



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: BL2023-136, **Version:** 1

An ordinance to amend Section 6.28.035 of the Metropolitan Code of Laws regarding the review of appeals made to the Short Term Rental Appeals Board.

BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Section 6.28.035 of the Metropolitan Code of Laws is hereby amended by adding the following as a new Subsection H:

H. When deciding appeals from decisions made by the zoning administrator based on evidence presented to the Board, the Board shall determine whether the appellant has shown by a preponderance of the evidence that the zoning administrator is in error or acted arbitrarily. If the Board finds that the zoning administrator did not act in error or arbitrarily, it may modify the penalty in whole or in part upon consideration of the following factors:

1. Intent. Whether the appellant did knowingly commit a wrongful act under this code.
2. Injury to the Neighboring Residents and Properties. Whether the granting of relief will be injurious to other properties or residents in the area.
3. Undue Hardship. Whether the failure to grant relief would result in exceptional practical difficulties or undue hardship upon the appellant. However, any such hardship or difficulty shall not be self-imposed, created by the actions of any person having an interest in the property.
4. Furtherance of Public Policy. Whether the granting of relief will substantially impair the intent and purpose of the code.

Section 2. The criteria set forth in the new Subsection H shall apply to any appeal filed after the enactment of this ordinance.

Section 3. This ordinance shall take effect from and after its final passage, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance amends Section 6.28.035 of the Metropolitan Code to establish a standard of review for appeals made to the Short Term Rental Appeals Board ("Board").

Under current law, the Board is authorized to hear and decide appeals from decisions made by the zoning administrator regarding Short Term Rental permits when it is alleged that the zoning administrator is in error or acted arbitrarily. The Board has jurisdiction to uphold, reverse, or modify in whole or in part the zoning administrator's decision regarding permit issuance or revocation for all permits eligible for review.

The ordinance under consideration authorizes the Board to determine, based on a preponderance on the evidence presented to the Board, whether the zoning administrator erred or acted arbitrarily. If the Board finds that the Zoning Administrator did not err or act arbitrarily, the Board could partially or wholly modify the penalty based on the following factors: (1) whether the appellant knowingly committed a wrongful act under the code; (2) whether any relief would injure other properties or residents in the area; (3) whether a failure to grant relief would lead to exceptional practical difficulties or undue hardship upon the appellant; and (4) whether relief would substantially impair the intent and purpose of the code.

These criteria would apply to appeals filed after the effective date of this ordinance.