



RULE INTERPRETATION DETERMINATION

Determination #: 2019-003

Title: Board of Adjustment Appeals Procedures

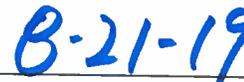
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Rule in Question: Section 35-481 Appeals to the Board of Adjustment

Department Action: Modification of relevant sections of the Unified Development Code (UDC) in order to comply with HB 2497 which was passed during the 86th Legislature



Michael Shannon, PE, CBO
Development Services Director



Date

Effective Date of Determination: September 1, 2019

Please note RIDs often result in direct or related UDC amendments to codify the clarification addressed within the RID. RIDs can also be superseded by subsequent RIDs or UDC amendments. The Development Services Department will remove RIDs from the website when they are no longer valid.

Staff Analysis:

This RID is a customer and staff clarification effort to incorporate changes to the Board of Adjustment (BOA) appeal procedures to address changes to state law made by House Bill 2497. HB 2497 was signed into law by Governor Abbott on June 10, 2019, and becomes effective on September 1, 2019.

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.

HB 2497 sets a time limit for when the appeal must be filed. Before this change, State Law only required that the timeframe be "reasonable" and "as determined by the rule of the board." The UDC, in Section 35-481(b)(3) sets that time limit for appeals at 30 days after the decision is made. HB 2497 sets a deadline for the filing of an appeal at 20 days after the decision is made.

HB 2497 also sets a specific timeframe for when an appeal decision must be made by the Board. The UDC, in Section 35-581(d)(3) only requires that the Board decide an appeal within a "reasonable time." HB 2497 requires appeals to be decided at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.

Staff Position and Interpretation:

Because the UDC contains regulations which differ from HB 2497, staff recommends issuing this RID in order to be compliant with new State Law. This RID shall not be effective until September 1, 2019, when HB 2497 becomes effective.

Per Section 3 of HB 2497, appeals based on decisions made before September 1, 2019, would follow the appeals procedures in place prior to September 1, 2019. For example, if a person wanted to appeal a building permit that was issued on August 31, 2019, then that person would need only to be an aggrieved by the decision and the person would have thirty days to file the appeal.

Future UDC Amendments:

To codify the changes in State Law, staff suggests the following UDC amendments:

Sec. 35-481. - Appeals to Board of Adjustment.

(a) **Applicability.**

- (1) **Generally.** Pursuant to Section 211.010 of the Texas Local Government Code, there are hereby established two separate tiers of appeals to the Board of Adjustment.

(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.

~~Except as provided by subsection (2), any of the following persons may appeal to the board of adjustment a decision made by an administrative official:~~

- ~~• A person aggrieved by the decision; or~~
- ~~• Any officer, department, board, or bureau of the city affected by the decision.~~

(2) **Exception.** 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.

(b) **Initiation.**

(1) **Application.** ~~Such An~~ appeal shall be ~~taken-made~~ by filing with the director of ~~planning and~~ development services and ~~with~~ the board of adjustment, ~~within the time provided by this chapter,~~ a notice of appeal specifying the particular grounds upon which the appeal is ~~taken-made~~ and the payment of the fee specified in Appendix "C." The appeal must be filed no later than the 20th day after the date the decision is made. Upon receipt of a notice of appeal and after the appeal tier and standing review in Subsection (2) below, the director of ~~planning and~~ development services shall transmit to the board of adjustment all of the original documents and materials, or true copies thereof, constituting the record upon which the ~~order-or~~ decision appealed from was based.

(2) **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.

~~(2)~~**(3) Automatic Stay for Tier Two Appeals.** An appeal from ~~an a decision order~~ of the director of ~~planning and~~ development services to the board of adjustment for a Tier Two appeal shall stay all proceedings unless the director of planning and 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.

~~(3) Time Limit for Appeal.~~ ~~The board of adjustment shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. 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 within thirty (30) days after such order, requirement, decision or determination by filing with the director of the department of planning and development services and with the board of adjustment a notice of appeal.~~

(4) 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.

(5) 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 this Chapter 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.

(c) **Completeness Review.** The director of planning and development services shall review the notice of appeal for completeness 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.

(d) **Decision.**

(1) **Appearance.** A party may appear at the appeal hearing in person or by agent or attorney.

- (2) **Hearing.** The board of adjustment shall consider the appeal at a quasi-judicial public hearing pursuant to section 35-404. Pursuant to ~~V.T.C.A. Texas~~ 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. Pursuant to ~~V.T.C.A. Texas~~ Local Government Code § 211.009(b), the concurring vote of seventy-five (75) percent of the members of the board is necessary to reverse ~~an o order, requirement, a decision, or determination~~ of an administrative official.
- (3) **Time Limit for Decision.** The board shall decide the appeal ~~within a reasonable time~~ at the next meeting for which public notice in accordance with the Texas Local Government Code and this Chapter 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.