

- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan.

70.130-I Lapse of Approval

1. An approved variance will lapse and become void 3 years after it is granted by the board of adjustment, unless a building permit for the work or improvements authorized has been issued and the project has commenced and is diligently pursued to completion. If no building permit is required, the improvement that is the subject of the variance must be in place within the 3-year period.
2. The board of adjustment may extend the expiration period by up to one year at the time of approval of the variance or any time before expiration of the approval. Requests for extensions after the variance is approved must be processed in accordance with the variance procedures, including applicable fees, notices and public hearings.

70.130-J Transferability

Approved variances run with the land and are not affected by changes of tenancy, ownership, or management.

70.130-K Amendments

A request for changes in the specific nature of the approved variance or changes to any conditions attached to an approved variance must be processed as a new variance application, including all requirements for fees, notices and public hearings.

70.130-L Appeals

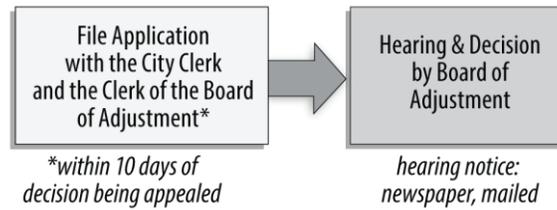
Board of adjustment decisions on variances may be appealed to District Court in accordance with [75.010-K](#).

Section 70.140 Appeals of Administrative Decisions

70.140-A Authority

Appeals of administrative (staff-level) decisions on site plans go to the planning commission (See [70.050-C](#)). The board of adjustment is authorized to hear and decide all other appeals where it is alleged there has been an error in any order, requirement, decision or determination made by the land use administrator, the development administrator or any other administrative official in the administration, interpretation or enforcement of this zoning code. For the purpose of applying the procedures of [Section 70.140](#) to appeal of any final decision of the preservation commission (See [§70.070-L](#)), the final decision of the preservation commission is deemed an administrative decision and the preservation commission is deemed an administrative official.

Figure 70-7: Appeals of Administrative Decisions (Generally)



70.140-B Right to Appeal

Appeals of administrative decisions may be filed by any person aggrieved by the land use administrator’s, the development administrator’s or other administrative official’s decision or action. The board of adjustment is authorized to make determinations about whether individuals filing appeals are “aggrieved” by the decision or action.

70.140-C Application Filing

1. Complete applications for appeals of administrative decisions must be filed with the clerk of the board of adjustment and the city clerk, who will accept the appeal on behalf of the administrative official who made the decision being appealed and forward it to said official.
2. Appeals of administrative decisions must be filed within 10 days of the date of the decision being appealed.

70.140-D Effect of Filing

The filing of a complete notice of appeal stays all proceedings in furtherance of the action appealed, unless the land use administrator or the administrative official who made the decision being appealed certifies to the board of adjustment, after the appeal is filed, that, because of facts stated in the certification, a stay would cause immediate peril to life or property, in which case the proceedings will not be stayed unless by a restraining order, which may be granted by the board of adjustment or by a court of record based on due cause shown.

70.140-E Record of Decision

Upon receipt of a complete application of appeal, the land use administrator or other administrative official whose decision is being appealed must transmit to the board of adjustment all papers constituting the record related to decision being appealed

70.140-F Notice of Hearing

Notice of the board of adjustment’s required public hearing must be provided as follows (see [70.010-F](#) for additional information on required newspaper and mail notices).

1. Newspaper Notice

Notice must be published in the newspaper at least 10 days before the scheduled public hearing.

2. Mailed Notice

When an appeal affects a specific property, notice must be mailed to the owner of the subject property and all owners of property within 300 feet of the subject property at least 10 days before the scheduled public hearing.

70.140-G Hearing and Final Decision

1. The board of adjustment must hold a public hearing on the appeal.
2. Following the close of the public hearing, the board of adjustment must make its findings and take action on the appeal.
3. In exercising the appeal power, the board of adjustment has all the powers of the administrative official from whom the appeal is taken. The board of adjustment may affirm or may, upon the concurring vote of at least 3 members, reverse, wholly or in part, or modify the decision being appealed.
4. In acting on the appeal, the board of adjustment must grant to the official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant.

70.140-H Review Criteria

The decision being appealed may be reversed or wholly or partly modified only if the board of adjustment finds that the land use administrator, the development administrator or other administrative official erred.

70.140-I Appeals

Board of adjustment decisions may be appealed to District Court in accordance with [75.010-K](#).