

RULES AND REGULATIONS FOR THE
BUILDING ADVISORY BOARD OF APPEALS

City of Scottsdale, Arizona

July 19, 2012

I. ORGANIZATION

101. Officers

The Building Advisory Board of Appeals, organized as provided under the Scottsdale Revised Code of the City of Scottsdale, shall elect a Chair and Vice-Chair at its first meeting of the calendar year. The City-designated Building Official or his/her designated representative shall be an ex-officio member and shall act as Secretary of the Board. The Vice-Chair shall fill any unfilled term of the office of the Chair should that office become vacant for any reason.

102. Duties

A. The Chair, or when the Chair is vacant, the Vice-Chair, shall preside at meetings, shall decide all points of order or procedure, shall take evidence, and shall as necessary compel the attendance of witnesses. The Vice-Chair shall be the Acting Chair and shall perform all duties of the Chair whenever the Chair is absent, or unable to serve.

B. The Secretary of the Board shall attend to official correspondence and shall supervise the clerical work and technical preparation necessary to the disposition of appeals before the Board.

103. Committee's

A. A committee of the Building Advisory Board of Appeals shall not be created unless authorized by the city council prior to its creation. Any committee created following city council authorization may include only members of the Building

Advisory Board of Appeals unless the city council approves the appointment of a nonmember.

104. Legal Counsel

The City Attorney, or his designated representative, shall be the legal counsel for the Board.

II. MEETINGS

201. Regular Meetings

Regular meetings of the Board shall be held in a designated City of Scottsdale Conference Room on the third Thursday of each month at 5:15 p.m., when there is business to conduct.

202. Special Meetings

Special meetings for any purpose may be held by the Board on the call of its Chair or at the written request of four or more members, which call shall be filed with the Secretary of the Board.

203. Notice to Members

Written notice of all regular meetings shall be provided to members at least three (3) days before the scheduled date of meeting. The same notice shall be required for all special meetings except that, where required by urgency of business, members shall be notified by telephone or other means by the Secretary of the Board at least 24 hours before the time of the special meeting. Public notice shall be made by the Secretary as required by State law.

204. Quorum

A quorum of the Board shall consist of at least four (4) members. A majority vote of members present shall be necessary to reverse any decision of the Building Official to approve the use of alternate materials or methods of construction, or to pass or to effect any variations from the building, electrical, plumbing,

mechanical, housing or fire code ordinances. A tie vote shall be considered as an affirmance to the status quo.

205. Meetings - Public

All meetings of the Board shall be open to the public.

206. Agenda

The Secretary of the Board shall prepare an agenda for each Board meeting.

The agenda shall list all matters of business for board consideration at that meeting.

207. Attendance

In the event a member of a board is unwilling or unable to serve, or if any member is absent or tardy from three (3) consecutive meetings, or four (4) meetings within a six (6) month period, then the chair shall notify the mayor or the mayor's designee so that consideration of removal and replacement of the member may be scheduled for city council action.

III. OFFICIAL RECORDS

301. Definitions

The official records shall include these rules and regulations, and the minutes of the Board, together with all findings, applications, exhibits, decisions and other official actions.

302. Recording of Vote

Minutes shall be kept for all meetings of the Board and shall show the vote of each member on every question on which the Board is required to act, or shall indicate absence or failure to vote. Minutes shall also show:

1. The date, time and place of the meeting.
2. The members of the board recorded as either present or absent.
3. A general description of the matters considered.

4. An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material.

303. Public Record

All of the official records of the Board shall be public records, filed in the office of the Building Official by the Secretary of the Board, and open to public inspection during normal working hours, pursuant to Arizona state law.

IV. POWERS AND DUTIES

401. The Building Advisory Board of Appeals shall have the power and jurisdiction:

A. To hear appeals of decisions made by the building official or fire chief on the suitability of alternative materials and methods of construction when different than required in, Chapter 31, Article III, Article IV, **Article V**, Article VI, Article VII and Chapter 36, Article II, Scottsdale Revised Code.

B. To hear appeals of decisions made by the building official or fire chief on variances to the application of the provisions of Chapter 31, Article III, Article IV, **Article V**, Article VI, Article VII and Chapter 36, Article II, of the Scottsdale Revised Code to any individual case. The Board may reverse or modify the interpretation of the Building Official or the fire chief when in its opinion, the decision would do manifest injustice and would be contrary to the spirit and purpose of said code or public interest.

C. To hear appeals of abatement notices, the final appeal of slum property designation or abatement assessment, filed with the City Clerk, for reasons listed in Chapter 18, Article IV, Scottsdale Revised Code.

V. APPLICATIONS

501. Application Required

A. No request to hear appeals of decisions made by the building official or fire chief shall be heard by the Board until and unless an application, signed by the requesting party, shall be filed with the Secretary of the Board. Said application shall be filed on a form provided at the office of the Building Official. The application shall include the name, address and telephone number, if applicable, of the requesting party, the request, and the justification on which relief is sought. Applications shall be filed and fees paid with the Secretary of the Board (when applicable). An incomplete application or a communication purporting to be an application and not made in the form prescribed shall be regarded only as a notice of intent to appeal, and shall not be scheduled by the Secretary of the Board for action by the Board.

B. No request to hear appeals of abatement notices, the final appeal of slum property designation or abatement assessment, shall be heard by the Board until and unless a notice of appeal, signed by the requesting party, shall be filed with the City Clerk. Said notice of appeal shall include the name, address and telephone number, if applicable, of the requesting party, the request, and the person's reasons for believing they are not in violation of the City Code, or that the assessment is excessive.

502. Time Limits

A. Every application for an appeal of an administrative decision, a variance to code requirements, or a variance for the use of alternate materials shall be filed within thirty (30) days after the date that relief was refused by the Building Official. Applications for variances may be filed at any time not prohibited under these rules.

B. Every appeal of abatement notices, the notice of slum property designation or abatement assessment, shall be filed within fifteen (15) days of the notice to abate, notice of designation of slum property or abatement assessment.

C. The Secretary of the Board shall schedule each case at the next regularly scheduled meeting provided that the completed application is received for filing by the Secretary of the Board ten (10) days prior to the scheduled meeting date.

503. Submission of Evidence

Evidence supporting the application shall be submitted only with the application or to the Board in public meeting. Strict adherence to judicial rules of evidence is not required.

504. Withdrawal of Application; Continuances

Any application may be withdrawn upon written notice filed with the Secretary of the Board, but no application shall be so withdrawn after notice of hearing has been transmitted to the Board members. Applications may also be withdrawn or granted a continuance upon request or agreement of the applicant and with the concurrence of majority of the Board present at a regular or special meeting.

505. Jurisdiction

The Board shall be presumed to have jurisdiction over any application before it unless challenged by any person, including a Board member, opponents of the applicant, or any member of the City staff. Such challenge must be based on applicable provisions of City ordinances or these Rules. Such a challenge shall rebut the presumption of jurisdiction and the Board shall hear arguments and decide the question when a challenge is raised.

VI. BASIS FOR ACTION

A. Basis for allowing alternate materials and methods of construction / basis for allowing variances in the application of the provisions of Chapter 31, Article III,

Article IV, Article V, Article VI, Article VII And Chapter 36, Article II, of the Scottsdale Revised Code.

The Board may allow alternate materials and different materials and methods of construction or grant variances to the provisions of Chapter 31, Article III, Article IV, Article V, Article VI, Article VII and Chapter 36, Article II, of the Scottsdale Revised Code when in its opinion:

1. The intent of the requirements described in the Codes has been incorrectly interpreted.
2. A decision is unreasonable or arbitrary as it applies to alternate or new materials.
3. The Building Official's failure to grant a minor variance is unreasonable. In this regard, the Board may require that the Building Official reverse his decision only after the Board has determined that ALL

OF THE FOLLOWING APPLY:

- a) Special circumstances or conditions apply to this permit application; and
- b) Authorizing the minor variance is necessary for the preservation and enjoyment of substantial property rights; and
- c) Authorizing of the minor variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property in the neighborhood or to the public welfare in general; and
- d) Granting of the minor variance will be in harmony with the purposes sought to be attained by the applicable codes or governing ordinances.

B. Basis for setting aside a notice of violation /compliance order or notice to abate / basis for allowing variances as provided in Chapter 18, Article IV, Scottsdale Revised Code.

1. The Board may set aside a notice of violation/ compliance order or notice to abate when in its opinion:

- a) The property or building subject to the notice is not in violation of the ordinance;
- b) The property is not a slum property.
- c) The intent of the chapter or standards described in the chapter have been incorrectly interpreted; or
- d) The statement of costs for correcting or abating the violation is excessive.

2. The Board may grant a variance or time extension to a notice of violation/ compliance order or notice to abate when in its opinion:

- a) Special circumstances or conditions apply to this appeal application such as hardship;
- b) Authorizing of the variance is necessary for the preservation and enjoyment of substantial property rights; and
- c) Authorizing of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.

3. The board may grant one (1) extension of the time limit set forth in Section 18-30. Such extension shall not exceed one hundred eighty (180) days. The extension period granted by the board starts to run on the day the board issues its decision pursuant to Section 18-35(c). The board may grant an extension only where it is shown that:

- a) It would create a hardship to bring the property into compliance within the thirty-day period of Section 18-30, and
- b) The moving party presents a plan, that is approved by the board, by which the property will be brought into compliance within one hundred eighty (180) days.

VII. HEARINGS

701. Procedure for Hearing

- A. The Building Official or his/her representative shall give a brief, general explanation of the content of the application. The Chair shall then determine what parties are available to speak on the application and whether the applicant intends to appear or to rely upon his application as written. If the applicant fails to appear, the Board may continue the hearing unless the applicant has requested that the Board act without his being present at the hearing, provided that the Board shall hear those persons appearing in response to the notice of hearing if such persons so desire.
- B. The Board may then question either the applicant or the Building Official or his/her representative regarding the case.
- C. After arguments have been heard, and after the Board has had the opportunity to ask any pertinent questions, the Chair may declare that the questioning and argument be closed. If any member of the Board disagrees, he may move that the questioning and argument remain open. Upon a second, an immediate vote will be taken without debate. A majority vote of the quorum will suffice to affirm or disaffirm the motion. If the motion is affirmed, the moving member shall identify the areas of argument in question which he feels remain and the Chair shall allow sufficient time for such questioning and argument before again declaring that questioning and argument be closed. This procedure

shall continue until the closing of questioning and argument by the Chair is not successfully overturned.

D. In situations not conflicting with these rules, Roberts Rules of Order shall be controlling.

702. Decisions

Upon conclusion of each hearing, the Board shall deliberate and render its decision. The Board may grant, modify, or deny any application for variance.

The Board may reverse or affirm, wholly or partly, or modify the order, requirement or decision of the City Manager, Building Official or their representative appealed from, and may allow alternate materials and methods of construction.

VIII. DISQUALIFICATION / CONFLICT OF INTEREST

A Board member, including the Chair, shall disqualify him or herself from voting whenever he/she has personal or monetary interest in the property under appeal, or will be directly affected by the decision of the Board. This section shall apply to any decision made by the Board, whether interim or final.

IX. RULES AND AMENDMENTS

901. Amendment Procedure

Amendments to these rules may be made by the Board upon the affirmative vote of four (4) members; provided any such amendment is proposed at a preceding meeting, or is submitted in writing at the prior regular meeting of the Board, and is included in the minutes of such meeting or meetings. Amendments adopted as above shall become effective at the next regular meeting of the Board following the meeting in which they were adopted.

902. Availability of Rules

A certified copy of these rules and any amendments thereto shall be made available by placing them on record in the Office of the City Clerk within ten (10) days following the date of adoption.

903. Effective Date

These rules, and any amendments thereto, shall be effective immediately upon their adoption by the Board by a vote of four (4) or more members; provided applications which have been initiated prior to the effective date shall be treated according to rules of procedure existing prior to the effective date if the applicant so desires.

PASSED AND ADOPTED by the Building Advisory Board of Appeals of the City of Scottsdale
this 19th day of July, 2012.


_____, Chair

David Valencia

ATTEST:

_____, Deputy City Clerk