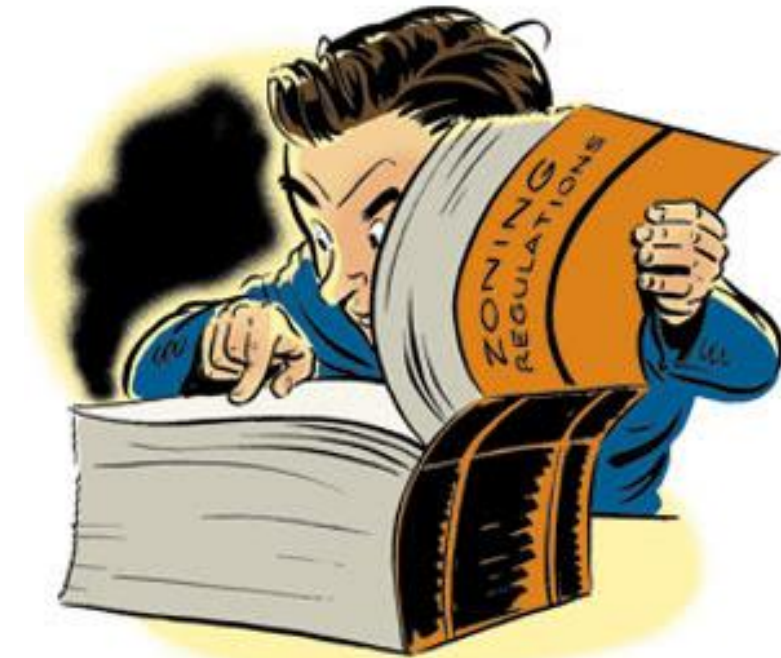
Police Powers v. Private Property





Zoning Code

- Zoning is the classification of land according to use or form.
- Uses/Forms may be permitted outright, permitted with conditions, permitted as an accessory use, or prohibited.
- Consists of two parts: the map and the text.
- ARS 9-462.01 provides for the adoption and administration of zoning in Arizona





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What is a Variance?

- A grant of relief from the requirements of the Zoning Code that permits construction in a manner that would otherwise be prohibited by this Zoning Code where circumstances or conditions not created by or in control of a property owner have created practical difficulties or unnecessary hardships that undermine the spirit of these regulations or undermine public safety and welfare.
- A Variance may not be granted to allow uses that are not permitted in the Zone.





Ethical Principles in Planning



- The planning process must continuously pursue and faithfully serve the public interest.
- Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.





Conflict of Interest

- Three Questions to Identify a Conflict of Interest:
 - Will my decision have a positive or negative impact on my interests or that of my relatives?
 - Do I have a monetary or ownership interest in the matter?
 - Is my interest other than one of the designated remote interests?
- Remote interests are financial and property interests deemed to be so minor as not to trigger the reporting and non-participation requirements
- May still vote and participate in discussions





Open Meeting Law

“All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.” ARS § 38-431.01(A).

“It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided” ARS § 38-431.09.





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What constitutes a meeting?

A meeting is a gathering, in person or through technological devices, of a quorum of a public body at which they discuss, propose, or take legal action, including deliberations. ARS § 38-431(4).

This includes telephone and e-mail communications





Open Meeting Law

- Meetings shall be open to the public
 - Legal action must take place in a public meeting
 - The proposing and discussing of action must take place in a public meeting
 - Only agenda items may be discussed
- Meetings must comply with notice, agenda, and minute requirements
 - When and where
 - Information to inform the public of the matters to be discussed or decided
 - May not use topics such as “Old Business” or “New Business” unless...
 - Minimum 24-Hour public notice is required
 - Includes subcommittees





Open Meeting Law

- **PROHIBITED ACTS/VIOLATIONS**

- Polling individual board members to reach a decision prior to a meeting
- Discussion/deliberation between less than a quorum outside public meeting for the purpose of circumventing the Open Meeting Law
- E-mails/Social Media

- **PENALTIES**

- If found guilty of an Open Meeting Law violation, a court may:
 - Levy a fine up to \$500 against the commissioner for each violation
 - The board member **personally** must pay the fine
- The board member is subject to removal from office





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Ex Parte Contact

- Latin for “from or on one side only” and relates to Board Members being influenced outside the public forum.
- Contacts which occur away from the hearing are known as ex parte and can include telephone calls, informal meetings, lunches or even a casual encounter on a street corner.
- Common for Board Members because of their visibility in community.





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How to deal with Ex Parte Contact

- If someone contacts you to discuss an issue involving a specific case, tell the person to put the information on the record or contact staff.
- Refrain from discussing your position on the case.
- If you receive written information on a case it should be submitted to staff for included in the Boards packet.
- If you make a site visit, with or without the applicant, disclose that fact on the record.
- If you do have ex parte contact with a member of the public, applicant or interested party, disclose that fact on the record.





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Due Process

- Adequate, advance notice of meetings;
- Availability of staff reports and other information needed by the public to more fully understand issues;
- The opportunity to be heard at public hearings;
- Full disclosure or the chance to hear, see, or review all the information available to the Board in its deliberations;
- Findings of fact backed up by evidence on the record to support the Board's decisions.





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Responsibilities of the Chair

- Preside over the Board of Adjustment meetings
 - Maintains order
 - Keeps the business moving
 - Manages public testimony
 - Prevents arguments
 - Understands the basics of parliamentary procedure
 - Helps tie things together





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Making a Decision/Findings

- What are Findings?
- Purpose of Findings
 - Provide a framework for making decisions
 - Facilitate orderly analysis from evidence to conclusion
 - Ensures that decision-making is careful, reasoned, and equitable
 - Enables parties to determine basis for an appeal
 - Gives appeal body the basis of the Board's decision





Variance Findings

A variance shall only be granted if the applicant demonstrates all of the following:

- A. That, because of special circumstances applicable to the property, including its size, shape, topography, location or surroundings, the strict application of these regulations will deprive such property of privileges enjoyed by other property of the same classification in the same zone;
- B. That a grant of a variance will be subject to conditions to ensure that the adjustment authorized is the minimum variation needed and that it will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;
- C. The special circumstances applicable to the property are not self-imposed by any person having an interest in the property; and
- D. The variance will not allow the establishment of a use which: (1) is not otherwise permitted in the zone, (2) would result in the extension of a nonconforming use or structure, or (3) would change the terms of the zone of any or all of the subject property.





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Staff Recommendations

- Recommendations are Included in the administrative report prepared by staff
- Majority of instances, staff is recommending approval
- Denial is sometimes, although very infrequently, recommended





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Conditions of Approval

- Issuance of a variance may be made subject to conditions necessary to carry out the purposes of the Zoning Code and to ensure that the variance authorized shall not constitute a granting of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
- Conditions serving to prevent or minimize adverse effects upon other property in the neighborhood shall include but are not limited to limitations on size and location, hours of operation, requirements for landscaping or buffer yards, lighting, and ingress and egress.





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THE PLANNING DEPARTMENT IS LITERALLY



FULL OF ROCKSTARS

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