

BOARD OF ADJUSTMENT: *THE SAFETY VALVE FOR ZONING*

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Wilson Cribbs + Goren

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Board of Adjustment: *The Safety Valve for Zoning*

Zoning Structure
Board of Adjustment
Authority
Organization
Super-Majority Vote
Quasi-Judicial

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ZBA Authority

- ▣ Appeals from Adm. Zoning Enforcement Decisions
- ▣ Special Exceptions
- ▣ Variances
- ▣ Other matters assigned by CC
- ▣ Appeals from Amortization Decision (new 2023- SB 929)

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Enforcement Appeals

- ▣ “...hear and decide an appeal that alleges error in an *order, requirement, decision, or determination* made by an *administrative official* in the *enforcement* of this *subchapter* or an ordinance adopted under this subchapter....”

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Right to Appeal a Decision to ZBA

- ▣ 2019 Change- "...may appeal to the [ZBA] a **decision** made by an administrative official...":
 - ▣ (i) specific application, address or project:
 - ▣ Applicant,
 - ▣ Owner (or their rep.) of the site,
 - ▣ Aggrieved **owner** of land **w/in 200' of the site**, or
 - ▣ Gov't official *affected* by the decision.
 - ▣ (ii) Other appeals (prior standard):
 - ▣ Any person *aggrieved* by the decision, or
 - ▣ Gov't official *affected* by the decision
- What about "...order, requirement...or determination....?
Associations may not appeal specific issues

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Exhaustion of Administrative Remedies

- ▣ * General Rule- Must exhaust all administrative remedies prior to seeking judicial review
- ▣ * Judicial economy – Be sure no administrative remedies could be granted which resolve the dispute
- ▣ * Related concept of Ripeness – must have a final decision
- ▣ * If your administrative remedies are not exhausted, but are no longer available due to your delay- No judicial recourse!

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