

CHAPTER 171

ZONING REGULATIONS – BOARD OF ADJUSTMENT

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171.01 BOARD CREATED. A Board of Adjustment is hereby established, which shall consist of seven members. Five members shall be residents of the City, appointed by the Council. Two members shall be residents of the area outside the City over which the zoning jurisdiction of the City has been extended, appointed by the Board of Supervisors of the County in which such extended area is located. The term of office of the members of the Board shall be for five years, on a staggered basis.

171.02 MEETINGS. Meetings of the Board shall be held at the call of the Chairperson, and at such other times as the Board may determine. The Chairperson or, in the absence of the Chairperson, the acting Chairperson may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each question or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. The presence of four members shall be necessary to constitute a quorum.

171.03 APPEALS. Appeals to the Board may be taken by any person aggrieved or by any officer, department, Board or Bureau of the City affected by any decision of the Zoning Administrator. Such appeal shall be taken within ten days by filing with the Zoning Administrator and with the Board a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from is taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board after notice of appeal shall have been filed with such officer that by reason of facts stated in the certificate a stay would in the opinion of the Zoning Administrator cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by a court of record on application on notice to the Zoning Administrator and on due cause shown. The fee for appeal is \$10.00.

171.04 HEARINGS; NOTICE. The Board shall fix a reasonable time for the hearing on the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or by attorney.

171.05 POWERS – ADMINISTRATIVE REVIEW. The Board shall have power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of the Zoning Regulations.

171.06 POWERS – SPECIAL EXCEPTIONS. The Board shall have power to permit the following exceptions to the district regulations set forth in the Zoning Regulations, subject to the requirements of this section:

1. To permit erection and use of a building or the use of premises or vary the height and the regulations in any location for a public service corporation for public utility purposes or for

purposes of public communication, which the Board determines is reasonably necessary for the public convenience or welfare.

2. To permit the extension of a use into a district where it would otherwise be prohibited in a case where a district boundary line is so located that a lot or plot is in more than one district.

3. To hear and decide only such other special exceptions as the Board is specifically authorized to pass on by the terms of these Zoning Regulations, to decide such questions as are involved in determining whether special exceptions should be granted and to grant special exceptions with such conditions and safeguards as are appropriate under the Zoning Regulations or to deny special exceptions when not in harmony with the purpose and intent of the Zoning Regulations. A special exception shall not be granted by the Board unless and until:

A. A written application for special exception is submitted, indicating the applicable chapter or section of the Zoning Regulations under which the special exception is sought and stating the grounds on which it is requested.

B. Notice of public hearing shall be given in advance of public hearing. The owner of the property for which special exception is sought or any agent and any other affected property owners shall be notified by mail. Notice of hearing may also be posted on the property for which special exception is sought.

C. The public hearing shall be held. Any party may appear in person, or by agent or attorney.

D. The Board shall make a finding that it is empowered under the Zoning Regulations described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public interest.

In granting any special exception, the Board may prescribe appropriate conditions and safeguards in conformity with the Zoning Regulations. Violations of such conditions and safeguards, when made a part of the terms under which the special exception is granted, shall be deemed a violation of the Zoning Regulations. The Board may prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both. Failure to begin or complete, or both, such action within the time limits set, shall void the special exception.

171.07 POWERS – VARIANCES. The Board shall have power to authorize upon appeal in specific cases such variance from the terms of the Zoning Regulations as will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions of the Zoning Regulations would result in unnecessary hardship. A variance from the terms of the Zoning Regulations shall not be granted by the Board unless and until:

1. A written application for a variance is submitted demonstrating that:

A. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures or buildings, in the same district.

B. Literal interpretation of the provisions of the Zoning Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Zoning Regulations.

C. The special conditions and circumstances do not result from the actions of the applicant.

D. Granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Regulations to other lands, structures, or buildings in the same district.

No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

2. Notice of public hearing shall be given in advance of the public hearing. The owner of the property for which the variance is sought or any agent and any other affected property owners shall be notified by mail.

3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.

4. The Board shall make findings that the requirements of this chapter have been met by the applicant for a variance.

5. The Board shall further make a finding that the reasons set forth in the application justify the granting of the variance.

6. The Board shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of the Zoning Regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the Zoning Regulations. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the Zoning Regulations. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of the Zoning Regulations in the district involved or any use expressly or by implication prohibited by the terms of the Zoning Regulations in said district.

171.08 DECISIONS OF THE BOARD OF ADJUSTMENT. In exercising the above mentioned powers, the Board may, so long as such action is in conformity with the terms of the Zoning Regulations, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have powers of the Zoning Administrator from whom the appeal is taken. The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or to decide in favor of the applicant upon any matter upon which it is required to pass under the Zoning Regulations or to effect any variation in the application of the Zoning Regulations.

171.09 APPEALS FROM DECISIONS OF THE BOARD OF ADJUSTMENT. Any taxpayer or any officer, department, Board or Bureau of the City or any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Board. The court may reverse or affirm, wholly or in part, or may modify the decision brought up for review.