

**AN ORDINANCE AMENDING CHAPTER 25 OF THE MUNICIPAL CODE BY REPEALING ARTICLE 13, BOARD OF ADJUSTMENT, AND ENACTING A NEW ARTICLE 13, IN LIEU THEREOF TO REVISE THE PROCEDURES FOR APPLICATIONS TO THE BOARD OF ADJUSTMENT (Petition of City of Maryland Heights)**

**WHEREAS**, it is necessary to clarify several of the regulations regarding enforcement of the Zoning Code; and,

**WHEREAS**, the proposed amendment to the Zoning Code is consistent with the Comprehensive Plan as acts to implement the goals and objectives of the Plan through zoning regulations;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARYLAND HEIGHTS AS FOLLOWS:**

**Section 1.** Article 13, Board of Adjustment, of Chapter 25, Zoning, of the Maryland Heights Municipal Code is hereby repealed and the following Article 13, Board of Adjustment, is enacted in lieu thereof:

**Section 25-13.1. Establishment.**

A Board of Adjustment is hereby established in accordance with Chapter 89 of the Missouri Revised Statutes regarding the zoning of cities.

**Section 25-13.2. Membership.**

- A. The Board of Adjustment shall consist of five (5) members, who shall be residents of the city. Three (3) alternate members may be appointed to serve in the absence of or the disqualification of regular members.
- B. Members shall be appointed for terms of five (5) years each.
- C. All members and alternates shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.
- D. The Board of Adjustment shall elect its own chairman and acting chairman who shall serve for one (1) year.

**Section 25-13.3. Meeting and Voting.**

- A. The meeting schedule shall be established by and maintained in the Department of Community Development indicating meeting dates, application submittal deadlines, and tentative hearing schedule.
- B. The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses.
- C. The Board of Adjustment shall keep minutes of all meetings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the City Clerk, and shall be public

record. All testimony, objections thereto, and rulings thereon shall be taken down by a reporter employed by the board for that purpose.

#### **Section 25-13.4. Powers.**

- A. The Board of Adjustment shall have the following powers:
1. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the City Planner in the enforcement of the Zoning Code or of any ordinance adopted pursuant thereto;
  2. To hear and decide all matters referred to it or upon which it is required to pass under such ordinances;
  3. In passing upon appeals, where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance, to vary or modify the application of any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

#### **Section 25-13.5. Eligible Applicants.**

Appeals to the Board of Adjustment may be taken by any person or company aggrieved or by any officer, department, or board of the City affected by any decision of the City Planner;

#### **Section 25-13.6. Application for Board of Adjustment Review.**

The procedure for requesting a hearing before the Board of Adjustment shall be as follows:

- A. *Pre-application conference.* Prior to submission of an application, the City Planner shall schedule and hold a pre-application conference.
- B. *Submittal Requirements.* The applicant shall submit the following to the City Planner:
1. Application form. Completion of an authorized application form supplied by the City Planner, including all supplemental information required by that form.
  2. *Fees.* Filing and review fees, as established by the City Council.
  3. A site plan, written narrative, or other information required by the City Planner.
- D. *Determination of completeness for hearing.*
1. Subsequent to receipt of an application and supporting documents, the City Planner shall determine whether it is complete for purposes of conducting a public hearing. The application is complete for hearing if it includes all of the materials required in Section 25-13.6.B, Submittal Requirements.
  2. Upon determination by the City Planner that the application is incomplete for hearing, the City Planner shall notify the applicant. The applicant shall either re-submit or notify the City Planner of a pending re-submittal within a period of thirty (30) days. If the re-submittal or notification of a pending re-submittal are not received within this period, the application shall be deemed withdrawn without prejudice.

- E. *Public Hearing.* Upon determination by the City Planner that the application is complete for hearing, a public hearing on the application for a conditional use permit shall be scheduled in accordance with Section 25-14 Public Notice and Posting.
- F. *Withdrawal.* An application for review may be withdrawn prior to the public hearing upon written notice to the City Planner.

**Section 25-13.7. Burden of Proof.**

- A. *Non-use variances.* In presenting any application for a non-use variance, the burden of proof shall rest with the applicant to clearly establish that, as a practical matter, the property cannot be used for a permitted use without coming into conflict with restrictions of the Zoning Code. The following specific criteria shall be considered:
  - 1. How substantial the variance is in relation to the requirement;
  - 2. The potential effect of the increased population density produced on the available government facilities;
  - 3. The potential to produce a substantial change in the character of the neighborhood or a substantial detriment to adjoining property owners.
  - 4. The ability to obviate the difficulty by some method, feasible for the applicants to pursue, other than the variance; and
  - 5. In view of the manner in which the difficulty arose, and considering all of the above factors, whether the interests of justice would be served by granting the variance.
- B. *Use variances.* In presenting any application for a variance to authorize a use that the Zoning Code does not allow, the burden of proof shall rest with the applicant to:
  - 1. Demonstrate an unnecessary hardship which is defined by the following criteria:
    - a. The land in question cannot yield a reasonable return if used only for a use permitted in the zone in which it is located;
    - b. The owner's plight is due to unique and not to general neighborhood considerations; and
    - c. The granting of the variance would not alter the essential character of the locality.
  - 2. Prove that relief is necessary because of the unique character of the property;
  - 3. Prove that the variance will not destroy the preservation of the Comprehensive Plan; and
  - 4. Prove that granting the variance will result in substantial justice.
- C. In presenting any application for a variance, the burden of proof shall rest with the applicant to prove that the harm complained of is not self inflicted.

**Section 25-13.8. Procedure and Decision.**

- A. An appeal stays all proceedings in furtherance of the action appealed from, unless the City Planner certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his or her opinion, cause immediate 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 of Adjustment or by a court of record on application or notice to the office from whom the appeal is taken and on due cause shown.

- B. The Board of Adjustment may, in conformity with the provisions of Sections 89.010 to 89.140 of the Missouri Revised Statutes, 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 all the powers of the City Planner. The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision, or determination of the City Planner, or to decide in favor of the applicant or any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance.

**Section 25-13.9. Reapplication.**

In the event that any application is denied by the Board, a reapplication concerning the same property or site shall not be accepted by the board until six (6) months following the date of final action on the original application has elapsed, unless it can be shown to the satisfaction of the City Planner that:

- A. A significantly different plan is proposed; or
- B. That new facts or other pertinent information have been discovered that were not previously presented and were not reasonably capable of discovery by the applicant prior to the previous application.

**Section 25-13.10. Appeal of Board of Adjustment Decision.**

Any person or persons, jointly or severally aggrieved by any decision of the Board of Adjustment, may, within thirty (30) days of the issuance of the decision of the board, present to the Circuit Court of Saint Louis County a petition, duly verified setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality in accordance with appropriate state statute.

Section 2. This Ordinance shall be in full force and effect from and after its passage and approval.

PASSED BY THE CITY COUNCIL THIS 20<sup>th</sup> DAY OF MARCH 2008.

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MAYOR/PRESIDING OFFICER

APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF MARCH 2008.

\_\_\_\_\_  
MAYOR

ATTEST:

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CITY CLERK