



BACKGROUND

Grounds for Appeals to the Development Advisory Board (DAB)

When filing an appeal to the Development Advisory Board pursuant to Phoenix City Code, the appellant must identify the legal or technical basis for granting an appeal. Unless the City Code provisions provide otherwise, appeals may be granted only if the appellant can prove one of the following conditions exists:

1. The true intent of the codes or ordinances described in the Phoenix Construction Code and technical development standards contained in chapters 28, 31, 32, 32A, 32B, and 37 of the Phoenix City Code have been incorrectly interpreted.
2. The provisions of the codes or ordinances in number 1 above do not apply;
3. An alternate method of complying with code or ordinance requirements should be approved because the standards set forth below are met.
 - a. Special circumstances or conditions apply to this permit application; and
 - b. Authorizing the alternate method is necessary for the preservation and enjoyment of substantial property rights; and
 - c. Authorizing the alternate method will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general; and
 - d. Authorizing an alternate method of compliance will achieve the intent of the subject codes or ordinances and authorizing the alternate method will not lessen any life safety requirement, any traffic safety requirement, any fire protection requirement, any structural integrity, or any capacity of a required sewer, water, or drainage system.

While the above referenced conditions apply to most types of appeals, the City Code does provide alternative or additional basis for certain types of appeals.

City Manager's Representative / Building Official

Appeals heard by the DAB have already been heard and / or reviewed by the City Manager's Representative or Building Official in a previous formal appeal or review. The City Manager's Representative, Building Official, or delegate will present the City's position at the DAB hearing.

Quasi-Judicial Proceedings

DAB appeals are quasi-judicial, meaning DAB members cannot receive any ex parte oral or written communication on appeals which are pending before the DAB, or which may later come

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before the DAB. DAB members may only hear testimony and other evidence presented in public hearings on the appeal and read copies of the official file on the appeal and written communications furnished to the DAB by the DAB secretary. A DAB member who engages in oral communications or reviews written communications on an appeal, other than allowed as stated above, shall be disqualified to participate in that appeal.

Conflict of Interest

A DAB member who has, or whose relative has, a substantial interest in any appeal before the DAB shall make full disclosure of such interest to the DAB, and shall refrain from participating in any manner in the discussion or the decision on such appeal.

APPEAL PROCEDURE

DABChair's Opening Remarks for the Public Hearing:

“At this Public Hearing the DAB considers appeals by persons aggrieved by a formal written order, decision, or determination of technical requirements made by the Building Official or City Manager’s Representative. We are comprised of citizens, who serve without pay, representing all areas of the city and are appointed by and advise the City Council.”

General Rules of Procedure

1. Call to Order. The Chair (or designee) of the DAB will call the hearing to order. All parties will be asked to introduce themselves and indicate their reason for attending the hearing. Attendees will be asked to complete the attendance sign in sheet indicating their name, address, and phone number.
2. The Chair asks staff to introduce themselves.
3. The Chair shall announce the name of the appellant, the location of the property involved and the specific appeal requirement before the committee. In the interest of maintaining a fair and efficient public hearing, adherence to the following time limits is recommended, unless modified by the Chair:
 - a. Appeal introduction by Planning & Development Department Director or his designee
 - b. Ten minutes for the appellant’s presentation;
 - c. Fifteen minutes for City’s presentation;
 - d. Ten minutes for any community input (if more than five attendees, two minutes per person);
 - e. Five minutes rebuttal for the appellant. The scope of appellant’s rebuttal is limited to response to issues discussed in City’s presentation or community input only.

Parties should proceed without interruption by the other parties, and all arguments and concerns should be addressed to the DAB. Parties should select a spokes-person to present major points and strive to be non-repetitive. The DAB may ask questions or make comments as they relate to the specific appeal item.

Executive Session

At any time during the hearing, the DAB may call for an executive session to allow the DAB members to consult with their attorney(appointed by the city) regarding procedural clarifications

or legal questions. This executive session requires a motion and approval of the motion prior to commencement. All non-DAB and ex-officio members must exit the room during the executive session.

Grounds For Granting Appeal

Unless the City Code provides otherwise, the grounds for granting an appeal are as follows:

1. The true intent of the codes or ordinances has been incorrectly interpreted.
2. The provisions of the code do not fully apply.
3. An alternative method of complying with code should be approved because standards set forth are met.

Limits of DAB Authority

The DAB may NOT waive any of the provisions of the applicable code or ordinance.

The DAB has no jurisdiction over any requirement that a permit must be obtained, decisions to pursue enforcement actions in accordance with the provisions of the City Code, or the amount of any fee prescribed by the City Code.

Development Advisory Board's Decision

After hearing the appeal, the DAB may take the following actions:

1. Affirm the decision of the City Manager's Representative
2. Remand the matter for further proceedings before the City Manager's Representative
3. Reverse or modify the decision of the City Manager's Representative

The DAB may continue the appeal to the next scheduled DAB meeting or special meeting.

Subsequent Appeal

The decision of the DAB on appeals is final and not subject to further appeal within the City. Any person aggrieved by a decision on an appeal may file an appeal with the Maricopa County Superior Court.