

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE repealing subsection 24003.23, Jackson County Code, 1984, relating to the Board of Zoning Adjustment, and enacting, in lieu thereof, one new subsection relating to the same subject.

ORDINANCE NO. 5157, September 24, 2018

INTRODUCED BY Dennis Waits, County Legislator

WHEREAS, due to resignations and term expirations, the Board of Zoning Adjustment, (BZA), which hears land use matters relating to applications for variances and appeals from administrative decisions, is currently without any active members; and,

WHEREAS, in view of the fact that the BZA has not conducted a meeting in over two years, the Director of Public Works, who serves as the BZA's secretary, has recommended that the duties of the BZA be combined with those of the Plan Commission, and assigned solely to the Plan Commission, in the interest of governmental efficiency; now therefore;

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

Section A. Enacting Clause. Subsection 2400.23, Jackson County Code, 1984, is hereby repealed, and one new subsection enacted in lieu thereof, to be known as subsection 24003.23, to read as follows:

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.]

a. Establishment/Designation.

The Plan Commission established pursuant to Article XI, Section 2 of the 2010 Jackson County Charter and Chapter 81 of this Code shall serve as and perform all functions of the Board of Zoning Adjustment. Any reference to the Board of Zoning Adjustment or "BZA" in this Chapter shall be deemed reference to the Plan Commission.

[f]b. 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.

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

c. **Applicability of Provisions Relating to Plan Commission.**

All provisions of this Chapter and Chapter 81 of this Code applicable to the Plan Commission shall also apply to the Plan Commission acting as the BZA, unless a contrary result is clearly indicated in this Section.

d. **Docket/Order of Business/Compensation.**

The Plan Commission may act as the BZA only at meetings called for that purpose. At any such meeting, the Plan Commission may take up only BZA business, and may not act on any other matters within the Plan Commission's jurisdiction. The Plan Commission may conduct a separate BZA meeting on the same calendar day as a properly noticed Plan Commission meeting, provided that only one daily stipend authorized by Section 8107 of this Code may be paid per calendar day.

e. **Quorum/Votes Required**

Five member of the BZA are required for a quorum to conduct business. Additionally, any decision on any substantive application or matter pending before the BZA require five affirmative votes for adoption.

[h]f.

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]g. 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.

(d) **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.

(e) **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 this Development Code which will not be contrary to the public interest and where, owing to special 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 of residents;
- b) granting the variance will not be opposed to the 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]h. 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]i. 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 signature by the County Executive.

APPROVED AS TO FORM:



Chief Deputy County Counselor



County Counselor

I hereby certify that the attached ordinance, Ordinance No. 5157 introduced on September 24, 2018, was duly passed on October 8, 2018 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 9

Nays 0


Abstaining 0

Absent 0

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

10-8-18

Date



Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance No.5157.

10.9.2018

Date



Frank White, Jr., County Executive