

ARTICLE 12

MATTERS ENTRUSTED TO THE ZONING BOARD OF APPEALS

Section 12-1 ESTABLISHMENT OF THE BOARD OF ZONING APPEALS

The Board of Zoning Appeals of this municipality is hereby established in accordance with Illinois law.

Section 12-2 MEMBERSHIP, APPOINTMENT, COMPENSATION

The Board of Zoning Appeals shall consist of seven member, all of whom shall reside within this municipality. Each Board member shall be appointed by the Mayor with the advice and consent of the City Council. The Chairman of the Board shall be designated by the Mayor annually during the month of May, with the consent of the City Council. The Chairman is appointed for a term of one year. All members of the Board shall serve without compensation.

Section 12-3 TERM OF OFFICE, VACANCIES

Each Board member shall hold office for five years from the date of his appointment, and until his successor has been selected and qualified. With the advice and consent of the City Council, the Mayor may remove any member of the Board of Zoning Appeals for cause, after a public hearing. Vacancies on the Board shall be filled for the un-expired term of the member whose place has become vacant in the same manner as provided for the appointment of new members.

Section 12-4 AUTHORITY AND DUTIES

The Board of Zoning Appeals shall have all the authority and duties prescribed by law and by this ordinance including the following:

- A) Upon request, the Board shall decide any question involving the interpretation of any provision or term of this ordinance, including the determination of the exact location of any district boundary when there is uncertainty with respect thereof;
- B) Hear and determine appeals from persons affected by an order, requirement, decision or determination made by the Administrator;
- C) Hear and decide all matters referred to it, or upon which it is required to pass under this ordinance;
- D) Hear and pass judgment upon applications for variations;
- E) Hold public hearings, and approve or disapprove each application for a special use received in compliance with the provisions of this ordinance.

All decisions rendered by the Board does not exonerate the applicant from the building codes, requirements, and standards currently or hereafter adopted by this municipality. If the application is denied, the applicant shall not again apply for a permit for substantially the same proposal unless there has occurred a substantial change of circumstances, and in such case, only with the Administrator's consent first obtained. If there has been no substantial change, the Board shall not hear the same request for one year after the date of the original denial.

Section 12-5 MEETINGS, QUORUM, VOTING

All meetings of the Board shall be held at the call of the chairman and at such times as the Board may determine. All Board meetings shall be open to the public. The Board may adopt their own rules of meeting procedures consistent with the ordinance and applicable Illinois Statutes. The Board may select such officers as they deem necessary. The Chairman, or in his absence the Chairman Pro-tem, may administer oaths and compel the attendance of witnesses. Four members of the Board shall constitute a quorum, and the affirmative vote of at least four members shall be necessary to authorize any Board action.

Section 12-6 RECORDS

The Board shall keep minutes of its proceedings and examinations. These minutes shall indicate the absence of any member, the vote or abstention of each member on each question, and any official action taken. A copy of every rule, variance, order, or decision of the Board shall be filed immediately in the City Clerk's office, and shall be a public record.

Section 12-7 APPEALS

Any person aggrieved by any decision or order of the Administrator, or any matter related to the interpretation or enforcement of any provision of this ordinance may appeal to the Board of Zoning Appeals. Applications for an appeal are available at the City Clerk's office. Every such appeal shall be made and treated in accordance with Illinois law and the provisions of this Article.

12-7.1 Filing, Record Transmittal

Every appeal shall be made within forty-five days of the matter complained of by filing with the Administrator and the Board a written notice specifying the grounds for appeal.

12-7.2 Stay of Further Proceedings

An appeal stays all further action on the matter being appealed unless the Administrator certifies to the Board, after Notice of Appeal has been filed with him, that for reasons stated in the certificate, a stay would cause imminent peril to life or property. In such case, further action shall not be stayed unless the Board or the Circuit Court grants a restraining order for due causes, and so notified the Administrator.

12-7.3 Public Hearing, Notice

The Board shall hold a public hearing on every appeal within a reasonable time after the filing of the appealed notice. At the hearing any interested party may appear and testify, either in person or by duly authorized agent or attorney. Notice indicating the time, date, and place of the hearing, and briefly describing the issue to be decided shall be given not more than thirty nor less than fifteen days before the hearing. Notice of the hearing shall be given:

- A) By first-class mail to all parties directly affected by the appeal, including all property owners within 250 feet of the property in question;
- B) By publication in a newspaper of general circulation with this municipality.

12-7.4 Decision by Board of Zoning Appeals

The Board shall render a decision on the appeal within a reasonable time after the hearing. The Board may reverse or affirm, wholly or partly, or may modify or amend the decision or order appealed from to the extent that in the manner that they deem appropriate. In so doing, the Board has all the power of the Administrator.

Section 12-8 SPECIAL USE PERMITS

12-8.1 Purpose

The purpose for the formulation of a comprehensive zoning ordinance is to encourage the development of similar and compatible uses in the same area. For this reason, this ordinance divides the city into various districts, and allows in each district only those uses which are clearly compatible with each other. It is recognized that there are some uses that, because of their potential influence upon neighboring uses or public facilities, need to be carefully regulated with respect to location or operation for the protection of the community. These uses are referred to as "Special Uses," and are only allowed by permission of the Board of Zoning Appeals. Special Uses can be classified into three categories:

- A) Uses operated by publicly regulated utilities, or uses traditionally affected by public interest, such as electrical substation, telephone exchange stations, etc;
- B) Uses entirely private in character which, on account of their peculiar locational need, the nature of the service they offer to the public, or their possible damaging influence on the neighborhood, cannot reasonably be allowed as an unrestricted permitted use under the zoning regulation.

12-8.2 Application for Special Use

An application for a special use shall be filed with the Administrator upon such form and accompanied by such information as shall be established from time to time by the Board of Zoning Appeals. Upon receiving an application for a Special Use, a public hearing shall be scheduled for the Board to gather input regarding the proposed use. Special use shall be authorized by a special use permit granted by the Board in the same manner as a variance, with a finding of fact prepared and filed thereon. The Board shall render a decision on the request for a "Special Use Permit" within a reasonable time after the hearing.

12-8.3 Requirements for Authorization

No special use shall be granted by the Board unless the special use:

- A) Is necessary for the public convenience at that location, or in the case of existing nonconforming uses, a special use permit will make the use more compatible with its surroundings;
- B) Is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
- C) Will not cause substantial injury to the value of other property in the neighborhood in which it is to be located;

D) Will conform to and preserve the essential character of the district in which it is located;

E) The proposed special use is designated by this ordinance as a special use in the district in which the property in question is located;

F) The proposed special use will comply with all applicable regulations in the district in which the property in question is located.

12-8.4 Conditions and stipulations

The Board may provide such conditions or restrictions upon the construction, location, and operation of special use as may be deemed necessary to secure the general objectives of this ordinance, and to reduce injury to the value of property in the neighborhood. These conditions may include, but are not limited to: provisions for the protection of adjacent property, the expiration of such special use after a specific period of time, off-street parking and loading, and other types of requirements.

12-8.5 Public Hearing Notice

The Board of Zoning Appeals shall follow the process for public hearings as outlined in Section 12-7.3.

Section 12-9 VARIANCES

A variance is a relaxation of the requirements of this ordinance that are applicable to a particular lot, structure, or use. A so-called “use-variance” (which would allow a use that is neither permitted nor special in the district in question) is not a variance. It is to be considered an amendment, and may be granted only as provided for in Article 13.

12-9.1 Authorization

In order that the spirit of this Zoning Ordinance may be observed and substantial justice done, the Board shall, upon application or appeal, determine and vary the terms thereof by making a finding of fact that, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship.

12-9.2 Standards for Variances

The Board shall not grant any variances unless, based upon the evidence present to them, they determine that:

A) The property in question cannot yield a reasonable rate of return if permitted to be used only under the conditions allowed by the regulations for the district in which it is located. A reasonable rate of return is defined as a substantial hardship, as opposed to a mere inconvenience or loss of revenue;

B) The plight of the owner is due to unique circumstances;

C) The variance, if granted, will not impair an adequate supply of light and air to the adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood;

D) The proposed variance complies with the spirit and intent of the restrictions imposed by this ordinance.

A variance will only be permitted if the evidence, in the judgment of the Board, fulfills each of the conditions listed above.

12-9.3 Imposition of Conditions and Restrictions

The Board may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to prevent injurious effects therefrom upon other property in the neighborhood, and better to carry out the general intent of this ordinance.

12-9.4 Application

Every application for a variance shall be filed with the Administrator on a prescribed form. The Administrator shall promptly transmit said application, together with any advice he might wish to offer, to the Board. The application shall contain sufficient information to allow the Board to make an informed decision, and shall include at a minimum the following:

- A) Name and address of the applicant;
- B) Location of the structure/use for which the variance is sought;
- C) Relationship of said structure/use to existing structures/uses on adjacent lots;
- D) Specific Sections of this ordinance containing the regulations which, if strictly applied, would cause a serious problem;
- E) Any other pertinent information that the Administrator may require.

12-9.5 Public Hearing Notice

The Board shall hold a public hearing on each variance request as outlined in Section 12-7.3.

12-9.6 Terms of Relief, Findings of Fact

The Board shall render a decision on every variance request within a reasonable time after the public hearing. In accordance with State law, the Board shall specify the terms of relief granted (if any) in one statement and their findings of fact in another statement. The findings of fact shall clearly indicate the Board's reasons for granting or denying any requested variance.

Section 12-10 EXPIRATION, REVOCATION OF APPEAL, VARIANCE, SPECIAL USE

The Board may revoke an appeal determination, variance, or special use permit issued under this Article if:

- A) The proposal for which an appeal determination, variance, or special use has been issued is not carried out pursuant to the Board's approved final site plan;
- B) If any condition, stipulation, or requirement included in the determination, variance, or special use permit is not complied with. The Board may, however, allow modifications of the final plan, if the modification is in conformity with the original intentions of the Board;
- C) A determination, variance or special use permit issued under this article shall expire if the proposal authorized by the Board is not completed within the applicant's development schedule as included in the application and permit. Any determination, variance, or special use permit that is granted but not acted upon shall expire six months from the date granted unless prior notification and sufficient reason has been given to the Administrator.