

**IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI**

**AN ORDINANCE** amending section 24003., Jackson County Code, 1984, relating to variances used for the development of land in unincorporated Jackson County.

**ORDINANCE #4203**, March 29, 2010

**INTRODUCED BY** Fred Arbanas, County Legislator

WHEREAS, chapter 240, Jackson County Code, 1984, known as " the Unified Development Code of Jackson County," or "the Code," sets out a scheme for the orderly development of land in unincorporated Jackson County, consistent with the intent and purposes of the County's Master Plan; and,

WHEREAS, the Director of Public Works has recommended that the Code be amended to clarify the difference between a use variance and a non-use variance; and,

WHEREAS, the Plan Commission conducted a public hearing on the recommended amendment on March 18, 2010, during which it heard testimony, and after which it voted 8-0 to recommend approval of the amendment to the Legislature; and,

WHEREAS, the proposed amendment is in the best interests of the health, welfare, and safety of the citizens of Jackson County; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County, Missouri, as follows:

Section A. Enacting Clause. Section 24003., Jackson County, 1984, is amended to read as follows, with any affected subsections to be renumbered accordingly:

#### **24003.23 BOARD OF ZONING ADJUSTMENT/VARIANCES**

- a. **Establishment.** The Jackson County Board of Zoning Adjustment ("BZA") is hereby established in accordance with § 64.120 RSMo. The BZA shall have the supervisory and appellate powers made and provided by law.
- b. **Membership.** The members of the Jackson County Board of Zoning Adjustment shall be appointed by the County Executive subject to the power of the County Legislature to disapprove.
- c. **Number.** The Jackson County Board of Zoning Adjustment shall consist of seven (7) members.
- d. **Residency.** At least three (3) of the members shall be residents of the unincorporated area of Jackson County.
- e. **Membership on Another County Board or Commission Prohibited.** No member shall serve on any other Jackson County board or commission during the term of that member on the Board of Zoning Adjustment.

**f. Secretary.** The Director shall serve as Secretary to the Board of Zoning Adjustment

**g. Terms and Reimbursement.**

1. Term of Office. The terms of the members shall be four (4) years or until their successors take office.
2. Removal From the Board. Members may be removed for cause on written charges by a majority of the County Legislature. Further, whenever a member shall be absent without excuse from more than two (2) consecutive, regularly scheduled meetings or more than three (3) such meetings in one year, the Chair shall forthwith notify the County Executive. Acting upon such notification, the County Executive shall remove said member from the Board. A new member shall then be appointed by the Executive to fill the unexpired term in accordance with the regular method of making appointments to the Board. An absence is "excused" when the Chair, with the concurrence of a majority of the Board members present, shall note such excused absence in the minutes of the meeting at which the member is not in attendance, or at the meeting immediately following.
3. Vacancies. Vacancies may be filled by the County Executive, subject to the power of the County Legislature to disapprove, for the unexpired term of any member whose term becomes vacant, or until a successor takes office.

4. Reimbursement. All members of the Board of Zoning Adjustment shall receive fifty dollars (\$50) for each meeting attended.

**h. Functions.**

1. Rules of Procedure. The Board of Zoning Adjustment shall adopt rules of procedure consistent with the provisions of the zoning regulations of Jackson County.
2. Chairperson Administers Oaths. The chairperson, or in the absence of the chairperson, the acting chairperson, shall administer oaths.
3. Chairperson Can Compel Attendance. The chairperson or , in the absence of the chairperson, the acting chairperson, shall compel the attendance of witnesses.
4. Service of Process. The Court Administrator or a properly designated deputy shall be responsible for service of any process issued to compel the attendance of witnesses.
5. Meetings. All meetings of the Board of Zoning Adjustment shall be open to the public.

6. Notice of Meetings. Public notice of meetings of the Board of Zoning Adjustment shall be given in at least one (1) publication in a newspaper of general circulation in the County.
7. Time of Notice. Public notice shall be given at least fifteen (15) days before the date of the meeting.
8. Notice to News Media. The Board of Zoning Adjustment shall notify all local news media who request to be notified of all meetings of the Board.
9. Contents of Notice. The notice of the hearings of the BZA shall include the following:
  - (a) The notice shall state the time and place of the hearing.
  - (b) The notice shall state the official docket of the BZA.
  - (c) The notice shall state the place where the specific requests will be accessible for examination by interested parties.
10. Minutes. The minutes shall be filed in the office of the Clerk of the County Legislature.

11. Public Record. The minutes shall be a public record.

**I. Powers and Duties.**

1. Hear and Decide Appeals. The Board of Zoning Adjustment shall hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by an administrative official in the enforcement of the County zoning regulations.

(a) Appeals to the BZA may be taken by the person aggrieved, or by any officer, department, board or bureau of the government affected by any decision of the Director. Such appeal shall be filed with the Director within three months of the decision or action. The Director shall transmit to the BZA all papers constituting the record upon which the action appealed from is taken.

(b) An appeal stays all proceedings in furtherance of the action appealed from, unless the Director certifies to the BZA, after the Notice of Appeal shall have been filed, that by reason of facts stated in the certificate, a stay would, in the Director's opinion, 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 or notice to the Director

on good cause shown.

(c) Discretion on Appeals. In passing on appeals where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the order, requirement, decision or determination and those difficulties or hardships constitute an unreasonable deprivation of use as distinguished from merely granting a privilege, the BZA may vary or modify the application of any of the regulations or provisions so the intended purpose of the regulations shall be strictly observed, public safety and welfare secured and substantial justice done.

(d) Action on Appeals. In exercising the powers set forth in these sections, the Board of Zoning Adjustment may in conformity with the provisions of the Jackson County zoning regulations or ordinances, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make that order, requirement, decision or determination as ought be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

[2. Variances. The Board of Zoning Adjustment may authorize in specific cases a variance from the specific terms of these regulations which will not be

contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done.

(a) The applicant must show that this property was acquired in good faith and whereby reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the District Zoning Regulations, or whereby reason of exceptional topographic conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually prohibit the practical use of applicant's property in the manner similar to that of other property in the zoning district where it is located.

(b) A request for a variance may be granted, upon a finding of the BZA that all of the following conditions have been met. The BZA shall make a determination on each condition, and the finding shall be entered in the record.

(1) The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an



action or actions of the property owner or applicant.

- (2) The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
  - (3) The strict application of the provisions of the zoning regulations of which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
  - (4) The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.
  - (5) The granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.
- (c) In granting a variance, the BZA may impose such conditions, safeguards and restrictions upon the premises benefitted by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations.]

2. Variances. The Board of Zoning Adjustment may authorize in specific cases a variance from the specific terms of this Development Code which will not be contrary to the public interest and where, owing to specific conditions, a literal enforcement of the provisions of this Development Code will, in an individual case, result in unnecessary hardship in the case of a use variance or practical difficulties in the case of a non-use variance, provided that the spirit of this Development Code shall be observed, public safety and welfare secured and substantial justice done.

(a) An application for a variance may only be granted upon a finding by the BZA that the applicant has shown by clear and convincing evidence that all of the following conditions have been met:

1. With respect to a use variance, that

a. the strict application of the provisions of this Code would constitute unnecessary hardship upon the applicant;

b. the granting of the variance will not alter the essential character of the locality; and

c. the land in question cannot yield a reasonable return if used only for the purposes allowed in the district.

2. With respect to a non-use variance, that practical difficulties exist that would make it impossible to carry out the strict letter of this Code. In making such finding the BZA shall consider:
  - a. how substantial the variation is, in relation to the requirement;
  - b. if the variance is allowed, the effect of increased population density, if any, on available public facilities and services;
  - c. whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties is created;
  - d. whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance;
  - e. whether, in view of the manner in which the difficulty arose and considering all of the above factors, the interests of justice will be served by allowing the

variance; and,

f. conditions of the land in question, and not conditions personal to the landowner. The BZA shall not consider evidence of applicant's personal financial hardship unrelated to any economic impact upon the land.

3. With respect to all variances, that

a. the granting of the variance will not adversely affect the rights of adjacent landowners or residents;

b. granting the variance will not be opposed to the general spirit and intent of this Code.

c. the variance desired will not adversely affect the public health, safety or general welfare;

d. the variance requested arises from a condition that is unique to the property in question, is not ordinarily found in the same zoning district, and is not created by an action or actions of the landowner or the applicant; and

e. substantial justice will be done.

(b) In granting a variance, the BZA may impose such conditions, safeguards and restrictions upon the premises benefitted by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations.

**j. Procedure.**

1. The applicant for appeal, variance or other procedure before the Board of Zoning Adjustment shall complete and file the appropriate application form(s) with the Director.
2. The Director shall determine if the application is complete. Complete applications shall be scheduled for review by the Board at the next regularly scheduled meeting of the Board, following the publication of the appropriate notices.
3. Notice.

(a) Notice of appeal shall be published pursuant to Section 24003.5.

(b) Notice of variance application shall be published. Personal notice shall be provided and notice posted pursuant to Section 24003.5.

**k. Appeals.** Appeals to Circuit Court From Board of Zoning Adjustment Decisions. Any person aggrieved by any decision of the Board of Zoning Adjustment may present to the Circuit Court of Jackson County, Missouri, a petition in the manner and form provided in § 536.110 RSMo.

Effective Date: This Ordinance shall be effective immediately upon its passage by the County Executive.

APPROVED AS TO FORM:

Pamela Fellin  
Deputy/Assistant County Counselor

Wm M. Sanders  
Acting County Counselor

I hereby certify that the attached Ordinance, Ordinance #4203 introduced on March 29, 2010, was duly passed on April 19, 2010 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 8

Nays 0

Abstaining 0

Absent 1

This Ordinance is hereby transmitted to the County Executive for his signature.

4.19.10  
Date

Mary Jo Spino  
Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance #4203.

4/20/2010  
Date

Michael D. Sanders  
Michael D. Sanders, County Executive