

TOWN OF REDINGTON BEACH
ORDINANCE NO. 2020 - 06

**AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, FLORIDA,
AMENDING CHAPTER 6 – BUILDINGS AND BUILDING REGULATIONS,
ARTICLE XI. – BOARD OF ADJUSTMENT OF THE TOWN CODE TO
CLARIFY THE SCOPE OF THE POWERS AND DUTIES OF THE BOARD
OF ADJUSTMENT; MAKING RELATED FINDINGS; PROVIDING FOR
CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

WHEREAS, the Town Board of Commissioners regularly adopts ordinances amending the Code; and

WHEREAS, part of the Commission's duties include the necessity to ensure that the Town's ordinances, as codified in the Code, are up to date, reflect current actual Town operations, do not contain outdated, redundant or erroneous provisions, and are harmonious with other provisions in the Town Code; and

WHEREAS, in light of the foregoing, the Commission desires to update the authority and clarify the powers and duties of the Town's Board of Adjustment in light of recent changes to other provisions in the Town's Code; and

WHEREAS, the Commission therefore finds that it is in the best interests of the Town, and its citizens, property owners and businesses to adopt this Ordinance and

WHEREAS, the Redington Beach Planning Board has recommended adoption of this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Redington Beach, Florida, that:

SECTION 1. Chapter 6 – Buildings and Building Regulations, Article XI. – Board of Adjustment, is amended as follows:

Sec. 6-288. - General.

- (a) A board of adjustment is hereby established, to consist of five members and two alternates, designated as such to be appointed by the town commission, each for a term of three years; provided that in initial appointments, three terms shall be for one year, two for two years, and two alternates for three years. All members must be electors of the city Town. No member of the board shall be an official or employee of the town.

- 1
2 (1) *Alternate members.* Alternate members may act in the temporary absence or
3 disability of any regular member or when a regular member is otherwise
4 disqualified in a particular case.
5
6 (2) *Member removal.* Members of the board may be removed from office for cause
7 by the town commission on written notice and after public hearing.
8
9 (3) *Vacancies.* Vacancies shall be filled by the town commission within 30 days after
10 the vacancy occurs for the unexpired term of the member affected.
11
12 (b) The board shall elect a chairman and vice chairman who shall be a member of the board
13 of adjustment. Terms of all offices under this subsection shall be for one year, with
14 eligibility for reappointment.
15
16 (c) The board shall adopt rules for transaction of its business, and shall keep a record of its
17 resolutions, findings and determinations, which shall be public record. The board shall
18 keep minutes of its proceedings, showing the vote of each member on each question, or if
19 absent or failing to vote indicating such fact.
20
21 (d) Meetings of the board shall be held at the call of the chairman and at such times as the
22 board may determine. Minutes of the board shall be filed promptly in the office of the
23 town clerk. ~~Copies of every application and appeal, notice of public hearing, and~~
24 ~~resolution of the board shall be forwarded to each member of the town commission.~~
25
26 (e) The town commission is authorized and empowered to appropriate such funds that are
27 necessary to conduct the work of the board. The town commission is authorized to
28 establish a schedule of fees to be charged by the board. The board shall have the
29 authority to expend all sums made available for its use from fees and other sources for the
30 purpose and activities authorized by this chapter.
31
32

33 **Sec. 6-289. - Powers and duties.**

34

35 The board of adjustment shall have the following powers and duties:

36

- 37 (a) To authorize upon application in specific cases such ~~exception/~~ variances from the terms
38 of ~~this chapter~~ the Town's Code of Ordinances unless otherwise specifically excepted,
39 that as will not be contrary to the public interest where, owing to special conditions, a
40 literal enforcement of ~~the~~ those provisions of ~~this chapter~~ would result in unnecessary and
41 undue hardship.
42

(b) To consider written applications for a ~~special exception~~/variance when it is demonstrated demonstrates that:

- (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other similarly situated lands, structures, or buildings in the same district; and
- (2) A literal interpretation of the provisions of ~~this chapter~~ the applicable code would deprive the applicant of rights commonly enjoyed by other similarly situated properties in the same district under the terms of ~~this chapter~~ the applicable code ~~and would work unnecessary and undue hardship on the applicant.~~
- (3) No variance shall be granted unless the applicant demonstrates by relevant, competent, and substantial evidence that the following criteria have been satisfied:
 - a. The property has an unusual hardship not suffered by other similarly situated properties within the same district;
 - b. The hardship of the property was not self-created by the applicant and was not the result of an action taken with the applicant's prior knowledge or approval. Further, no variance may be granted arising from illegal construction of a structure or an illegal use of the premises which would otherwise have required a permit to be issued and which construction was commenced illegally. Under such conditions, the property owner shall have no legal right to apply for a variance and the board shall have no legal right to grant a variance;
 - c. The requested variance is the minimum variance necessary to permit the reasonable use of the property;
 - d. The requested variance will not confer on the applicant any special privilege that is denied by the applicable code to other similarly situated property owners;
 - e. The literal interpretation of the applicable code would deprive the applicant of rights commonly enjoyed by other similarly situated property owners;
 - f. The requested variance will not be contrary to the public interest and will be in harmony with general intent and purpose of the applicable code.

(c) To hear and decide appeals where it is alleged there is error in any order, decision,

1 or determination of the building code administrator in the administration or interpretation of the
2 ~~building~~ regulations of the Town of Redington Beach. This appeals process is limited to the
3 provisions of the Town's Code and does not allow for appeals of interpretation or application of
4 the Florida Building Code, or other similar code which the Town may adopt from time to time.

5
6 ~~—— (d) — No amendment, repeal or change whatsoever or exception/variance of any kind to~~
7 ~~those certain zoning ordinances of the town restricting, providing and establishing certain zones~~
8 ~~and zoning of the town, shall be made or affected unless a resolution is duly passed and adopted~~
9 ~~by the board of commissioners of the town proposing such change and calling for an election,~~
10 ~~either at a special or general election or other specific election, whereupon, the registered voters~~
11 ~~of the town shall vote upon the question for affirmation or approval or disaffirmation or~~
12 ~~disapproval of the resolution and the proposition contained therein respecting any amendment,~~
13 ~~repeal or change of any nature in the present zoning laws and ordinances of the town.~~
14 ~~Amendment, repeal or change of any exception/variance to those certain zoning ordinances of~~
15 ~~any kind must be approved by at least two-thirds of the voters, voting on such amendment, repeal~~
16 ~~or change.~~

17
18 ~~—— (e) — The board of adjustment is specifically prohibited from granting any exception or~~
19 ~~variance whatsoever from the laws, regulations, ordinances or other restrictions relating to the~~
20 ~~overall height of buildings and structures within the town as set forth in Section 20 of the Charter~~
21 ~~of Redington Beach and section 5(c) and (d) of the building regulations of appendix A, zoning,~~
22 ~~of the Redington Beach Code.~~

23
24 ~~The board of adjustment shall not consider not-permitted or non-conforming use of lands,~~
25 ~~structures or buildings in the same zoning district, or not-permitted or non-conforming use of~~
26 ~~lands, structures, or buildings in other zoning districts as grounds for the issuance of a special~~
27 ~~exception/variance.~~

28
29 (d) *Prohibited Variances.* The board of adjustment is specifically prohibited from
30 hearing and granting any variance from:

- 31
32 (1) The provisions of Appendix A to the Town's Code of Ordinances restricting,
33 providing, and establishing certain zones and zoning of the Town;
34
35 (2) The overall height of buildings and structures within the Town as set forth in
36 Section 20 of the Charter of Redington Beach and sections 5(c) and (d) of the
37 building regulations of Appendix A of the Redington Beach Code;
38
39 (3) The regulations governing non-conforming docks set forth in section 5-57 (a)(7)
40 of the Redington Beach Code; and
41
42 (4) Any provision of the Town's Comprehensive Plan.

1 (e) The board shall not consider any petition or application for the same request for a
2 period of ~~30~~ 120 days from the ~~effective date~~ of the order on a previous action on the petition or
3 application.

4
5 (f) A de minimis or administrative variance may be granted by the Town's building
6 code administrator without being presented to the board of adjustment so long as it meets the
7 following criteria:

8
9 (1) The structure or use at issue was constructed or commenced lawfully and with the
10 proper permits;

11
12 (2) Such a variance would not be contrary to the public interest or give special benefit
13 to the property owner requesting such a variance;

14
15 (3) The variance, if granted, would not be in violation of the Town's Comprehensive
16 Plan; and

17
18 (4) The deviation being sought does not exceed twelve inches for setbacks and
19 accessory structure heights, or one percent for measurements pertaining to lot
20 dimensions or area. All other prohibitions on the granting of variances contained
21 in Section (d) above are applicable to de minimis variances.

22
23 Denial of a de minimis variance may be appealed to the board of adjustment subject to the
24 variance criteria set forth in section (b) above.

25 26 27 **Sec. 6-290. - Procedures.**

28
29 When an application for ~~special exception~~/variance is submitted:

30
31 (a) A public hearing shall be held. Any party may appear in person, by agent, or by
32 attorney.

33
34 (b) Except as provided herein, d~~Due~~ notice of the public hearing shall be given by no
35 less than 30 days' written notice (in writing) mailed to the applicant and to all property owners
36 within 150 feet of any property line of the applicant as determined by the Pinellas County
37 Property Appraiser's Office. For a dock variance application for a property located on an inside
38 radius as such is defined herein, notice of the variance application shall be given to all property
39 owners with property that fronts on the inside radius. For the purposes of this subsection, "inside
40 radius" means a curvilinear length of shoreline wherein the shoreline recedes from the waterway,
41 thereby creating a cove, inlet or bay or similar physical feature. ~~or exceptions as determined by~~
42 ~~the building code administrator (exceptions would be docks which would entail a greater~~

distance). Board of adjustment members, and the building code administrator and the town commissioners shall also be notified at least 14 days prior to the public hearing.

(c) The board of adjustment shall make findings as to whether the requirements as set forth in section 6-289 have been met by the applicant.

(d) The board of adjustment shall further make a finding whether the reasons set forth in the application justify the granting of the ~~special exception~~/variance, and whether the ~~special exception~~/variance is the minimum ~~special exception~~/variance that will make possible the reasonable use of the land, building, or structure of the applicant.

(e) The board of adjustment shall further make a finding that the granting of the special exception/variance will be in harmony with the general purpose and intent of ~~this chapter~~, the applicable provisions of the Town Code and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

(f) The board of adjustment, in granting any ~~special exception~~/variance, may ~~prescribe~~ impose appropriate conditions and safeguards in conformity with the applicable code sections ~~this chapter, including time limits for beginning and for completion of any action involved by the variance.~~ Violation of such conditions and safeguards, when made a part of the terms under which the ~~special exception~~/variance is granted, shall be deemed a violation of ~~this chapter the Town Code, and all such violations shall be governed by the code enforcement ordinance and presented to the special master in accordance with chapter 2, administration, article III, code enforcement, sections 2-55 through 2-93 of the Code of Redington Beach.~~

(1) ~~—The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties as set forth in chapter 2, administration, article III, code enforcement, sections 2-55 through 2-93 of the Code of Redington Beach.~~

(2) ~~—It shall be a violation for any person to destroy, move, remove, or deface or obscure any sign or notice erected or posted pursuant to the requirements of this chapter and any person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties as set forth in chapter 2, administration, article III, code enforcement, sections 2-55 through 2-93 of the Code of Redington Beach.~~

(3) ~~—Nothing herein contained shall prevent the town from taking any other lawful action necessary to prevent or remedy any violation.~~

(g) Any variance granted under the provisions of this code shall expire within sixty (60) days from the date of the executed order granting the variance, unless a building permit for

1 construction or alteration has been issues in accordance with the plans and conditions upon
2 which the variance was granted.

3
4 (h) Upon receiving a request in writing at least thirty (30) days prior to the scheduled
5 expiration date of the variance, the board of adjustment may, in its discretion, grant a one-time
6 thirty (30) day extension calculated from the date the original variance would have expired,
7 provided proper public notice by mail has been given and the request is one made in good-faith.
8
9

10 **Sec. 6-291. - Appeals from decisions of the board of adjustment.**

11
12 Any person aggrieved by any decision of the board, may seek judicial review of such decision in
13 a court of competent jurisdiction as provided by law. ~~by filing a notice of appeal, in the form~~
14 ~~prescribed by the Florida Appellate Rules, in the circuit court, within 30 days of the execution of~~
15 ~~the order to be appealed.~~ The decision of the board of adjustment shall be considered a final
16 administrative action, and shall only be subject to review based upon the record established at the
17 hearing before the board.
18
19

20 **Sec. 6-292. - Appeals to the board of adjustment.**

21
22 It is the intent of this article that all questions of interpretation and enforcement of the
23 Building Code and Building Regulations of the Town of Redington Beach shall be first presented
24 to the building code administrator.
25

26 (a) Appeals to the board of adjustment concerning interpretation or administration of
27 ~~the Town's Building these r~~ Regulations ~~or for special exception or variance under these~~
28 ~~regulations~~ may be taken by any person aggrieved by any decision, determination, or requirement
29 of the building code administrator.
30

31 (b) Such appeals shall be taken within 30 days, by filing a notice of appeal specifying
32 the grounds of appeal with the building code administrator. The building code administrator
33 shall forthwith transmit to the board of adjustment all papers constituting the record upon which
34 the building code administrator took the action appealed.
35

36 (c) The board of adjustment shall fix a reasonable time for the hearing of the appeal,
37 giving public notice thereof in the same manner as for ~~special exceptions~~/variances, as provided
38 in section 6-290, as well as due notice to the parties in interest, and decide the same within a
39 reasonable time. At the hearing, any party may appear in person or by agent or attorney.
40

41 (d) An appeal stays all proceedings in furtherance of the action appealed unless the
42 building code administrator, from whom the appeal is taken, certifies to the board after notice of

1 appeal is filed that, in the administrator's opinion, a stay would cause a hazard to life or property.
2 In such event, the proceedings shall not be stayed except by ~~restraining order granted a~~
3 supermajority vote by the board or by an injunction issued by a court of competent jurisdiction,
4 on notice to the administrator and ~~on due~~ with good cause shown.

5
6
7 **Sec. 6-293. - Schedule of fees, charges and expenses.**
8

9 (a) The town commission shall establish a schedule of fees, charges, and expenses
10 and a collection procedure for review by the board of adjustment. The schedule of fees shall be
11 posted in the office of the building code administrator and town clerk, and may only be amended
12 by the town commission.

13
14 (b) The fee and administrative costs for a ~~special exception~~/variance heard by the
15 board of adjustment shall be \$250.00 and \$50.00 for administrative or *de minimis* variances.
16 There shall be no additional fee for an appeal as set forth in section 6-291.

17
18 (c) Until all applicable fees, costs and expenses have been paid in full, no action shall
19 be taken on any application or appeal.

20
21 (d) In addition to the fee schedule outlined above, the petitioner shall be responsible
22 for the payment of any extraordinary expenses incurred by the town, at a cost consistent with the
23 reasonable expenses in analyzing or reviewing all or any part of an application. The
24 extraordinary expenses may be occasioned by the town's retention of the services of a third-party
25 consultant. The petitioner will be advised of the necessity of such expense prior to it being
26 incurred. The petitioner and the building code administrator must jointly approve an estimated
27 cost amount before these charges can be authorized. Upon the request of the petitioner, the town
28 commission may review such extraordinary expenses as to its necessity and amount. The charges
29 for extraordinary expenses will be paid in advance to the town in the form of cash or certified
30 check at the agreed upon cost.

31
32
33 **Sec. 6-294. - Severability clause.**
34

35 Should any section or provision of this article be decided by ~~the courts~~ a court of competent
36 jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the
37 balance of this article.

38
39
40 **SECTION 2.** For purposes of codification of any existing section of the Redington
41 Beach Code herein amended, words underlined represent additions to original text, words
42 ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain

unchanged.

SECTION 3. If any section, subsection, sentence, clause, provision, or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

SECTION 4. The Codifier shall codify the substantive amendments to the Redington Beach Town Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

SECTION 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the ____ day of _____, 2020, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____, 2020, by the Board of Commissioners of the Town of Redington Beach, Florida.

James Simons, Mayor

Attest:

Missy Clarke, CMC, Town Clerk

Approved as to form:

Jay Daigneault, Town Attorney

C:\Red Bch\Board of Adjustment\Code RewriteC.wpd