

SECTION

24

BOARD OF ZONING ADJUSTMENT

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Section 24-1. Organization

24-1.01 The Board of Zoning Adjustment is created and established in accordance with the provisions of R.S. Mo., Section 89.080 and amendments thereof. The Board of Zoning Adjustment shall consist of five (5) residents of the municipality appointed by the Mayor and approved by the Board of Aldermen.

24-1.02 Term: Of the members first appointed, one shall serve for one (1) year, one shall serve for two (2) years, one shall serve for three (3) years, one shall serve for four (4) years, and one shall serve for five (5) years. Thereafter, members shall serve for terms of five (5) years each. Vacancies shall be filled by appointment for the unexpired term. Members shall be removed for cause by the Mayor and Board of Aldermen upon written charges and after public hearing. Three (3) alternate members may be appointed to serve in the absence of or disqualification of the regular members.

24-1.03 Compensation: All members of the Board of Zoning Adjustment shall serve without compensation.

24-1.04 Officers: The Board of Zoning Adjustment shall annually elect one (1) of its members as Chair and one (1) of its members as Secretary who shall serve for one (1) year.

24-1.05 Rules of Procedure: The Board of Zoning Adjustment shall adopt rules in accordance with the provisions of the ordinance creating and establishing such board. The presence of four (4) members shall be necessary to constitute a quorum.

24-1.06 Meetings: Meetings of the Board of Zoning Adjustment shall be held at the call of the Chair and at such other times as said board may determine. Such Chair, or in that person's absence, the acting Chair may administer oaths and compel the attendance of witnesses. The Board of Zoning Adjustment shall keep minutes of its proceedings, showing evidence presented, findings of fact, decisions of said board and the vote upon each question. All testimony, objections thereto and rulings thereon shall be taken down by a reporter employed for that purpose.

24-1.07 Records: Records of all official actions of the Board of Zoning Adjustment shall be kept in the Office of the City Clerk and shall be open to public inspection during reasonable office hours.

Section 24-2. Powers

24-2.01 The Board of Zoning 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 Director of Community Development in the enforcement of this Ordinance.
2. To hear and decide all matters referred to it or upon which it is required to pass under the provisions of this Ordinance.
3. In passing upon appeals, where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Ordinance, to vary or modify the application of any of the regulations or provisions of this Ordinance relating to the 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. The Board shall not have the power to vary or modify the zoning regulations relating to the use of land.

Section 24-3. Hearings

24-3.01 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.

24-3.02 A copy of said notice shall be mailed to each party in interest. At the hearing, any party may appear in person or by agent or by attorney.

Section 24-4. Appeals

24-4.01 Appeals to the Board of Zoning Adjustment may be taken by any person aggrieved, or by any officer of the City or any governmental agency or body affected by any decision of the Director of Community Development.

24-4.02 Such appeal shall be taken within fifteen (15) days as provided by the rules of the Board of Zoning Adjustment, by filing with the officer from whom the appeal is taken and with the Board a notice of appeal specifying the grounds thereof and the payment of the fee required therefore.

24-4.03 The officer from whom the appeal is taken, when notified by the Board of Zoning Adjustment or its agent, shall forthwith transmit to said board all the papers constituting a record upon which the action appealed from was taken.

24-4.04 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 of Zoning Adjustment, after the notice of appeal shall have been filed with him, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order that may be granted by the Board or a court of record on application on notice to the office from whom the appeal is taken and on due cause shown.

Section 24-5. Variances

24-5.01 In specific cases, the Board of Zoning Adjustment may grant a variance from the specific terms of these zoning regulations that will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the same will, in an individual case, result in unnecessary hardship or practical difficulties, and provided that the spirit of these zoning regulations shall be observed,

public safety and welfare secured, and substantial justice done. Such variance, however, shall not permit any use not permitted by these zoning regulations in such district.

24-5.02 A request for a variance may be granted in such case, upon a finding of the Board of Zoning Adjustment that the following conditions have been met:

1. That the variance requested arises from such condition that is unique to the property in question and that is not ordinarily found in the same zoning district and is not created by an action or actions of the property owner or the applicant;
2. That the granting of the variance will not adversely affect the rights of adjacent property owners or residents;
3. That the strict application of the provisions of these zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and
5. That granting the variance desired will not be opposed to the general spirit and intent of these zoning regulations.

Section 24-6. Home Occupation Accessory Use Permit

24-6.01 The Board of Zoning Adjustment is authorized to issue a Home Occupation Accessory Use Permit for all home occupations specifically prohibited as of right under these regulations. The Board shall notify all property owners within an area determined by lines drawn parallel to and one hundred and eighty five (185) feet distant from the boundaries of the property proposed for the permit.

24-6.02 The Board of Zoning Adjustment may issue the permit if the proposed accessory home occupation use is compatible with the surrounding neighborhood. In reaching its determination the Board may add conditions on the following items, among others that the Board feels are appropriate:

1. Hours of operation.

2. Signage.
3. Employment of individuals who do not reside on the property.
4. Outdoor storage.
5. Need for an Occupation License.
6. Parking.
7. Traffic.

Section 24-7. Exception for Dwellings on Small Lots

24-7.01 If there is no other feasible way to develop a parcel consistent with these zoning regulations, the Board of Zoning Adjustment may authorize an exception to the zoning regulations for the construction of a dwelling and customary accessory structures on any single lot of record or on any lot located in a subdivision that has a final plat approved by the Board of Aldermen at the effective date of these zoning regulations, notwithstanding the limitations imposed by other provisions of these regulations.

24-7.02 The Board of Zoning Adjustment shall use the following standards to decide whether to issue the exception:

1. For lots of record, such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership.
2. For this provision only, the minimum lot area may be reduced up to thirty (30) percent.
3. For this provision only, the minimum width of the lot of record may be reduced up to twenty (20) percent.
4. For this provision only, the minimum depth of the lot of record may be reduced up to ten (10) percent.
5. All front, rear and side yard requirements shall be met unless varied by the board of zoning adjustment.
6. All other requirements of these regulations shall be met.

7. If two (2) or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are lots of record at the effective date of the adoption of these regulations, and if all or part of the lots with no dwellings do not meet the requirements established in the district for lot area and width, the lands involved shall be considered to be a single lot of record. No portion of the parcel shall be used or sold in a manner that diminishes compliance with the lot width and area requirements in these regulations.

Section 24-8 Determination of Board of Zoning Adjustment

24-8.01 In exercising the foregoing powers, the Board of Zoning Adjustment, in conformity with the provisions of this section, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions and may issue or direct the issuance of a permit.

24-8.02 The concurring vote of four (4) members of the Board shall be necessary to reverse the 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 this Ordinance, or to effect any variation in this Ordinance.

24-8.03 Any person or persons, jointly or severally aggrieved by any decision of the Board of Zoning Adjustment, or any taxpayer, or any officer, department, board or bureau of the municipality may present to the Circuit Court of Jackson County, Missouri a petition, duly verified, setting forth that such decision is illegal in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after filing of the decision in the office of the Board.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the Board of Zoning Adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. 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 and on due cause shown, grant a restraining order.

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. 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.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take 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 the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs 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.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.