

ARTICLE 301 ADMINISTRATION AND ENFORCEMENT

Sec. 301.00 **Reserved.**

Sec. 301.01 **Enforcement.**

The Zoning Ordinance, hereinafter referred to as “this chapter,” shall be administered and enforced by the community development director as appointed by the mayor. It shall be a violation of this chapter for any person to erect, alter, move or improve any building or structure until a building permit has been obtained under the regulations of this ordinance. The planning commission may, from time to time, recommend instructions and operating procedures to be followed in the administration of these regulations to the end that the public may be better informed.

(Code 1994; Ord. No. 2003-101, § 1, 06-10-2003)

Sec. 301.02 **Fees.**

(a) *Establishment of fee schedule.* The city council of the city of Bentonville, Arkansas shall establish a schedule of fees, charges and expenses and a collection procedure for, rezonings, conditional uses, variances, appeals and other matters pertaining to this chapter by resolution. The schedule of fees shall be available in the planning department and may be altered or amended only by the city council.

(b) *Fee to be paid in full.* Prior to initiation or commencement of any action or the physical transfer of any item listed in this chapter, the fees, as established from time to time for the same, shall be collected by the city as part of the application for such item or the purchase of said item, to include:

- Rezoning-proposed fee
- Appeal
- Variance
- Final plat
- Preliminary plat
- Large sale development
- Lot split
- Map sales
- Ordinance sales

Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

(Code 1994; Ord. No. 2003-101, § 1, 06-10-2003; Ord. No. 2012-58, § 1, 07-24-2012)

Sec. 301.03 Planning commission.

(a) *Purpose of the planning commission.* The general purpose of the planning commission is to:

- (1) Prepare, or have prepared, a plan of the municipality;
- (2) Receive and make recommendations on public and private proposals for development;
- (3) Prepare and administer planning regulations;
- (4) Prepare and transmit to the legislative body recommended ordinances implementing plans;
and
- (5) Advise and counsel the city government and other public bodies.

(b) *Creation and appointment.*

- (1) *Membership and appointment.* There is hereby appointed a planning commission which shall consist of seven members, at least two-thirds of whom shall not hold any elective or appointive city department except membership; in the board of adjustment or a joint planning agency. The members of the planning commission shall be appointed by the mayor and confirmed by a majority vote of the city council.
- (2) *Terms of office of members.* The members of the planning commission shall serve for five-year staggered terms.
- (3) *Vacancies in office.* When the term of office of any member of the planning commission expires or in the event of any vacancy, the mayor shall immediately make a nomination to fill the vacancy. The person so nominated and confirmed by the city council shall serve for the remainder of the term of the person whom he or she replaced.

(c) *Organization.*

- (1) *Election of officers.* The planning commission shall from its membership elect a chairperson, a vice-chairperson and such other officers as it may require. The chairperson shall not hold any other city office or appointment.
- (2) *Rules and regulations to be adopted; limitation on delegation of duties to committees.*
 - a. The planning commission shall make and adopt bylaws establishing rules and regulations for the discharge of its duties and the transaction for business and such rules and regulations shall provide for such committees within the commission as may be found necessary and advisable and the duties of such committees shall be prescribed by the commission.
 - b. No committee established pursuant to subsection (1) of this section shall exercise duties delegated by state law or this article that are organic to the commission.
 - c. Such rules and regulations may also provide for special meetings and the manner of calling the same.
- (3) *Meetings.* The planning commission shall provide for a regular meeting date of the commission at least once in each quarter of each calendar year or more often if prescribed by the commission.

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- (4) *Minutes.* The planning commission shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or if failing to vote, indicating such fact; it shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the planning department.
 - (5) *Quorum.* A quorum of the planning commission shall be a majority of the appointive members present.
- (d) *Appropriation by council required prior to expending or encumbering funds.* The planning commission shall not expend or encumber funds without prior appropriation by the city council.
- (e) *Comprehensive study.*
- (1) The planning commission shall make a comprehensive study of present conditions and future growth of the city and its neighborhood and adjacent territory for the purpose of planning a coordinated, adjusted and harmonious development of the city and its environs which would promote, in accordance with future needs, the safety, morals, order, convenience, prosperity and general welfare of its citizens; efficiency and economy in the process of development, convenience or traffic; safety from fires and other dangers; adequate light and air, healthful and convenient distribution of population; provision of adequate open spaces, good civic design and arrangement; wise and efficient expenditure of public funds; adequate provision for public utilities; and for other matters pertaining to the public requirements.
 - (2) *Formulation of plan.* The planning commission shall formulate and maintain a plan of the territory within its planning jurisdiction in accordance with state law, which plan shall at least embrace the subjects prescribed by state law and which shall be adopted by the planning commission by resolution after public hearing and notice as provided by state law.
 - (3) *Filing plan.* When the planning commission shall have approved any plan, the same shall be certified to the city council and shall be filed in the office of the city clerk and in the office of the circuit clerk and county recorder.
 - (4) *Action on plan by city council; acceptance.*
 - a. The city council, on receipt of a certified copy of a plan adopted by the planning commission, may accept, amend, modify or reject the plan in whole or in part.
 - b. On acceptance of a plan by city council, it shall become in full force and effect binding upon all persons with force of law.
 - (5) *Manner of amending plan.* Whenever a plan has been adopted by the planning commission, filed for record and accepted by the city council, the same shall not be changed, altered or amended except by the procedure required by state law for the adoption of an original plan.
- (f) *Construction of streets, public utilities, etc., to be approved by planning commission.* Whenever a plan has been so adopted, filed and become effective, no new street, square, park or other public way, ground or open space or any public building or structure or public utility, whether publicly or privately owned, shall be constructed or authorized to be constructed in any section or district of the planning jurisdiction embraced within a plan until the location, character and extent thereof shall have been submitted to the planning commission in the manner prescribed by state law.

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(g) *Rules to be prepared after master street plan governing subdivision of land is adopted.* After a master street plan is adopted and filed as provided in this article, the planning commission shall prepare and administer rules governing subdivision of land within its jurisdiction in accordance with state law.

(h) *Cooperation with other planning bodies.* The planning commission shall have the authority to cooperate with official and unofficial planning bodies for the purpose of coordinating the preparation of plans for the city and its adjacent territory.

(Code 1994 § 13.04.17; Ord. No. 83-31, § 1; Ord. No. 97-7, §1)

State law reference – General purpose of municipal plans, A.C.A. § 14-56-403; establishment of planning commission, A.C.A. § 14-56-404; designation and term of officers, A.C.A. § 14-56-406; regular meetings, A.C.A. § 14-56-407; internal rules and regulations, A.C.A. § 14-56-408; appropriations authorized, A.C.A. § 14-56-410; purpose of planning commission, A.C.A. § 14-56-411; legislative recommendations, A.C.A. § 14-56-415; land development regulations, A.C.A. § 14-56-417; amendments to recommended ordinances and regulations, A.C.A. § 14-56-420, 14-56-426, 14-56-424; adoption procedure, A.C.A. § 14-56-422.

Sec. 301.04 Board of adjustment.

(a) *Creation and appointment.*

- (1) *Memberships and terms.* There is hereby appointed a board of adjustment which shall consist of five (5) members; each to be appointed by the city council of the City of Bentonville for a term of five (5) years. Not less than one (1) member shall be appointed from the membership of the planning commission. Appointments shall be staggered.
- (2) *Removal.* A member of such board of adjustment, once qualified, can thereafter be removed during his/her term of office only for cause on a majority vote of the city council. In the event of the death, resignation, or removal of any such member before the expiration of his/her term, a successor shall be appointed by the city council to serve his/her unexpired term by resolution.

(b) *Organization.*

- (1) *Officers.* A chairperson, vice chairperson, and secretary shall be elected annually by the board from among its membership. The chairperson, or in his/her absence, the vice chairperson, shall preside at all meetings, shall decide all points of order or procedure.
- (2) *Rules and regulations to be adopted.* The board of adjustment shall adopt bylaws to establish rules necessary to the conduct of its affairs and in keeping with the provisions of this chapter and for appeals to floodplain interpretations.
- (3) *Meetings.* Meetings shall be held on a regular schedule and at such other times as the board may determine. All meetings shall be open to the public.
- (4) *Minutes.* The board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or if failing to vote, indicating such fact; it shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the planning office.
- (5) *Quorum.* A quorum of the board shall consist of three (3) members. The concurring vote of three (3) of the board members shall be necessary to revise any order or decision of the Community development director or to decide on any matter upon which it is required to pass under this chapter.

(c) *Powers and duties.* The board of adjustment shall have all the powers and duties prescribed by law and by this chapter, which are more particularly described as follows:

- (1) *Appeal of interpretation.* To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the administrative official in the enforcement of this chapter and floodplain regulations. The board may affirm or reverse, in whole or in part, said decision of the community development director.
- (2) *Variances.* To hear and decide requests for variances from the literal provisions of the zoning ordinance in instances where strict enforcement of the ordinance would cause undue hardship due to circumstances unique to the individual property under consideration, and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the ordinance.

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- (3) *Determination of zoning district boundaries.* In addition to the powers and duties specified above, the board shall also have the powers and duties to hold public hearings and interpret zoning district boundaries where uncertainty exists as to the boundaries of the zoning districts or when the street or property lines existing on the ground are at variance with those shown on the Zoning District Map.

(Code 1994; Ord. No. 2003-101, § 1, 06-10-2003; Ord. No. 2012-58, § 1, 07-24-2012)

SEC. 301.05 Building permits. No building permit shall be issued except in conformance with the provisions of this chapter.

Sec. 301.06 Conditional uses.

(a) *Authority.* The planning commission shall have the authority to approve conditional uses in accordance with the provisions of this section.

(b) *General.*

(1) *Purpose.* The purpose of this section is to define the concept of conditional uses; to establish standards by which the planning commission shall evaluate conditional uses; and to set forth procedures for processing conditional uses.

(2) *Description.* A conditional use is a use that conforms to the intent of the General Plan for a specific area and is generally allowable. The use may represent potential problems, however, with respect to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The conditional use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the General Plan or Zoning Ordinance. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the planning commission and a weighing of conditions and methods proposed by the commission or by the applicant to mitigate those impacts.

(3) *Table of uses.* Where the letter “C” appears for certain uses in the *Table of Uses for zoning districts*, the use is allowed subject to approval by the planning commission of a conditional use permit.

(c) *Procedure for conditional use request.*

(1) *Application.* The property owner shall submit an application city to the planning department in accordance with current planning department policies and procedures. Such applications shall show the location and intended use of the site and include a general statement as to the intent of the use. Applications may be obtained from the planning department. A general graphic representation of what is proposed shall be submitted as well and shall include the following:

- a. The location, size, and use of buildings, signs, land and improvements;
- b. The location, size and arrangement of parking space, loading space, driveways and street access;
- c. Proposed screening and landscaping;
- d. The use of adjoining property;
- e. Scale, north arrow and vicinity map; and
- f. Any additional information needed by the staff because of conditions peculiar to the development.

(2) *Notification.*

- a. *Notice of public hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The planning department will publish the notice for conditional use. This public notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- b. *Sign.* The planning department will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than seven (7) days prior to the public hearing.

(3) *Staff review.* The planning department staff shall review the proposed conditional use and report to the planning commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this chapter and shall make recommendations to the planning commission.

(4) *Public hearing.* The city planning commission shall hold one (1) or more public hearings thereon. The planning commission shall review conditional use applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed conditional use.

(5) *Planning commission action.*

- a. *Action.* The planning commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth in Section (d) below.
- b. *Conditions.* The planning commission may impose conditions and restrictions upon the premises benefited by a conditional use permit as may be necessary to reduce or minimize any injurious effects of the conditional use. Such action may be necessary to ensure that the conditional use is compatible with surrounding property to better carry out the intent of this chapter. Once any portion of the approved conditional use permit is utilized, all such conditions pertaining to such authorization shall become effective immediately. Such conditions may include time limits for exercise of such authorization and commence within a reasonable time. The violation of any condition so imposed shall constitute grounds for revocation of the conditional use permit.

(d) *Standards for approval.* In carrying out the purpose of this section, the commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the planning commission for each specific conditional use location.

- (1) The proposed use shall be so designated, located and operated so that the public health, safety and welfare will be protected.
- (2) The proposed land use shall be compatible with other area properties located near it.
- (3) The proposed use shall be in compliance with the provision of "Conditional Uses" as set out in this chapter.

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- (4) The proposed use shall be in conformance with all applicable provisions stated in this chapter for the district in which the use is to be located.
- (5) The proposed conditional use shall be in conformance with all off-street parking and loading requirements of this chapter and ingress and egress and pedestrian ways shall be adequate.
- (6) Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust and odor shall have been addressed in the proposed use application.
- (7) Landscaping and screening of the proposed use shall be in accordance with these regulations and the city of Bentonville landscaping regulations.
- (8) Proposed use signage shall be in accordance with the provisions of this chapter.
- (9) Open space located on the proposed use shall be maintained by the owner/developer.
- (10) The size and shape of the site, including size, shape and arrangement of proposed structures shall be in keeping with the intent of this chapter.
- (11) The planning commission shall in no case authorize less than minimum requirements of the chapter relating to height, area, or setbacks.
- (12) The planning commission shall not permit any use in a zone as a conditional use that is not permitted under the Zoning Ordinance.

(e) *Amendments.* Major changes to a conditional use authorization must follow the same process as the original conditional use; however, the commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan.

(Code 1994; Ord. No. 2003-101, § 1, 06-10-2003; Ord. No. 2012-58, § 1, 07-24-2012)

Sec. 301.07 Reserved.

Sec. 301.08 Zoning amendments (rezoning).

(a) *Authority.* The city council shall have the authority to enact amendments to the text or map of the Zoning Ordinance in accordance with the provisions of this section. Such action may be initiated on the recommendation of the planning commission, on its own motion, or on petition from a property owner. Before action is taken in regard to any amendment of this chapter, the planning commission shall have reviewed the case and given a recommendation. However, nothing in this section shall be construed to limit the city council's authority to recall the ordinances and resolutions by a vote of the majority of the council.

(b) *Procedure for zoning amendments by property owners.*

(1) *Application.* The property owner shall submit an application, to the planning department in accordance with current planning department policies and procedures. The petition shall provide the legal description of the property involved, the zoning classification requested for the property, and a statement and diagram explaining why the proposed changes will not conflict with the surrounding land uses.

(2) *Notification.*

a. *Notice of public hearing.* Notice of the public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The planning department will publish the notice of proposed amendment. The notice shall include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.

b. *Sign.* The planning department will post a notice of public hearing sign on said property to be rezoned. Such sign(s) shall be clearly visible, unobstructed to the passing general public and posted on or near the front property line not later than fifteen (15) days prior to the public hearing.

c. *Certified mail.* The property owner will be required to notify, by certified mail with return receipts requested, all property owners within 200 feet of the property of his/her intention to apply for a zoning amendment no less than fifteen (15) days prior to the public hearing. The petitioner shall state the date and time of the public hearing with a certified letter. The postmarked certified receipts and/or petitions shall be submitted to the planning department staff not less than ten (10) days prior to the planning commission meeting along with a map showing the location of the property in question as well as the owners within 200 feet of the property and a letter from the petitioner certifying that the map shows a complete list of those property owners.

(3) *Staff review.* The planning department staff shall review the proposed zoning request and report to the planning commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this chapter and shall make recommendations to the planning commission.

(4) *Public hearing.* The city planning commission shall hold one (1) or more public hearings thereon. The planning commission shall review zoning request applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed zoning request.

(5) *Planning commission action.*

- a. *Approval.* Following the public hearing, the proposed amendment may be approved as presented or as modified, by a majority vote of the planning commission and recommended for adoption by the city council, with reasons for recommendation stated in writing. No petition shall be reviewed by the city council without a report from the planning commission on the case.
- b. *Denial.* If the planning commission disapproves a proposed amendment, the applicant may appeal to the city council in accordance with *Sec. 106-309 Appeals to city council.*
- c. *Forward to city council.* Following approval by the planning commission, the petition will be sent to the city council for action. A petitioner may withdraw the request for an amendment prior to action by the city council.
- d. *Re-consideration.* No application for a zoning amendment will be considered by the Planning commission within one (1) year from date of final disapproval by planning commission of a proposed amendment. The resubmission must meet all requirements for a rezoning request and must be a different rezoning from original request.

(6) *City council action.* The city council by majority vote, may by ordinance, adopt the recommended amendment submitted by the planning commission or may return the proposed amendment to the planning commission for further study and recommendation. If the city council does not concur with the recommendation of the planning commission, either as first submitted or as submitted after re-study, the city council may, by majority vote, amend this ordinance by granting the request for amendment in full or in modified form. However, nothing in this section shall be construed to limit the city council's authority to recall the ordinances and resolutions by a vote of a majority of the council.

(c) *Procedures for zoning amendments by the city council.*

- (1) *Refer to planning commission.* The city council may refer a request for amendment to the planning commission to be considered in accordance with the procedures outlined in Sub-section (d), below.
- (2) *Emergency.* The city council may act upon a request to amend this Ordinance when an emergency exists which threatens the health, safety, welfare, or morals of the citizens of the city. An amendment may be made under this section upon the approval of two-thirds (2/3) of the entire city council.

(d) *Procedures for zoning amendments by the planning commission.*

- (1) *Initiation.* The planning commission, may, from time to time, either upon request by one or more of its members, by direction of the city council, or in the course of its normal planning activities, consider amendments or additions to the Zoning Ordinance.
- (2) *Studies.* The planning commission shall prepare a work program and make studies, including the preparation of maps, to support its decisions regarding possible amendments.
- (3) *General plan.* If the proposed amendments are not consistent with the General Plan, the planning commission shall first consider and adopt any necessary changes to the General Plan.

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- (4) *Public hearing.* The planning commission shall hold a public hearing to consider amendments to the Zoning Ordinance and amendments to the General Plan, if required.
- (5) *Notification.* Changes in the Zoning Ordinance initiated by the planning commission shall be considered comprehensive changes affecting the entire city and no individual notifications shall be made. A map indicating the proposed changes shall be available in the mayor's office or at a convenient location designated by the mayor for interested citizens and property owners.
- (6) *Planning commission action.* Following the public hearing, the proposed plans may be recommended as presented, or in modified form, by a majority of the entire planning commission.
- (7) *City council action.* Following its adoption of plans and recommendations of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the city council for its adoption.

(e) *Standards for approval.* The city council may consider several recommendations and planning documents when attempting to make a decision on the granting of an amendment. Such guidelines may be derived from recommendations from the planning commission and planning staff, use of provisions of the General Plan, Master Street Plan, Master Parks Plan, Land Use Plan, Capital Improvements Plan, and Bicycle and Pedestrian Master Plan, as well as any other appropriately approved document created to provide required public facilities necessary to protect the public interest. Any denial by the city council of an amendment shall be final for one (1) year and the same application may not be reinitiated until the expiration of that deadline.

(Code 1994; Ord. No. 2003-101, § 1, 06-10-2003; Ord. No. 2012-58, § 1, 07-24-2012)

Sec. 301.09 Appeals to city council.

(a) *Notice of appeal.* Any decision by the planning commission regarding a rezoning or conditional use permit, may be appealed to the city council. In order to make an appeal, the aggrieved party must file a “Notice of Appeal” with the city clerk within 30 days of the planning commission’s final action. The Notice of Appeal shall be filed on forms and in a format prescribed by the city council. As a minimum however, the applicant shall provide the following information:

- (1) Summary of any reasons provided by the planning commission concerning the decision made in the case.
- (2) Reasons why the applicant of the appeal contends that the planning commission erred in its decision.
- (3) Reasons why the applicant of the appeal believes that the public health, safety, welfare, and morals would be better served if the planning commission’s action were reversed.
- (4) Any new and pertinent information bearing on the case which may have been overlooked by the planning commission or which may have come to light following the meeting at which the planning commission made its decision.

(b) *City council action.* Appeals to the city council shall be de novo; however, they shall first be considered on the record of the public hearing and planning commission meeting at which the original case was heard and the original decision made. Based on this review, the city council may affirm the planning commission’s decision, reverse it, or send the case back to the planning commission for further study and re-certification. If new information is placed before the Council that, in the opinion of the Council, would affect the planning commission’s decision, the Council may refer the case back to the planning commission for further study, including the new information, and re-certification.

(Code 1994; Ord. No. 2003-101, §1, 06-10-2003; Ord. No. 2012-58, § 1, 07-24-2012)

Sec. 301.10 Variances.

(a) *Authority.* The board of adjustment shall have the authority to approve variances of this chapter in accordance with the provisions of this section.

(b) *Procedure for variance requests.*

(1) *Application.* The property owner shall submit an application to the planning department in accordance with the current planning department policies and procedures. Every appeal or application shall refer to the specific provision of this chapter involved and shall exactly set forth:

- a. The interpretation that is claimed,
- b. The use for which the permit is sought, or
- c. The details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
- d. Each applicant must submit, at least ten (10) days prior to the public hearing, a scaled drawing showing the requested variance along with all relevant information, including the exceptional condition or situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
- e. Any additional information requested by the planning department due to conditions specific to the request.

(2) *Notification.*

- a. *Notice of public hearing.* Notice of a public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time seven (7) days prior to the hearing. The planning department will publish the notice of proposed amendment. The notice shall include the variance being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- b. *Sign.* The planning department will post a notice of public hearing sign on said property for which the variance is being requested. Such sign(s) shall be clearly visible, unobstructed to the passing general public and posted on or near the front property line not later than seven (7) days prior to the public hearing.

(3) *Staff review.* The planning department staff shall review the proposed variance request and report to the board of adjustment on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this chapter.

(4) *Public hearing.* Public hearings may be adjourned from time to time, and, if the time and place of the adjourned meeting be publicly announced when the adjournment is made, no further notice of such adjourned meeting need be published. At a public hearing any party may appear in person, by agent, or by attorney.

(c) *Standards for approval.* A variance from the terms of this chapter shall not be granted by the board of adjustment unless and until:

- (1) The applicant demonstrates that:
 - a. special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structure or buildings in the same district;
 - b. that literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;
 - c. that special conditions and circumstances do not result from the actions of the applicant; and,
 - d. that granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district.
- (2) 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.
- (3) The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of land, building or structure.
- (4) The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (5) *Conditions.* In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.
- (6) *Uses.* Under no circumstances shall the board of adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.

(d) *Effect of appeal.* An appeal shall stay all proceedings of the action appealed from, unless the person affected by such appeal certifies to the board, that, by reason of facts stated in the certificate a stay would, in his/her 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 a court of record on application, and notice to the person from whom the appeal was taken.

(e) *Time limit on permits.* No order permitting the use of a building or premises, or the alteration or erection of a building shall be valid for a period longer than six (6) months unless such use is established or the erection or alteration is started within such period and proceeds to completion in accordance with the terms of a building permit.

(f) *Appeals from board of adjustment.* Any person or persons, or any board, taxpayer, department, board or bureau of the city aggrieved by any decision of the board of adjustment may seek review by a court of record of such decision, in the manner provided by the laws of the State of Arkansas.

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(g) *Reconsideration.* If a variance request is denied, it shall not be reconsidered by the board of adjustment within one (1) year from the date of denial of the variance request. The resubmission must meet all requirements for a variance request and shall be a different variance request.

(Code 1994; Ord. No. 2003-101, § 1, 06-10-2003; Ord. No. 2007-67, § 1; Ord. No. 2007-67, §1; Ord. No. 2012-58, § 1, 07-24-2012)