

## **ARTICLE 9 BOARD OF ZONING APPEALS**

### **Section 9:1 Establishment of Board of Zoning Appeals**

A Board of Zoning Appeals is hereby created with the powers and duties set forth below.

### **Section 9:2 Membership**

The Board of Zoning Appeals shall be composed of five members appointed by City Council to serve staggered terms of three years. The City Council may, at its discretion, appoint not more than two alternate members to serve on such Board in the absence, for any cause, of any regular members. Such alternate member or members shall be appointed in the same manner as regular members and at the regular times for appointment. Each alternate member, while attending any regular or special meeting of the Board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular members so absent. Vacancies shall be filled for the unexpired term only. Members shall be removable for cause by City Council upon written charges and after public hearing.

### **Section 9:3 Proceedings**

The Board of Zoning Appeals shall draw up and adopt rules governing the conduct of the affairs, which are in keeping with the provisions of this Ordinance. The rules shall provide and require the following, in addition to other rules and regulations the Board shall adopt.

#### **9:3.1 Officials**

At the first meeting after its establishment, the Board shall elect a chairman, a vice-chairman and such other officers as necessary from among the members. Such officers shall serve one-year terms and may succeed themselves. The chairman, or in his absence, the vice chairman, shall preside at all meetings, may administer oaths, and compel the attendance of witnesses, and the production of papers, records, and other documents by subpoena.

#### **9:3.2 Meetings**

Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. Due notice shall be given to all parties of interest. All meetings of the Board shall be open to the public, and all evidence and testimony shall be presented publicly.

#### **9:3.3 Minutes of Proceedings**

The Board shall keep minutes of its proceedings, showing the vote of each member upon every question or his absence or failure to vote, indicating such fact, and also keep records of its examinations, findings, determinations, and any other official action. No final action shall be taken unless a majority of the total membership of the Board is present.

**Section 9:4 Appeals and Hearings**

Appeals to the Board of Zoning Appeals concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Such appeal shall be taken within such time as shall be prescribed by the Board of Zoning Appeals by general rule, by filing with the officer from whom the appeal is taken and with the Board a notice of appeal, specifying the grounds. The 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. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board, after notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which 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 officer from whom the appeal is taken and on due cause shown. The Board of Zoning Appeals shall fix a reasonable time for hearing the appeal, give due notice of hearing to the parties concerned, and decide the same within forty-five days. At the hearing, any party may appear in person or by agent or attorney. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make such order, requirement, decision, or determination as in its opinion ought to be made on the premises, and to that end shall have all the powers of the officer from whom the appeal is taken.

**Section 9:5 Powers and Duties**

The Board of Zoning Appeals shall have the following powers and duties.

**9:5.1 Review**

The Board shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Building Inspector in the enforcement of this Ordinance.

**9:5.2 Variances**

The Board of Zoning Appeals may authorize upon written appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship or peculiar and exceptional practical difficulties.

Before action is taken on a request for a variance, the Board of Zoning Appeals shall hold one or more public hearings, at which any party may appear in person, or by agent or attorney.

**9:5.2-1 Notice of Hearing**

Notice of a public hearing shall be published in a newspaper of general circulation, at least fifteen days prior to the hearing. The notice shall be blocked in, carry an appropriate descriptive title, and

shall state the time, dates, and place of the hearing. Following any request for a variance, the City shall properly post and maintain on the subject property a Notice of Public Hearing at least ten days prior to the date of the public hearing. Such signs must be placed in a conspicuous place or places on the affected premises and posted at the City Hall.

### **9:5.2-2 Action by the Board of Zoning Appeals**

A variance from the terms of this Ordinance may be granted by the Board of Zoning Appeals upon a finding that:

- A. There are extraordinary and exceptional conditions pertaining to the particular piece of property.
- B. These conditions do not generally apply to other property in the vicinity.
- C. Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.
- D. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

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

Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved.

### **9:5.3 Uses Permitted by Special Exception**

The Board of Zoning Appeals may hear and decide upon Uses Permitted by special exception specifically authorized by the terms of this Ordinance. A use permitted by special exception shall not be authorized by the Board of Zoning Appeals unless and until:

- A. A public hearing shall be held;
- B. The Board shall make findings;
- C. The Board shall make written findings certifying compliance with the regulations governing the special use.

#### **9:5.3-1 Notice of Hearing**

Notice of public hearing shall be published in a newspaper of general circulation, at least fifteen days prior to the hearing. The notice shall be blocked in, carry an appropriate descriptive title, and shall state the time, dates, and place of the hearing. Following any request for a use permitted by special exception, the City shall properly post and maintain on the subject property a Notice of Public Hearing at least ten days prior the date of the public hearing. Such signs must be placed in a

conspicuous place or places on the affected premises, and posted at the City Hall.

#### **9:5.4 Additional Power**

In addition to the powers conferred upon the Board of Zoning Appeals, the Board shall have authority to interpret district boundaries where boundaries on the ground are at variance with those shown on the Official Zoning Map.

In granting any variance, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards shall be a violation of this Ordinance and punishable under Article 14.

Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permissible under the terms of this Ordinance, or any use expressly or by implication prohibited by the terms of this Ordinance in the district involved.

#### **Section 9:6 Decisions**

The concurring vote of four members of the Board of Zoning Appeals shall be necessary to reverse any order, requirement, decision, or determination of the building inspector charged with the enforcement of this Ordinance, or to decide in favor of the applicant any matter upon which it is required to pass under this Ordinance, or to grant a variance from the provisions of this Ordinance.

#### **Section 9:7 Appeals**

Every decision of the Board of Zoning Appeals shall be subject to review by a court of record, in the manner provided by the laws of the State of South Carolina and particularly by the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Title 6, Chapter 29.

#### **Section 9:8 Fee**

A fee of one hundred dollars shall be paid to the City Clerk for each application to the Board of Zoning Appeals to cover the necessary administrative costs.

#### **Section 9:9 Duties of Administrative Official, Board of Zoning Appeals, City Council, and Courts on Matters Of Appeals**

It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Building Inspector, and that such questions shall be presented to the Board of Zoning Appeals only on appeal from the decision of the Building Inspector, and that recourse from the decision of the Board of Zoning Appeals shall be to the Circuit Court and the Supreme Court of the State of South Carolina, as provided by the laws of the State of South Carolina and particularly by the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Title 6, Chapter 29.

It is further the intent of this Ordinance that the duties of the City Council in connection with this Ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this section and this Ordinance. Under this Ordinance, the City Council shall have only the duty of considering and adopting or rejecting proposed amendments or the repeal of this Ordinance, as provided by law.