



AGENDA
REGULAR MEETING OF THE
WINDSOR HEIGHTS BOARD OF ADJUSTMENT
Wednesday, March 20, 2024 - 5:30 PM
WINDSOR HEIGHTS COUNCIL CHAMBERS - 1133 66th ST
ZOOM: <https://us02web.zoom.us/j/7832856334>
Meeting ID: 783 285 6334

1. **Call to Order/Roll Call**
2. **Approval of Agenda**
3. **Work Session: Rules of Procedure**
 - A. Attachments
4. **Adjourn**

The agenda was posted on the official bulletin boards, posted to www.windsorheights.org, and city social media platforms in compliance with the requirements of city ordinances and the open meetings law.

CHAPTER 179

BOARD OF ADJUSTMENT

179.01 Organization and Meetings
179.02 Meetings
179.03 Appeals

179.04 Powers
179.05 Exceptions
179.06 Decisions of the Board of Adjustment

179.01 ORGANIZATION AND MEETINGS.

The Board of Adjustment hereafter referred to by the words "Board of Adjustment," is hereby continued. Such Board of Adjustment shall consist of five members appointed by the City Council. Terms shall be as provided by State statute. The Council shall have the power to remove any member of the Board of Adjustment for cause upon written charges and after public hearing.

179.02 MEETINGS.

The Board of Adjustment shall adopt rules and regulations in accordance with this Zoning Code and the *Code of Iowa*. The meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Adjustment and shall be a public record. The presence of three members shall be necessary to constitute a quorum.

179.03 APPEALS.

1. Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of Windsor Heights affected by any decision of the Zoning Administrator, as provided in Iowa Code 414. Such appeal shall be taken within 20 days of the decision by filing with the Zoning Administrator and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed is taken from.

2. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment, after notice of appeal shall have been filed with him, that by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may not be granted by the Board of Adjustment, or by a court of record on application, on notice to the Zoning Administrator and on due cause shown.

3. The Board of Adjustment shall fix a reasonable time for the hearing on the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person or by agent, or by attorney. Before an appeal is filed with the Board of Adjustment, the appellant shall pay a fee according to the schedule of fees which is on file in the office of the City Clerk and submit all required paperwork and application.

179.04 POWERS.

The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Administrator in the enforcement of this ordinance.

2. To grant a variation from the terms of this ordinance; provided, however, that all variations granted under this clause shall be in harmony with the intent of this ordinance and the applicable State Statute Iowa Code Section 414. In granting approval or conditional approval of a variance, the Board of Adjustment shall prepare written findings of fact that all of the conditions below apply to the application:

A. **Special Circumstances.** Special circumstances exist relating to the physical character of the property that are peculiar to the property and that do not apply generally to other properties in the same zoning district. And these circumstances are not of so general or recurrent a nature as to make it practical to provide, in the form of an amendment to this ordinance, a general rule to cover them.

B. **Hardship or Practical Difficulties.** Because of these special circumstances, the literal application of the provisions of this ordinance would, without a variance, result in unnecessary and undue hardship or practical difficulties for the applicant, as distinguished from mere inconvenience.

C. **Not Resulting from Applicant Action.** The special circumstances and either practical difficulties or hardship that are the basis for the variance have not resulted from any act, undertaken subsequent to the adoption of this ordinance or any applicable amendment thereto, of any party with a present interest in the property.

D. **Reasonable Use and Return.** Without the requested variance, the property cannot yield a reasonable return, or cannot be reasonably used consistent with the intent of the zoning district and the use of other properties therein, but the purpose of the variance is not otherwise to increase the return from the property or to confer special privileges not ordinarily

enjoyed by other properties in the same district.

E. Not Alter Local Character. The variance will not alter the essential character of the locality or substantially impair public safety or welfare or property values in the area.

F. Minimum Variance Needed. The variance approved is the minimum required to allow reasonable use and enjoyment of the property.

3. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under this ordinance. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

4. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

179.05 EXCEPTIONS.

1. To permit the following exceptions to the district regulations set forth in the ordinance, provided all exceptions shall be their design, construction and operation adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property, shall not impair an adequate supply of light and air to adjacent property, shall not increase congestion in the public streets, shall not increase public danger of fire and safety, and shall not diminish or impair established property values in surrounding areas.

2. To permit erection and use of a building or the use of premises or vary the height, yard or area regulations in any location for a public service corporation for public utility purposes, or for purposes of public communication, which the Board of Adjustment determines is reasonably necessary for the public convenience or welfare.

3. To issue special permits and decide such matters as may be required by other sections of this ordinance.

179.06 DECISIONS OF THE BOARD OF ADJUSTMENT.

1. In exercising the above mentioned powers, the Board of Adjustment may, in conformity with the provisions of law, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determinations as it believes proper, and to that end shall have all the powers of the Zoning Administrator. The concurring vote of three of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance. The action of the Board of Adjustment shall not become effective until after the resolution of the Board of Adjustment, setting forth the full reason for its decision and the vote of each member participating therein, has been filed. Such resolution, immediately following the Board of Adjustment's final decision, shall be filed in the office of the Board of Adjustment, and shall be open to public inspection.

2. Every variation and exception granted or denied by the Board of Adjustment shall be supported by a written testimony or evidence submitted in connection therewith. Any taxpayer, or any officer, department, board or bureau of Windsor Heights, or any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Board of Adjustment.

(Ch. 179 – Ord. 18-07 – Jun. 18 Supp.)

Roles and Responsibilities – The Zoning Board of Adjustment

Iowa Code §§ 335.15 (counties) and 414.12 (cities) provide identical mandates for zoning boards of adjustment. These statutes are very specific in limiting the functions of the board of adjustment to (1) hearing appeals of decisions made by the zoning administrator, (2) granting or denying special exceptions (also referred to as “special uses” or “conditional uses”), and (3) granting or denying variances.

Appeals

Zoning administrators are given the authority to make many decisions relating to the interpretation and implementation of the zoning ordinance. If a landowner is dissatisfied with a zoning administrator’s decision, the landowner has a right to appeal the decision to the board of adjustment. The board’s role is to review the zoning administrator’s interpretation of the ordinance and the given facts, based on the purpose and intent of the regulations, and render a decision affirming or overturning the administrator’s determination. If the zoning administrator’s decision is reasonable, it should be given the benefit of the doubt.

Special Exceptions, aka Special Uses or Conditional Uses

In each zoning district two broad classes of land uses are explicitly identified: (1) permitted uses, which are those listed by the ordinance as being allowed by right in any location, and (2) special exceptions, which are listed by the ordinance as being permissible only at the discretion of the zoning board of adjustment. Special exceptions are generally unique uses that are slightly out of character with permitted uses. In order to be granted a special exception by the board of adjustment, the applicant must be able to show that the requested use can be made to fit into its surroundings.

Variances

A variance is a minor exception to the existing zoning rules to allow a landowner to do what is generally forbidden by the ordinance. In order to be granted a variance, the applicant carries the burden of proving to the board that strict enforcement of the terms of the ordinance will inflict an unnecessary hardship on the landowner.

Administratively, the board of adjustment is a forum of last resort. The only appeal from the decision of the board of adjustment is to the court system. In too many communities, however, this arrangement has led to the mistaken assumption that the board of adjustment is the final authority on almost all zoning matters. Individuals will go to the board any time they feel the ordinance is “too strict,” and some boards will grant almost any relief requested by landowners. In these communities boards of adjustment are treating their zoning regulations as suggestions, not as law. In reality, the board of adjustment is bound by relatively strict criteria found in the zoning ordinance that define the limits of its discretion to grant variances or special exceptions and to overturn decisions of the zoning administrator.

**BOARD OF ADJUSTMENT
GOVERNING BODY RULES OF PROCEDURE**

AUTHORITY

In compliance with Section 414.9 and the Code of Ordinances, Chapter 122.03.01.A, which says that the Board of Adjustment will adopt rules to carry out the provisions of the zoning ordinance, the following rules of procedure are hereby adopted by the Nevada Board of Adjustment.

The following shall be in effect upon their adoption by the Board and until such time as they are amended or new rules adopted.

Adopted on: _____ by Resolution No. _____ -

1.0 OFFICERS

Section 1.0 – OFFICERS —The Nevada Board of Adjustment shall select from its membership a Chair and Vice-Chair who shall perform the usual duties pertaining to such offices.

Section 1.1 – SELECTION —At the first regular meeting of each fiscal year the Board will pick its officers from its membership. All officers are eligible for re-election.

Section 1.2 – TENURE —The chair and vice-chair shall take office immediately following their election and shall hold office for a term of one year or until their successors are selected and assume office.

Section 1.3 – DUTIES The chair shall preside at all meetings and hearings of the board, shall decide all points of order or procedure, and shall appoint any committees that may be found necessary. The vice-chair shall assume the duties of the chair in the absence of the chair.

Section 1.4 – STAFF SUPPORT —The City Administrator will designate city staff person(s) to serve as the secretary and provide staff support for the Board. The designated person(s) shall conduct all official correspondence subject to these rules at the direction of the Board, shall send out all notices required by these rules of procedure, keep the minutes of the Board's proceedings, keep a file on each case that comes before the Board. For all appeals and applications, the designated staff person(s) shall issue the proper forms; see that information, maps and plats are compiled and ready for Board's review; notify any property owner and other interested parties by mail of the time and place of the hearing; and any other duties as determined by the Board.

2.0 MEETINGS

Section 2.0 – MEETINGS —The annual meeting of the Board will take place at the first regular meeting of the fiscal year. Regular meetings of the Board of Adjustment shall be held at 10:00 a.m. on the Tuesday following the second Monday of each month unless no cases are pending in which case no meeting shall be held. The secretary shall give each member of the Board seventy-two hours notice of such meeting by delivery or mail.

Section 2.1 – SPECIAL MEETINGS —Special meetings may be called by the chair or at the request of three members of the Board. Notice of the special meeting shall be given by the secretary to the members of the Board at least forty-eight hours prior to such meeting and shall state the purpose and time of the meeting.

Section 2.2 – QUORUM —A quorum of the board shall consist of three members.

Section 2.3 – PUBLIC All regular, special and subcommittee meetings; public hearings; records; and accounts shall be open to the public. The Board may hold a closed session to consider or hear any matter which is authorized by state law to hear or consider in closed session.

Section 2.4 – NOTICE OF MEETINGS Public notice will be given for all meetings of the Board. The notice shall give the time, date and place of each meeting and its tentative agenda. Notice of meetings will be sent to the Board members and the local paper as required by law.

Section 2.5 – AGENDAS At least twenty-four (24) hours before a meeting, copies of the Board's tentative agenda shall be posted. The Board may not take action on any item that did not appear on the posted tentative agenda unless an exception is provided under Iowa law. The chairperson may rearrange the order of business appearing on the agenda as he or she may deem necessary to conduct the

meeting.

Section 2.64 – ORDER OF BUSINESS The secretary shall prepare an agenda for each meeting and send it to each board member as part of the notification process (72 hours prior). The order of business shall be as follows:

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of Previous Meeting
4. Public Hearing and Decision on Case(s)
5. Reports
6. Adjournment

Section 2.75 – VOTING —The concurring vote of three (3) members of the Board is required to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variation in the requirements of this chapter. Voting will be by roll call and will be recorded by yeas and nays. All members of the Board, including the chair, are required to cast a vote for each motion. Minutes will show members absent for each vote. A member may abstain if he or she feels there is a conflict of interest, particularly if the conflict is of a financial nature. If a member elects to abstain from voting, he or she is required to state the reason for his or her abstention at the time of voting. Abstentions due to conflicts of interest shall not count as votes for the purpose of determining whether there has been an affirmative vote of a majority of the members present, but shall be counted for the purpose of determining whether a quorum is present.

Section 2.86 – UNFINISHED BUSINESS —When all appeals or applications cannot be disposed of on the day set (due to length of meeting or extenuating circumstances), the Board may adjourn from day to day or until the next regular meeting as the board may decide.

Section 2.97 – BOARD ACTION —The Board may not vote on an appeal or application until all required information has been set forth on the forms and until the hearing has been conducted.

Section 2.108 – PARLIAMENTARY PROCEDURE —Roberts Rules of Order, Revised, will govern the board meetings, unless otherwise provided herein.

3.0 BOARD DUTIES

Section 3.0 – CASES TO BE DECIDED BY THE BOARD —The following cases shall be made before the Board of Adjustment on forms provided by the board secretary:

- a. Appeals, when it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of the zoning ordinance.
- b. Special exceptions to the terms of the zoning ordinance upon which the Board is required to act under the ordinance.
- c. Variances to a zoning district requirement where there are unusual conditions or circumstances which cause a hardship when the provisions of zoning are strictly applied.

Section 3.1 – EX PARTE COMMUNICATION The outside communication regarding a project to be reviewed by the Board is discouraged. Whereas, the majority of the actions of the Board are quasi-judicial in nature, the parties involved are entitled to the same fairness, impartiality and independence of judgement as one expects in a court of law. Any members of the Board who has been contacted by an applicant, appellant or interested party, shall so note at the beginning of the hearing on any item and should state what issues were raised and discussed on the request.

4.0 HEARINGS

Section 4.0 - PROCEDURE FOR HEARING CASES The following rules will apply to all appeals or applications before the Board.

Section 4.1 APPEALS Appeals to the Board may be taken by any person, group, or by any officer or department of any government affected by any decision of the Zoning Administrator and by applicants for a special exception or variance.

Section 4.2 NOTICE OF RIGHT TO APPEAL —The Zoning Administrator shall tell the applicant or interested party why the zoning or building permit was denied or why the application is necessary. He or she shall inform the applicant or interested party of the right to apply or appeal to the Board and that it be made within 10 days. Such appeal shall be filed with the Zoning Administrator on the forms provided by the Board of Adjustment. The Zoning Administrator will transmit the completed appeal form along with all papers constituting the record upon which the Board shall act.

Section 4.3 APPEAL FORMS The applicant shall complete the required forms, providing all information requested by the form and any additional information as requested by the Zoning Administrator.

Section 4.4 REJECTION OF APPEAL The secretary of the board shall reject any such application or appeal that is not filed within 10 days of the Zoning Administrator's decision. Also, the secretary shall reject any such application or appeal unless same are made on prescribed forms properly filled out, with all required data attached.

Section 4.5 CASE NUMBERS An application or appeal filed according to the above procedure shall be given a case number within five (5) working days from the date filed. Applications or appeals will be assigned in the order in which they are received.

Section 4.6 PUBLIC NOTICE The secretary of the board shall notify the parties of interest (property owners of record within 200 feet of the applicant's lot lines) by mail of the time, place, and purpose of the public hearing, and give a minimum of seven days public notice in a newspaper of general circulation between seven (7) and twenty (20) days before the meeting date.

Section 4.7 PUBLIC HEARING At the time of the public hearing the applicant may appear in his or her own behalf or be represented by agent or counsel. In the absence of any personal appearance on behalf of the applicant, the Board will proceed to dispose of the matter on the forms and information provided before.

Section 4.8 ORDER OF HEARING The order of the hearing shall be as follows:

- a. The applicant's or appellant's side of the case
- b. Zoning Administrator's side of the case
- c. Interested property owners' opinions
- d. Applicant's rebuttal
- e. Questions of applicant or appellant by the Board
- f. Questions of Zoning Administrator by the Board
- g. Action by the Board of Adjustment

Public discussion/hearing may be reopened at any time during the meeting to permit additional testimony

and evidence, either to permit reconsideration of an action or for any other reason at the discretion of the Chairperson.

Section 4.9 RULES OF EVIDENCE Hearings before the Board need not be conducted according to formal rules of evidence. Any relevant testimony may be considered if it is the sort of testimony upon which reasonable persons may rely. The Chairperson may exclude irrelevant or redundant testimony and may make such other rulings as may be necessary for the orderly conduct of the proceedings while ensuring basic fairness and full consideration of the issues involved.

Section 4.10 BURDEN OF PROOF The burden of proof of any legal prerequisites to the granting of the relief or action sought shall be upon the party requesting such relief or action.

Section 4.11 QUESTIONING OF SPEAKERS Any person other than the Board desiring to direct a questions to a speaker or staff member shall submit the question to the Chairperson, who shall determine whether the question is relevant and whether or not it should be answered. Direct questioning of speakers or staff members may be allowed in extraordinary circumstances, at the discretion of the Chairperson.

Section 4.129 DELIBERATION After the hearing, the Board shall deliberate the case. The Board may ask its attorney for comments.

Section 4.130 WITHDRAWAL The applicant or appellant may withdraw his or her application or appeal at any time prior to the decision by the Board of Adjustment.

Section 4.144 FINAL DECISION Final decision of any application or appeal shall be made in the form of a resolution by anyone on the Board of Adjustment. The resolution may affirm, modify, or reverse the refusal of a permit by the decision of the Zoning Administrator. In the case of an application for variance or special exception, the resolution shall set forth that the application is granted or denied and said resolution shall specifically set forth what variances or special uses are permitted and what conditions, if any, shall be complied with.

Section 4.15 MOTIONS FOR RECONSIDERATION Motions for reconsideration of a matter may be made only by a member who voted with the prevailing majority on the matter to be reconsidered. Any member of the Board may second a motion to reconsider. Motions to reconsider shall be made at the same meeting as the original motion. If the matter to be reconsidered was considered at a public hearing, the public hearing will be reopened before additional evidence may be heard.

Section 4.15 NOTIFICATION Within fifteen days after the hearing the Zoning Administrator shall notify the parties of interest of the Board's decision.

Section 4.13 REHEARING A rehearing of any decision of the Board of Adjustment may be made if the following occur: the motion to ~~reconsider-rescind~~ is made by a member of the Board and carried by not less than four affirmative votes, new evidence is submitted that could not reasonably have been presented at the original meeting; at least 90 days have elapsed since the resolution was defeated; and the case is put on the agenda for a rehearing.

5.0 RECORDS The secretary shall keep books showing the status of all cases and minutes as part of the records of the Board of Adjustment. In addition, the secretary shall keep a file of all cases including forms and additional information as a part of the legal records.

Section 6.0 AMENDMENTS A majority vote of all the members of the Board shall be necessary to amend these procedural rules. Such proposed amendments shall be presented in writing at any regular

meeting of the Board of Adjustment.

7.0 INFORMAL ADVICE The Board will not consider a request (informal or not) for advice on theoretical or actual situations that potentially may later come before the Board as an appeal or application.

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Windsor Heights Board of Adjustment
RULES AND PROCEDURES

1. Each applicant will be given 10 minutes to present the request.
2. Proponents and then opponents from the public are then allowed to speak in that order, with each speaker allowed a maximum of 5 minutes. Speakers must introduce themselves, including their name and address.
3. Applicant is then allowed five (5) minutes for a rebuttal.
4. The hearing will then be closed, and the Commission will discuss and vote on the issue.
5. All comments are to be germane to the item under consideration and speakers are to maintain a courteous manner.