

**Article 24.**  
**BOARD OF ADJUSTMENT**

**Sec. 24-1 - Appointment.**

A Board of Adjustment is hereby established which shall consist of seven (7) members, five (5) of whom shall be appointed by the City Commission, one of whom shall be nominated by the City Manager, subject to approval of the City Commission and one of whom shall be nominated by the six (6) members so appointed, subject to approval of the City Commission. In the event that the six (6) members shall fail to agree on the seventh member, such member shall then be nominated by the City Commission after a thirty (30) day waiting period. All members, except the five (5) members appointed by the City Commission, shall be associated with and ethically responsible to professions having a membership generally familiar with planning and zoning principles; such professions may include Architects, Engineers, Attorneys, Appraisers, Contractors, Realtors, etc. A member of the administrative staff of the Building and Zoning Department shall be named by the City Manager to act as a non-voting ex-officio member of the Board and shall be Secretary of the Board.

**Sec. 24-2 - Terms.**

The term of each member shall be for a period expiring on May 31, 1971. Thereafter all appointments shall be for a two-year period, commencing June 1 and ending on May 31 of the next odd year or until their successor is appointed. Any member may be removed by a majority vote of the City Commission. Appointments for replacement of any member due to death, resignation or removal shall be for the unexpired term.

**Sec. 24-3 - Organization and members.**

The members of the Board of Adjustment shall elect one of its members to serve as Chairman. The term of the first Chairman so named shall terminate on May 31, 1971; thereafter, the term of the Chairman named by the Board shall be for a period of one year but not later than May 31 of the year following the date of appointment. Nothing shall prevent the Board from naming a Chairman to succeed himself. Each member of the Board shall be a resident citizen, domiciliary of the City of Coral Gables and an owner of real

property or spouse of owner in the City of Coral Gables during the term of appointment and also for at least five (5) years prior to appointment.

**Sec. 24-4 - Meetings and records.**

The Board of Adjustment shall hold regular meetings on the first Monday of each month, and special meetings at such times as the Board may determine or at the call of the Chairman thereof, or the Building and Zoning Director for consideration of business before the Board. All meetings of the Board shall be open to the public. The time and place of meetings, and the order of business and procedure to be followed at meetings, shall be as prescribed by the Board. Four (4) members of the Board shall constitute a quorum and the affirmative vote of a majority of the Board shall be necessary to authorize a variance, grant an appeal, effectuate a ruling or recommendation or for any other decision or determination thereof. In the event of a tie vote, the matter voted upon shall be automatically deferred to the next regular meeting of the Board and if at such subsequent meeting a tie vote is again obtained the minutes of the Board of Adjustment shall show that the motion was not carried and that the matter voted upon was denied. A written record of the proceedings of the Board shall be kept, showing its action on each question considered. Such record shall be filed in the office of the Secretary of the Board and shall be open for public inspection.

**Sec. 24-5 - Authority, powers and decisions.**

The Board of Adjustment shall have the following authority and powers:

- (a) Authorize in specific cases such variance from the terms of this Code as will not be contrary to the public interest where, owing to special conditions a literal enforcement of the provisions of this Code would result in unnecessary hardship. A variance from the terms of this Code shall not be granted by the Board of Adjustment unless the Board shall find that the facts exist as set forth under Section 24-7 hereof. Variances shall be granted only after a public hearing has been held by the Board of Adjustment at which persons interested

and/or affected shall be accorded an opportunity to be heard.

- (b) Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Board of Architects, Building and Zoning Director, or any Administrative Official in the enforcement of the Zoning Code. An appeal shall be granted only after a public hearing has been held by the Board of Adjustment at which time persons interested and/or affected shall be accorded an opportunity to be heard. The Board of Adjustment may, so long as such action is in conformity with the terms of this Code, reverse or affirm wholly or partially, or may modify the order, requirements, decision or determination appealed from and may make such order, requirements, decision or determination as ought to be made, and to that and shall have powers of the Board of Architects, Building and Zoning Director, or Administrative Official from whom the appeal is taken.
- (c) Construe the provisions of this Code so that the spirit and the true purpose thereof may be observed.
- (d) The Board of Adjustment shall recommend in writing to the Planning and Zoning Board such amendments to this Code as it may deem proper and expedient or necessary to clarify, or to carry into effect the purposes thereof. All decisions of the Board of Adjustment shall be by resolution. Within fourteen (14) days from the date of such decision, any resolution of the Board of Adjustment may be appealed to the City Commission, as provided for under Section 26-2 herein, otherwise the resolution shall become final.

**Sec. 24-6 - Notice of hearings.**

In every case where a variance or a ruling is requested to this Code, or where an appeal is requested from a decision of the Board of Architects, Building and Zoning Director, or Administrative Official, as provided for under Section 26-1 hereof, the Secretary of the Board of Adjustment shall cause a Notice of the Public Hearing to be given in the following manner: (3180)

- (a) Types of Notices.
  - 1. Newspaper publication. A public notice of such variance, request, or

ruling to this Code, or an appeal from a decision of the Board of Architects, Building and Zoning Director, or Administrative Official, shall be published one (1) time in a newspaper of general circulation published in the City of Coral Gables, or in Miami-Dade County, Florida, at least ten (10) days prior to the date of such hearing. All such notices published in a newspaper shall state in substance the variance, ruling, or appeal requested and shall give the date, time, and place of the public hearing.

- 2. Posting property.
  - a. All property being considered by the Board of Adjustment for a variance, ruling or an appeal from a decision of the Board of Architects, Building and Zoning Director, or Administrative Official, shall be posted at least ten (10) days in advance of the public hearing. Such posting shall consist of a sign, the face surface of which shall not be larger than forty (40) square inches in area, the color of which shall be day-glo orange with black lettering and shall contain the following language:

**NOTICE  
BOARD OF ADJUSTMENT  
PUBLIC HEARING  
PHONE: \_\_\_\_\_  
HEARING DATE: \_\_\_\_\_  
HEARING NO. \_\_\_\_\_**

- b. The sign shall be erected in full view of the public on each street side of such property. Where large parcels of property are involved with street frontages extending over considerable distances, as many signs shall be erected on the street frontage as may be deemed adequate to inform the public.
- c. If such sign be placed on a vacant lot or parcel of land, it shall be securely nailed or otherwise fastened securely to a stake or post which itself

shall be fastened securely into the ground. Said sign shall not be located nearer than (10) feet nor more than fifteen (15) feet from the street property line, provided, however, that where said property is improved by a building, the main part of which is less than ten (10) feet from said street property line, the sign may be placed upon the front and/or side of the building, or upon a front and/or side door and/or window of the building. Whenever a building on improved property is located more than ten (10) feet from the street property line, the sign shall be erected as provided for on vacant property.

- d. The height of such sign shall be erected to project not more than three (3) feet above the surface of the ground.
  - e. It shall be a misdemeanor in the second (2<sup>nd</sup>) degree, punishable pursuant to Florida Statute 775.082 and 775.083, if any unauthorized person shall tamper with or remove the signs posted pursuant to this section.
3. Mail notices. A courtesy notice of public hearings as to the date, time, place of hearing, property location and general nature of the application may be mailed to the property owners whose addresses are known by reference to the latest ad valorem tax record, within a radius of five-hundred (500) feet of the property described in the application; provided, however, that failure to mail or receive such courtesy notice shall not affect any action or proceeding taken hereunder. Such notice shall be mailed not less than ten (10) days before the day of the hearing. The applicant shall provide the aforementioned mailing list and labels to the City in order for the City to carry out this provision as it may. (3262)

#### **Sec. 24-7 - Variances.**

In order to authorize any variance from the terms of the Zoning Code, the Board of Adjustment must and shall find:

- (a) That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.
- (b) That the special conditions and circumstances do not result from the actions of the applicant.
- (c) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings or structures in the same zoning district.
- (d) That literal interpretation of the provisions of the Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Code and would work unnecessary and undue hardship on the applicant (see also definition of necessary hardship).
- (e) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
- (f) That granting the variance will not change the use to one that is different from other land in the same district.
- (g) That the granting of the variance will be in harmony with the general intent and purpose of the Zoning Code, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

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

No variance from the Zoning Code shall be authorized by the Board of Adjustment which reduces the minimum square foot floor area more than five (5%) percent for any specifically designated property.

In granting any variance, the Board of Adjustment shall provide that any permit issued in connection with the variance shall conform to

the plans submitted with the application and the Board of Adjustment may also prescribe appropriate conditions and safeguards in conformity with this Code. Violations of such and/or deviation from such plans, conditions and/or safeguards, shall be deemed a violation of this Code and punishable under Section 27-1 hereof.

Under no circumstances shall the Board of Adjustment grant a variance to permit the following:

- (a) A use not permitted in the district involved, or any use expressly or by implication prohibited by the terms of this Code in said district; and,
- (b) The reduction or diminishing of a building site upon which a single-family residence or duplex has heretofore been constructed. When a variance is granted, the proceedings of the Board shall state the basis for granting the variance.

**Sec. 24-8 - Applications for variance and other hearings--Procedure.**

- (a) Applications for variances involving "R" and "D" Use Districts: (2578, 2641, 2969, 3239, 3489) Variance.....\$400.00
- (b) Applications for variances involving signs, landscaping, facing materials, fences and walls, all auxiliary and accessory uses, and all conditional uses in "S", "A", "C", or "M" Use Districts—four-hundred and fifty dollars (\$450.00).
- (c) Applications for variances from each section of the Zoning Code (other than as set forth in subsection 2. hereinabove) for building in "S", "A", "C", or "M" Use Districts shall be based on the sum of the total gross floor areas of the existing and proposed buildings as follows:  
Four cents (\$0.04) per square foot of gross floor area for each variance requested (with a minimum application fee of seven-hundred dollars (\$700.00).
- (d) Applications involving the following conditions or additional requests shall be charged the following additional fees as are appropriate:
  - 1. "R" and "D" Use Districts:  
Requests for rulings or interpretations .....\$300.00

- Requests for waiving of one (1) year waiting period on subsequent applications.....\$300.00
- Requests for submitting an application after the application deadline (when possible for meeting the legal notice and newspaper publication requirements).....\$300.00
- Applications for variances as a result of a deviation from the approved plans.....\$500.00
- Applications for variances as a result of a violation notice.....\$500.00
- 2. "S", "A", "C" and "M" Use Districts:  
Requests for rulings or interpretations..... \$300.00
- Requests for waiving of one (1) year waiting period on subsequent applications.....\$525.00
- Requests for submitting an application after the application deadline (when possible for meeting the legal notice and newspaper publication requirements).....\$525.00
- Applications for variances as a result of a deviation from the approved plans.....\$900.00
- Application for variances as a result of a violation notice.....\$900.00
- (e) Requests for an appeal from a decision of the Board of Architects, Building and Zoning Director or Administrative Official— Three-hundred dollars (\$300.00).
- (f) No fee shall be charged for any postponement of an application at the request of the Board of Adjustment or when the applicant requests a postponement because there are not seven (7) Board Members attending that meeting.
- (g) The maximum fee for an application shall not exceed five-thousand dollars (\$5,000.00).
- 8. Applicants requesting an administrative extension of a variance shall pay a fee of two-hundred dollars (\$200.00).

**Sec. 24-9 - Time limit for variances.**

Any variance authorized by Resolution shall become void and of no effect six (6) months from and after the date of the resolution granting the same, unless within such period of six (6) months a building permit for the building or structure involved embodying the substantive matter for which the variance was granted shall

have been issued and taken out; or if the use or adoption of such variance does not require the issuance of a building permit, unless the requested action permitted by the variance shall have taken place within the said six (6) months period. Whenever the six (6) months period has elapsed without action by the applicant, the applicant shall be required to file a new application as set forth in Section 24-8 hereinabove.

expenses incurred in the performance of their official duties.

However, upon application, the City Manager may, after review and determination that substantial progress has been achieved by the applicant in terms of project planning, extend the expiration date of the variance from an additional period of time not to exceed six (6) months. Said extension request shall be filed with the City Manager two (2) weeks prior to the expiration of the initial six (6) months effective period of the variance.

**Sec. 24-10 - Limitation of subsequent applications.**

Whenever any application for a variance shall have been finally determined, no other or further application for a variance with reference to the particular property affected by said application or with references to other property similarly situated, will be considered for a period of one year following the date of such action. Should conditions affecting such property materially change, in the opinion of the Board of Adjustment, or should a modified plan be presented to the Board of Adjustment either of which in the opinion of the Board of Adjustment would justify action before the expiration of such one-year period, the Board of Adjustment by five-sevenths (5/7) majority may permit the filing of such application notwithstanding the provision of this Code.

**Sec. 24-11 - Expenses.**

Each member of the Board of Adjustment except the Chairman, shall receive the sum of twenty-five (\$25.00) dollars for each regular or special meeting of the Board of Adjustment attended by such member. The chairman shall receive the sum of thirty (\$30.00) dollars for each regular or special meeting attended by him. This sum shall not be considered as compensation but shall be considered as travel and other necessary