

ARTICLE 301 ADMINISTRATION

SEC. 301.1 ENFORCEMENT

The Zoning Ordinance shall be enforced by the Community Development Director as appointed by the Mayor. It shall be a violation of this ordinance 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.

SEC. 301.2 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 building permits, appeals and other matters pertaining to this ordinance by resolution. The schedule of fees shall be available in the Community Development office and may be altered or amended only by the City Council.

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

SEC. 301.3 PLANNING COMMISSION

See Title 13, Section 13.04 of the City Code.

SEC. 301.4 BOARD OF ADJUSTMENT

A. Creation and Appointment

- 1. Memberships and Terms.** There is hereby appointed a Board of Zoning 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 Zoning 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.** The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of the Zoning Ordinance 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 Ordinance.

C. Powers and Duties. The Board of Adjustment shall have all the powers and duties prescribed by law and by this Ordinance, 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 Zoning Ordinance 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.
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.

and structures, and the exact size and location on the lot of the structure or building proposed to be repaired, altered, erected or moved, and the size, arrangement, number of parking stalls, movement of vehicles and ingress and egress drives for all off-street parking and loading facilities and all easements on the lot.

- B. **Declaration.** A declaration of the existing and intended use of each existing and proposed building or structure on the lot and the number of families and housekeeping units which each existing building accommodates and which each existing and proposed building is designed to accommodate.
- C. **Additional Information.** Additional information relating to the proposed improvement needed to determine compliance with these regulations.
- D. **Survey.** A survey prepared by an engineer or surveyor registered in the State of Arkansas of the boundaries of the lot on which the improvement is proposed to be located may be required by the Mayor or Community Development Director.
- E. **Filing.** A record of such application and plat shall be kept by the Community Development Director and is subject to review by the Planning Commission.

SEC. 301.5 BUILDING PERMITS

Whenever any structure or building is to be erected or structurally altered, including but not limited to modular or manufactured structures, a building permit shall be obtained from the Community Development Director or his designee(s). Every applicant for a building permit shall furnish the following information:

- A. **Plans.** A plot plan, drawn to scale, showing the exact size, shape and dimension of the lot to be built upon, the exact size and location on the lot of all existing buildings

SEC. 301.6 CONDITIONAL USES

A. 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 Permitted Uses.** Where the letter "C" appears for certain uses in the Table of Permitted Uses, the use is permitted subject to approval by the Planning Commission of a Conditional Use Permit.

B. Procedure for Conditional Use Request.

1. **Application.** An application shall be filed by the property owner with the City Planning Department in accordance with current Planning Department policies and procedures. Said application shall be filed no less than twenty-two (22)

days prior to the Planning Commission meeting. 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 office. 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.

- (a) *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 Ordinance 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 E 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 Ordinance. 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.
- C. **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 Ordinance.
 4. The proposed use shall be in conformance with all applicable provisions stated in this Ordinance 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 Ordinance 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 Ordinance regulations and the City of Bentonville landscaping regulations.
 8. Proposed use signage shall be in accordance with the provisions of this Ordinance.
 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 Ordinance.

11. The Planning Commission shall in no case authorize less than minimum requirements of the Ordinance 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.

D. 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.

E. Building Permit. No building permit shall be issued except in conformance with the provisions of this section.

SEC. 301.7 VIOLATIONS AND PENALTIES

A violation of this ordinance shall be deemed a misdemeanor and shall be punishable as set forth in the Bentonville Municipal Code Section 1.32.01.

SEC. 301.8 ZONING ORDINANCE AMENDMENTS

A. General

1. **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 the Ordinance, 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.** An application giving the legal description of the property involved and the zoning classification requested for the property, shall be submitted to the Planning Commission by the agent of the property owner no less than twenty-two (22) days prior to the public hearing. The petition shall also include a statement and diagram explaining why the proposed changes will not conflict with the surrounding land uses. A proposed ordinance rezoning the property shall also be submitted with the petition for approval as to its correctness and form.

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 and/or petition, all property owners within 200 feet of the property of his 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 and/or petition. 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 Ordinance 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 form, 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 Section 301.7, 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 Section E, 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.
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 City Hall 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.

SEC. 301.9 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.

SEC. 301.10 VARIANCES

- A. General.** The Board of Adjustment shall have the authority to approve variances of the Zoning Code.
- B. Procedure for Variance Requests**

1. Application. All appeals and applications made to the Board shall be made in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance 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) *Scale Drawing.* Each applicant must submit, at least ten (10) days prior to the public hearing, a scale 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.

2. Notification

(a) *Notice of Public Hearing.* The Board shall fix a reasonable time for the public hearing of an appeal, cause public notice to be given of the time and place thereof, as well as due notice to the parties in interest, and decide same within a reasonable time. Said public notice shall be published at least once not less than seven (7) days preceding the date of such hearing in a newspaper of general circulation in Bentonville. The public notice shall give the particular location of the property on which the appeal is requested, including a legal description and an address (if no address is available, a description which is clear to the average lay person will suffice), as well as a brief statement of what the appeal consists.

(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 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 Ordinance.

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 Zoning Ordinance 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 Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Zoning Ordinance;
 - (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 Zoning Ordinance 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 Zoning Ordinance, 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 Zoning Ordinance.

6. Uses. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Zoning Ordinance 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. Fee. The fee for any appeal or application to the Board shall be established by the Bentonville City Council and subject to periodic change. Current fee schedules are available with the application. Fees are non-refundable.

G. 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.

H. Reconsideration. If a variance request is denied, it shall not be reconsidered by the Board of Adjustment within one 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.
(Ord. No. 2007-67, 6-12-2007)

SEC. 301.11 SEVERABILITY

If any portion of this Ordinance shall be held to be invalid or unconstitutional, the remainder of the Ordinance shall not thereby be invalid, but shall remain in full force and effect.

SEC. 301.12 REPEAL OF CONFLICTING ORDINANCES

Any ordinance now in effect that conflicts with any provision of this Ordinance is hereby repealed, held to be invalid and to no effect to the extent of the conflict.

SEC. 301.13 EMERGENCY CLAUSE

Whereas no emergency exists for the immediate taking effect of this Ordinance, therefore, the same shall be in full force and effective one month from and after its passage.

Rev. 07-24-12, Ord. No. 2012-58