



TO: Development Services Customers

SUBJECT: INFORMATION BULLETIN # 554
Board of Adjustment Appeal Processes

DATE: March 18, 2014; Updated September 20, 2019

As a customer service initiative, the Development Services Department (DSD) has created this Information Bulletin (IB) to outline the appeal processes to the Board of Adjustment for both appeals of decisions made by an administrative official and an appeal of the denial of a Certificate of Appropriateness. This IB has been updated to reflect the changes to the appeal process as a result of HB 2497 which was passed during the 86th Legislature.

A) Appeals of decisions made by an Administrative Official

The appeal process to the Board of Adjustment for decisions made by an administrative official is established in the Unified Development Code, Section 35-481 Appeals to the Board of Adjustment. “Administrative Official” is defined as an official, such as the head of each department (i.e. Director), and/or his/her designee, appointed by the City Manager, having the final decision-making authority within the department. “Administrative Official” does not include members of Boards or Commissions that have been appointed by City Council. As such, decisions made by a Board or Commission, unless otherwise specified by City Code, cannot be appealed to the Board of Adjustment.

HB 2497 essentially creates two different tiers of appeals to the BOA: Tier 1 Appeals not related to a specific application, address, or project; and Tier 2 Appeals related to a specific application, address, or project. These two tiers determine who may file an appeal to the Board to Adjustment.

Tier 1 Appeals are general in nature and relate to a policy, decision, or interpretation that is not limited in scope to a single specific application, address, or project. Examples of Tier 1 Appeals include, but are not limited to, Rule Interpretation Decisions or interpretations of a general nature. Appeals may be filed by any person aggrieved by the decision or any officer, department, board, or bureau of the municipality affected by the decision.

Tier 2 Appeals are related to a specific application, address, or project. Examples of Tier 2 Appeals include, but are not limited to, building permits, certificates of occupancy, or zoning verification letters. Tier 2 Appeals may be filed by a person who filed the application that is the subject of the appeal, the owner or owner’s representative of the property that is the subject of the appeal, a person who is aggrieved by the decision and who owns real property within 200 feet of the property that is the subject of the decision, or any officer, department, board, or bureau of the municipality affected by the decision.

Applicability:

(A) Tier One Appeal. A Tier One appeal is an appeal of a decision by an administrative official that is not related to a specific application, address, or project.

Because a Tier One appeal is not related to a specific application, address, or project, Tier One appeals will not automatically stay any project. A Tier One appeal may be filed by any of the following persons:

1. a person aggrieved by the decision; or
2. any officer, department, board, or bureau of the City of San Antonio affected by the decision.

(B) Tier Two Appeal. A Tier Two appeal is an appeal that is related to a specific application, address, or project. A Tier Two appeal may be filed by any of the following persons:

1. a person who filed the application that is the subject of the decision;
2. a person who is the owner or representative of the owner of the property that is the subject of the decision;
3. a person who is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or
4. any officer, department, board, or bureau of the City of San Antonio affected by the decision.

Decisions that can be appealed to the Board of Adjustment are defined as those decisions related to Chapter 35, Unified Development Code, only. Applicants will need to specifically define sections of Chapter 35 to be appealed to the Board of Adjustment; how the interpretations of those sections were in error, and what the interpretation and/or decision should be.

Exceptions to those that may appeal to the Board of Adjustment are stated in Section 35-481 (2): *A member of the governing body of the municipality who serves on the board of adjustment under V.T.C.A. Local Government Code § 211.008(g) may not bring an appeal under this section.*

Items/Issues that cannot be appealed to the Board of Adjustment

Several cases presented to the Board of Adjustment have resulted in confusion regarding what decisions or variances can be heard by the Board of Adjustment, due to the lack of clarity in the City Code. Decisions made by a Board or Commission, unless specified by City Code, cannot be appealed to the Board of Adjustment. This will include decisions made by the Historic and Design Review Commission. Additionally, request for variances related to Chapter 28, Signs, which would eliminate the distinctions between on-premises and off-premises sign types, single and multi-tenant sign types, sign sizes by zoning district, or street classification cannot be appealed to the Board of Adjustment. Prohibited uses and prohibited items specifically listed in Chapter 35 cannot be appealed to the Board of Adjustment. Items that require decisions from City Council (i.e. revocation of a C of O that requires the business to request an alcohol variance) cannot be appealed to the Board of Adjustment. In an effort to assist the customer, and before an application is filed, staff will review the request and determine, through the application of City Code, if the item can proceed to the Board of Adjustment.

Initiation of an Application

An Application regarding an appeal made by an Administrative Official is provided in this IB as Attachment 1.

Application. The aggrieved person must submit the application in a timely basis at the Development & Business Service Center, located at 1901 S. Alamo Street. A \$600.00 filing fee is required. Required documentation is outlined on the application form, however it is extremely important that the appeal explains exactly how the Administrative Official's decision was incorrect. This includes A) the Section of Chapter 35 used in the decision made by the Administrative Official; and B) the incorrect decision or interpretation made by the Administrative Official. The appeal must explain the correct decision that should have been made and include evidence in support of this allegation.

Upon receipt of the appeal, the development services staff shall assemble *all of the original documents and materials, or true copies thereof, constituting the record upon which the order or decision appealed from was based.*

Review for Appeal Tier and Standing. Upon receipt of a complete appeal submittal, the director of development services shall make an initial determination as to the appropriate tier of the appeal as defined in Subsection (1) above. Upon determination of the appropriate tier, the director of development services shall also make a determination as to whether the appellant has standing to bring the appeal filed.

Automatic Stay for Tier Two Appeals. *An appeal from an order of the Director of Development Services to the board of adjustment shall stay all proceedings unless the Director of Development Services certifies that, by reason of the facts stated in the certificate, a stay in his opinion would cause imminent peril to life or property. When such a certificate is filed, proceedings shall not be stayed except by a restraining order granted by the board of adjustment or a court of proper jurisdiction.*

As stated above, the UDC provides an automatic stay of proceedings. Therefore, if an applicant is asserting that the measurement methodology used by Code Compliance personnel in an enforcement case was flawed, the enforcement case would not proceed until a determination was made regarding the methodology.

Deadline for Filing an Appeal. Appeals to the zoning board of adjustment from any decision made by an administrative official in the enforcement of this chapter shall be made by filing a notice of appeal with the director of the department of development services and with the board of adjustment no later than the twentieth (20th) day after the decision was made.

Time Limit for Board of Adjustment to make an Appeal Decision. The board of adjustment shall hear and decide any appeal for which the appellant has standing at the next meeting for which public notice can be provided. In no case shall any such hearing or decision occur later than the 60th day after the date the appeal is filed. Public notice of the hearing and due notice to the parties in interest shall be provided in accordance with the Unified Development Code and the Texas Local Government Code. Appeals to the zoning board of adjustment from any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter shall be made not later than the twentieth (20th) day after such order, requirement, decision or determination by filing with the director of the department of development services and with the board of adjustment a notice of appeal.

Completeness Review. The UDC has a provision requiring a completeness review *within two (2) working days. The appellate agency for purposes of completeness review (see subsection 35-481(c) of this chapter) shall be the board of adjustment.*

Proceedings before the Board of Adjustment

An appeal will be scheduled at the next regularly scheduled meeting of the Board of Adjustment. If a schedule change is requested after public notice, a \$200 postponement fee is required.

Public Hearing. An appeal hearing must meet strict standards of legal public notice which include publication in a newspaper of general circulation at least 10 days prior to the hearing and mailed notice to the petitioner and to property owners within 200 feet.

Hearing. The Board of Adjustment shall consider the appeal at a quasi-judicial public hearing pursuant to section 35-404. This section of the UDC details the proceedings, outlining the process to be used by the Board of Adjustment in making these types of decisions. The Board is charged with gathering facts, weighing evidence and drawing conclusions. The UDC states that *these decisions involve two key elements: the finding of facts regarding the specific proposal and the exercise of some discretion in applying the standards of the ordinance.* The staff from the appropriate division/section charged with the issuance of the decision, interpretation of the code, or permit, will provide support and information for the staff report and present to the Board in their deliberations. The conduct of the hearing is also detailed in this section of the Code.

Time Limit for Decision. The board shall decide the appeal at the next meeting for which public notice in accordance with the Texas Local Government Code and the Unified Development Code can be provided after the filing of a complete appeal, but such decision shall not be later than the 60th day after the date the appeal is filed.

Board Powers. Pursuant to V.T.C.A. Local Government Code § 211.009(b), *the Board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official.* The concurring vote of seventy-five (75) percent of the members of the board is necessary to reverse an order, requirement, decision, or determination of an administrative official.

Appeal from Board of Adjustment

If an appellant is dissatisfied with the decision of the Board of Adjustment, their next course of action is to file an appeal in District Court. The process is described in V.T.C.A. Local Government Code § 211.011. The time limit to file an appeal is 10 days from the date the decision is filed in the board's office. The date the decision is filed shall be the date the board takes action to approve the minutes for the meeting in which the decision that is being appealed took place. During the pendency of an appeal to district court the proceeding will not be stayed except as provided by V.T.C.A. Local Government Code § 211.011.

B) Appeals regarding the Denial of a Certificate of Appropriateness

The appeal process to the Board of Adjustment for decisions made by the City Manager or Designee, for these purposes the Historic Preservations Officer, regarding applications for a Certificate of Appropriateness is established in the Unified Development Code, Section 35-451.

Applicability:

Section 35-451 (d) 3 states that *an applicant for a certificate of appropriateness may appeal the decision to the Board of Adjustment within twenty (20) days after receipt of notification of the city manager's action.*

Initiation of an Application

An Application for an appeal of the City Manager's decision regarding a requested Certificate of Appropriateness is provided in this IB as Attachment 2.

Application. The appellant must submit the appeal in a timely basis at the Development & Business Service Center, located at 1901 S. Alamo Street. A \$600.00 filing fee is required. Required documentation is outlined on the application form, however it is extremely important that the appellant explains exactly how the City Manager or Historic Preservation Officer erred in the decision regarding the Certificate of Appropriateness. The documentation must include evidence, pertinent sections of the Unified Development Code Requirements and / or City of San Antonio Historic Design Guidelines, or other reference materials in support of this allegation.

Upon receipt of the appeal, the development services staff shall assemble *all of the original documents and materials, or true copies thereof, constituting the record upon which the order or decision appealed from was based.*

Time Limit for Appeal. Appeals to the zoning board of adjustment shall be made within twenty (20) days after receipt of notification of the City Manager or Historic Preservation Officer's action.

Completeness Review. The UDC has a provision requiring a completeness review *within two (2) working days. The appellate agency for purposes of completeness review (see subsection 35-402(c) of this chapter) shall be the board of adjustment.*

Proceedings before the Board of Adjustment

An appeal will be scheduled at the next regularly scheduled meeting of the Board of Adjustment, unless otherwise indicated by the appellant at the time of submittal. Staff will make every effort to schedule the hearing at the convenience of the appellant prior to placing required legal public notice. If a schedule change is requested after public notice, a \$200 postponement fee is required.

Public Hearing. An appeal hearing must meet strict standards of legal public notice which include publication in a newspaper of general circulation at least 10 days prior to the hearing and mailed notice to the petitioner and to property owners within 200 feet.

Hearing. The Board of Adjustment shall consider the appeal at a quasi-judicial public hearing pursuant to section 35-404. This section of the UDC details the proceedings, outlining the process to be used by the Board of Adjustment in making these types of decisions. The Board is

charged with gathering facts, weighing evidence and drawing conclusions. The staff from the Office of Historic Preservation will provide support and information for the staff report and present to the Board in their deliberations. The conduct of the hearing is also detailed in this section of the Code.

Board Powers. The Board's Powers are derived from Section 35-451 (d) 3. *In determining whether or not to grant the appeal, the board of adjustment shall consider the same factors as the commission, the report of the commission, and any other matters presented at the hearing on the appeal.* The Board must review the original application for consistency with those criteria enumerated in UDC Sections 35-608 through 35-610, as well as the City of San Antonio Historic Design Guidelines.

Board Decision. *If the board of adjustment approves the application, it shall direct the city manager or designee to issue a certificate for the work covered. If the board of adjustment disapproves the application, it shall direct the city manager or designee not to issue such certificate. Such disapproval may indicate what changes in the plans and specifications would meet the conditions. Upon receipt of the written disapproval of the board of adjustment, the city manager or designee shall immediately advise the applicant and the commission in writing. The concurring vote of seventy-five (75) percent of the members of the board is necessary to reverse an order, requirement, decision, or determination of an administrative official.*

Appeal from Board of Adjustment

If an appellant is dissatisfied with the decision of the Board of Adjustment, their next course of action is to file an appeal in District Court. The process is described in V.T.C.A. Local Government Code § 211.011. The time limit to file an appeal is 10 days from the date the decision is filed in the board's office. The date the decision is filed shall be the date the board takes action to approve the minutes for the meeting in which the decision that is being appealed took place. During the pendency of an appeal to district court the proceeding will not be stayed except as provided by V.T.C.A. Local Government Code § 211.011.



**CITY OF SAN ANTONIO
DEVELOPMENT SERVICES DEPARTMENT**

CITY OF SAN ANTONIO

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COUNTY OF BEXAR

STATE OF TEXAS

TO THE HONORABLE BOARD OF ADJUSTMENT:

Property description (Attach field notes if necessary):

Lot no. _____

Block No. _____

NCB _____ Property Address: _____

Per Section 35-481 of the Unified Development Code (UDC), the Zoning Board of Adjustment is empowered to consider appeals of a decision made by an administration official.

The Applicant, _____ of _____ County, alleges that

the following administrative official _____, in his/her capacity as

(Name of Official)

_____, made an incorrect decision, or interpretation regarding Section 35-__

(Title of Official)

of the UDC. This incorrect decision or interpretation was (List the section(s) of the UDC that was applied incorrectly. Provide details why the decision was incorrect or misinterpreted.): _____

The correct decision or interpretation should be as follows (List the section(s) of the UDC that should be applied in this decision. Provide details how the decision should be made.): _____

*Note: Local Government Code § 211.010 (b) and San Antonio City Code § 35-481 (b)(1) require that the applicant give notice of the specific grounds for the appeal. Failure to state the reasons for the alleged error and applicable code sections will result in the return of your application. Please attach additional pages if necessary.

Respectfully submitted:

Applicant's name: _____

Status: Owner () Agent ()

Mailing address: _____

Telephone: _____ Alternate: _____

Email: _____

Applicant's Signature Date

Property Owner: _____

Mailing address: _____

Telephone: _____ Alternate: _____

Email: _____

I, _____ the owner of the subject property, authorize _____ to submit this application and represent me in this appeal before the Board of Adjustment.

Please include the following items with this appeal

- Documentation from City of San Antonio representing the decision you are appealing and proof that you are within the mandatory 20 day time limit to file the appeal.**
- Sections of the UDC from which the decision was based, including all support sections which potentially reinforce your assertion that an error was made.**
- Property Ownership documentation, including a copy of the warranty deed and Bexar County Appraisal District and any applicable documentation as required by IB 554.**
- Filing Fee of \$600 (plus applicable administrative fees)**



**CITY OF SAN ANTONIO
DEVELOPMENT SERVICES DEPARTMENT**

**CITY OF SAN ANTONIO
STATE OF TEXAS**

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COUNTY OF BEXAR

TO THE HONORABLE BOARD OF ADJUSTMENT:

Property description where Certificate Appropriateness was requested:

Lot no. _____
Block No. _____
NCB _____ Property Address: _____

Per Section 35-451 of the Unified Development Code (UDC), the Zoning Board of Adjustment is empowered to consider an appeal from an applicant for a Certificate of Appropriateness.

The Applicant, _____ of _____ County, alleges that the City Manager or designee erred in the decision regarding Case No. _____, rendered on _____ (add date).

The correct decision or interpretation should be as follows: _____

_____.

