

NO. 304175

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

FAMILIES OF MANITO, ANN BEREGMAN, TODD STECHER, and
SADIE LAKE,

Respondents/ Cross-Appellants,

Vs.

ST. MARK'S LUTHERAN CHURCH,

Appellant / Cross-Respondent.

and,

CITY OF SPOKANE, a First Class Charter City of the State of
Washington,

Respondent/ Cross-Respondent.

CITY OF SPOKANE'S BRIEF IN RESPONSE TO
ST. MARK'S OPENING BRIEF

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INTRODUCTION

The City of Spokane agrees with and supports the arguments made by Appellant/Cross-Respondent St. Mark's Lutheran Church ("St. Mark's") in its opening brief. Pursuant to the City's development regulations, religious institutions, including additions to such uses, are permitted in residential zones if they comply with specified conditions. St. Mark's proposal to add approximately 25 parking stalls to its off-street parking area and to improve the safety of ingress and egress to the church (the "Project") is fully consistent with these conditions.

The City's Planning Services Director approved the Project. The Respondents/Cross-Appellants (the "Neighborhood") appealed the Director's approval to the Hearing Examiner (the "Administrative Appeal"). The Administrative Appeal lasted two days. The record, both in terms of testimony and documents, is voluminous. Based on this record, and consistent with the authority granted by the City's legislative authority, the Hearing Examiner (the highest forum exercising fact finding authority in this case) affirmed the Director's approval of the Project, subject to certain minor modifications intended to address concerns expressed by the Neighborhood during the Administrative Appeal hearing.

The Neighborhood then appealed to superior court. Although the superior court rejected many of the Neighborhood's claims, it ruled (i) that the Hearing Examiner erred by requiring modifications to the Director's approval of the Project, and (ii) that the Hearing Examiner erred by including St. Mark's fellowship hall in determining the size of the church's "main assembly area." In making these decisions, the superior court disregarded the decision-making authority delegated to the Hearing Examiner by Spokane's legislative authority, reweighed the evidence presented to the Hearing Examiner, and overturned the Hearing Examiner's decision even though there is ample evidence in the record to support it.

**SUPPLEMENTAL STATEMENT OF ISSUES
PRESENTED BY ST. MARK'S APPEAL**

A. Whether the superior court erred when it failed to defer to the Hearing Examiner's expertise in interpreting the City of Spokane's development regulations, particularly as it applied to defining the term "main assembly area."

B. Whether the superior court erred when it overturned the Hearing Examiner's decision regarding the size of St. Mark's main assembly area when it failed to view the facts and inferences

in the light most favorable to the party that prevailed in front of the fact finder.

C. Whether the superior court erred when it weighed the evidence and substituted its own findings regarding the size of St. Mark's main assembly area, even though the Hearing Examiner's decision was supported by substantial evidence.

D. Whether the superior court erred when it ignored the Hearing Examiner's express authority to modify the decision he was asked to review, thereby creating uncertainty and doubt regarding the Hearing Examiner's authority in deciding future land use appeals.

SUPPLEMENTAL STATEMENT OF THE CASE

The City has no issues with the Statement of the Case set forth in St. Mark's opening brief, but supplements that statement as follows:

This matter originated with St. Mark's application for an addition to its parking area on land adjoining the church's sanctuary and existing parking area. Record, p. 283.¹ The permissible size of St. Mark's parking area is governed by Spokane Municipal Code (SMC) Table 17C.230-2 which provides a

¹ References to the "Record" are to the Original Certified Hearing Examiner Record.

maximum parking ratio for religious institutions of 1 parking space per 60 sq. ft. of the church's main assembly area. The City's development regulations did not define "main assembly area." But based on the Department's experience and authority to interpret and apply the City's development regulations,² the Department interpreted "main assembly area" to include St. Mark's sanctuary and fellowship hall. Record, pp. 181, 1,163, and 1,258. Based on the evidence and testimony presented during the Administrative Appeal, the Hearing Examiner agreed with the Department's interpretation of the term "main assembly area" as it applied to St. Mark's proposal to add to its parking area. Record, p.31. And as outlined in St. Mark's opening brief, there is ample evidence in the record to support this interpretation.

ARGUMENT

A. STANDARD OF REVIEW.

When reviewing a superior court's decision under RCW Chapter 36.70C ("LUPA"), this Court stands in the shoes of the superior court, reviewing the ruling below on the administrative record. *City of Federal Way v. Town & Country Real Estate, LLC*,

² See SMC 17A.010.070(A)(3) and SMC 17G.060.020(A)(3), both delegating responsibility to the Planning Director for administration, application and *interpretation* of the City's land use regulations.

161 Wn. App. 17, 252 P.3d 382 (2011) (citing *HJS Dev., Inc. v. Pierce County ex. Rel. Dep't of Planning & Land Servs.*, 148 Wn.2d 451, 468, 61 P.3d 1141 (2003)). Essentially, the administrative decision is presumed correct and the party that filed the LUPA petition in superior court (here, the Neighborhood) has the burden of overcoming that presumption by meeting one of the six standards under RCW 36.70C.130(1):

(a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

(b) The land use decision is an erroneous interpretation of the law, *after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise*;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts;

(e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or

(f) The land use decision violates the constitutional rights of the party seeking relief.

Challenges under subsection (b) are legal questions the Court reviews de novo, *but only* “after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise.” *City of Federal Way v. Town & Country Real Estate, LLC*, 161 Wn. App. at 37 (emphasis supplied).

Challenges under subsection (c) are factual questions, which this Court upholds if there is “substantial evidence” to support the factual finding or “evidence that would persuade a fair-minded person of the truth of the statement asserted.” *Id.* (citing *Cingular Wireless LLC v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006)).

Challenges under subsection (d) involve applying the law to the facts, which this Court reviews under the “clearly erroneous” standard – “whether we are left with a definite and firm conviction that a mistake has been committed.” *Id.*

To summarize, the Court

must give substantial deference to both the legal and factual determinations of a hearing examiner as the local authority with expertise in land use regulations. City of Medina v. T-Mobile USA, Inc., 123 Wn. App. 19, 24, 95 P.3d 377(2004). [The Court must] review the evidence and any inferences in a light most favorable to the party that prevailed in the highest forum exercising fact-finding authority . . . *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 652, 30 P.3d 453 (2001) ; *Willapa Grays Harbor Oyster Growers Ass'n v. Moby Dick Corp.*, 115 Wn. App. 417, 429, 62 P.3d 912 . (Emphasis supplied.)

Lanzce G. Douglass, Inc. v. City of Spokane Valley, 154 Wn. App. 408, 415-16, 225 P.3d 448 (2010).

These standards essentially recognize that there is a presumption in favor of the Hearing Examiner's decision:

There is a presumption of fairness, correctness, validity, procedural regularity, and constitutionality of the action taken by administrative zoning officials with respect to permits, special uses, variances, exceptions, nonconforming uses, marginal adjustments and the like. It is presumed that the administrative action is within and is a reasonable exercise of municipal power.

8A McQuillin Mun Corp Section 25.366 (3rd Ed)

Applied here, the foregoing standards and presumptions require reversal of the superior court's decision and reinstatement of the Hearing Examiner's decision affirming the Department's approval of St. Mark's project, subject to the conditions imposed by the Hearing Examiner.

B. THE SUPERIOR COURT ERRED IN FINDING THAT ST. MARK'S FELLOWSHIP HALL IS NOT PART OF THE CHURCH'S MAIN ASSEMBLY AREA.

Based on evidence presented during the administrative hearing, the Hearing Examiner agreed with the Planning Director's decision that St. Mark's fellowship hall is part of the church's main assembly area. In reversing the Hearing Examiner, the superior court failed to defer to the Hearing Examiner's interpretations of

the City's development regulations and reweighed the evidence presented to the Hearing Examiner, both of which are improper under LUPA. When the Hearing Examiner's decision is afforded the deference LUPA mandates, and when the evidence presented to the Hearing Examiner is viewed under the standards required by LUPA, it is clear that the superior court erred in overturning the Hearing Examiner's approval of St. Mark's Project.

1. The Hearing Examiner's Interpretations of the City's Development Regulations (Including the Meaning of Main Assembly Area) Are Entitled to Substantial Deference under LUPA (RCW 36.70C.130(1)(b)).

The Hearing Examiner reviewed the evidence presented to him, interpreted the City's development regulations, and made a determination that St. Mark's fellowship hall is part of the church's "main assembly area." The superior court erred by failing to give any deference to this determination. RCW 36.70C.130(1)(b).³

³ *Lanzce G. Douglass, Inc. v. City of Spokane Valley*, 154 Wn. App. at 415-16 ("substantial deference" required); *City of Federal Way v. Town & Country Real Estate, LLC*, 161 Wn. App. at 37; *Pinecrest Homeowners Ass'n v. Glen A. Coninger & Associates*, 151 Wn.2d 279, 87 P.3d 1176 (2004) (judicial review of city's interpretation of city ordinance must accord deference to city's expertise); *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 120 P.3d 56 (2005) (local jurisdiction with expertise in land use decisions are afforded an appropriate level of deference in interpretations of law under LUPA); *Citizens to Preserve Pioneer Park LLC v. City of Mercer Island*, 106 Wn. App. 461, 24 P.3d 1079 (2001) (City council's interpretation of "usable signal" was

The Hearing Examiner's determination was based on testimony that St. Mark's main sanctuary and fellowship hall are used simultaneously to accommodate many events. Record, pp. 30-31. There are windows in the fellowship hall that permit worshippers in the fellowship hall to see into the church's main sanctuary. Record, p. 154. There are also television monitors in the fellowship hall that serve the same purpose, and there is a removable wall that connects the two rooms. CP 154. The Hearing Examiner was also mindful of the fact that the Planning Director had already interpreted the term "main assembly area" to include St. Mark's fellowship hall, per the Planning Director's authority under Spokane Municipal Code (SMC) 17A.010.070(A)(3) and SMC 17G.060.020(A)(3) (delegating responsibility to the Planning Director for administration, application and *interpretation* of the City's land use regulations). Record, pp. 30-31. Combined, these factors led the Hearing Examiner to conclude that, under the City's development regulations, St. Mark's "main assembly area" should not be limited

entitled to deference on review under LUPA); *see also, Manke Lumber Co., Inc. v. Diehl*, 91 Wn. App. 793, 959 P.2d 1173 (1998) (substantial weight is given to an agency's interpretation of the statutes it administers).

to the sanctuary but should also include the fellowship hall. Record, pp. 30-31.

After reweighing the evidence, the superior court disagreed. In doing so, the superior court failed to defer to the Hearing Examiner's expertise in interpreting the City's development regulations. Consequently, reversal is required, reinstating the Hearing Examiner's decision.

2. The Trial Court Erred by Weighing the Evidence and Substituting its Judgment for That of the Hearing Examiner (RCW 36.70C.130(1)(c)).

Under LUPA, courts do not reweigh or evaluate the persuasiveness of the evidence presented to a hearing examiner. Courts review only to determine whether there is evidence to support the hearing examiner's findings. *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006). Substantial evidence is evidence that could support the truth of the fact asserted. *Id.* Under this standard, the Court is required to consider all of the evidence in the light most favorable to St. Mark's, the party that prevailed before the Hearing Examiner. *Id.*

Under the substantial evidence standard, the Court does not substitute its judgment for that of a hearing examiner. *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 99 Wn. App. 127, 133, 990 P.2d 429 (1999), *aff'd on other grounds*, 146 Wn.2d 740, 49 P.3d

867 (2002). Instead, the Court must accept the hearing examiner's assessments of weight and credibility. *J.L. Storedahl & Sons, Inc. v. Cowlitz County*, 125 Wn. App. 1, 11, 103 P.3d 802 (2004).

Consequently,

[a]n order supported by substantial evidence can be upheld even if the record contains contrary evidence.

Yakima Police Patrolmen's Ass'n v. City of Yakima, 153 Wn. App. 541, 561, 222 P.3d 1217 (2009).

It is true that when an appellate administrative body is governed by provisions directing it not to substitute its discretion for that of the original tribunal, *findings of fact made by the original tribunal are not to be disturbed if they are sustained by substantial evidence.* (Emphasis supplied.)

Citizens to Preserve Pioneer Park LLC v. City of Mercer Island, 106 Wn. App. 461, 473, 24 P.3d 1079 (2001).

As outlined in pages 11 through 13 of St. Mark's Opening Brief, there is substantial evidence in the record that St. Mark's fellowship hall is an important part of the church's main assembly area. Record, pp. 30-31, 151-55. The Neighborhood offered contrary testimony. Based on the competing evidence and his interpretation of the City's development regulations, the Hearing Examiner found as follows:

[T]he Appellant presented testimony that a former church member who testified that the Fellowship Hall and the sanctuary were not used at the same time. The Church, however, presented testimony from its pastor stating that the two spaces were used at the same time on different occasions. He testified that the youth choir uses the Fellowship Hall during Sunday services and that certain events, because they attract a large number of attendees cannot be accommodated totally in the sanctuary and that the Fellowship Hall is used for spillover at those large events.

While the Hearing Examiner understands this to be a close question, the presumption in favor of the Decisionmaker's interpretation, and testimony that revealed that sometimes the two spaces are used simultaneously, convinces the Hearing Examiner that the main assembly area should not be limited to the sanctuary and choir area but should include the Fellowship Hall.

Record, pp. 30-31. Under LUPA, these findings (which are supported by substantial evidence as outlined in pages 11-13 of St. Mark's opening brief) should not be disturbed on appeal. RCW 36.70C.130(1)(c); *Citizens to Preserve Pioneer Park LLC v. City of Mercer Island*, 106 Wn. App. at 473.

But contrary to LUPA's requirements, the superior court rejected the Hearing Examiner's assessment of the evidence, failed to consider the evidence in the light most favorable to St. Mark's (the party that prevailed before the fact finder), and instead reweighed the evidence and came to its own conclusions. When viewed properly, however, there is no question that the Hearing

Examiner's decision that St. Mark's main assembly area includes its fellowship hall is supported by substantial evidence, providing another basis for reversing the superior court and reinstating the Hearing Examiner's decision affirming the Director's approval of St. Mark's Project.

3. The Hearing Examiner Did Not Err in Deciding that St. Mark's Fellowship Hall Was Part of the Church's Main Assembly Area (RCW 36.70C.130(1)(d)).

Challenges under RCW 36.70C.130(1)(d) involve applying the law to the facts under the "clearly erroneous" standard – "whether we are left with a definite and firm conviction that a mistake has been committed." *City of Federal Way v. Town & Country Real Estate, LLC*, 161 Wn. App. at 37. As outlined above in the two previous sections, there is nothing in the record from which to conclude that the Hearing Examiner made a mistake. Instead he weighed competing evidence, interpreted Spokane's development regulations, and made a decision that is supported by substantial evidence. Reversal is required.

C. THE HEARING EXAMINER PROPERLY REQUIRED MINOR MODIFICATIONS TO THE ST. MARK'S PROJECT.

Spokane Municipal Code, Section 17G.050.320B, provides as follows:

The hearing examiner may affirm, *modify*, remand or reverse the decision being appealed. (Emphasis supplied.)

SMC 17G.050.320B. Despite this unambiguous delegation of authority, the Neighborhood argued and the superior court agreed that it was improper for the Hearing Examiner to modify the Director's approval of St. Mark's Project by requiring minor modifications of the Project. For the reasons outlined in St. Mark's opening brief, Spokane submits this was clear error. Not only is the superior court's decision at odds with the plain language of Spokane's municipal code, it creates doubt and uncertainty regarding the Hearing Examiner's ability to require modification of subsequent projects that he is required to review.

CONCLUSION

For the foregoing reasons, Spokane respectfully submits that the superior court erred and that the Hearing Examiner's decision should be reinstated in full.

Respectfully submitted this 6th day of March, 2012.

By: 
James A. Richman
Assistant City Attorney
WSB #24125

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I, Rebecca L. Riedinger certify that on March 6, 2012, I caused a true and correct copy of the foregoing to be hand delivered to the following parties:

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 VIA HAND DELIVERY



Rebecca Riedinger
Attorney Assistant for
James A. Richman

APPENDIX

Spokane Municipal Code

Tuesday, March 6, 2012 - 10:08 AM

[Print](#) | [Close Window](#)Font Size: [Increase](#) | [Decrease](#)**Title 17A Administration****Chapter 17A.010 General Administration****Section 17A.010.070 Delegation of Administration**

Except to the extent that state law requires municipal code enforcement personnel to be specifically qualified, every function, authority and responsibility vested by this title in a particular officer is delegable.

- A. Responsibility for the administration, application, and interpretation of these procedures pursuant to this title is as is set forth below.
1. The director of building services or his/her designee administers [chapter 17E.050 SMC](#), [Title 17F SMC](#), [chapter 17G.010 SMC](#), [Title 17I SMC](#), and the development codes.
 2. The director of engineering services or his/her designee administers [chapter 17D.020 SMC](#), [chapter 17D.080 SMC](#), [chapter 17E.010 SMC](#), [chapter 17E.050 SMC](#), [chapter 17G.080 SMC](#), [Title 17H SMC](#), and the development codes.
 3. The director of planning services or his/her designee administers [Title 17B SMC](#), [Title 17C SMC](#), and [chapter 17D.010 SMC](#), [chapter 17D.080 SMC](#), [chapter 17E.020 SMC](#), [chapter 17E.030 SMC](#), [chapter 17E.040 SMC](#), [chapter 17E.050 SMC](#), [chapter 17E.060 SMC](#), [chapter 17E.070 SMC](#), [chapter 17G.020 SMC](#), [chapter 17G.030 SMC](#), [chapter 17G.040 SMC](#), [chapter 17G.060 SMC](#), [chapter 17G.070 SMC](#), and [chapter 17G.080 SMC](#).
 4. The historic preservation officer or his/her designee administers [chapter 17D.040 SMC](#) and [chapter 17E.050 SMC](#).
 5. The director of wastewater management administers [chapter 17D.060 SMC](#) and [chapter 17D.090 SMC](#).

Date Passed: Monday, March 8, 2010

ORD C34566 Section 1

Spokane Municipal Code

Tuesday, March 6, 2012 - 10:11 AM

[Print](#) | [Close Window](#)Font Size: [Increase](#) | [Decrease](#)**Title 17G Administration and Procedures****Chapter 17G.050 Hearing Examiner**

Article III. Appeal

Section 17G.050.320 Action on Appeal to Hearing Examiner

- A. Upon receiving an administrative appeal, the hearing examiner's office shall schedule a hearing on the appeal with the appropriate parties within thirty days of the date of the appeal unless the parties agree to extend the appeal date past thirty days.
- B. The hearing examiner may affirm, modify, remand or reverse the decision being appealed. In considering the appeal the examiner must act in a manner that is consistent with the criteria for the appropriate category of action being appealed.
- C. The original decision being appealed is presumptively correct. The burden of persuasion is upon the appellant to show that the original decision was in error and the relief sought in the appeal should be granted.
- D. If the findings of fact upon which the original decision was based are supported by substantial evidence, the hearing examiner must accept those findings. If not, the examiner may modify one or more of the findings as warranted by the evidence, or substitute its own findings, citing the evidence found supporting the substitute findings. In land use cases, if the decision is supported by the findings, but the city council is not satisfied with the results in the particular case, the city council may direct appropriate amendments to the underlying policy or regulatory documents to apply to future applications, but may not modify, remand, or reverse a decision based on such future amendments.
- E. If there is not substantial evidence to support the findings upon which the original decision is based, the decision is reversed. The hearing examiner must substitute its own findings which are supported by substantial evidence.
- F. If the original decision is not fully supported by the findings, the hearing examiner may:
 1. examine the evidence to determine whether additional findings could be supported, make those additional findings and then review the original decision;
 2. examine the evidence to determine whether additional findings could be supported, and if so, remand the matter for further findings and a new decision; or
 3. make such decision as is supported by the findings.
- G. If, in the judgment of the hearing examiner, a party can provide new evidence not available at the time of the original decision which would more likely than not change the decision, the examiner remands the matter back for reconsideration.
- H. If a substantial procedural error has taken place which has adversely affected the rights of an appellant, the hearing examiner may remand the matter for further proceedings.

Date Passed: Monday, February 21, 2005

ORD C33578 Section 3

Spokane Municipal Code

Tuesday, March 6, 2012 - 10:09 AM

[Print](#) | [Close Window](#)Font Size: [Increase](#) | [Decrease](#)**Title 17G Administration and Procedures****Chapter 17G.060 Land Use Application Procedures****Section 17G.060.020 Administration**

- A. Responsibility for the administration, application and interpretation of these procedures pursuant to this ordinance is as is set forth below:
1. The director of building services or his designee is responsible for [chapter 17E.050 SMC](#), Division F; [chapter 17G.010 SMC](#), Division I; and the development codes.
 2. The director of engineering services or his designee is responsible for [chapter 17D.020 SMC](#), [chapter 17D.070 SMC](#), [chapter 17E.010 SMC](#), [chapter 17E.050 SMC](#), [chapter 17G.080 SMC](#), Division H and the development codes.
 3. The director of planning services or his designee is responsible for SMC Division B, Division C, and [chapter 11.15 SMC](#), [chapter 11.17 SMC](#), [chapter 11.19 SMC](#), [chapter 17D.010 SMC](#), [chapter 17D.060 SMC](#), [chapter 17D.080 SMC](#), [chapter 17D.090 SMC](#), [chapter 17E.020 SMC](#), [chapter 17E.030 SMC](#), [chapter 17E.040 SMC](#), [chapter 17E.050 SMC](#), [chapter 17E.060 SMC](#), [chapter 17E.070 SMC](#), [chapter 17G.020 SMC](#), [chapter 17G.030 SMC](#), [chapter 17G.040 SMC](#), [chapter 17G.060 SMC](#), [chapter 17G.070 SMC](#) and [chapter 17G.080 SMC](#).
- B. The procedures for requesting interpretations of the land use codes and development codes shall be made by the department and may be contained under the specific codes.

Date Passed: Monday, November 26, 2007

ORD C34135 Section 25

Spokane Municipal Code

Tuesday, March 6, 2012 - 10:10 AM

[Print](#) | [Close Window](#)Font Size: [Increase](#) | [Decrease](#)**Title 17A Administration****Chapter 17A.010 General Administration****Section 17A.010.070 Delegation of Administration**

Except to the extent that state law requires municipal code enforcement personnel to be specifically qualified, every function, authority and responsibility vested by this title in a particular officer is delegable.

- A. Responsibility for the administration, application, and interpretation of these procedures pursuant to this title is as is set forth below.
1. The director of building services or his/her designee administers [chapter 17E.050 SMC](#), [Title 17F SMC](#), [chapter 17G.010 SMC](#), [Title 17I SMC](#), and the development codes.
 2. The director of engineering services or his/her designee administers [chapter 17D.020 SMC](#), [chapter 17D.080 SMC](#), [chapter 17E.010 SMC](#), [chapter 17E.050 SMC](#), [chapter 17G.080 SMC](#), [Title 17H SMC](#), and the development codes.
 3. The director of planning services or his/her designee administers [Title 17B SMC](#), [Title 17C SMC](#), and [chapter 17D.010 SMC](#), [chapter 17D.080 SMC](#), [chapter 17E.020 SMC](#), [chapter 17E.030 SMC](#), [chapter 17E.040 SMC](#), [chapter 17E.050 SMC](#), [chapter 17E.060 SMC](#), [chapter 17E.070 SMC](#), [chapter 17G.020 SMC](#), [chapter 17G.030 SMC](#), [chapter 17G.040 SMC](#), [chapter 17G.060 SMC](#), [chapter 17G.070 SMC](#), and [chapter 17G.080 SMC](#).
 4. The historic preservation officer or his/her designee administers [chapter 17D.040 SMC](#) and [chapter 17E.050 SMC](#).
 5. The director of wastewater management administers [chapter 17D.060 SMC](#) and [chapter 17D.090 SMC](#).

Date Passed: Monday, March 8, 2010

ORD C34566 Section 1

Spokane Municipal Code

Tuesday, March 6, 2012 - 10:13 AM

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Title 17C Land Use Standards

Chapter 17C.230 Parking and Loading

Section 17C.230.130 CC and Downtown Zone Parking Exceptions

- A. Any new building or building addition with a floor area less than three thousand square feet shall have no parking requirement.
- B. If different developments share parking the director may allow the total number of required spaces to be reduced by twenty percent. Sufficient factual data must be provided to substantiate that such an efficiency of use is possible and the applicant assumes the burden of proof. The director may require a shared parking agreement for the sharing of a parking area.
- C. If uses with opposite operating hours share parking (e.g., a church and an office building), the total number of required stalls is calculated based on the use requiring the greatest amount of parking.
- D. The director may approve ratios that are higher than the maximum or lower than the minimum if sufficient factual data is provided to indicate that a different amount is appropriate. The applicant assumes the burden of proof. Approval of parking above the maximum shall be conditioned upon increasing the amount of required landscaping by thirty percent.
- E. If property owners and businesses within a center or corridor establish a parking management program with shared parking agreements, the director may reduce or waive parking requirements.
- F. Existing legal nonconforming buildings that do not have adequate parking to meet the standards of this section are not required to provide off-street parking when remodeling which increases the amount of required parking occurs within the existing structure.

TABLE 17C.230-2 PARKING SPACES BY USE (Refer to Table 17C.230-1 for Standards for Different Zoning Categories) CU = Conditional Use			
Use Categories	Specific Uses	Minimum Parking	Maximum Parking
Residential Categories			
Group Living		1 per 4 residents	None
Residential Household Living		1 per unit plus 1 per bedroom after 3 bedrooms, 1 per ADU; SROs are exempt	None
Commercial Categories			
Adult Business		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Commercial Outdoor Recreation		20 per acre of site	30 per acre of site
Commercial Parking		Not applicable	None
Drive-through Facility		Not applicable	None
Major Event		1 per 8 seats or per	1 per 5 seats or per

Entertainment		CU review	CU review
Office	General Office	1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
	Medical / Dental Office	1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Quick Vehicle Servicing		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Retail Sales and Service	Retail, Personal Service, Repair-oriented	1 per 330 sq. ft. of floor area	1 per 200 sq. ft. of floor area
	Restaurants and Bars	1 per 250 sq. ft. of floor area	1 per 60 sq. ft. of floor area
	Health Clubs, Gyms, Lodges, Meeting Rooms, and similar Continuous Entertainment such as Arcades and Bowling Alleys	1 per 330 sq. ft. of floor area	1 per 180 sq. ft. of floor area
	Temporary Lodging	1 per rentable room; for associated uses such as restaurants, see above	1.5 per rentable room; for associated uses such as restaurants, see above
	Theaters	1 per 4 seats or 1 per 6 feet of bench area	1 per 2.7 seats or 1 per 4 feet of bench area
Mini-storage Facilities		Same as Warehouse and Freight Movement	Same as Warehouse and Freight Movement
Vehicle Repair		1 per 750 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Industrial Categories			
Industrial Services, Railroad Yards, Wholesale Sales		1 per 1,000 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Manufacturing and Production		1 per 1,000 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Warehouse and Freight Movement		1 per 1,000 sq. ft. of floor area for the first 3,000 sq. ft. of floor area and then 1 per 3,500 sq. ft. of floor area thereafter	1 per 200 sq. ft. of floor area
Waste-related		Per CU review	Per CU review
Institutional Categories			
Basic Utilities		None	None

Colleges		1 per 600 sq. ft. of floor area exclusive of dormitories, plus 1 per 4 dorm rooms	1 per 200 sq. ft. of floor area exclusive of dormitories, plus 1 per 2.6 dorm rooms
Community Service		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Daycare		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Medical Centers		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Parks and Open Areas		Per CU review for active areas	Per Cu review for active areas
Religious Institutions		1 per 100 sq. ft. of main assembly area; or per CU review	1 per 60 sq. ft. of main assembly area
Schools	Grade, Elementary, Junior High	1 per classroom	2.5 per classroom
	High School	7 per classroom	10.5 per classroom
Other Categories			
Agriculture		None, or per CU review	None, or per CU review
Aviation and Surface Passenger Terminals		Per CU review	Per CU review
Detention Facilities		Per CU review	Per CU review
Essential Public Facilities		Per CU review	Per CU review
Wireless Communication Facilities		None, or per CU review	None, or per CU review
Rail Lines and Utility Corridors		None	None

Date Passed: Monday, May 9, 2011

ORD C34714 Section 1

Spokane Municipal Code

Tuesday, March 6, 2012 - 10:33 AM

[Print](#) | [Close Window](#)Font Size: [Increase](#) | [Decrease](#)**Title 17G Administration and Procedures****Chapter 17G.050 Hearing Examiner**

Article III. Appeal

Section 17G.050.320 Action on Appeal to Hearing Examiner

- A. Upon receiving an administrative appeal, the hearing examiner's office shall schedule a hearing on the appeal with the appropriate parties within thirty days of the date of the appeal unless the parties agree to extend the appeal date past thirty days.
- B. The hearing examiner may affirm, modify, remand or reverse the decision being appealed. In considering the appeal the examiner must act in a manner that is consistent with the criteria for the appropriate category of action being appealed.
- C. The original decision being appealed is presumptively correct. The burden of persuasion is upon the appellant to show that the original decision was in error and the relief sought in the appeal should be granted.
- D. If the findings of fact upon which the original decision was based are supported by substantial evidence, the hearing examiner must accept those findings. If not, the examiner may modify one or more of the findings as warranted by the evidence, or substitute its own findings, citing the evidence found supporting the substitute findings. In land use cases, if the decision is supported by the findings, but the city council is not satisfied with the results in the particular case, the city council may direct appropriate amendments to the underlying policy or regulatory documents to apply to future applications, but may not modify, remand, or reverse a decision based on such future amendments.
- E. If there is not substantial evidence to support the findings upon which the original decision is based, the decision is reversed. The hearing examiner must substitute its own findings which are supported by substantial evidence.
- F. If the original decision is not fully supported by the findings, the hearing examiner may:
 1. examine the evidence to determine whether additional findings could be supported, make those additional findings and then review the original decision;
 2. examine the evidence to determine whether additional findings could be supported, and if so, remand the matter for further findings and a new decision; or
 3. make such decision as is supported by the findings.
- G. If, in the judgment of the hearing examiner, a party can provide new evidence not available at the time of the original decision which would more likely than not change the decision, the examiner remands the matter back for reconsideration.
- H. If a substantial procedural error has taken place which has adversely affected the rights of an appellant, the hearing examiner may remand the matter for further proceedings.

Date Passed: Monday, February 21, 2005

ORD C33578 Section 3

McQuillin The Law of Municipal Corporations
Database updated March 2012

Chapter
25. ZONING
XI. Judicial Proceedings and Relief
C. Against Administrative Decisions

§ 25:366. Proof—Presumptions

West's Key Number Digest

West's Key Number Digest, Zoning and Planning ↪581 to 760

A.L.R. Library

Laches as defense in suit by governmental entity to enjoin zoning violation, 73 A.L.R.4th 870

Enforcement of zoning regulation as affected by other violations, 4 A.L.R.4th 462

Right to cross-examination of witnesses in hearings before administrative zoning authorities, 27 A.L.R.3d 1304

Motive of members of municipal authority approving or adopting zoning ordinance or regulation as affecting its validity, 71 A.L.R.2d 568

Administrative decision by officer not present when evidence was taken, 18 A.L.R.2d 606

Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel, 18 A.L.R.2d 552

Treatises and Practice Aids

Rathkopf's The Law of Zoning and Planning (4th ed.), Chapters 62 to 66

Trial Strategy

Zoning: Challenge to Imposition of Development Exactions, 36 Am. Jur. Proof of Facts 3d 417

Zoning: Proof of Vested Right to Complete Development Project, 35 Am. Jur. Proof of Facts 3d 385

Zoning: Proof of Bias or Conflict of Interest in Zoning Decision, 32 Am. Jur. Proof of Facts 3d 531

Zoning: Proof of Unreasonableness of Interim Zoning and Building Moratoria, 32 Am. Jur. Proof of Facts

3d 485

Zoning: Proof of Inverse Condemnation From Excessive Land Use Regulation, 31 Am. Jur. Proof of Facts 3d 563

Zoning: Proof of Wrongful Land Use Regulation Pursuant to § 1983, 30 Am. Jur. Proof of Facts 3d 503

Zoning: Proof of Unreasonableness of Aesthetic Regulation, 29 Am. Jur. Proof of Facts 3d 491

Zoning: Circumstances Warranting Relief From Zoning Enforcement, 25 Am. Jur. Proof of Facts 3d 541

Special Damages Sufficient to Give Standing to Enjoin Zoning Violation, 1 Am. Jur. Proof of Facts 3d 495

Relief from Zoning Ordinance, 16 Am. Jur. Trials 99

There is a presumption of fairness,[1] correctness,[2] validity,[3] procedural regularity,[4] and constitutionality[5] of the action taken by administrative zoning officials with respect to permits, special uses, variances, exceptions, nonconforming uses, marginal adjustments and the like.[6] It is presumed that the administrative action is within[7] and is a reasonable exercise of municipal power.[8] The presumption is especially strong where the administrative decision follows the zoning ordinance.[9] A consistent administration construction of an ordinance by the officials charged with its enforcement is entitled to great weight.[10] The presumption in favor of the board's action extends to its findings, and they are presumed to be fair, correct and valid, particularly where proofs are ample to support them.[11]

The fact that a certain action is taken raises the presumption that the existence of the necessary facts had been ascertained and found.[12] However, such a presumption does not apply to a zoning board which must expressly state its findings and set forth the relevant supporting facts.[13]

[FN1]

La.

Toups v. City of Shreveport, 37 So. 3d 406 (La. Ct. App. 2d Cir. 2010), on reh'g, (June 2, 2010) and writ granted, 50 So. 3d 822 (La. 2010) and judgment rev'd, 60 So. 3d 1215 (La. 2011)

N.J.

Albright v. Johnson, 135 N.J.L. 70, 50 A.2d 399 (N.J. Sup. Ct. 1946) (action by administrative officials on application for variance presumed fair and correct); Pieretti v. Johnson, 132 N.J.L. 576, 41 A.2d 896 (N.J. Sup. Ct. 1945); Fallone Properties, L.L.C. v. Bethlehem Tp. Planning Bd., 369 N.J. Super. 552, 849 A.2d 1117 (App. Div. 2004)

Ohio

McCauley v. Ash, 97 Ohio App. 208, 55 Ohio Op. 458, 124 N.E.2d 739 (3d Dist. Allen County 1955)

Wis.

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[FN2]

D.C.

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Idaho

Neighbors for a Healthy Gold Fork v. Valley County, 145 Idaho 121, 176 P.3d 126 (2007)

Ill.

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Ind.

Terra Nova Dairy, LLC v. Wabash County Bd. of Zoning Appeals, 890 N.E.2d 98 (Ind. Ct. App. 2008); Town of Munster Bd. of Zoning Appeals v. Abrinko, 905 N.E.2d 488 (Ind. Ct. App. 2009) (affirming reversal of board of zoning appeals grant of variance); Sam's East, Inc. v. United Energy Corp., Inc., 927 N.E.2d 960 (Ind. Ct. App. 2010), transfer denied, 940 N.E.2d 827 (Ind. 2010)

La.

Toups v. City of Shreveport, 37 So. 3d 406 (La. Ct. App. 2d Cir. 2010), on reh'g, (June 2, 2010) and writ granted, 50 So. 3d 822 (La. 2010) and judgment rev'd, 60 So. 3d 1215 (La. 2011)

N.H.

Johnston v. Town of Exeter, 121 N.H. 938, 436 A.2d 1147 (1981)

N.J.

Sitgreaves v. Board of Adjustment of Town of Nutley, 136 N.J.L. 21, 54 A.2d 451 (N.J. Sup. Ct. 1947) (presumption of fairness and correctness); Pieretti v. Johnson, 132 N.J.L. 576, 41 A.2d 896 (N.J. Sup. Ct. 1945); 131 N.J.L. 336, 36 A.2d 610 (N.J. Sup. Ct. 1944); Holman v. Board of Adjustment of Borough of Norwood, 78 N.J. Super. 74, 187 A.2d 605 (App. Div. 1963); Griggs v. Zoning Bd. of Adjustment of Borough of Princeton, 75 N.J. Super. 438, 183 A.2d 444 (App. Div. 1962); Miller v. Board of Adjustment of Boonton Tp., 67 N.J. Super. 460, 171 A.2d 8 (App. Div. 1961) (even though vote of three members of five-man board was split two to one); Levitin v. Board of Adjustment (Zoning) of Town of Bloomfield, 66 N.J. Super. 208, 168 A.2d 686 (Law Div. 1961); Marrocco v. Board of Adjustment of City of Passaic, 5 N.J. Super. 94, 68 A.2d 470 (App. Div. 1949)

N.Y.

Meisenzahl v. McAvoy, 31 Misc. 2d 511, 222 N.Y.S.2d 747 (Sup 1961), order aff'd, 15 A.D.2d 720, 222 N.Y.S.2d 1022 (4th Dep't 1962)

Okla.

Thompson v. Phillips Petroleum Co., 1944 OK 168, 194 Okla. 77, 147 P.2d 451 (1944)

R.I.

Wyss v. Zoning Bd. of Review of City of Warwick, 99 R.I. 562, 209 A.2d 225 (1965)

Tex.

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S.W.3d 408 (Tex. App. Houston 14th Dist. 2009)

Va.

Goyonaga v. Board of Zoning Appeals, 275 Va. 232, 657 S.E.2d 153 (2008); Board of Supervisors of Fairfax County v. Board of Zoning Appeals of Fairfax County, 271 Va. 336, 626 S.E.2d 374 (2006); Lamar Co., LLC v. Board of Zoning Appeals, 270 Va. 540, 620 S.E.2d 753 (2005); Norton v. City of Danville, 268 Va. 402, 602 S.E.2d 126 (2004); Masterson v. Board of Zoning Appeals of City of Virginia Beach, 233 Va. 37, 353 S.E.2d 727 (1987); Natrella v. Board of Zoning Appeals of Arlington County, 231 Va. 451, 345 S.E.2d 295 (1986); Board of Zoning Appeals of Town of Abingdon v. Combs, 200 Va. 471, 106 S.E.2d 755 (1959)

W. Va.

Wolfe v. Forbes, 159 W. Va. 34, 217 S.E.2d 899 (1975)

Wis.

Sills v. Walworth County Land Management Committee, 254 Wis. 2d 538, 2002 WI App 111, 648 N.W.2d 878 (Ct. App. 2002); Driehaus v. Walworth County, 317 Wis. 2d 734, 2009 WI App 63, 767 N.W.2d 343 (Ct. App. 2009); Klinger v. Oneida County, 149 Wis. 2d 838, 440 N.W.2d 348 (1989)

[FN3]

Alaska

Griswold v. City of Homer, 55 P.3d 64 (Alaska 2002)

Ariz.

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Idaho

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Ill.

Lapp v. Village of Winnetka, 359 Ill. App. 3d 152, 295 Ill. Dec. 777, 833 N.E.2d 983 (1st Dist. 2005)

La.

Sassone v. Hartel Enterprises, L.L.C., 981 So. 2d 923 (La. Ct. App. 3d Cir. 2008); Toups v. City of Shreveport, 37 So. 3d 406 (La. Ct. App. 2d Cir. 2010), on reh'g, (June 2, 2010) and writ granted, 50 So. 3d 822 (La. 2010) and judgment rev'd, 60 So. 3d 1215 (La. 2011); Freeman v. Kenner Bd. of Zoning Adjustments, 40 So. 3d 207 (La. Ct. App. 5th Cir. 2010); Racetrac Petroleum, Inc. v. City of Shreveport, 44 So. 3d 800 (La. Ct. App. 2d Cir. 2010); Gardner v. City of Harahan, 504 So. 2d 1107 (La. Ct. App. 5th Cir. 1987); Lake Forest, Inc. v. Board of Zoning Adjustments of City of New Orleans, 487 So. 2d 133 (La. Ct. App. 4th Cir. 1986), writ denied, 496 So. 2d 1030 (La. 1986); State ex rel. Phillips v. Board of Zoning Adjustments of City of New Orleans, 197 So. 2d 916 (La. Ct. App. 4th Cir. 1967)

Md.

Gilmor v. Mayor and City Council of Baltimore, 205 Md. 557, 109 A.2d 739 (1954); Maryland Advert-

ising Co. v. Mayor and City Council of Baltimore, 199 Md. 214, 86 A.2d 169 (1952)

Miss.

Red Roof Inns, Inc. v. City of Ridgeland, 797 So. 2d 898 (Miss. 2001)

N.H.

Town of Rye Bd. of Selectmen v. Town of Rye Zoning Bd. of Adjustment, 155 N.H. 622, 930 A.2d 382 (2007)

N.J.

Infinity Broadcasting Corp. v. New Jersey Meadowlands Com'n, 377 N.J. Super. 209, 872 A.2d 125 (App. Div. 2005), judgment aff'd in part, rev'd in part, 187 N.J. 212, 901 A.2d 312 (2006); Fallone Properties, L.L.C. v. Bethlehem Tp. Planning Bd., 369 N.J. Super. 552, 849 A.2d 1117 (App. Div. 2004); D. Lobi Enterprises, Inc. v. Planning/Zoning Bd. of Borough of Sea Bright, 408 N.J. Super. 345, 974 A.2d 1134 (App. Div. 2009); Reich v. Borough of Fort Lee Zoning Bd. of Adjustment, 414 N.J. Super. 483, 999 A.2d 507 (App. Div. 2010); Grant v. Board of Adjustment of Borough of Haddon Heights, 133 N.J.L. 518, 45 A.2d 184 (N.J. Sup. Ct. 1946); Griggs v. City of Paterson, 132 N.J.L. 145, 39 A.2d 231 (N.J. Sup. Ct. 1944); Phillips Oil Co. v. Municipal Council of City of Clifton, 120 N.J.L. 13, 197 A. 730 (N.J. Sup. Ct. 1938); Wajdengart v. Broadway-Thirty-Third Corp., 66 N.J. Super. 346, 169 A.2d 178 (App. Div. 1961); Mistretta v. City of Newark, 33 N.J. Super. 205, 109 A.2d 677 (Law Div. 1954)

N.Y.

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S.C.

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Tex.

City Of Alamo Heights v. Boyar, 158 S.W.3d 545 (Tex. App. San Antonio 2005); Board of Adjustment of City of San Antonio v. Wende, 92 S.W.3d 424 (Tex. 2002); Board of Adjustment of City of Corpus Christi v. Whitlock, 442 S.W.2d 437 (Tex. Civ. App. Corpus Christi 1969), writ refused n.r.e., (Oct. 8, 1969); Zoning Bd. of Adjustment of City of San Antonio v. Marshall, 387 S.W.2d 714 (Tex. Civ. App. San Antonio 1965), writ refused n.r.e., (May 5, 1965); Davis v. Zoning Bd. of Adjustment of City of Lubbock, 362 S.W.2d 894 (Tex. Civ. App. Amarillo 1962), writ refused n.r.e., (Feb. 27, 1963); Montgomery v. City of Dallas, 245 S.W.2d 753 (Tex. Civ. App. Waco 1952), writ refused n.r.e., citing this treatise

Wis.

State v. Outagamie County Bd. of Adjustment, 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376 (2001) (citing text); Sills v. Walworth County Land Management Committee, 254 Wis. 2d 538, 2002 WI App 111, 648 N.W.2d 878 (Ct. App. 2002); Driehaus v. Walworth County, 317 Wis. 2d 734, 2009 WI App 63, 767 N.W.2d 343 (Ct. App. 2009); Klinger v. Oneida County, 149 Wis. 2d 838, 440 N.W.2d 348 (1989)

La.

Sassone v. Hartel Enterprises, L.L.C., 981 So. 2d 923 (La. Ct. App. 3d Cir. 2008); Toups v. City of Shreveport, 37 So. 3d 406 (La. Ct. App. 2d Cir. 2010), on reh'g, (June 2, 2010) and writ granted, 50 So. 3d 822 (La. 2010) and judgment rev'd, 60 So. 3d 1215 (La. 2011); Racetrac Petroleum, Inc. v. City of Shreveport, 44 So. 3d 800 (La. Ct. App. 2d Cir. 2010)

Md.

Rockville Fuel & Feed Co. v. Board of Appeals of City of Gaithersburg, 257 Md. 183, 262 A.2d 499 (1970); Mayor and Council of City of Baltimore v. Biermann, 187 Md. 514, 50 A.2d 804 (1947) (variance)

Miss.

Red Roof Inns, Inc. v. City of Ridgeland, 797 So. 2d 898 (Miss. 2001) (nonconforming use)

N.H.

Town of Rye Bd. of Selectmen v. Town of Rye Zoning Bd. of Adjustment, 155 N.H. 622, 930 A.2d 382 (2007); Farrar v. City of Keene, 158 N.H. 684, 973 A.2d 326 (2009); Glidden v. Town of Nottingham, 109 N.H. 134, 244 A.2d 430 (1968)

N.J.

Fallone Properties, L.L.C. v. Bethlehem Tp. Planning Bd., 369 N.J. Super. 552, 849 A.2d 1117 (App. Div. 2004); D. Lobi Enterprises, Inc. v. Planning/Zoning Bd. of Borough of Sea Bright, 408 N.J. Super. 345, 974 A.2d 1134 (App. Div. 2009); Reich v. Borough of Fort Lee Zoning Bd. of Adjustment, 414 N.J. Super. 483, 999 A.2d 507 (App. Div. 2010); Rexon v. Board of Adjustment of Borough of Haddonfield, 10 N.J. 1, 89 A.2d 233 (1952) (denial of variance presumptively correct); Verniero v. Board of Com'rs of City of Passaic, 134 N.J.L. 71, 45 A.2d 890 (N.J. Sup. Ct. 1946) (variance); Grant v. Board of Adjustment of Borough of Haddon Heights, 133 N.J.L. 518, 45 A.2d 184 (N.J. Sup. Ct. 1946) (variance); Griggs v. City of Paterson, 132 N.J.L. 145, 39 A.2d 231 (N.J. Sup. Ct. 1944) (variance permitting undertaking establishment); Phillips Oil Co. v. Municipal Council of City of Clifton, 120 N.J.L. 13, 197 A. 730 (N.J. Sup. Ct. 1938) (denial of permit for filling station); Grimley v. Village of Ridgewood, 45 N.J. Super. 574, 133 A.2d 649 (App. Div. 1957).

Refusal of permit by board of adjustment is presumed right. Steinberg v. Board of Adjustment of Town of Nutley, 6 N.J. Misc. 597, 142 A. 431 (Sup. Ct. 1928), aff'd, 106 N.J.L. 603, 146 A. 318 (N.J. Ct. Err. & App. 1929); Bilt-Wel Co. v. Scott, 6 N.J. Misc. 621, 142 A. 434 (Sup. Ct. 1928); Linwood Co. v. Board of Adjustment of Town of Bloomfield, 6 N.J. Misc. 606, 142 A. 436 (Sup. Ct. 1928)

Or.

Milwaukie Co. of Jehovah's Witnesses v. Mullen, 214 Or. 281, 330 P.2d 5, 74 A.L.R.2d 347 (1958), citing this treatise

Pa.

Triolo v. Exley, 358 Pa. 555, 57 A.2d 878 (1948) (variance for resumption of nonconforming use)

R.I.

Minnear v. Zoning Bd. of Review of City of Cranston, 84 R.I. 183, 122 A.2d 198 (1956) (allowance of filling station as exception)

Tex.

City Of Alamo Heights v. Boyar, 158 S.W.3d 545 (Tex. App. San Antonio 2005); Board of Adjustment of City of San Antonio v. Wende, 92 S.W.3d 424 (Tex. 2002); Christopher Columbus Street Market LLC v. Zoning Bd. of Adjustments of City of Galveston, 302 S.W.3d 408 (Tex. App. Houston 14th Dist. 2009); Jacobson v. Preston Forest Shopping Center, Inc., 359 S.W.2d 156 (Tex. Civ. App. Dallas 1962), writ refused n.r.e., (Oct. 10, 1962) (height variance), citing this treatise; City of Dallas v. Fifley, 359 S.W.2d 177 (Tex. Civ. App. Dallas 1962), writ refused n.r.e., (Oct. 6, 1962) (nonconforming use), citing this treatise; Huguley v. Board of Adjustment of City of Dallas, 341 S.W.2d 212 (Tex. Civ. App. Dallas 1960), citing this treatise

Va.

Lamar Co., LLC v. Board of Zoning Appeals, 270 Va. 540, 620 S.E.2d 753 (2005); Norton v. City of Danville, 268 Va. 402, 602 S.E.2d 126 (2004); Ames v. Town of Painter, 239 Va. 343, 389 S.E.2d 702 (1990) (rebuttable presumption of reasonableness of grant of special use permit by board of zoning appeals); Board of Zoning Appeals of City of Alexandria v. Fowler, 201 Va. 942, 114 S.E.2d 753 (1960) (trial court erred when it ignored findings of board of zoning appeals)

Wis.

State v. Outagamie County Bd. of Adjustment, 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376 (2001) (citing text); Sills v. Walworth County Land Management Committee, 254 Wis. 2d 538, 2002 WI App 111, 648 N.W.2d 878 (Ct. App. 2002); Klinger v. Oneida County, 149 Wis. 2d 838, 440 N.W.2d 348 (1989) (presumption as to variances)

Wyo.

Williams v. Zoning Adjustment Bd. of City of Laramie, 383 P.2d 730 (Wyo. 1963)

[FN7]

Ky.

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La.

Freeman v. Kenner Bd. of Zoning Adjustments, 40 So. 3d 207 (La. Ct. App. 5th Cir. 2010)

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N.J.

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[FN8]

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La.

Freeman v. Kenner Bd. of Zoning Adjustments, 40 So. 3d 207 (La. Ct. App. 5th Cir. 2010)

N.H.

Town of Rye Bd. of Selectmen v. Town of Rye Zoning Bd. of Adjustment, 155 N.H. 622, 930 A.2d 382 (2007); Barry v. Town of Amherst, 121 N.H. 335, 430 A.2d 132 (1981) (decision of board only prima facie showing of reasonableness)

N.J.

Phillips Oil Co. v. Municipal Council of City of Clifton, 120 N.J.L. 13, 197 A. 730 (N.J. Sup. Ct. 1938) ; Infinity Broadcasting Corp. v. New Jersey Meadowlands Com'n, 377 N.J. Super. 209, 872 A.2d 125 (App. Div. 2005), judgment aff'd in part, rev'd in part, 187 N.J. 212, 901 A.2d 312 (2006)

Or.

Murphy v. S. A. Hutchins & Associates Const. Co., Inc., 263 Or. 245, 501 P.2d 1273 (1972)

Wis.

Klinger v. Oneida County, 149 Wis. 2d 838, 440 N.W.2d 348 (1989)

[FN9]

D.C.

Foggy Bottom Ass'n v. District of Columbia Zoning Com'n, 979 A.2d 1160, 249 Ed. Law Rep. 267 (D.C. 2009)

Miss.

Red Roof Inns, Inc. v. City of Ridgeland, 797 So. 2d 898 (Miss. 2001)

N.J.

The general rule is that the decision of the adjustment board after hearing is correct, and where it follows the ordinance, it will be sustained unless clearly against the weight of the evidence. Krilov v. Board of Adjustment of City of Newark, 137 N.J.L. 39, 57 A.2d 659 (N.J. Sup. Ct. 1948); Green v. Board of Com'rs of City of Newark, 131 N.J.L. 336, 36 A.2d 610 (N.J. Sup. Ct. 1944)

N.Y.

The court may not assume that the corporation to which a permit was granted was a sham nor that its operations will transcend legal authority. Nelson v. Pierce, 117 N.Y.S.2d 61 (Sup 1952), order aff'd, 281 A.D. 994, 120 N.Y.S.2d 804 (2d Dep't 1953)

Va.

Lamar Co., LLC v. Board of Zoning Appeals, 270 Va. 540, 620 S.E.2d 753 (2005)

[FN10]

Alaska

Griswold v. City of Homer, 55 P.3d 64 (Alaska 2002)

Idaho

Wohrle v. Kootenai County, 147 Idaho 267, 207 P.3d 998 (2009)

N.J.

Fallone Properties, L.L.C. v. Bethlehem Tp. Planning Bd., 369 N.J. Super. 552, 849 A.2d 1117 (App. Div. 2004)

Pa.

A zoning hearing board (ZHB) is the entity responsible for the interpretation and application of its zoning ordinance and its interpretation of its own ordinance is entitled to great deference from a reviewing court. Adams Outdoor Advertising, LP v. Zoning Hearing Bd. of Smithfield Tp., 909 A.2d 469 (Pa. Commw. Ct. 2006)

Va.

Board of Supervisors of Fairfax County v. Board of Zoning Appeals of Fairfax County, 271 Va. 336, 626 S.E.2d 374 (2006); Lamar Co., LLC v. Board of Zoning Appeals, 270 Va. 540, 620 S.E.2d 753 (2005); Masterson v. Board of Zoning Appeals of City of Virginia Beach, 233 Va. 37, 353 S.E.2d 727 (1987)

[FN11]

Alaska

Griswold v. City of Homer, 55 P.3d 64 (Alaska 2002)

D.C.

Foggy Bottom Ass'n v. District of Columbia Zoning Com'n, 979 A.2d 1160, 249 Ed. Law Rep. 267 (D.C. 2009)

Idaho

Canal/Norcrest/Columbus Action Committee v. City of Boise, 137 Idaho 377, 48 P.3d 1266 (2002)

La.

Gardner v. City of Harahan, 504 So. 2d 1107 (La. Ct. App. 5th Cir. 1987)

N.H.

Town of Rye Bd. of Selectmen v. Town of Rye Zoning Bd. of Adjustment, 155 N.H. 622, 930 A.2d 382 (2007); Farrar v. City of Keene, 158 N.H. 684, 973 A.2d 326 (2009); Saturley v. Town of Hollis, Zoning Bd. of Adjustment, 129 N.H. 757, 533 A.2d 29 (1987)

N.J.

Fallone Properties, L.L.C. v. Bethlehem Tp. Planning Bd., 369 N.J. Super. 552, 849 A.2d 1117 (App. Div. 2004); Rocky Hill Citizens for Responsible Growth v. Planning Bd. of Borough of Rocky Hill, 406 N.J. Super. 384, 967 A.2d 929 (App. Div. 2009)

Va.

Board of Supervisors of Fairfax County v. Board of Zoning Appeals of Fairfax County, 271 Va. 336, 626 S.E.2d 374 (2006)

Wis.

Sills v. Walworth County Land Management Committee, 254 Wis. 2d 538, 2002 WI App 111, 648 N.W.2d 878 (Ct. App. 2002)

See § 25:369.

[FN12]

Alaska

Griswold v. City of Homer, 55 P.3d 64 (Alaska 2002)

Cal.

Miller v. Planning Commission of City of Torrance, 138 Cal. App. 2d 598, 292 P.2d 278 (2d Dist. 1956)

D.C.

Foggy Bottom Ass'n v. District of Columbia Zoning Com'n, 979 A.2d 1160, 249 Ed. Law Rep. 267 (D.C. 2009)

[FN13]

Cal.

Broadway, Laguna, Vallejo Ass'n v. Board of Permit Appeals of City and County of San Francisco, 66 Cal. 2d 767, 59 Cal. Rptr. 146, 427 P.2d 810 (1967) (variance cases)

R.I.

V. S. H. Realty, Inc. v. Zoning Bd. of Review of City of Warwick, 103 R.I. 16, 234 A.2d 355 (1967)

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