

Board of Adjustment LDC Workgroup				
11/4/2019 -- Compiled by Don Leighton-Burwell				
Code Section / Issue for Consideration	DonLB	J. Cohen	Wm. Hodge	Y. Smith
General Notations	Shift from BOA (or other Board & Commission Approvals to Staff Approvals (eg MUPs & Minor Adjustments		Opinion: the zoning code and general planning requirements (Chapter 23-3 and 23- 4, respectively) are better-written than current code, with clearer language and better graphics and format. Specifically regarding my day-to-day (infill residential architecture), the proposed new regulations are simpler and more prescriptive, with fewer exemptions and exceptions.	Language could use some work
			Opinion: one of the best ways to increase housing supply is to make the code simpler and clearer—simplicity and clarity equal predictability, which equals greater ease of use...which equals greater ease of review...which equals faster reviews...which equals, per unit time, more housing created.	It feels like they're conflating the director's role and the boards & commissions roles.
			All residential zones, tables of lot size and intensity. If an ADU is allowed it should be made clear by means of creating a column between "Principal Dwelling Units" and "Width."	A little confused on how information is given to the general public whether it be notices for somethings and particularly interpretations. Doesn't look like it actually goes anywhere unless there's an appeal.
<u>INTRODUCTION:</u>				
<u>GENERAL PROVISIONS</u>				
23-1A-3030 (C) (2) (a) (i and ii) <u>Types of Administrative Decisions</u> ; A decision by the responsible director on an application for:				
(i) A site plan or minor use permit ;	[NOTE: MUP is defined (per 23-3B-1050) as "...similar to a conditional use permit under Section 23-3B-1040 (Conditional Use Permit) in that it provides for consideration of a development's overall context, but is intended for smaller scale uses, authorizes a narrower range of conditions, and is approved administratively. " NOTE: Unlike a CUP, public input is not sought]			
(ii) A minor adjustment or alternative equivalent compliance				
23-1A-4010 (A) <u>Consistency Requirement</u> . "Legislative, quasi-judicial, and administrative decisions under this Title must be consistent with the Comprehensive Plan, as required by Article X of the City Charter."				
23-1A-5020 (B) (2) (b) "If a general provision conflicts with a provision that is more specific to a development application or category of development, then the specific provision applies and controls over the general provision unless the general provision was adopted more recently and the manifest intent of the city council was for the general provision to apply."				
[NOTE: How is "manifest intent" determined and by whom?]				
<u>RESPONSIBILITY FOR ADMINISTRATION</u>				
23-1B-2020 Board of Adjustment				

LATE BACKUP

S-5/2

Code Section / Issue for Consideration	DonLB	J. Cohen	Wm. Hodge	Y. Smith
23-1B-2020 (C) (2) "An appeal of an administrative action filed by an aggrieved party under Division 23-3B-2 (Code Interpretations and Use Determinations), in accordance with the procedures in Article 23-2I (Appeals);"				use of "aggrieved party" with no definition. Shows up again for the second and last time in 23-2H-3030 but still lacks actual definition.
<u>ADMINISTRATION & PROCEDURES:</u>				
<u>GENERAL PROVISIONS</u>				
23-2A-1010 (B) "More detailed requirements for particular types of development approval and administrative decisions may be found throughout this Title, as well as in administrative rules and policy memos adopted by the responsible directors listed in Table 23-1B-3020(A) (Overview of City Departments)."				
23-2A-1030 (A) Overview of Legislative, Quasi-Judicial and Administrative Approvals (Table)				
<u>BOA Jurisdiction:</u>				
• Zoning Variances 23-3B-4020				
• Special Exception 23-3B-4				
• Administrative Appeals (Zoning Regs) 23-3B-2040 - notice?	How noticed?			
• Administrative Appeals (Enforcement Orders) 23-1B-2050				
<u>BOA Appeals:</u>				
• Nonconforming Status Determination 23-2H-1				
• Zoning Code Interpretation 23-3B-2020 - notice?	How noticed?			
• Zoning Use Determination 23-3B-2030 - notice?	How noticed?			
• Stop Work Order 23-2J-3010				
• Suspension or Revocation Order 23-2J-2				
23-2B-2020 (B) Three to Eight-Unit Residential modifies "Regulations for Tree Protection" and reduces "Application Fees" (over requirements for One to Two-Unit Residential)				
23-2C-1010 (C) "... responsible director may specify the order in which approvals within each category must be obtained."				
23-2C-2040 (A) (2) "The responsible director shall, to the greatest extent possible, provide comments on or before the deadlines for staff review established under Section 23-2C-1010 (Application Requirements and Procedures)."	[NOTE: Staff and the Director are often bound by "may", while appellants are bound by "shall"; even when no notice is given on a determination by Director or City Staff]			
23-2D-1010 (B) "Throughout this Title, notice requirements are established for particular types of development applications and administrative decisions by referencing procedures established in this article. Notice is not required for every development application or administrative decision, but only where required by a specific provision of this Title."	[NOTE: Disadvantages potential appellants.]			
23-2D-2010 (A) "A person or organization is entitled to notice of a public hearing, application, or administrative decision under this Title if a provision of this Title requires the responsible director to provide the person or organization with notice of the public hearing, application, or administrative decision."				

LATE BACKUP

S-5/3

Code Section / Issue for Consideration	DonLB	J. Cohen	Wm. Hodge	Y. Smith
23-2D-3040 (F) "If requested by an applicant, the responsible director may allow the applicant to post a sign required by this Title..."	[NOTE: BOA gets complaints about improperly posted or maintained signs - how is compliance administered?]			
23-2D-5020 (3) <u>Notice of Administrative Decisions</u> ; "all persons who qualify as registered parties under Section 23-2D-2030 (Registered Parties).	[NOTE: What recourse for appeal do "interested parties" have, if only "registered parties are notified?]			
23-2G-1010 (C) (1) (a): "...in general a variance may only be approved if site conditions unique to a particular property create a hardship that makes strict compliance with a regulation impossible or unreasonable."				
23-2G-2030 (B)				Why is this limited re: motel transformation case we heard
23-2G-2040 (A) (1) <u>Modification to Address Errors in Construction</u> ; "Criteria for Approval. The director may approve an administrative modification under this subsection if the modification is the minimum amount necessary to address errors in construction... "	[NOTE: See entire section]			"de minimis" --- is there a standard in building modifications that relates to this... What is "de minimis" in this universe (i.e. building)?
23-2G-2040 (A) (1) <u>Administrative Modifications for Residential Structures</u> "... this subsection authorizes the director to grant de minimis modifications to specified development regulations..."				
23-2G-2040 (A) (3) <u>Scope of Modification</u> ; "...the director may approve a modification relaxing :"	[NOTE: Applicants must seek administrative modification prior to applying for variance or special exception]		I recommend that the ability to administratively modify setback requirements by up to 10% be deleted. At a minimum, the ability to administratively modify rear and side setbacks should be deleted. Rear and side setbacks, especially, are established to protect structures from each other and residential structures are, in general, more susceptible to damage by fire than commercial.	
<ul style="list-style-type: none"> A setback limitation by up to 10 percent; or Height requirement by up to 5 percent." 				
23-2G-2050 (A) (1) <u>Alternative Equivalent Compliance</u> ; "This section grants the director limited flexibility in applying certain design standards relating to building placement, building form, and site configuration to facilitate development that meets the intent of this Title through alternative design which may not strictly adhere to particular standards or requirements." Also, "may not be used to vary or modify zone regulations, such as height, setbacks, impervious cover, or floor area ratio."	[NOTE: What is "limited flexibility" and why are the listed standards at the discretion of the director to modify (vs BOA or other Boards)?]			...isn't this ... a variance...? Why wouldn't we do it or the commission that's hearing the case. I may be reading this wrong...
23-2H-1040 (B) <u>Appeal of Decision on Nonconforming Status</u> ; "If the responsible director issues a determination under Section 23-2H-1030 (Determination of Nonconforming Status), that determination may not subsequently be challenged by appealing the director's approval or disapproval of a development application for the use or structure."	[NOTE: What does this mean?]			
23-2H-1050 (C) Modification of Nonconforming Structures; [see entire section] <ul style="list-style-type: none"> Height and Setback Requirements 	[NOTE: This section needs explanation by Staff as to intent and application]			Where are we getting these numbers -- architects is this reasonable?

LATE BACKUP

S-5/4

Code Section / Issue for Consideration	DonLB	J. Cohen	Wm. Hodge	Y. Smith
23-2H-1070 (B) (1) (a) <u>Alteration of Non-Conforming Structures (Residential Structures Wall Demolition or Removal</u> ; "No more than 50 percent of exterior walls and supporting structural elements of an existing nonconforming structure may be demolished or removed..."	[NOTE: This seems excessive].			
23-2H-2020 (C) (1) (c)			I recommend that "be an existing lot" be modified to "be an existing lot or tract of land that has been deemed exempt from platting by means of a land status determination." Most nonconforming "lots," in my experience, are actually <i>portions</i> of lots. Without my recommended modification, portions of lots that are currently buildable (and that would qualify for exemption from platting) will become unbuildable without variances. Opinion: this code rewrite is being "sold" as a means of increasing housing supply, specifically the supply of "affordable" housing. If this is true then we should not be taking buildable land off the table.	
23-2H-2030				Would this be better suited for BOA?
23-2H-2040 (C) (c)				Happy about this (when nonconforming boat docks can't be altered)
23-2H-3020 (A)			Opinion: an existing single-family use within <i>any</i> zone should be considered a compliant use. There is much currently-affordable housing to be found on land outside the R1 and R4 zones, housing that will be in greater danger of demolition if the language of this section is not changed.	
23-2H-3030 A & B		wording and definition clarification. Is this saying that if you use a residential property for something besides a residential property then it's no longer a residential property? What terminology could be used to make grounds for termination clearer?		See comments on 23-1B-2020
<u>Article 23-2I: APPEALS</u>				
23-2I-1020 (A) (1) (b) <u>Appeal of Administrative Decisions</u> ;				
For an appeal to the Board of Adjustment, a person who: • Filed the application that is subject of the decision; • Is the owner or representative of the owner of the property that is subject to the decision; or • Is aggrieved by the decision and is the owner of a real property within 200 feet of the property that is the subject of the decision.	[NOTE: This section defines limits placed on BOA by State Legislature in 2019 session; "interested parties" can no longer appeal project-specific decisions to the BOA].	"real property" within 200 feet? As opposed to a fake property? What is this trying to accomplish? Suggest "Is aggrieved by the decision and is the owner of a property within 200 feet of the property that is the subject of the decision"		

LATE BACKUP

S-5/5

Code Section / Issue for Consideration	DonLB	J. Cohen	Wm. Hodge	Y. Smith
23-2I-1030 (A) (2) Deadline for Appeal ; "20 days after an appealable administrative decision"	[NOTE: How are appeals made on issues that do NOT require notice?]	14 days seems acceptable for a board or commission appeal but 20 days seems a bit unreasonable to file an administrative appeal especially if it's your everyday Joe Residential filing. Is there a reason this shouldn't be 30 days and could that be something we recommend?		
23-2I-1040 (A) Development Not Permitted During Appeal ; "Development under an approved site plan may not occur during the time period in which an appeal of the site plan may be initiated under Section 23-2I-1030 (Deadline for Appeal), except for site clearing. "	[NOTE: What if issue being appealed is removal of trees?]			
23-2I-2010 (A) (6) Fee established by separate ordinance		What ordinance? Can that be included for reference?		
23-2I-2020 (B) Assignment to Appeals Board ; "An appeal that challenges the director's interpretation or application of Chapter 23-3 (Zoning Code), or a separately adopted zoning ordinance, shall be heard by the Board of Adjustment."	[NOTE: What are the appeal fees noted in 23-2I-2010 (A) (6)?]			
23-2I-3010 (B) Notification of Applicant and Presiding Officer ; "On receipt of a timely filed notice of appeal under Section 23-2I-1030 (Deadline for Appeal), the director shall promptly notify the applicant, if the applicant is not the appellant, and the presiding officer or staff liaison of the body to which the appeal is assigned. "				
23-2I-3020 (D) Scheduling and Notice of Public Hearing ; "If an appeal concerns issues with potential to affect individuals or groups who are not parties to the appeal or otherwise entitled to notification, the director may provide additional notice to those individuals or groups."	[NOTE: Who would this be and how would the director determine who are those individuals or groups?]			who are these people?
23-2I-3030 (B)				What about a time requirement for late back up re: public comment about time we have with all the relevant information?
23-2I-3040 (B) Staff Report and Case File ; "A use determination issued by the Planning Director under Section 23-3B-2030 (Use Determinations) or a code interpretation issued under Section 23-3B-2020 (Code Interpretations) satisfies the requirement for a staff report under Subsection (A). A supplemental report may be provided, but is not required. "				
23-2I-4020 (A) Appellate Burden ; "General Standard. Except as provided in Subsection (B), a body considering an appeal may not reverse or modify a decision under appeal unless the appellant establishes by substantial evidence that the decision is contrary to applicable regulations within the jurisdiction of the board considering the appeal."				
23-2K-2010 (D)				Reconsideration for vested rights by the original decider seems ... ripe for litigation.
23-3 ZONING CODE				

LATE BACKUP

S-5/6

Code Section / Issue for Consideration	DonLB	J. Cohen	Wm. Hodge	Y. Smith
23-3A-2020			Opinion: the "Former Title 25" zone should be eliminated. Personally I don't feel the areas slated for F25 zoning are more worthy of preservation than other areas, and should be mapped to new zones like other areas which are arguably equally "valuable" to the urban fabric. At a minimum, properties inside F25 should be mapped to new zones, zones selected for their correlation to the stipulations of current NCCDs.	
23-3B-1050 (B) (1) <u>Minor Use Permit</u> ; "Notice of Application. The director shall provide notice of an application for a minor use permit under Section 23-2D-5010 (Notice of Application) and allow comments on the application to be submitted for a period of at least 14 days .				
23-3B-1050 (B) (3) <u>Minor Use Permit</u> ; "Notice of Decision. Within three days after issuing a decision on a minor use permit application , the director shall provide notice of the decision under Section 23-2D-5020 (Notice of Administrative Decision).	[NOTE: How is this decision conveyed to public & stakeholders?]			
23-3B-1050 (C) <u>Minor Use Permit</u> ; (1) "Standard for Approval. The director shall approve or conditionally approve a minor use permit under this section if the director finds that the application satisfies the findings and criteria for approval of a conditional use permit under Subsection 23-3B-1040(E) (Conditional Use Permit)"; (2) "The director shall establish guidelines for review of minor use permit applications, including interdepartmental consultation, and shall ensure that criteria for approval and conditioning of applications are applied consistently ."	[NOTE: If must meet criteria of CUP, why allow MUP without public hearing?]			
<u>23-3B-2 CODE INTERPRETATIONS AND USE DETERMINATIONS</u>				
23-3B-2020 (B) (1) <u>Project Level Determination</u> ; "Request by Applicant. During the application period for a site plan or building permit, an applicant may request that the director issue a project interpretation regarding the meaning or effect of a particular site development regulation applicable under this Title or a separately adopted zoning ordinance."				Where are these decisions held after the fact? I.e. how is the public informed of these decisions? Additionally, do these decisions set any type of precedent?
23-3B-2020 (B) (2) (a) <u>Project Level Determination</u> ; "Notice and Decision. After receiving a request for interpretation under this section, the director shall: (a) Provide notice of an application for a project interpretation under Section 23-2D-5010 (Notice of Application)..."	[NOTE: How is the public made aware of this interpretation, so that it might be appealed?]			
23-3B-2020 (E) <u>Non-Project Level Determination</u> ; "Posting of Interpretations. The director shall post code interpretations on the City's website ."	[NOTE: Where will this be done and how will BOA and other Boards & Commissions be informed as to the interpretation?]			

LATE BACKUP

S-5/7

Code Section / Issue for Consideration	DonLB	J. Cohen	Wm. Hodge	Y. Smith
23-3B-2030 (B) <u>Use Determinations</u> ; <u>Review Procedures</u> . A use determination is subject to the same procedures as a code interpretation under Section 23-3B-2020 (Code Interpretations), including requirements for notice under Section 23-2D-5010 (Notice of Application) and Section 23-2D-5020 (Notice of Administrative Decision). A use determination may be requested as either a project or non-project determination.”	[NOTE: How will public have access to determination and be able to appeal?]			
23-3B-2040 <u>ADMINISTRATIVE APPEAL</u> ; (A) <u>Project and Non-Project Determinations</u> . A party who meets the requirements of Section 23-2I-1020 (Appeal of Administrative Decisions) may appeal a project or non-project interpretation issued under this division to the Board of Adjustment, consistent with the procedures established in Article 23-2I (Appeals)” and,	[NOTE: Want clarification of who may appeal each type of interpretation, determination and permit decisions.]			
(B) <u>Permitting Decisions</u> . (1) If the responsible director approves or disapproves a development application that is subject to the regulations of this chapter or a separately adopted zoning ordinance, a party who meets the requirements of Section 23-2I-1020 (Appeal of Administrative Decision) may appeal the director’s interpretation of applicable zoning regulations to the Board of Adjustment under the procedures established in Article 23-2I (Appeals).”				
23-3B-4 <u>CRITERIA FOR VARIANCES AND SPECIAL EXCEPTIONS</u>				I think this a little strict. Why could you only remodel to meet “minimum” health and safety if it doesn’t otherwise change the footprint of the nonconforming?
23-3B-4030 (C) <u>Special Exception - Level 1</u> ; “Required Findings. The Board of Adjustment may approve a special exception under this section if the Board finds that...” [NOTE: See findings; limited to Residential House-Scale Zones; “may NOT grant special privilege that is inconsistent with other properties in the area”].		It appears there will only be one type of special exception so will this still be referred to as “special exception 1?”		
23-3B-4030 (C) (3)		10 years seems long. What about Joe Residential who did some work on his garage 5 years ago and is now in trouble? Could this number be lowered?		
23-3B-4030 (C) (5)		does this prohibit ADUs and duplexes in R2A?		
23-3B-4040 <u>Special Exception - Level 2</u> ; DELETED BY STAFF at BOA request . Not currently in the LDC.		confirm deletion from revised code		
23-3C-2030			“Multifamily” represents a broad range of residential developments. It would be clearer and less confusing to eliminate multifamily use and instead distribute the project types described as multifamily to their own individual use designations. If “duplex” is a defined use then why can’t “triplex” be one, too?	
23-3C-2030			“Single-family attached” describes two townhouses, each on its own lot. “Townhouse” use is defined elsewhere. Why not simply eliminate single-family attached use?	

Code Section / Issue for Consideration	DonLB	J. Cohen	Wm. Hodge	Y. Smith
23-3C-2050 (B) (1)			Definition of "top plate" implied by code is different than the industry-standard definition. A "top plate" is the top of a side wall from which rafters spring. Thus, a portion of a roof is, by definition, higher than the top plate of the wall that supports that roof. The intent is to prevent any portion of a roof within 10' of a property line from being X height above the average adjacent grade. (X = 25' in many zones.) Why not simply change (1) to read: "Within 10' of the property line, the structure may not reach a height greater than X above average adjacent grade"?	
23-3C-2050 (B) (3) (b)			The prohibition of shed roofs may be illegal per state law (the state law that prohibits the prohibition of any material or method allowed by the building code). Even if legal, the prohibition is a subjective stylistic mandate. Additionally: if a gabled roof runs parallel to a side lot line and extends within 10' of a property line, that roof (within 10' of a property line) is technically a shed roof. This stipulation should just be eliminated.	
Table 23-3C-3100 (E)			Private frontages are required in R2B but not R2A or R2C. Is this intentional?	
23-3C-3050		clarification on wordage (question for architects - is this the memansion tent replacement?)		
23-3D-1060		doesn't an 8' privacy fence seem excessive? Will we be getting variance requests for 10' fences now? Bad fences make for bad neighbors		
23-3D-9 DOCKS, BULKHEADS, AND SHORELINE				
23-3D-9060 (C) <u>Site Development Standards for Docks, Marinas, and Other Lakefront Uses</u> ; "Standards for Docks. A dock, or similar structure, must comply with the requirements of this subsection: (1) A dock may extend up to 30 feet from the shoreline, except that the director may require a dock to extend a lesser or greater distance from the shoreline if the director finds it necessary to ensure navigation safety. "	[NOTE: See entire section for other LDC requirements.]			
23-3D-10 ADDITIONAL GENERAL STANDARDS				
23-3D-10060 (C) (2) <u>Fences and Walls</u> ; "Fences of any kind, any height, in any zone are prohibited within a floodplain or drainage easement without prior approval by the director."	[NOTE: Does this include existing fences in areas recently included in floodplains via Atlas 14?]			
23-7 SIGNAGE	[NOTE: Are signs now allowed in Residential House Scale Zones ?]			
23-7B-1030 (3) <u>Electronic Message Signs</u> ; " Night-time Brightness . The illuminance differential of any message displayed on the sign may not exceed 0.3 foot-candles at night. "	[NOTE: How measured? Does this section address the new LED signs?]			there has to be a better way than ".3 foot-candles at night."

LATE BACKUP

S-5/9

Code Section / Issue for Consideration	DonLB	J. Cohen	Wm. Hodge	Y. Smith
23-7B-2020 (C) <u>Permanent Signs Without a Permit; Signs for Residential Uses.</u>	[NOTE: Why are signs now allowed in Residential Uses?]			
23-7C-2120 (2)		While I have not personally participated in many sign variance requests, I would imagine an illuminated mural could be one. Is this normal and what is it supposed to protect?		
23-7D-2		is vagueness of "impose reasonable conditions" intentional? Is the wordage designed not to codify limitations? What is the definition of reasonable and should this be clarified in the code?		
23-7D-2020 (A) <u>Administrative Sign Modifications</u> ; "Purpose and Applicability. This section authorizes the director or building official to administratively approve an on-premises sign in excess of the size or height restrictions imposed under this chapter. Authority under this section derives from the Local Government Code, Chapter 216, Subchapter Z, and does not authorize variances allowing an off-premise sign."	[NOTE: Shouldn't this be BOA jurisdiction? Allows up to 5% maximum size or height; per 23-7D-2030, this decision is appealable to BOA, but how does is the public notified on this administrative decision?].			
<u>Staff Supplemental 10-25-2019</u>		BOA-1 & 2 appear to follow recommendations in chair/vice chair letter from last meeting		
		PRO-2 To revise Section 23-1A-3020 (Classification of Applications and Decisions) to clarify that prohibition on ex parte contacts is limited to the Board of Adjustment seems to refer to 23-2I-2050. Is the BOA the only board prevented from ex parte?		
		SGN-2 referencing 23-7C-2120-2 correction to prohibit mural illumination - Why?		