



CITY OF TONTITOWN PLANNING OFFICE

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Meeting: **April 25, 2023**
Project: **Appeal Provision Changes**
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PUBLIC HEARING AND PLANNING COMMISSION AGENDA ITEM

PH 5, PC 3

Appeal Provisional Changes

Appeal to City Council

§ 152.009 AMENDMENTS.

~~On any proposed amendments to these regulations, the Planning Commission shall hold a public hearing. Notice of public hearing shall be published in a newspaper of general circulation in the city at least one time, not later than 15 days prior to the hearing. Following such hearing, the City Council may adopt the amendments as recommended by the Planning Commission or, after further consultation with the Planning Commission, as determined by a majority vote of the City Council.~~

[Amendments to these regulations may be initiated by the Planning Commission or the City Council. Proposed amendments to these regulations may be considered by the Planning Commission, and following such consideration shall be made known to the City Council for its consideration.](#)

~~§ 152.102 APPEALS.~~

~~—Planning Commission determination. Any decision of Planning Commission may be appealed pursuant to the City Council.~~

§ 152.029 APPEALS.

~~—Appeals of interpretations of the subdivision regulations may be made to the city Planning Commission.~~

[Appeals from the decisions of the Building Official pursuant to this chapter may be taken to the Planning Commission by any person aggrieved by the decision and shall be filed in writing to the City Clerk within 15 days after the decision has been rendered by the Building Official or designee. The appeal shall consist of a letter from the aggrieved party which sets forth the reasons for the appeal, any other necessary information as well as the payment of any required fee. The Planning Commission shall fix a reasonable time for the hearing of the appeal.](#)

§ 152.240 SIGNS, NUMBERS AND SYSTEM MAINTENANCE.

(F) Address numbers shall be a minimum of four inches high with dark reflective block letters on a white background or reverse contrasts and shall be visible from the street. The numbers shall be placed as near as possible to the primary entrance of the building and preferably above the entrance doorway. If building is not visible from the street, address numbers should be placed at the street entry to the building. ~~Appeals concerning numbers shall be made to the City Council.~~

The appeal must filed with the City Clerk within fifteen days after the decision has been rendered. The appeal shall consist of a letter from the aggrieved party which sets forth the reasons for the appeal, any other necessary information as well as the payment of any required fee. The City Council shall fix a reasonable time for the hearing of the appeal.

§ 153.122 PROCEDURE FOR AUTHORIZING.

The following procedure is established to properly integrate a conditional use with other land uses located in the district. These uses shall be reviewed and authorized or rejected under the following procedure:

(D) A petitioner aggrieved by an action to deny an application by the Planning Commission shall file an appeal to the City Council with the City Clerk-Treasurer. ~~The content of the appeal filing shall consist of: (1) A cover letter addressed to the Mayor and City Council setting forth the request; and (2) a copy of the Planning Commission application indicating the action and properly executed by the staff. This filing shall occur within 15 calendar days of the denial by the Planning Commission. Certified mail notice of the appeal hearing shall be provided by the appellant not less than ten days prior to the date of the hearing, and the affidavit and other supporting evidence of notice shall be filed not less than five days prior to the date of review. This notice shall be given to all record parties in interest whether for or against the request. The cost of this notice shall be borne by the appellant.~~ The appeal must filed with the City Clerk within fifteen days after the decision has been rendered by the Planning Commission. The appeal shall consist of a letter from the aggrieved party which sets forth the reasons for the appeal, any other necessary information as well as the payment of any required fee. The City Council shall fix a reasonable time for the hearing of the appeal.

§ 152.177 ADMINISTRATION AND APPEALS.

~~—(A) Administration.~~ The Building Official or his or her designee(s) shall be charged with the general administration of this chapter. The Planning Commission will be available for consultation and recommendations to aid in administration of this subchapter.

~~—(B) Appeals.~~ ~~Appeals from the decisions of the Building Official may be taken by any person aggrieved by the decision shall be in writing to the Planning Commission unless~~

~~otherwise herein. Notice of appeal should be addressed to the City Clerk and filed within ten days of the decision of the Building Official.~~

§ 153.261 ORGANIZATION.

The Board of Zoning Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of these regulations. 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 with public notice of the meeting and business to be carried on published in a newspaper of general circulation in the city, at least one (1) time seven (7) days prior to the meeting. The Board of Zoning Adjustment shall keep minutes of its vote, indicating such fact, and it shall keep records of its examinations and other official actions, all of which shall be a public record. ~~A quorum of the board shall consist of three members.~~ The concurring vote of a majority of the total board members shall be necessary to revise any order or decision of the administrative officer, or to decide on any matter upon which it is required to pass. The administrative official shall attend each meeting of the board and shall bring ~~with him~~ all plans, specifications, plats, and papers relating to any case before the board for determination.

§ 153.262 POWERS AND DUTIES.

The Board of Zoning Adjustment shall have all the powers and duties prescribed by law and by these regulations, which are more particularly described as follows:

(A) *Administrative review.* 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 these regulations. The board may affirm or reverse, in whole or in part, said decision of the administrative official.

(B) Variance. ~~To authorize upon appeal, in specific cases, such~~ To hear requests for a variance from the terms of ~~this~~ the zoning regulations in this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these regulations would result in unnecessary hardship that would deprive the owner of any reasonable use of the land or building involved. A variance from the terms of these zoning regulations, shall not be granted by the Board of Zoning Adjustment unless and until:

(1) The applicant demonstrates that special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district; that literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these regulations; that special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by the zoning regulations 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 Zoning 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 Zoning Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of these zoning regulations, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(5) In granting any variance, the Board of Zoning 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 these regulations.

(6) Under no circumstances shall the Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of these zoning regulations in the district involved, or any use expressly, or by implication, prohibited by the terms of these regulations in said district.

(C) *Special exceptions.* In addition to the powers and duties specified above, the Board of Zoning Adjustment shall also have the following powers and duties to hold public hearings and decide the following special exceptions:

(1) Interpret zoning district boundaries, upon appeal of the zoning official's determination and 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.

(2) Determine the amount of parking required for a use not listed herein.

(3) Vary the parking regulations by not more than 25% where it is conclusively shown that the specific use of a building would make unnecessary the parking spaces otherwise required by these regulations.

(4) Permit an addition to a nonconforming structure provided that said addition conforms to all building code requirements, and further provided that the current use of the structure conforms to the zoning district in which it is located.

§ 153.263 PROCEDURE FOR APPLICATION AND APPEALS.

(A) *Appeal and Application.* Appeals to the Board of Zoning Adjustment under this chapter may be taken by any person aggrieved, ~~or by any officer, department, or board of the city affected by, any~~ a decision of the administrative official. All appeals and applications made to the board shall be made in writing within ~~ten~~ fifteen days after the decision has been rendered by the administrative official. Every appeal or application shall refer to the specific provision of the code involved and shall exactly set forth:

(1) If applicable, ~~¶~~the interpretation that is claimed;

(2) The use for which the permit is sought; or

(3) If applicable, ~~†~~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.

(4) The appeal or application shall be filed with the City Clerk officer from whom appeal is taken and with the board. The City Clerk officer from whom appeal is taken shall forthwith transmit to the board, all papers constituting the record upon which the action appealed from was taken.

(B) *Public hearing and notice.*

(4) The board shall fix a reasonable time for the public hearing of an application or appeal, give public notice 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 days preceding the date of such hearing, in a newspaper of general circulation in the city. The public notice shall give the particular location of the property on which the application or appeal is requested, as well as a brief statement of what the application or appeal consists.~~

~~—(2) Evidence of notification of all adjoining property owners shall accompany all applications for variances. The applicant shall present evidence to the zoning official, at least ten days prior to the required public hearing, that all property owners within 200 feet of the boundaries of the subject property have been notified of the particular location of the property, a brief statement of what the application or appeal consists, and of the time, date, and place of the public hearing. Such evidence shall consist of postmarked, certified receipts and/or return receipts.~~

~~—(3) Public hearings may be adjourned from time to time, and, if the time and place of the adjourned meeting is 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) *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 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.

(D) *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 60 days, 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.

(E) *Appeals from Board of Zoning Adjustment.* Any person or persons, or any board, taxpayer, department, board or bureau of the city aggrieved by any decision of the Board of Zoning Adjustment may seek review by a court of record of such decision, in the manner provided by Arkansas law.

§ 153.281 BUILDING PERMITS.

(A) It shall be unlawful to commence the construction, reconstruction, moving, demolition or structural alteration of any building until a building permit has been issued. No building permit shall be issued unless the proposed construction or use is in full conformity with all the provisions of these regulations and other applicable building codes, laws, or regulations. Compliance with paved parking and other site standards

shall be achieved as a condition a change of use for commercial, industrial and multi-family purposes.

(B) All applications for building permits shall be accompanied by a reproducible plan drawn to scale, showing the size of the building to be erected and its location on the zoning lot, the location of any existing buildings or structures, location and dimensions of all driveways and parking or loading areas, drainage and such other information as may be necessary to provide for the administration of these regulations.

(C) Site plans shall be required for all multi-family development proposals of three units or more, as well as for all new commercial and industrial development, and substantial redevelopment. Such plans shall be reviewed and approved by Planning Commission. ~~Site plan decisions by the Planning Commission shall be subject to appeal to the City Council.~~ Complete requirements for site plans are included in the appendices hereto.

§ 153.283 AMENDMENTS.

(5) If the Planning Commission does not recommend approval of an application, the City Council may consider the matter, but only after an appeal is filed by the property owner with the City Clerk-Treasurer within fifteen days after the decision has been rendered by the Planning Commission. ~~, and a special public hearing is set and subsequently held. Applicant responsibility with regard filing documents with the Clerk-Treasurer, as described above, is also applicable.~~ The appeal shall consist of a letter from the aggrieved party which sets forth the reasons for the appeal, any other necessary information as well as the payment of any required fee. The Planning Commission shall fix a reasonable time for the hearing of the appeal.

§ 154.015 DUTIES AND POWERS OF THE CODE OFFICIAL.

(A) *General.* The Code Official shall enforce the provisions of this code. An interpretation of any term or provision of this code made by the Code Official may be appealed to the City Council by an aggrieved person. ~~Such appeal must be made within 14 days of having received notice of violation of this chapter.~~ The appeal must filed with the City Clerk within fifteen days after the decision has been rendered by the Code Official. The appeal shall consist of a letter from the aggrieved party which sets forth the reasons for the appeal, any other necessary information as well as the payment of any required fee. The City Council shall fix a reasonable time for the hearing of the appeal.