



**TO:** Development Services Customers

**SUBJECT:** **INFORMATION BULLETIN 554**  
Board of Adjustment Appeal Processes

**DATE:** March 18, 2014/*Revised August 1, 2014*

**CREATED BY:** Land Development Division/Zoning Section

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**Purpose:**

As a customer service initiative, the Development Services Department (DSD) has created this **revised** Information Bulletin (IB) 554 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 bulletin has been updated to incorporate the department's new format for Information Bulletins.

**Scope:**

**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.

**Applicability:**

Section 35-481 states that *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.*

A person aggrieved is defined as the property owner of the property subject to the appeal, or the adjacent property of the property subject to the appeal, or a person whose financial interest is directly affected by a decision or permit.

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.

**(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.*

**(2) Automatic Stay.** *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.

**(3) Time Limit for Appeal.** *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 development services and with the board of adjustment a notice of appeal.*

An aggrieved person cannot contest potentially related decisions that may have occurred in the months prior, however if the day of decision is in dispute, staff will review evidence submitted regarding the required time frame.

**(4) 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. If a schedule change is requested after public notice, a \$200 postponement fee is required.

**(1) 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.

**(2) 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.

**(3) 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. 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 thirty (30) 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.

**(1) 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.*

**(2) Time Limit for Appeal.** Appeals to the zoning board of adjustment shall be made within thirty (30) days after receipt of notification of the City Manager or Historic Preservation Officer's action.

**(3) 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.

**(1) 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.

**(2) 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.

**(3) 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.

**(4) 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. 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.

**Summary:**

This Information Bulletin is for informational purposes only.

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