

## CHAPTER 26 - BOARD OF ZONING ADJUSTMENT

### Section 26.010 General.

1. "Board of Zoning Adjustment" is hereby established in accordance with the provisions of Section 89.080, R.S.Mo., 1986, regarding the Zoning of cities.
2. The Board of Zoning Adjustment shall consist of five (5) members who shall be Freeholders appointed by the Mayor and approved by the majority of the Board of Aldermen.
3. The term of office of the members of the Board of Zoning Adjustment shall be for five (5) years, except that the five (5) members first appointed shall serve respectively for terms of one (1) year, two (2) years, three (3) years, four (4) years and five (5) years each.
4. The members shall elect their own chairman, who shall serve for one (1) year.
5. Only the Mayor with the approval of the Board of Aldermen shall fill any vacancy for the unexpired term.
6. All meetings of the Board shall be open to the public.
7. The Board shall keep minutes of its proceedings showing the vote of each member upon questions, or, if absent or failing to vote, indicating such facts.
8. All records of the meetings shall be immediately filed in the office of the Board and shall be a public record.
9. Members of the Board of Zoning Adjustment shall be removed for cause by the majority of the Board of Aldermen upon written charges and after a public hearing.
10. Three (3) alternative members may be appointed to serve in the absence of or disqualification of the regular members.
11. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board of Zoning Adjustment may determine and shall be conducted pursuant to Section 89.080 R.S.Mo., 1986, as amended.
12. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.
13. All testimony, objections thereto, and rulings thereon shall be taken down by a reporter employed by the Board for that purpose.
14. The Board of Zoning Adjustment may, in appropriate cases and subject to appropriate conditions, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with the general or specific rules herein contained.
15. The presence of four (4) members shall be necessary to constitute a quorum.

## **Section 26.020 Powers of the Board of Zoning Adjustment.**

1. The Board of Zoning Adjustment shall have the following powers:
  - a. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Enforcement Person in the enforcement of these sections or of any ordinance adopted pursuant thereto;
  - b. To hear and decide all matters referred to it or upon which it is required by this order to pass.
  - c. Granting of a variance to modify or vary the application of any of the regulations or provisions of such ordinance relating to the construction or alteration of buildings or structures or so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
2. In applying for a variance an applicant must prove:
  - a. Relief is necessary because of the unique character of the property rather than for personal considerations; and
  - b. Applying the strict letter of the ordinance would result in "unnecessary hardship"; "unnecessary hardship" is shown by the following elements:
    1. The property in question cannot yield the reasonable return if used only for the purpose allowed in that zone; and
    2. That the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood which may reflect the unreasonableness of the zoning ordinance itself; and
    3. Imposition of such a hardship is not necessary for the preservation of the plans; and
    4. Granting the variance will result in substantial justice to all.
3. In exercising the above mentioned powers in Section 26.020(1), the Board of Zoning Adjustment may 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 the power of the officer from whom the appeal is taken.
4. The concurring vote four (4) members of the Board shall be necessary to reverse any order,, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to affect any variation in such ordinance.

## **Section 26.030 Board Decision, Performance Bond.**

1. In making any decision varying or modifying any provisions of the zoning regulations or in granting an exception to the district regulations, the Board shall impose such restrictions, terms, time limitations, landscaping, screening and other appropriate safeguards as needed to protect

adjoining property.

2. The Board may require a performance bond to guarantee the installation of improvements such as parking lot surfacing, landscaping, etc. The amount of the bond shall be based on a general estimate of cost for the improvements as determined by the Board, and shall be enforceable by or payable to the City in the sum equal to the cost of constructing the required improvements.
3. In lieu of the performance bond requirement, the Board may specify a time limit for the completion of such required improvements and in the event the improvements are not completed within the specified time, the Board may declare the granting of the application null and void after reconsideration.

### **Section 26.040 Appeals.**

1. *Appeals to the Board of Zoning Adjustment.*
  - a. Appeals to the Board of Zoning Adjustment may be taken by any person aggrieved, any owner, lessee, tenant of land, public officer, department, or board or bureau affected by an order or decision of the Zoning Enforcement Person.
  - b. The appeal shall be taken within a period of not more than ten (10) days from the decision.
  - c. A notice of appeal specifying the grounds thereof shall be filed with the officer from whom the appeal is taken and with the Board of Adjustment.
  - d. The Zoning Enforcement Person or other officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
  - e. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Person or other officer from whom the appeal is taken shall certify to the Board of Zoning Adjustment after the notice of appeal shall have been filed with him/her that by reason of the facts stated in the certificate a stay would, in his/her opinion, cause imminent peril, jeopardize or be detrimental, to life or property.
  - f. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Zoning Adjustment or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown.
  - g. The Board of Zoning Adjustment shall fix a reasonable time for the hearing of the appeal, giving public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time.
  - h. Upon the hearing, any party may appear in person or by agent or by attorney.
2. *Appeals to the Circuit Court.*
  - a. Any owner, lessee, tenant of buildings, structure or land (any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Adjustment, or any officer,

department, Board of Aldermen, board or bureau of the municipality), may present to the Circuit Court of Platte County a petition, duly verified, setting that such decision is illegal, in whole or in part, specifying the grounds of the illegality.

- b. Such petition shall be presented to the Court within thirty (30) days after the filing of the decision in the office of the Board of Zoning Adjustment.
- c. Upon the presentation of such petition, the court may allow a writ of certiorari directed to the Board of Zoning Adjustment to review such decision of the Board of Zoning Adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than ten (10) days and may be extended by the court.
- d. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board of Zoning Adjustment and on due cause shown, grant a restraining order.
- e. The Board of Zoning Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ.
- f. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
- g. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take additional evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which a determination of the court shall be made.
- h. The court may reverse or affirm, wholly, or partly, or may modify the decision brought up for review.
- i. Cost shall not be allowed against the Board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.
- j. All issues in any proceeding under this section shall have preference over all other actions and proceedings.

#### **Section 26.050 Fees.**

Every application or appeal to the Board of Zoning Adjustment shall be accompanied by a filing fee of Two Hundred Twenty – Five Dollars (\$225.00)

#### **Section 26.060 Only Specifically Set Forth Uses Are Permitted.**

1. No 'use' shall be allowed within the City limits of Platte City except those uses exclusively listed within this ordinance (including permitted and special uses within District A-1 through M-2). Any use not specifically listed within this ordinance cannot be performed unless:
  - a. An application is made for an amendment to the zoning code following the procedures set forth

in Chapter 25; or

- b. A variance is obtained from the Board of Zoning Adjustment.
2. Without limitation, the following uses may only be permitted within the City limits of Platte City if the Board of Zoning Adjustment grants a variance:
    - a. Manufacturing uses involving primary production of the following products from raw materials, along with the storing of these products:

Hazardous chemicals, explosives, ammunition, small arms, furs, hides, leather tanning and Finishing, lime products, paving mixtures, chocolate and cocoa, ice, ornamental iron works.
    - b. The following processes: magnesium, foundry; reduction, refining secondary aluminum, refining petroleum products, such as gasoline, kerosene, naphtha, lubricating oil; radioactive materials processing, reclaiming rubber, sewage sludge drying beds, wet corn milling.
    - c. Operations involving stockyards and slaughterhouses, slag piles, and keeping, breeding and raising of pigs and poultry for commercial purposes.
    - d. Sanitary and earth landfills and junkyards.
    - e. Quarries, stone crushes, screening plants and storage of quarry screenings.
    - f. Incineration of waste materials.
    - g. Disposal of septic, sewage, industrial, radioactive wastes, except as expressly authorized by the Missouri State Clean Water Commission.
    - h. Massage shops, nude modeling studios and other adult entertainment establishments.
    - i. Roadside stands.
    - j. Second hand, merchandise stores.
    - k. Digging of wells.
    - l. Rifle and shotgun ranges.

## STANDARD PROCEDURE FOR BOARD OF ZONING ADJUSTMENT

1. Board of Zoning Adjustment members shall decide if it is necessary to elect a chairman, vice chairman and secretary.
2. Upon receipt of an application for variance or appeal the City Clerk shall set the date, time and place of public hearing. (It is best to survey the Board members prior to setting the public hearing to find out available of each member).
3. The City Clerk shall publish notice of the public hearing in a local newspaper at least fifteen (15) days prior to the date of he hearing.
4. The City Clerk shall copy the notice and mail it to he applicant, along with a cover letter instructing the applicant to mail a copy of the notice of the public hearing, certified mail return receipt request to each property owner listed on the application. The cover letter shall also instruct the applicant to bring he signed returned receipts to the public hearing.
5. The chairman shall call the meeting to order. The City Clerk will verify publication of the hearing and that the requirements of a public hearing are met. The City Clerk shall verify that all property owners listed on the application received notice.
6. The applicant shall present their arguments for the application or appeal.
7. Staff shall present their argument against the application or appeal.
8. The City Clerk shall keep minutes of all proceedings to include a record of each members vote. The minutes shall be filed in the City Hall within ten (10) days of the date of the public hearing.

The minutes shall include a finding of facts supporting each of the board member's decisions. If the application is granted, the minutes shall specifically state that all conditions for variance listed in the Zoning Order have been met. If the application is denied, the minutes shall specifically sate the reasons for denial.