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Washington County, AR
Kyle Sylvester Circuit Clerk
File 2023-00017323

ORDINANCE NO. 2023-06-1054

TONTITOWN, WASHINGTON COUNTY, ARKANSAS

AN ORDINANCE TO AMEND AND REPLACE VARIOUS SECTIONS OF CHAPTERS 152 THROUGH 154 OF THE TONTITOWN MUNICIPAL CODE; DECLARING AN EMERGENCY AND FOR OTHER PURPOSES.

WHEREAS, the City of Tontitown has adopted regulations for land use appeals codified in various sections of Chapters 152 through 154 in the Tontitown Municipal Code; and

WHEREAS, the City Council of Tontitown has determined that it is necessary to amend and replace various sections of Chapters 152 through 154 in order to provide updated policies and procedures for appeals on land use in the City of Tontitown; and

WHEREAS, after thorough review of the proposed amendments, the City Council has determined that it is necessary and in the best interest and benefit of the community to amend and replace various sections of Chapters 152 through 154 of the Tontitown Municipal Code, as set forth in the attached Exhibit "A".

NOW, THEREFORE, BE IT ENACTED, by the City Council of the City of Tontitown, Arkansas:

Section 1. That various sections of Chapters 152 through 154 of the Tontitown Municipal Code are hereby amended, as set forth in the attached Exhibit "A", in order to provide updated policies and procedures for appeals on land use in the City of Tontitown.

Section 2. The rest and remainder of the Tontitown Municipal Code not specifically amended herein remains in full force and effect.

Section 3. In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein.

Section 4. Declaration of Emergency. It is hereby found and determined that the sections provided in the attached Exhibit "A" of Chapters 152 through 154 in the Tontitown Municipal Code should be immediately amended in order to provide updated policies and procedures for land use appeals in the City of Tontitown. Therefore, an emergency is declared to exist, and this act, being immediately necessary for the preservation and protection of the public peace, health, safety and welfare of the City and its citizens, shall become effective on the date of its passage and approval by the Mayor. If the Ordinance is neither approved nor vetoed by the Mayor, it shall become effective on the expiration of the period of time during which the Mayor may veto this Ordinance. If the Ordinance is vetoed by the Mayor and the veto is overridden by the City Council, it shall become effective on the date the City Council overrides the veto.

PASSED AND APPROVED this ____ day of June 2023.



APPROVED:

Angela Russell
Angela Russell, Mayor

Rhonda Ardemagni
Rhonda Ardemagni, City Clerk-Treasurer
(SEAL)



§ 152.009 AMENDMENTS.

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.

§ 152.029 APPEALS.

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 ten (10) business 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. The appeal must filed with the City Clerk within ten (10) business 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 approve or deny an application by the Planning Commission shall file an appeal to the City Council with the City Clerk. The appeal must filed with the City Clerk within ten (10) business 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.

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.

§ 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. 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 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 hear requests for a variance from the terms of 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 by a decision of the administrative official. All appeals and applications made to the board shall be made in writing within ten (10) business 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. The City Clerk shall forthwith transmit to the board, all papers constituting the record upon which the action appealed from was taken.

(B) *Hearing and notice.*

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.

(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 1 year, 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 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. Complete requirements for site plans are included in the appendices hereto.

§ 153.283 AMENDMENTS.

(F)(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 within ten (10) business 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.

§ 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. The appeal must be filed with the City Clerk within ten (10) business 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.



property owner with the City Clerk within ten (10) business 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.

§ 154-016 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. The appeal must be filed with the City Clerk within ten (10) business 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.

Washington County, AR

I certify this instrument was filed on
07/07/2023 09:19:20 AM
and recorded in Real Estate
File Number 2023-00017323
Kyle Sylvester - Circuit Clerk

by

