

Procedures of the Floodplain Review Board for Appeal, Interpretation, Variance Floodplain Regulations for Maricopa County Section 409. Appeals

- A.** Appeals may be taken to the Floodplain Review Board pursuant to A.R.S. §48-3612(B) and A.R.S. §48-3642. Any person, if there is a dispute between the person and district employees or if location of a floodway or floodplain is in doubt, may file an appeal seeking an interpretation of the regulations if the meaning of a word, phrase or section is in doubt. After substantively complying with A.R.S. §48-3649, an applicant for a license may file an appeal seeking an interpretation of the regulations if the meaning of a word, phrase or section is in doubt; or an applicant may file an appeal challenging a denial of a permit. A regulated person, if there is a dispute between the regulated person and district employees of a final decision of a district based on the results of an inspection, may file an appeal to the Floodplain Review Board seeking an interpretation of the regulations if the meaning of a word, phrase or section is in doubt.
- B.** Appeals to the Floodplain Review Board shall be filed with the Floodplain Administrator within thirty (30) calendar days of the receipt of notice of the decision to be appealed, or sixty (60) calendar days from the date of the decision whichever is earlier. The notice of appeal shall be in writing on a form provided by the Floodplain Administrator and shall state the name and address of the person requesting the interpretation, the regulation that requires clarification, any facts relevant to the requested interpretation and the person's proposed interpretation of the applicable regulation.
- C.** Any interpretation of the regulations issued by the Floodplain Review Board shall only affect the dispute between the appellant and district employees. If the district wants to expand the application of the Floodplain Review Board's interpretation of the regulations, the district shall follow the procedures required by Maricopa County's Enhanced Regulatory Outreach Program Policy.
- D.** The Floodplain Review Board shall fix a time for hearing the appeal and give notice to the parties in interest and to the public as set forth herein. The Floodplain Review Board shall hear and decide the appeal within a reasonable time.
- E.** Property shall be posted pursuant to procedures adopted by the Floodplain Review Board.
- F.** Any appellant aggrieved by a decision of the Floodplain Review Board may, within thirty (30) days of such decision, appeal to the Board of Directors by filing a written notice of appeal with the Clerk of the Board on a form provided by the Floodplain Administrator. Said notice shall state the name and address of the person requesting the interpretation, the regulation that requires clarification, any facts relevant to the requested interpretation and the person's proposed interpretation of the applicable regulation.
- G.** Any appellant aggrieved by a decision of the Board of Directors may file a special action in Superior Court of the State of Arizona.

REVIEW BOARD PROCEDURES

October 24, 1984

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POWERS AND DUTIES

Pursuant to Arizona Revised Statutes Sections 48-3611 and 48-3612 and Board of Directors Resolution No. FCD 84-7, the Floodplain Review Board shall have the following duties and functions:

1. Interpret upon appeal the meaning of any word, phrase or section in the Floodplain Regulation which is the subject of dispute between the Floodplain Administrator and the appellant.
2. Decide upon appeal the location of a floodway or floodplain boundary which is the subject of dispute between the Floodplain Administrator and the appellant.
3. Allow upon application a variance from the terms of the Floodplain Regulation if it determines that by reason of any peculiar physical characteristics of the specific property, strict application of the Regulation would result in unnecessary hardship upon the applicant and granting the variance would not substantially impair the purpose and intent of the Regulation.

APPLICATIONS FOR VARIANCE OR APPEAL FROM DECISION OF FLOODPLAIN ADMINISTRATOR

1. Applications for variance to the Regulation or appeals shall be made on forms prescribed by the Board of Review and shall be filed with the Floodplain Administrator. An appeal shall be filed within 30 days of issuance of notice of the action which is the subject of appeal.

Such applications or appeals shall be accompanied by:

- a) An accurate plot plan and description of the property involved, description of the proposed use and finished floor elevations and estimate of the value of the use.
 - b) For appeals, the specific grounds upon which the appeal is made.
2. Except for appeal for interpretation of the Regulation, the property involved in each application for variance or appeal shall be posted as to the time, date and location of the hearing.
 3. The Review Board shall fix a time for hearing and give a minimum of fifteen (15) days notice thereof to the parties in interest and to the public by posting of the property and publication of the meeting agenda.
 4. At least five (5) days prior to hearing, applicant or appellant shall be mailed a copy of the agenda and staff report to be presented at hearing.

Meetings of the Review Board shall be held in conjunction with scheduled meetings of the Flood Control Advisory Board, or at such other times as deemed necessary for the transaction of business. Variance applications and appeals to be heard will be incorporated into the regular meeting agenda and be heard in accordance with the Bylaws of the Flood Control Advisory Board. The monthly meeting shall be the fourth Wednesday of each month unless otherwise called and noticed.

All such meetings shall comply with the requirements of the open meeting law, ARS 38-431 et. seq. The Review Board shall keep minutes of its proceedings showing the vote indicated upon each motion. A copy of the minutes shall be filed with the Floodplain Administrator and shall be a public record.

The Floodplain Administrator shall transmit to the Review Board all papers and documents constituting the record upon which the appealed action was taken. Such appeal shall stay all proceedings in the matter appealed unless the Floodplain Administrator certified to the Review Board that, by reason of the facts stated in the certification, the stay would in his opinion cause imminent peril to life or property.

Staff recommendations shall be prepared and distributed to Board members at least 5 days prior to the scheduled hearing.

The procedure to be followed in each case on the agenda shall be as follows:

1. The Chairman shall call the case in the order appearing on the agenda.
2. Staff shall present a narrative report including any relevant maps, data, history or other information and shall conclude its report by making a recommendation to the Board.
3. The applicant or appellant, or his representative shall be allowed to make a presentation or statement.
4. Other persons who wish to speak in support of the application or appeal shall be allowed to present any new or additional relevant information.
5. Persons who wish to speak in opposition to the application or appeal shall be allowed to present any new or additional relevant information.
6. The applicant or appellant shall be allowed to respond to points raised.
7. The Chairman shall ask for additional comments from staff, or additional questions from members of the Board. Questions may be directed by the Chairman from any members of the Board to any person speaking on the case, at any time during the hearing of the case.
8. The Chairman shall call for a motion and a second. The members of the Board shall vote on the motion, except that any member who has a conflict of interest in the case shall excuse himself from sitting on the case upon becoming aware of the conflict of interest. A majority vote of the quorum shall be required to pass a motion. If a motion fails to pass, a substitute motion shall be made which shall also require a majority vote of the quorum to pass. If an action is protested by more than 50% of the property owners

within 500 feet of the property in question or by any municipal corporation within one mile of a property, the action shall not pass unless at least five members of the Board vote to approve.

9. The Review Board may attach to its actions such stipulations or conditions as may be necessary to carry out the intent of the Floodplain Regulation. If the Floodplain Board of Review has cause to believe, after approval of a variance, that any stipulations or conditions may have been violated, it may set a hearing for the purpose of determining whether to revoke the variance for such violation. Notice of the revocation hearing shall be as set forth above for other hearings. The Floodplain Board of Review may revoke the variance stating on the record the specific basis for finding a violation of the stipulations or conditions or it may grant a limited period of time within which to correct the violation in order to avoid revocation of the variance.

10. If an applicant or appellant or his representative is not present when his case is called the Chairman may entertain a motion to continue the case or dismiss the case for failure to pursue the application or appeal. Alternatively, the Board may proceed to conduct the hearing and decide the case if it appears that sufficient information is contained in the application and staff report and from any persons testifying at the hearing, to decide the case on its merits. If the Board determines to hear and decide the case in absentia, it shall make a finding on the record that it has sufficient information before it to enable it to decide the case on its merits. If the Board moves to dismiss the case for failure of the applicant or appellant to appear, the application or appeal may be refiled only upon payment of another filing fee.

Any person, agency, firm, corporation, partnership, association, municipality, state agency or any officer thereof aggrieved in any manner by an action of the Board of Review may within 30 days appeal to the District Board of Directors. Any such person aggrieved in any manner by an action of the Board of Directors may within 30 days appeal to the Superior Court of the State of Arizona.

The County Attorney shall serve in an advisory capacity to the Review Board.