



BELLA VISTA

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DEPARTMENT OF COMMUNITY
DEVELOPMENT SERVICES

616 W. LANCASHIRE BLVD.

BELLA VISTA, AR 72715

PHONE: (479) 268-4980

BOARD OF CONSTRUCTION APPEALS

REGULAR MEETING

DATE: MAY 10, 2016 AT 3:00 P.M.

LOCATION: DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

CONFERENCE ROOM

616 WEST LANCASHIRE BOULEVARD

BELLA VISTA, AR 72715

AGENDA

I. CALL TO ORDER

II. ROLL CALL

Members: Gary Young, Chairman; Dwayne Smith, P.E., Vice-Chairman; John Nuttall, Secretary; Stan Moore; and Tim Hull

III. MINUTES

- A. Minutes from previous regular meeting: March 8, 2016
- B. Discussion notes from April 12, 2016 – do not require approval
- C. Minutes from special meeting: April 26, 2016

IV. NEW BUSINESS

None

V. UNFINISHED BUSINESS

- A. Code changes: Review criteria and sample application for this board

VI. OPEN DISCUSSION

None

VII. ANNOUNCEMENTS

- A. Next City Council Work Session will be held on Monday, May 16, 2016, at 5:30 PM in the Bella Vista City Hall Conference Room at 101 Town Center.
- B. Next regular meeting of the Board of Zoning Adjustment meeting will be held on Tuesday, May 17, 2016, at 7:00 PM in the Bella Vista City Hall Conference Room at 101 Town Center.
- C. Next City Council Regular Session will be held on Monday, May 23, 2016, at 6:30 PM in the Bella Vista American Legion Hall at 1889 Bella Vista Way.
- D. Next Planning Commission Work Session will be held on Thursday, June 2, 2016, at 4:30 PM in the Bella Vista City Hall Conference Room at 101 Town Center.
- E. Next Planning Commission Regular Session will be held on Monday, June 13, 2016, at 6:30 PM in the Bella Vista City Hall Conference Room at 101 Town Center.
- F. Next regular meeting of the Board of Construction Appeals will be held on Tuesday, June 14, 2016, at 3:00 PM in the Community Development Services Conference Room at 616 W. Lancashire Blvd.

VIII. ADJOURNMENT

3:00 P.M.

TUESDAY, MAY 10, 2016



BELLA VISTA

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**COMMUNITY DEVELOPMENT
SERVICES DEPARTMENT**

616 W. Lancashire Blvd.

Bella Vista, Arkansas 72715

Phone: (479) 268-4980

BOARD OF CONSTRUCTION APPEALS REGULAR MEETING

DATE: MARCH 8, 2016
LOCATION: COMMUNITY DEVELOPMENT SERVICES
CONFERENCE ROOM
616 W. LANCASHIRE BLVD.
BELLA VISTA, ARKANSAS 72715

MINUTES

I. CALL TO ORDER

The meeting was called to order by Chairman Young at 4:00 PM.

II. ROLL CALL

Members present: Gary Young, Chairman; John Nuttall, Secretary; Stan Moore; Tim Hull.

Members absent: Doug Smith, P.E., Vice-Chairman.

III. CONSIDERATION OF MINUTES

A. *Regular Meeting Minutes – February 9, 2016.*

On a motion by Mr. Nuttall and a second by Mr. Moore, the February minutes were approved by voice vote.

IV. UNFINISHED BUSINESS

A. *Upcoming Code Changes: Review Criteria for this Board.*

1. Ms. Bonner said if you look at the proposed changes you'll see most of the changes on page 1 are grammatical edits. Section 103-44(a)(1)d has been changed to reference the Director of the Department of Community Development Services and/or his/her designees instead of the building official. The term vice-chair has been added to Section 103-44(b)(1). The term Municipal Code has been added to Section 103-44 (b)(2) since we now have more than just the Building Code. For your reference, what I did is take the existing language from the BZA (Board of Zoning Adjustments) and put it in here for the BCA (Board of Construction Appeals). The format you have has been edited to remove any references to zoning or the Board of Zoning Adjustments. Item (c) was added, and talks about the powers and duties of the Board of Construction Appeals, and how that works. Section 103-44 (c)(1) talks about the appeal and interpretation. So, if there's a question in the field, in the office, or an applicant doesn't like something that Staff says or what they want to do doesn't meet Code, the Board of Construction Appeals would be the first point of appeal. Item 2 in this section describes what is expected of the applicant making an appeal, and what they have to provide in order for the Board of Construction Appeals to be able to grant a variance.
2. Chairman Young said the origination of the Board was if there was a permit issue at the permitting stage is when the Board would be involved in any modification or appeals. It had nothing to do with issues that occur out in the field. Basically, that is the part of the Building Code that talks about the duties of the Board of Construction Appeals. We've had two cases in the six year history of the Board. The Board is here for the permit part and interpreting the Code. I would challenge making an "in the field" call because the permit has been issued. As a previous builder, once I had a permit for approved drawings that I submitted, that's the way I am going to build the project no ifs, ands, or

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- but. If there are discussions in the field, they need to be worked out between the builder and the inspector.
3. Mr. Nuttall said I am not disagreeing that the field can't be part of this, but I can't think of an instance where it would be a subject that might actually exist. If the plans are drawn, but they don't fit you need to rework the plans, which would happen before you get to the field. I guess I agree with Chairman Young that what happens in the field is not part of the appeals process. I'm not opposed to it because it's the field. I just don't see where it would show up for us.
 4. Mr. Hull asked if a variance would be addressed at permit time, not later on.
 5. Chairman Young said if what happens in the field had to come before the Board it would hold up construction for two to three weeks.
 6. Mr. Hull said even in the field you do need some sort of appeal. There are instances where minor modifications may be needed such as an outlet that is supposed to be on a 4' wall, but the wall is only 3'11.5". If the inspector is having a bad day and doesn't want pass it...it doesn't hurt anything to have an appeal.
 7. Chairman Young said that's why you have the inspector in the field, and a building official. That should be resolved prior to coming to any Board.
 8. Mr. Nuttall said an instance like that should have been handled with the plan review.
 9. Chairman Young said the building official has the authority to waive something like that at their discretion because somethings are not always black and white.
 10. Ms. Bonner said to simplify Section 103-44, if everyone is ok with leaving it the way it is, I would like to skip to page 6 because that is the old Section 103-45 and has the least amount of change. Everything in black is existing language, red is what would be removed, and everything blue and underlined is new language. Most of this is grammatical changes. Instead of referencing the Building Official it is the Department Director and/or one of his/her designees. In item (a) is says an appeal shall stay anything else happening until this Board makes a decision. Item (b) refers to relevant sections of the Municipal Code. Item (d) talks about appeals from the Board of Construction Appeals going to the circuit court. Item (e) is time limits, which gives a length of time that an applicant would be able to act before the variance would become null and void. Item (f) is if the Board of Construction Appeals would disapprove how long an applicant would have to wait for resubmittal.
 11. Mr. Hull asked if the one year requirement for reconsideration is just random or...
 12. Ms. Bonner said that is the way most things happen that our department deals with is if it is turned down you have to wait a year to resubmit for consideration. If everyone is okay with the changes in this section we can go back to page 2. Again, the Board of Construction Appeals does not have to require this. It's just a suggestion from Staff to give some sort of basis for the appeals process. I took language, as it existed, from the Board of Zoning Adjustments and removed their references and what they look at, and tried to leave in things that would apply to the Board of Construction Appeals. For a quick overview, we start with what is required with an application, and what can be administratively reviewed that the Board of Construction Appeals wouldn't have to look at. Next we have what would be required as far as public notice and hearing. Since this is a public hearing, some sort of public notice would be required. Would it be sufficient for Staff to do, or do you want something over and above that? What is included here is also what would be used for zoning ordinances, conditional use permits, and zoning adjustments. Those things are required by state law, so if you decide to do those things you would be over and above that requirement. Part of what is required in the public notice section is an ad in the newspaper, placing a sign on the property, and sending certified mail to property owners within 400' of the subject property. Item (d) Findings

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gives the reference for what you are reviewing against. This is standard language to remind you why you are really looking at these things. It is up to the Board if you want to use this language or strike it. I just need some input from you on how you would like to proceed.

13. Mr. Nuttall said his basic thought is the Board of Construction Appeals would never need to hold a public hearing. We aren't talking about things that the general public would have any knowledge of. I would hate to think that we would trust the general public to make safety and fire decisions. I would strike everything in the language about public hearings.
14. Chairman Young said I agree with that. We are to look at a project prior to permitting if there is an appeal. It's within the guidelines of the building Code and life safety. One of the cases we've seen is the tennis courts at Riordan Hall. The Code requires vertical pillars where a 4" ball can't go through them. To watch a tennis match through vertical slats is impossible. The architect came in with a proposal and we looked at what was feasible. We came up with a way that the slats could be horizontal. At that point, it was up to the architect to come back and present to the building official what we came up with at that meeting. The other case we saw a homeowner that wanted to add a patio to his house that had a small heating and air conditioning unit. The applicant didn't want to hire a master electrician. He wanted his son to do the electrical work, which is fine under the Code as long as a master electrician pulls the permit and oversees the work. These are the only two appeals we've seen in six years. The Board has Building Codes to go by. The applicant just needs to come in and plead their case. As far as going beyond that with public hearings and so forth, I don't believe that is the thought process of this Board.
15. Ms. Bonner said I want to make sure I covered everything because it's easier to strike it out than to add it in later.
16. Chairman Young said planning and zoning is a completely different animal than the Board of Construction Appeals.
17. Mr. Hull said back when the public hearing portion was first discussed, Ms. Bonner was going to speak with the Staff Attorney to see if it is required. Director Suneson said under the terms of the Building Code, a public notice of an appeals hearing is not necessary. That said, realize that every meeting the Board has is a public meeting. There are agendas that get sent out to the media, but to have the formality language that is being proposed is not a legal requirement.
18. Ms. Bonner said removing the public notification portion will eliminate the last two lines of page 3, all of page 4, and the top half of page 5. Moving on to (d) Findings, do you see any problems with the language there? Again, we can take out, add in, or eliminate completely. I thought this language would give some good base lines to help remember what we are trying to review for.
19. Mr. Hull said this language sounds like you couldn't grant the same variance twice to two different people.
20. Chairman Young said he would change the word "variance" to the read "exception" to the Building Code because it would be a one-time exception for the applicant.
21. Director Suneson said generally, when it comes to construction methods and methodology it is difficult to do what zoning variances determine to be a hardship. There's always a different way to build something, but you can't really change the shape of the land, which is a zoning type of issue. If you like and use this language, approving the need for a variance becomes more difficult. As a Board, you would tie yourselves to having to affirmatively answer these review criteria in order to grant an exception or

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variance. With this language, if you can say yes to one of the criteria, that is grounds for granting an exception or variance.

22. Ms. Bonner said if you can say no, that is also grounds to deny it.
23. Mr. Nuttall said that is a big swing.
24. Ms. Bonner said if the Board is going to use some sort of baseline language, everyone has to be on board with it.
25. Director Suneson said keep in mind that if you adopt this language for review criteria by implication you do not have as much flexibility in granting variances as you do without these. It comes down to how lenient, flexible, and permissive you want to be in granting a variance.
26. A discussion continued on the proposed review criteria language.
27. Chairman Young said I think we need to keep the process as it currently is where we have a group discussion and go with the majority instead of a checkbox system. Any and all Codes are interpretations, and you don't have means and methods.
28. Ms. Bonner said we can meet again next month to see what you come up with for guidance.
29. Director Suneson said if you have specific suggestions, please send it to Ms. Bonner so we don't have any FOIA issues. She can compile the comments and send them out to everyone.
30. Chairman Young said at this point we have accepted the first portion; deleted all of the public notice language; we are going to take the findings portion and modify that; and we have accepted page 5.
31. Ms. Bonner said until we know what the language for the findings or guidance is going to be, we probably can't really tweak sections (a) and (b) until we know what they are going to be since they are based on the findings section (c).
32. Chairman Young asked if the Board can get together outside of a regular meeting to brainstorm on the guidance language. Ms. Bonner said as long as notice is given to the media to avoid any FOIA issues.
33. Director Suneson said anytime two or more members of the Board get together to discuss business of the Board, it is considered a public meeting and requires a public notice.
34. Ms. Bonner said two hours of public notice is what's required.

V. NEW BUSINESS

None.

VI. OPEN DISCUSSION

None.

VII. ANNOUNCEMENTS

- A. *Next scheduled meeting of the Board of Construction Appeals is on Tuesday, April 12, 2016, at 4:00pm in the Community Development Services' Conference Room.*
- B. *Training.*
 1. Chairman Young asked if there are any training opportunities like the webinars that the Board has previously viewed. Ms. Bonner said she will look into it and let everyone know.

VIII. ADJOURNMENT

The meeting was adjourned at 4:50 PM.

**BOARD OF CONSTRUCTION APPEALS
REGULAR MEETING**

SUBMITTED BY:

Brenda Jorgensen
Administrative Assistant
Community Development Services Department

APPROVED AND ACCEPTED THIS 12TH DAY OF APRIL, 2016.

Gary Young, Chairman
Bella Vista Board of Construction Appeals

John Nuttall, Secretary
Bella Vista Board of Construction Appeals

Board of Construction Appeals
Open Discussion Due to Lack of Quorum
4/11/16 at 3pm

Chairman Young said due to the lack of a quorum for the Board of Construction Appeals meeting on 4/12/16, we will just have an open discussion today. The only person in attendance from the Board is myself, Chairman Young. We also have Ms. Bonner, Staff; Mr. Raney, Building Inspector; Mr. Connor Woody, Weekly Vista Reporter; and Mr. Melvin Waters, Owner of Waters Home Improvements.

Chairman Young said my suggestion is for Mr. Waters to inform us on what code section you are appealing, and we can pass that on to the other members so they'll have a chance to hear your thoughts. We'll have another meeting next month with the whole Board. How urgent is this to get resolved? Is it a hardship, or could the appeal hold off until the next general meeting?

Mr. Waters said I am just the building contractor, and not the homeowner, but I'm sure the owner wants to get this project closed out. In my opinion, there isn't a safety issue. It's not a question of whether it has to be resolved today. I wish it could, but the Board members aren't here.

Ms. Bonner said if both Mr. Raney and the applicant agree that this is not a dire life safety issue, I don't have a problem with us putting it off.

Mr. Waters said I don't mind telling you my thoughts for the other members of the Board to consider. My time is valuable, so whatever makes things easier is best. My appeal is based on blocking the risers on the set of stairs we just built. I want to say right up front that I don't have any problem with any code issues. We always build to codes. This particular code requirement has not been one that has been enforced in Bella Vista. That is my contention. It's going to require me a day's labor and two guys to go fix the problem that I could have easily have fixed if I had known on the front end. My contention is this - I don't have any problem with the Board, or with Bella Vista requiring this code to be met. When I applied for my permit, I was given a sheet for a deck detail. The deck detail said nothing about the risers being blocked. I've been told, and I've built many decks here, that open risers are okay on exterior steps. Probably 95% of the decks built in Bella Vista are open. My contention is this - if you want to change this, I have no problem with that, but put it on this sheet. Then when we come in to buy a permit we don't have any issues. I was told to do something that is not on this list. Again, I am not fussing with the requirement. Because I have to go back and redo this...from this point forward I would have no issue there. It's not that I am not trying to abide by the law, but Bella Vista has not required this in the past. If the builder knows, and it's on the deck detail sheet, then there's not even an argument. As I said, I've built many decks and have never been called in to question on this issue.

Chairman Young said with this being said he would go ahead and type this up and send it out to the other Board members for them to review. Then we will all meet at the next scheduled meeting. This doesn't seem urgent or a life safety issue.

Mr. Waters said this property is a rental. The owner doesn't live there, he rents it. He does want the job to be completed and final, and I understand that. His request was that he was hoping the deck would pass as it is.

Chairman Young asked how high off the ground the deck is.

Mr. Waters said the house is a standard 1 story, so it would be 8'-10'. It's not a high deck.

Mr. Raney said the requirement for the riser to be solid or guarded has been in the codes forever. At least clear back to 1993. The County was enforcing it because my first day here I responded to three complaints that involved risers needing to be guarded or blocked. So, since the County was already asking for it, I continued asking for it. That riser closure is a life safety issue. It involves are stairs, interior or exterior. All stairs shall have that space less than 4". I understand that everyone gets in the habit of doing things a certain way. Since I have been employed here, I have been informing contractors that there are some differences. We are going to be having a meeting in the near future where we'll invite all of the trades in to discuss these differences. From that point forward we are going to address seeing them different than they are today. That one, had the County not been enforcing it, I would have made a notation that in the future the risers need to be closed in or guarded. Since the County was already asking for it, I continued to ask for it because I was under the impression that was common practice.

Mr. Waters said well, it hasn't been. Bella Vista has never enforced this.

Mr. Raney said that is a shame.

Mr. Waters said I am just saying that's why I was surprised. Again, I have no problem with the code.

Mr. Raney said apparently, the County hasn't looked at any at any of your stairs since they have been doing the inspections, but they were asking for it.

Mr. Waters said you guys hand out a reference guide, and this is where I would say that Bella Vista could...

Mr. Raney said to keep in mind that the reference guide is nothing but a reference, and does not address every step and every detail on "how to," and probably never will reflect that.

Mr. Waters said my point is it would be very simple to add a line that all risers shall be guarded or blocked.

Mr. Raney said we've already had discussions and are looking at multiple changes to the reference guide right now. There will also be a change in regards to piers and footings.

Mr. Waters said I have no issues other than they have been approved here in Bella Vista, and now they suddenly are not. We were not alerted of that fact.

Mr. Raney said he can appreciate that.

Mr. Waters said as a builder I've got to go back in to a tune of about \$500 to fix this.

Mr. Raney said 20 minutes, and a little bit of cost in materials, and you're fixed. There are multiple options - I can't tell you how to correct it. There are solutions that are cost and time effective.

Chairman Young said with all that being said, I think we need to postpone this until we have a quorum the next meeting. We will readdress this at that point.



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COMMUNITY DEVELOPMENT

SERVICES DEPARTMENT

616 W. Lancashire Blvd.

Bella Vista, Arkansas 72715

Phone: (479) 268-4980

BOARD OF CONSTRUCTION APPEALS SPECIAL MEETING

DATE: APRIL 26, 2016
LOCATION: COMMUNITY DEVELOPMENT SERVICES
CONFERENCE ROOM
616 W. LANCASHIRE BLVD.
BELLA VISTA, ARKANSAS 72715

MINUTES

I. CALL TO ORDER

The meeting was called to order by Chairman Young at 2:00 PM.

II. ROLL CALL

Members present: Gary Young, Chairman; Doug Smith, P.E., Vice-Chairman; John Nuttall, Secretary; Stan Moore; Tim Hull.

Members absent: None.

III. CONSIDERATION OF MINUTES

A. *Discussion Notes from April 12, 2016 – Do not require approval.*

IV. UNFINISHED BUSINESS

None.

V. NEW BUSINESS

A. *RES-2016-23443: Appeal of Inspection Decision by City Building Inspector; Riser Openings on Stairs.*

1. Chairman Young introduced himself asked those present to introduce themselves, and state their position. The purpose of this meeting is because we have an appeal, which resulted from a field call. We will let the petitioner start us off with his position and let us know what your thoughts are. You can point out what the hardship is, or any exceptions you have for not complying with the Code.
2. Mr. Melvin Waters asked if the Board members had a chance to read the discussion notes from April 11, 2016. If so, I don't need to go back through the whole spiel. I would just like to add that I feel like I became the guinea pig on a code requirement that has not been enforced in Bella Vista up until this time. As I stated in the first meeting, my contention was if that had been spelled out in the deck reference guide that I was given when I applied for a permit, I wouldn't be here today. I was not advised or aware of the riser requirements. Now, after the fact, I have to go back and fix a problem. I have no trouble with the Code. I'm not fighting the codes. When I talked to Director Suneson after my inspection failed, he told me it was a code that would be enforced from now on. Again, I don't have a problem with the Code, I just have a problem with the way it was enacted. I built something the way I always have, and it has always been passed and approved. So, that's my contention.
3. Mr. Smith asked if this particular requirement has ever enforced in the past, or has it been sporadically enforced. Ms. Bonner said I have no idea one way or the other. The only way to verify that would be to go back through our permits, and pull every permit that applied to stairs. Unfortunately, stairs are not something we typically cover unless it's part of a deck or something else where we know there's going to be a change of

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elevation. Handrails are about the only other way to find stairs. Stairs are normally part of a bigger project, and not just the stairs

4. Mr. Waters said we do know that it's in the Code.
5. Ms. Bonner said yes, we did go back and review it that it is in the Code, but whether or not it has been enforced is a different question. The City has only done our own enforcement since January 2012. Prior to that, everything in the Village would have been inspected by the ACC.
6. Mr. Smith asked if these are new stairs or existing stairs. Mr. Waters said this project was a stair replacement.
7. Mr. Smith said so, these are new stairs. The stairs were rebuilt, correct. Mr. Waters said the stairs were replaced. The whole deck was basically resurfaced. We left the structure, and built new stairs, and topped it all. Like I said, I went through the code requirements as was given to me. It's the deck reference guide that you give out here. It has a stairway, guardrails...in fact I had a drawing of my railings and all of that which was submitted for review and was approved. Where it talks about stairways on the reference guide, there is no reference period for blocking a tread. A simple solution would be to add that line to the reference guide so you don't have another builder back in here appealing the same thing.
8. Mr. Smith said that is true.
9. Mr. Raney said since I have been with the City, I have been visiting with many of the contractors and letting them know about the changes that were upcoming. On the risers not being closed in, it was, to my opinion, being enforced by Benton County while they were here doing our inspections. Mr. Waters was just fortunate enough that they had not looked at one of his projects. I no more than got here and I responded to at least 2 or 3 requests by contractors to help them understand why they failed their stair inspections. So, the County was asking for it. I continued to ask for it since it was currently being asked for at that time. Otherwise, they would not have been asked to close the risers on the stairs.
10. Mr. Smith asked if we have the deck reference guide here. Ms. Bonner said she will get a copy. We are in the process of making changes to the reference guide because of this item, and a couple other things we wanted to review in the process of fixing the riser issue.
11. Mr. Smith said this sheet doesn't even reference the IBC.
12. Chairman Young said I would just like to throw out there that you can't put every code issue or exception on a set of documents or a drawing. The reference guide is just an overview. As a contractor, you still have to abide by the codes. If you are building a large building and you try to put every code on a set of documents, you probably couldn't haul it around because it would be so big. I agree that adding that line is probably a simple fix for the reference guide, but it isn't all encompassing.
13. Mr. Waters said I have been a builder in this area since the early 2000's, and have built numerous decks. I have not be required to block risers on exterior stairs since I've been building here. If you look at most of the stairs in this area, they don't have blocked risers. I don't have a problem abiding by this. What I am saying is I feel like I'm the guinea pig for this new requirement.
14. Mr. Smith said there's always someone that has to be the first one to go through a new code. I deal with this every day at every store I build. I'm the first sometimes that gets to enjoy a new ordinance. All you have to do is close the riser up enough that you don't have a 4" sphere that can pass through it. How high is the riser? If it's 7" high, you only have to run a 1 X 1 or 1 X 2 to block it. The Code is the Code, and it should have been enforced here ever since 2012. I can probably go look at my own stairs and find issues.

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15. Mr. Waters said frankly, the owner doesn't want the stairs blocked. He sent me an email saying he'd rather they weren't blocked.
16. Mr. Smith said well, the Code is the Code. The reference guide really does not reference the IBC, which is misleading to a degree. However, it is the contractor's responsibility to know the Code. Just because we have a document that is old doesn't mean the contractor shouldn't know the Code. Like I said, the solution isn't that big of a deal to do.
17. Chairman Young closed the discussion, and asked for a motion to accept the petitioner's exception, or to follow the Code.
18. Mr. Smith motioned to deny the petition at this time, and the motion was seconded by Mr. Nuttall.
19. Chairman Young asked for a roll call vote.

Moore - Yes
Nuttall - Yes
Hull - Yes
Smith - Yes
Young - Yes

Motion passes to deny the petition, 5-0.

20. Chairman Young said the petition has been denied. As Chairman it is my obligation to tell you (Mr. Waters) the next step, should you wish to pursue your petition, is to consult with legal counsel and go to the next level of the judicial system. The Board here is a group to look at what we need to uphold to the requirements and the Code as part of our duties. So, that's your next step if you wish to pursue this further.
21. Mr. Hull said I would like to thank Mr. Waters for bringing this up because it has pointed out a problem that may cause heartburn among other people.
22. Mr. Waters said the reference guide also says maximum spacing between rail posts is 6', and I think International Code says it's 8'.
23. Chairman Young said just a comment to that - an ordinance can always be enforced that is more stringent than the International Code, and you would have to abide by that.
24. Mr. Waters said the problem that presents is I like to tie my rails to the structure all the way through. When I set a post it is at 8' centers, and I take it all the way through. When you have 6' posts, you totally blow your layout and it doesn't work. That's the only reason I am bringing this up. I don't think 6' is International Code, but if Bella Vista requires it, that's another thing.
25. Mr. Smith said it also goes by the Timber Council as well. Where IBC gets their code from it from the Timber Council. A lot of that changed here in the past because of uplift, and so on. All of that code has been rewritten, and it isn't a blanket statement to say one or the other anymore. A lot of it was based on how you are attaching that structure to the main structure. Most of all fatalities are from a failed railing, or the deck being dislodged from the house because its main support was to a ledger board and not properly supported. That's why now you're required to through-bolting all the way through the concrete wall.
26. Mr. Waters said I understand, and that's why I notch in all of my rails. I don't like the 6' rule because when you attached it to the main ledger board over time you get this. That's why I like to go all the way through.
27. Mr. Smith said if the City is going to keep a document like the reference guide, then you have to update it. Not just every now and then, but all the time. There's stuff on there that is out of date. It needs to be updated so it somewhat represents the IBC, and not the

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Southern Building Code. The codes that are on there are basically from the Southern Building Code.

28. Mr. Moore said there also needs to be a statement on the sheet saying it is a guideline only; check your local codes for...

VI. OPEN DISCUSSION

A. Board of Construction Appeals Members.

1. Chairman Young said we all need to try to recruit another person or two to serve on this Board. Things happen, and we can't always make the quorum. We need to go out and do a little politicking. Something that was brought to my attention is if there is a means that is legally accepted to have a meeting using FaceTime or a web app for a member that may be traveling or out of town and can't physically make it to the meeting.
2. Mr. Smith said that would help. I apologize for not making it to the last meeting. My time/travel demand sometimes is difficult.
3. Chairman Young said it is becoming more and more acceptable in the electronic age we are in today. I think it would be good to at least ask the question if this is acceptable.
4. Ms. Bonner said I will look into that.
5. Mr. Nuttall said I do half of my meetings on the phone.
6. Mr. Smith said sometimes he has to live on the phone. He can be anywhere from Pennsylvania to Maine for work. I have called in to many city meetings. If we could do that, it would be a big help. If nothing else, just to call in to the meeting sometimes.
7. Ms. Bonner said she will check and see what would be allowed. I will also get you copies of the reference guides so you can start to mark them up.
8. Chairman Young said the Board of Construction Appeals really should assist with putting the reference guides together.
9. Mr. Smith agreed.

VII. ANNOUNCEMENTS

- A. *Planning Commission work session will be held on Thursday, April 28, 2016, at 4:30pm in the City Hall Conference Room at 101 Town Center.*
- B. *Planning Commission regular meeting will be held on Monday, May 9, 2016, at 6:30pm in the City Hall Conference Room at 101 Town Center.*
- C. *Next regular meeting of the Board of Construction Appeals is on Tuesday, May 10, 2016, at 3:00pm in the Community Development Services' Conference Room.*
- D. *City Council work session will be held on Monday, May 16, 2016, at 5:30pm in the City Hall Conference Room at 101 Town Center.*
- E. *Board of Zoning Adjustments will be held on Tuesday, May 17, 2016, at 7:00pm in the City Hall Conference Room at 101 Town Center.*
- F. *City Council regular meeting will be held on Monday, May 23, 2016, at 6:30pm in the American Legion Hall at 1889 Bella Vista Way.*

BOARD OF CONSTRUCTION APPEALS SPECIAL MEETING

VIII. ADJOURNMENT

The meeting was adjourned at 2:24 PM.

SUBMITTED BY:

Brenda Jorgensen
Administrative Assistant
Community Development Services Department

APPROVED AND ACCEPTED THIS 10TH DAY OF MAY, 2016.

Gary Young, Chairman
Bella Vista Board of Construction Appeals

John Nuttall, Secretary
Bella Vista Board of Construction Appeals

CHAPTER 103 – BUILDING AND BUILDING REGULATIONS
ARTICLE II. - CONSTRUCTION STANDARDS
DIVISION 2. - FIRE PREVENTION CODE

Sec. 103-44. - Board of eConstruction aAppeals. (orally “approved” on 03-08-2016)

(a) *Creation and appointment.* There is hereby created a bBoard of eConstruction aAppeals.

(1) *Membership.*

- a. The bBoard of eConstruction aAppeals shall consist of five members.
- b. All members shall be qualified electors residing in the city and shall not hold any other municipal office or appointment. All members shall have experience and training to pass on matters pertaining to building construction and shall not be employed by the city.
- c. All members shall be appointed by the mayor and approved by the city council.
- d. The building official shall serve as an ex-officio member of the Board.

(2) *Terms.*

- a. Initial. Members shall, in the initial appointment, serve terms as follows: One member for a term of one year; two members for a term of two years; and two members for a term of three years.
- b. After the initial appointment, members shall serve terms for three years. All terms shall expire on January 1 of each year.
- c. Appointments to fill vacancies shall be for unexpired terms only.
- d. In the event of the death, resignation, or removal of any member before the expiration of his term, a successor shall be appointed by the mayor to serve his unexpired term.
- e. There shall be no limit to the number of times a member may be reappointed to the Board.

(3) *Removal.* A member of the bBoard of eConstruction aAppeals, once qualified, can thereafter be removed during his term of office only for cause on a majority vote of the city council.

(b) *Organization.*

- (1) *Officers.* A chairperson, vice-chair, and secretary shall be elected annually by bBoard of eConstruction aAppeals from among its membership. The chairperson, or in his absence, the vice-chair and then the secretary, shall preside at all meetings, shall decide all points of order or procedure, and, as necessary, shall administer oaths and compel the attendance of witnesses.
- (2) *Rules.* The bBoard of eConstruction aAppeals shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of the building code and/or related and relevant sections of the Municipal Code.
- (3) *Meetings.* Meetings shall be held ~~at least once~~ monthly. Special meetings may be called, subject to notification by law, by the chair or by a majority of the membership. If no business is pending before the Board, the meeting may be cancelled. All meetings shall be open to the public.
- (4) *Minutes.* The bBoard of eConstruction aAppeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicate such fact; it shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the city administrative office.
- (5) *Quorum.* A quorum of the Board shall consist of four. The concurring vote of a majority of the quorum shall be necessary to decide on any matter upon which it is required to pass under this article or to revise any order or decision of the approved city authority that has enforcement

powers.

(c) Powers and duties. The Board of Construction Appeals shall have all the powers and duties prescribed by law and by this article, which are more particularly described as follows:

- (1) Appeal of interpretation. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the building official (and/ or his or her designee) who have the powers of enforcement in this chapter. The Board may affirm or reverse, in whole or in part, said decision of the administrative official(s).
- (2) Variances. To hear and decide requests for variances from the literal provisions of this chapter in instances where strict enforcement of this chapter would cause undue hardship due to circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of this chapter.

Sec. 103-45. Variances

(a) Application.

- (1) Written Application. All variance requests shall be made to the Board of Construction Appeals pursuant to the City's Development Calendar after a decision has been rendered by the building official and/ or his or her designee. Every appeal or application shall refer to the specific provision of the Code involved and shall exactly set forth:
 - a. The interpretation that is claimed;
 - b. The use for which the permit is sought; and
 - c. The details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted.
- (2) Scale Drawing. Each applicant shall submit, pursuant to the Bella Vista Development Calendar, a scale drawing or detail showing the requested variance along with all relevant information, including the exceptional condition or situation which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
- (3) Submittal. The appeal or application shall be filed with the building official or his / her designee who shall forthwith transmit to the Board all papers constituting the record upon which the action being appealed from was taken.
- (4) Fees. The fee for any appeal or application to the Board of Construction Appeals shall be established by the City Council and is subject to periodic change. Fees are non-refundable. The Mayor may exempt all or part of the applicable fee if the waiver or reduction would serve the public interest, alleviate an unfair burden upon on applicant, or be beneficial to the City as a whole.

(b) Administrative Review of Minor Modifications.

- (1) Applicability. The building official or his / her designee may grant minor modifications from the requirements of these regulations in compliance only where changes to the building code have been made at the state level, but are still in the process of being adopted at the local level. Requests for modifications which exceed

this limitation require the filing of a variance in accordance with standards of this section.

(2) Review.

a. Upon receipt of a completed minor modification application and the currently adopted fee for such applications, the building official or his / her designee shall review the request and issue a written decision regarding the application.

b. Findings. The building official or his / her designee may approve and / or modify, in whole or in part, with or without conditions, only after making all of the following findings:

(1) Granting the minor modification will not be detrimental to the public health, safety, or welfare or be injurious to other property or improvements in the vicinity in which the property is located;

(2) The minor modification does not exceed the standards set for in subsection (b)(1) of this section;

(4) The minor modification is in conformity with the intent and purpose of these regulations; and

(5) The minor modification does not, in any way, alter the applicant's obligation to comply with other applicable statutes, ordinances, laws, or regulations.

(3) Precedents. The granting of a minor modification is not grounds for granting other minor modifications for the same or differing purposes.

(4) Burden of Proof. The applicant bears the burden of proof and must support each of the required findings.

(5) Exercise of Approval. A minor modification must be exercised within one hundred eighty (180) days from the date of approval or the minor modification becomes null and void.

(6) Revocation. The building official or his / her designee may revoke a minor modification if:

a. The grantee has not substantially exercised the rights granted by the minor modification;

b. The minor modification was obtained by misrepresentation or fraud;

c. The applicant ceases or suspends work on the improvements authorized pursuant to the minor modifications for six (6) or more consecutive months;

d. The improvement authorized pursuant to the minor modification violates any applicable statute, ordinance, law, or regulation;

e. The improvement permitted by the minor modification is detrimental to the public health, safety, or welfare, or constitutes a nuisance.

(c) Review Guidance.

(1) An exception from the terms of the Municipal Code shall not be granted by the Board of Construction Appeals unless and until the applicant demonstrates that:

a. Special conditions and circumstances exist which are peculiar to only this structure or building and not to any other;

b. Literal interpretation of the provisions of the Municipal Code would deprive the

applicant of rights commonly enjoyed by other properties under the Municipal Code;

c. Special conditions and / or circumstances do not result from the actions of the applicant and if they do, what the conditions and / or circumstances are;

d. The reasons set forth in the variance application justify the granting of the variance will be in harmony with the spirit, general purpose, and intent of the City of Bella Vista's Municipal Code;

e. The reasons set forth in the application are the minimum that will make possible the reasonable use of the building or structure;

f. The reasons set forth in the application justify that granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public health, safety, and welfare; and

g. Granting the variance does not remove the obligations of the applicant to meet all other applicable codes, ordinances, laws, or statutes.

(2) Conditions. In granting any variance, the Board of Construction Appeals may prescribe additional appropriate conditions and safeguards that it deems necessary or desirable.

(3) Violations. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the Municipal Code.

(4) Uses. Under no circumstances shall the Board of Construction Appeals grant a variance that is expressly or implication prohibited by the Municipal Code.

Sec. 103-4546. - Appeals.

(orally "approved" on 03-08-2016)

- (a) When the building official shall disapprove an application, or the applicant is aggrieved by the interpretation of the building official, the applicant may appeal such decisions to the Board of Construction Appeals. An appeal shall stay all proceedings of the action appealed from, unless the person affected by such appeal certifies to the Board of Construction Appeals, that, by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board or a court of record on application, and notice to the person from whom the appeal was taken.
- (b) Requests for variances from the building code and/or related and relevant sections of the Municipal Code may be made to the Board of Construction Appeals when an applicant wishes to deviate from standard construction methods outlined in the building code and/or related and relevant sections of the Municipal Code.
- (c) All appeals to the Board of Construction Appeals shall be made on forms furnished by the building official and approved by the mayor. All such appeals shall be accompanied by payment of the currently adopted fee.
- (d) All appeals from final actions taken by the Board of Construction Appeals shall be taken to the circuit court by any person or persons, or any Board, taxpayer, department, Board, or bureau of the City aggrieved by any decision of the Board of Construction Appeals.
- (e) Time Limit on Permits. Applicants must start or establish the uses of lands, structures, or

buildings within one hundred eighty (180) days from the date of approval or the variance will become null and void.

(f) Reconsideration. If a variance request is disapproved, it shall not be reconsidered by the Board of Construction Appeals within one year from the date of denial of the variance request. The resubmission must meet all requirements for a variance request and shall be a considered a different variance request.

CONSTRUCTION VARIANCE APPLICATION PACKAGE

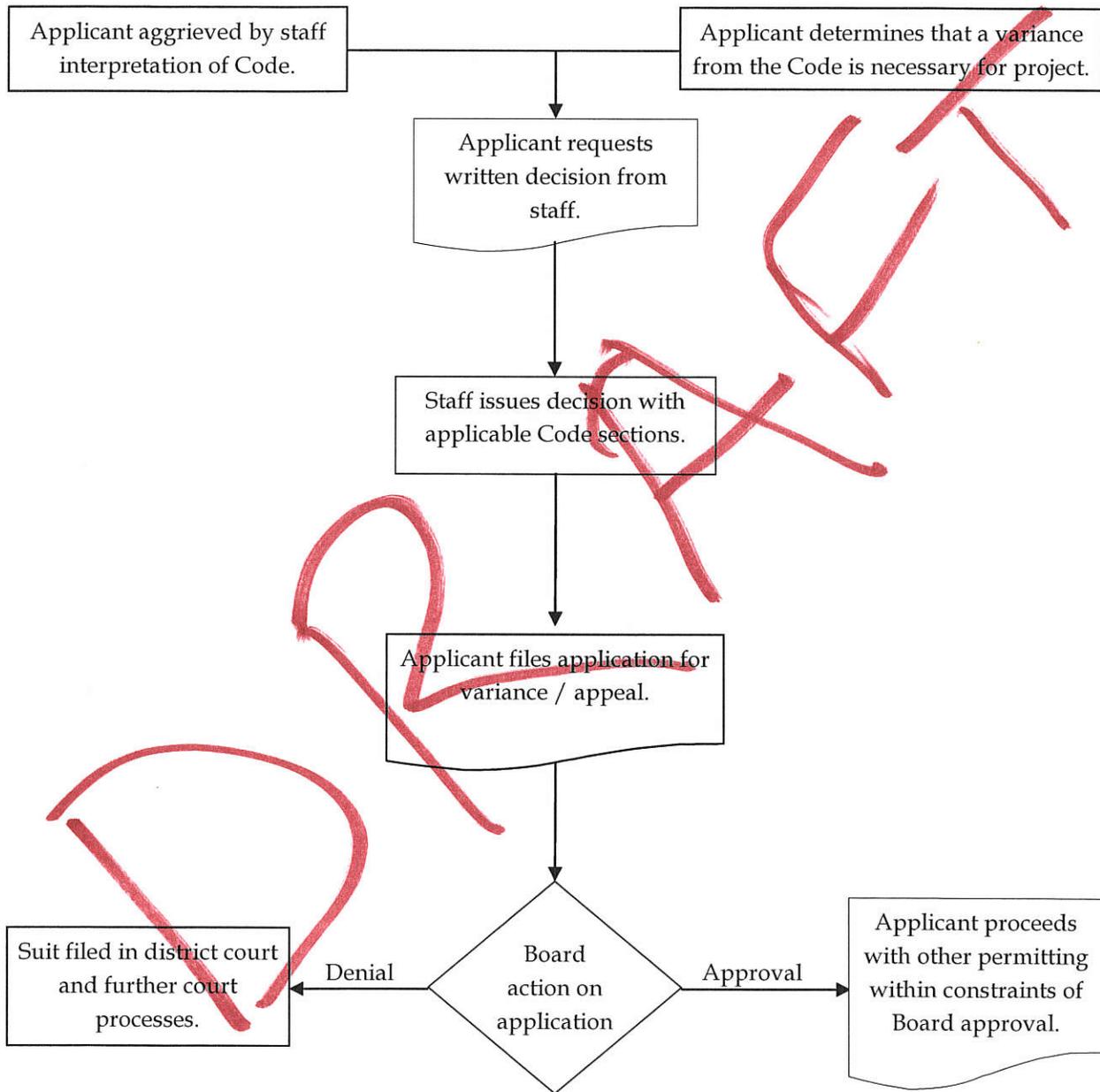


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DRAFT

CONSTRUCTION VARIANCE

APPEALS PROCESS



CONSTRUCTION VARIANCE APPLICATION



A separate application form is required for each variance of the Municipal Code. Please fill out this form completely, supplying the necessary information and documentation to support your request. Your application will not be processed until the application is completed and the required documentation is provided. All application fees are non-refundable.

Fee: \$100.00 per request

MAIN CONTACT (select one): Applicant / Agent Owner

PROPERTY INFORMATION

Property Address:		Parcel #:
Lot:	Block:	Subdivision:

OWNER INFORMATION

OWNER CERTIFICATION: By my/our signature below, I/we certify under penalty of perjury that I am/we are the owner(s) of the property that is the subject of this application and that I/we have read this application and consent to its filing. Further, I/we authorize the agent, listed below, to represent me/us in proceedings with the City of Bella Vista regarding this application. *(Please see reverse for more acknowledgements).*

Name:		Owner Signature:		
Mailing Address:		City:	State:	Zip:
Phone:	Phone:	Email:		
Name:		Owner Signature:		
Mailing Address:		City:	State:	Zip:
Phone:	Phone:	Email:		

APPLICANT / AGENT INFORMATION

APPLICANT / AGENT ACKNOWLEDGEMENT: By my signature below, I certify under penalty of perjury that the foregoing statements and answers herein made all data, information, and evidence herewith submitted are in all respects, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of application completeness, determination, or approval. I understand that the City might not approve what I am applying for, or might set conditions on approval. *(Please see reverse for more acknowledgements).*

Name:		Signature:		
Mailing Address:		City:	State:	Zip:
Phone:	Phone:	Email:		

This application is not valid unless signatures on both the front and back of this form have been provided.

FOR OFFICE / REVIEW USE ONLY

Application Date:	How Paid: <input type="checkbox"/> Cash <input type="checkbox"/> Check <input type="checkbox"/> Plastic	Sign Posted (Y/N)
Reviewer:	Receipt #	Proof of Mailing (Y/N)

Permit #:	Permit Fees:	Proof of Publication (Y/N)
File #:	Zoning:	Board Date:
		Board Action:

APPLICATION CHECKLIST	
<input type="checkbox"/>	1. A completed application with appropriate fee. Applications will not be processed unless all of the required information is provided, including the items below.
<input type="checkbox"/>	2. Applications must include that interpretation claimed, the use for which the permit is sought, and the details of the variance and the grounds on which it is claimed that the variance should be granted.
<input type="checkbox"/>	3. Scaled drawing showing the requested variance along with all relevant information, including the exceptional condition or the situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
<input type="checkbox"/>	4. Any additional information that conveys the exceptional hardship on the property including photos, maps, etc.

ACKNOWLEDGEMENTS	
1.	<i>Fees:</i> The fee for any appeal or application to the Board of Construction Appeals is non-refundable.
2.	<i>Effect of Appeals:</i> An appeal shall stay all proceedings of the action appealed from, unless the person affected by such appeal certifies to the Board of Construction Appeals that, by reasons of facts stated in the certification, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board or a court of record on application, and notice to the person from whom the appeal was taken.
3.	<i>Time Limits on Permits:</i> No order permitting the use of a building or premises, or the alteration or erection of a building, shall be valid for a period longer than 120 days. Such use must be started or established or the erection or alteration is started within such period and proceeds to completion in accordance with the terms of a building permit.
4.	<i>Reconsideration:</i> If a variance request is disapproved, it shall not be reconsidered by the Board of Construction Appeals within one year from the date of denial of the variance request. The resubmission must meet all requirements for a variance request and shall be a different variance request.
5.	<i>Appeals from Board of Adjustment:</i> Any person or persons, or any board, taxpayer, department, board or bureau of the City aggrieved by any decision of the Board of Construction Appeals may seek review by a court of record of such decision, in the manner provided by the laws of the State of Arkansas.
Owner / Agent Signature:	
Date:	

This application is not valid unless signatures on both the front and back of this form have been provided.

The application continues on the next page.

VARIANCE REQUEST INFORMATION

Variance Requested (supply code section you wish to vary):

Section 109-42(d) of the Municipal Code requires that each variance request meet each of the following criteria in order to be granted. Please attach additional sheets of paper to this application for continuations of variance request justifications.

Variance Review Criteria	Justification of Variance Request
1. Does the literal interpretation of the provisions of the Municipal Code deprive the applicant of rights commonly enjoyed by other properties?	
2. Do special conditions and circumstances exist which are peculiar to only this land, structure or building and not to any other?	
3. Are special conditions and circumstances the result of any action by the applicant? If yes, do new special conditions or circumstances exist? If yes, what are they?	
4. Does granting the variance keep the spirit, general purpose, and intent of the provisions of the Municipal Code?	
5. Is the request the minimum variance that will make possible the reasonable use of the building or structure?	
6. Is the variance injurious to the neighborhood or otherwise detrimental to the public, health, safety, and welfare?	
7. Will the granting of the variance support the obligations to comply with all other applicable statutes, ordinances, laws, or regulations?	

PUBLIC HEARING PROCEDURES



The following are procedural rules for applications considered by the Board of Construction Appeals. These are intended to provide the applicant an idea of what to expect during the public hearing.

1. Each application to be considered by the Board will be filed on the proper form and be accompanied by the currently adopted fee for such applications. All applications shall meet the respective submittal requirements of the Municipal Code, and any supplemental information required by the Director of Community Development Services, or his or her designee.
2. The Director of Community Development Services, or his or her designee, shall receive all such applications in accordance with the Bella Vista Development Calendar.
3. All applications shall be placed on the agenda and will be heard by the Board of Construction Appeals in the order that are received, except that an item may be advanced on the agenda by consent of the Board once good cause is shown.
4. Applicants shall appear in his or her own behalf or be represented by agent or attorney at the hearing. In the absence of any appearance by the applicant, agent, or attorney - and in such cases as the Board feels necessary - an application may be deferred until the next regular meeting if the application is not represented.
5. The order of the hearing, and allowed speaking times, shall be as follows. Board of Construction Appeals members may interject questions after each phase, or may hold them until the end of the public hearing.
 - a. Director of Community Development Services' (and/or staff designee's) side of the case, with ten (10) minutes to speak;
 - b. Applicant's side of the case, with fifteen (15) minutes to speak;
 - c. Interested property owners' opinions, with a maximum three (3) minutes to speak for each person present; and
 - d. Staff and/or Applicant's rebuttal, with ten (10) minutes to speak by each.
6. After the public hearing but prior to deliberations on each case, the Board of Construction Appeals reserves the right to defer action on the case until the next regularly scheduled meeting, if necessary.
7. An applicant may withdraw his or her application or appeal at any time prior to the decision of the Board of Construction Appeals.
8. After the public hearing, the members of the Board of Construction Appeals shall deliberate the case and reach a final decision on whether the request is granted.
9. If an application is approved by the Board, all necessary permits for the initiation of work shall be obtained within the time frames outlined in the respective Ordinances, unless a time extension is granted by the Board. Otherwise, the Board approval of the application will be considered void at the end of time allowed under the respective Ordinances.
10. If a variance request is denied by the Board, the Board shall not reconsider the variance for a time period of one (1) year from the date of denial.