

ORDINANCE NO. O-15-10

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE), ARTICLE VII, ENTITLED, "BOARD OF APPEALS," SO AS TO REPEAL AND REENACT WITH AMENDMENTS § 24-188, ENTITLED, "GENERAL REQUIREMENTS AND PROCEDURES"

**Text Amendment T-395**

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that Section 188 of Chapter 24 of the City Code, are hereby amended to read as follows:

**ARTICLE VII. BOARD OF APPEALS**

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**Sec. 24-188. General requirements and procedures.**

(a) Petitions filed for administrative review may be initiated by any person aggrieved by a final order, requirement, decision or determination as set forth in subsection (a) of section 24-187 of this Code. Such petition shall be filed within seventeen (17) days of the date of the action from which the appeal is filed, unless extended by law or by order of the board upon good cause shown not more than twenty-one (21) days after the date of the action appealed from. The filing of a petition for administrative review shall stay all proceedings in furtherance of the action appealed from unless such stay would cause immediate peril to life or property.

Petitions for a special exception or a variance may be filed by any person, entity or government agency with any financial, contractual or proprietary interest in the affected property. Should petitions be filed by one other than the owner of the property, those petitions must be filed with the owner's written consent.

(b) A petition for special exception, variance or administrative review shall be submitted to the board of appeals in writing on forms provided for this purpose and accompanied by a filing fee which shall be established from time to time by the city council. A petition shall not be accepted for filing which does not contain an appropriate application form, filing fee and supporting material set forth in subsection (c) below.

(c) An application for special exception or petition for variance or administrative review shall be accompanied by the following materials and/or information:

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<del>Single strikethrough</del>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
<del>Double boldface strikethrough</del>	<i>Deleted from existing law or the bill by amendment.</i>
* * * *	<i>Existing law unaffected by bill.</i>

(1) *Special exceptions.*

- ~~a.~~ ~~Survey plats, site plans or other accurate drawings showing boundaries, dimensions, area, topography and frontage of the property involved, as well as the location and dimensions of all structures existing and proposed from the nearest property lines~~ Plans and drawings that comply with section 24-169(c).
- ~~b.~~ ~~Plans, architectural drawings, photographs, elevations, specifications of other detailed information depicting fully the exterior appearance of existing and proposed construction, including parking and access, exterior lighting and signs, involved in the petition.~~
- ~~eb.~~ A statement explaining in detail how the special exception is to be operated, including hours of operation, number of anticipated employees, occupants and clientele, equipment involved and any special conditions or limitations which the petitioner proposes for adoption by the board.
- ~~d.~~ ~~An approved forest stand delineation and forest conservation plan, as defined in chapter 22 of this Code, and required by section 22-7 thereof, as well as any proposed landscaping and lighting plan.~~
- ~~ec.~~ ~~Certified~~ ~~e~~Copy of ~~official~~ the city zoning ~~vicinity~~ map of pertinent to the petition showing a one thousand-foot radius surrounding the subject property and other information to indicate the general conditions of use and existing improvements on adjoining and confronting properties, along with a list of such adjoining and confronting property owners, occupants and all addresses within two hundred (200) feet of the subject parcel.
- ~~fd.~~ If the petitioner is not the owner of the property involved, or the authorized agent of the owner, the lease, rental agreement or contract to purchase by which the petitioner's legal right to prosecute the petition is established.
- ~~ge.~~ Applicable master plan maps reflecting proposed land use, zoning and transportation, together with any other portions of the applicable master plan deemed pertinent by the petitioner.
- ~~hf.~~ All additional exhibits which the petitioner intends to introduce and/or the identification of exhibits intended to be introduced at the public hearing.
- ~~ig.~~ A summary of what the petitioner expects to prove, including the names of petitioner's witnesses, summaries of the testimony of expert witnesses and the estimated time required for presentation of the petitioner's case. All expert reports shall be filed at least fifteen (15) days prior to the public hearing.
- ~~jh.~~ A listing of the names and addresses of all persons required to receive notice pursuant to section 24-188(e) of this Code. If an abutting or confronting property is a condominium, cooperative or is owned by a homeowners' association then notice shall be given to the governing body and resident agent of the condominium cooperative or homeowners' association.

(2) Variances. Items a., ~~b., c., h., i. and j.~~ c., f., g. and h. of paragraph (1) above applicable to special exceptions.

(3) Administrative review.

a. The action, document and all records upon which the appeal was filed or based.

b. List of specific section or sections of the City Code relied upon or authorizing the review.

c. Certified copy of official zoning vicinity map of one thousand-foot radius surrounding the subject property and other information to indicate the general conditions of use and existing improvements on adjoining and confronting properties, along with a list of such adjoining and confronting properties, within two hundred (200) feet of the subject parcel.

d. Copies of additional exhibits or documents upon which the petitioner relies.

(d) All applications for special exceptions shall be referred to the city manager or his designee and the planning commission for analysis, review and recommendations. Petitions for variance shall be referred to the city manager or his designee, but shall only be referred to the planning commission at the discretion and direction of the board of appeals. Comments and recommendations shall be forwarded to the board of appeals prior to the public hearing on the special exception or variance.

(e) Notice of a public hearing on any special exception or variance shall be given by mail to the petitioner, the owner of the property and all abutting and confronting property owners of the property under consideration at least fifteen (15) days prior to the date of the public hearing. Notice shall be published ~~in a newspaper of general circulation in the city~~ at least fifteen (15) days prior to the public hearing. In addition, notice of such hearing shall be posted by the petitioner with a sign provided by the Board of Appeals staff on the property under consideration:

(1) At minimum, the sign shall contain the following information:

(a) The title of "Board of Appeals";

(b) The type of petition pending;

(c) The application number;

(d) The date, and place of the hearing; and

(e) A phone number to call for additional information.

(2) If the property has frontage on one or more improved streets, there shall be one sign posted for each one thousand (1,000) feet (or fraction) of frontage on each street. The sign(s) shall be posted on the property near the street right-of-way, so as to be visible from the improved portion of the street. When more than one sign

is required to be posted along a street, the signs shall, where practicable, be evenly spaced along the street.

- (3) If the property does not have frontage on an improved public street, then one (1) sign shall be placed on the property by the petitioner. This sign shall be near the boundary of the property and visible from an adjoining property. Another sign shall be placed by the petitioner near to, and visible from, the improved portion of the nearest, most-traveled street. This sign shall indicate it is not on the subject property.
- (4) The minimum size of each sign shall be two (2) feet in width by three (3) feet in height for all signs to be located abutting streets that are two (2) lanes or smaller. However, the minimum size of each sign shall be four (4) feet in width by three (3) feet in height, for all signs to be located abutting streets that are larger than two (2) lanes.
- (5) All signs posted shall be conspicuous and legible.
- (6) The petitioner shall be responsible for reasonable maintenance of all signs. In the event a sign is removed, falls down, or otherwise is not on the property or in the right-of-way during the pendency of and until the date of the hearing, it shall be the responsibility of the petitioner to re-post the sign.
- (7) The petitioner shall file a written statement in the record of posting.
- (8) The sign shall remain posted until the board of appeals has issued its written opinion.

(f) The board shall hold a public hearing on all petitions for special exceptions, variance or administrative review with the exception of appeals alleging error by the planning commission wherein administrative review shall be by oral argument or written statement based solely on the evidence submitted and received in the planning commission proceedings. The board's hearings shall be public and any party may appear in person or by agent or attorney. The conduct of the hearing shall be conducted pursuant to the board's rules of procedure. Hearings may be adjourned or continued from time to time at the board's discretion; provided, that any such adjournment or continuance shall be to a time and date certain and all parties shall be given notice thereof who were required to be notified of the original hearing. The board shall have authority to adopt, and amend from time to time, rules of procedure to govern the conduct of its proceedings.

(g) No petition for special exception or variance may be amended by petitioner after consideration by the planning commission so as to materially alter the original request or proposal unless done so upon the recommendation of the planning commission or with the prior consent of the board of appeals prior to the public hearing.

(h) The board of appeals shall maintain a record of its proceedings, including all exhibits filed and accepted, minutes of its proceedings and decisions and transcripts or voice recordings of all testimony presented.

(i) The petitioner for a special exception, variance or administrative review shall have the burden of proof which shall include the burden of going forward with the evidence and the

burden of persuasion on all issues of fact which are to be determined by the board of appeals.

ADOPTED by the City Council of Gaithersburg, Maryland, this 2nd day of August, 2010.

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SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 2nd day of August, 2010. APPROVED by the Mayor of the City of Gaithersburg, this 2nd day of August, 2010.

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SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the 2nd day of August, 2010, and the same was approved by the Mayor of the City of Gaithersburg on the 2nd day of August, 2010. This Ordinance will become effective on the 23<sup>rd</sup> day of August, 2010.

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Angel L. Jones, City Manager