

**ARTICLE 27, BOARD OF ADJUSTMENT**

**Section 1, Members and General Provisions.**

- A. The Board of Adjustment members and appointment procedure.
  - 1. The Board of Adjustment shall consist of five residents of the county, but not more than two shall be residents of the incorporated area of the county, and not more than one shall be a member of the county planning & zoning commission.
  - 2. The membership of the first board appointed shall serve respectively, one for one year, one for two years, one for three years, and two for four years.
  - 3. Thereafter members shall be appointed for terms of four years each.
  - 4. Members shall be removable for cause by the county commission upon written charges and after public hearings.
  - 5. Vacancies shall be filled by the county commission for the unexpired term of any member whose term becomes vacant.
- B. The Board of Adjustment shall elect its own chairman.
- C. The Board of Adjustment shall adopt rules of procedure consistent with the provisions of the Zoning Regulations and the provisions of Sections 64.800 to 64.895 of the Revised Missouri Statutes.
- D. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.
- E. All meetings of the Board of Adjustment shall be open to the public, and minutes shall be kept of all proceedings and official actions, which minutes shall be filed in the office of the Planning & Zoning Director, and shall be a public record.
- F. Appeals to the Board of Adjustment may be taken by any owner, lessee or tenant of land, or by a public officer, department, board or bureau, affected by any decision of the Planning & Zoning Director, the administrative officer, in administering a county zoning ordinance.
- G. Appeals to the Board of Adjustment shall be taken within a period of not more than three months, and in the manner provided by the rules of the Board of Adjustment. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken shall certify 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.

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H. The Board of Adjustment shall have the following powers and it shall be its duty:

1. To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by an administrative official in the enforcement of the county zoning regulations;
2. To hear and decide all matters referred to it or which it is required to determine under these Zoning Regulations;
3. Where, by reason of exceptional narrowness, shallowness, shape or topography or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under sections 64.845 to 64.880 of the Revised Statutes of Missouri would result in peculiar and exceptional difficulties to or exceptional and demonstrable undue hardship upon the owner of the property as an unreasonable deprivation of use as distinguished from the mere grant of a privilege, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the demonstrable difficulties or hardships, provided the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.

I. In exercising the above powers, the Board of Adjustment may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may take such 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.

J. Any owners, lessees or tenants of buildings, structures or land jointly or severally aggrieved by any decision of the board of adjustment or of the county commission, respectively, under the provisions of sections 64.845 to 64.880 of the Revised Statutes of Missouri, or board, commission or other public official, may present to the Circuit Court of Stone County, Missouri, a petition, duly verified, stating that the decision is illegal in whole or in part, specifying the grounds of the illegality and asking for relief therefrom.

1. Upon the presentation of the petition the court shall allow a writ of *certiorari* directed to the Board of Adjustment or the county commission, respectively, of the action taken and data and records acted upon, and may appoint a referee to take additional evidence in the case.

2. The Circuit Court may reverse or affirm or may modify the decision brought up for review. After entry of judgment in the circuit court in the action in review, any party to the cause may prosecute an appeal to the appellate court having jurisdiction in the same manner now or hereafter provided by law for appeals from other judgments of the circuit court in civil cases.

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E. Three (3) members of the Board of Adjustment shall constitute a quorum to hold meetings. Less than a majority of the Board of Adjustment may meet and recess the meeting for the purpose of obtaining a quorum.

### **Section 2, Meetings.**

- A. All meetings of the Board of Adjustment shall be open to the public.
1. Public notices of such meeting shall be given in at least one (1) publication in a newspaper of general circulation in the County at least fifteen (15) days before the date of the meeting.
  2. The notice shall state:
    - a. the time and place of the hearing,
    - b. the official docket of the Board of Adjustment, and
    - c. the place where the specific requests will be accessible for examination by interested parties.
  3. Minutes shall be filed in the Office of the Planning & Zoning Director and shall be a public record.

### **Section 3, Appeals**

- A. Appeals to the Board of Adjustment may be taken by any person aggrieved or by a public officer, department, board or bureau affected by any order or decision of the Planning & Zoning Director in administering county's zoning regulations.
- B. Appeals to the Board of Adjustment may be taken by any person aggrieved or by a public officer, department, board or bureau affected by any order or decision of the Planning & Zoning Commission in administering the county's zoning regulations.
- C. The appeal shall be taken within a period of not more than three (3) months and in the manner provided by the rules of the Board of Adjustment.
- D. The appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer or entity from whom the appeal is taken shall certify to the Board of Adjustment that the grounds of appeal would, in his, her, or its opinion, jeopardize life or property or be detrimental to life or property.

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**Section 4, Authority.** The Board of Adjustment shall have the following powers and it shall be its duty to hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the Planning & Zoning Director or the Planning & Zoning Commission in the enforcement of the County Zoning Regulations.

- A. To hear and decide all matters referred to it or upon which it is required to pass under the county's zoning regulations.
- B. In passing upon appeals, where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such order, which difficulties or hardship constitute an unreasonable deprivation of use as distinguished from merely granting a privilege, the Board of Adjustment may vary or modify the application of any of these Zoning Regulations so that the intended purpose of these Zoning Regulations shall be strictly observed, public safety and welfare secured and substantial justice done.

## **Section 5, Application, Appeals, Hearings and Decisions of the Board of Adjustment.**

- A. Applications for Board of Adjustment Decision. When and By Whom Taken
  - 1. An application, in cases in which the Board of Adjustment has original jurisdiction under the provisions of these Zoning Regulations, may be filed by any property owner, including a tenant, or by a governmental officer, department, board or bureau.
  - 2. Such application shall be filed with the Planning & Zoning Director, who shall transmit same to the Board of Adjustment.
- B. Appeals to Board of Adjustment.
  - 1. When and By Whom Taken. An appeal to the Board of Adjustment may be taken by any owner, lessee or tenant of lands, or by a public officer, department, board or bureau, affected by a decision of the Planning & Zoning Director or the Planning & Zoning Commission in administering a County Zoning Regulation.
  - 2. Such appeals shall be taken within a period of not more than three (3) months, and in the manner provided by the rules of the Board of Adjustment.
  - 3. The Planning & Zoning Director shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed was taken.
  - 4. The Chairman of the Planning & Zoning Commission, or his designated representative, shall attend the appeal hearing and shall advise the Board of Adjustment of those key issues considered in the decision that is under appeal.

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### **C. Hearings.**

1. The Board of Adjustment shall fix a reasonable time for the hearing of the application or appeal.
2. Each application or appeal shall be accompanied by a check, payable to payable to Stone County Planning & Zoning, or a cash payment in an amount to be determined by the County Commission, such amount to apply toward the cost of publishing and/or posting and mailing the notices of the hearing or hearings.
3. At the hearing any person may appear in person or by attorney.

### **D. Decisions of the Board of Adjustment.**

1. The Board of Adjustment shall decide all applications and appeals within thirty (30) days after the final hearing thereof.
2. The decision of the Board of Adjustment shall be transmitted to the applicant or appellant, and to the Planning & Zoning Director and observed by the applicant or appellant, and the applicant or appellant shall incorporate the terms and conditions of the same in the permit to the applicant or appellant, whenever a permit is authorized by the Board of Adjustment.
3. A decision of the Board of Adjustment shall not become final until the expiration of five (5) days from the date of such decision is made, unless the Board of Adjustment shall specify a different period of time, not to exceed thirty days.

## **Section 6, Stay of Proceedings.**

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Planning & Zoning Director or the Planning & Zoning Commission, from whom the appeal is taken, shall certify to the Board of Adjustment that by reasons of facts stated in the certificate, a stay would, in his/her opinion, cause immediate peril to life or property.

## **Section 7, Powers of the Board of Adjustment**

A. The Board of Adjustment shall have the power to hear and decide, according to the provisions of the provisions of these Zoning Regulations, applications that are properly filed in the manner provided in these Zoning Regulations, for:

1. Special exceptions,
2. Interpretation of the Zoning Map, or

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3. For decisions upon other special questions on which these Zoning Regulations provide that the Board of Adjustment shall decide.
- B. In considering an application for a special exception or interpretation of the zoning map, the Board of Adjustment shall give due regard to the nature and conditions of all adjacent uses and structures;
- C. In authorizing a special exception, the Board of Adjustment may impose such requirements and conditions with respect to location, construction, maintenance and operation in addition to those expressly stipulated in these Zoning Regulations for the particular special exception as the Board of Adjustment may deem necessary for the protection of adjacent properties and the public interest.

### Section 8, Special Exceptions.

- A. In addition to permitting the special exceptions specified in these Zoning Regulations, the Board of Adjustment shall have the power to permit the following special exceptions:
1. **Nonconforming Uses.** The substitution of a nonconforming use existing at the time of enactment of these Zoning Regulations by another nonconforming use, if no structural alterations, except those required by law or resolution, are made provided, however, that
    - a. in an R District, no change shall be authorized to any use that is not a permitted use or a conditional use in any R District and
    - b. in a C District, no change shall be authorized to any use that is not a permitted use or a conditional use in any C District.
  2. The extension of a nonconforming building upon the lot occupied by such building, or on an adjoining lot, provided that:
    - a. such lot was under the same ownership as the lot in question at the time the use of such building became nonconforming, and
    - b. that such extension is necessary and incidental to such existing nonconforming use provided that
      - (1) The value of such extension shall not exceed in all one-third (1/3) of the assessed valuation for tax purposes of the existing building devoted to a nonconforming use,
      - (2) That such extension shall be within a distance of not more than fifty (50) feet of the existing building or premises, and

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(3) Provided further that such extension shall in any case be undertaken within five (5) years of the enactment of these Zoning Regulations.

c. Provided, however, that the Board of Adjustment shall not authorize any extension or enlargement that would result in extending the useful life of a nonconforming building, or that would result in violation of the provisions of these Zoning Regulations with respect to any adjoining premises.

### **Section 9, Extension of Use on Border of Zoning District.**

The extension of a use or building into a more restricted Zoning District immediately adjacent thereto, but not more than twenty-five (25) feet beyond the dividing line of the two (2) Zoning Districts, under such conditions as will safeguard development in the more restricted Zoning District.

### **Section 10, Conditional Industrial Uses.**

A. Permitting in such parts of any M-2 District as are more than six hundred (600) feet distant from any R District and more than two hundred (200) feet from every other Zoning District except an M-1 District,

1. Any of the industries or uses listed in Article 18 and permitted in any M-1 District as an accessory use,
2. Any use permitted in an M-2 District as a principal use, as specified in Article 17.

B. In doing so, the Board of Adjustment may require the installation, operation and maintenance in connection with the proposed use of such devices or such methods of operation as may, in the opinion of the Board of Adjustment, be reasonably required to prevent or reduce fumes, gas, dust, smoke, odor, water carried waste, noise, vibration or similar objectionable features, and

C. May impose such conditions regarding the extent of open spaces between such industries or uses and surrounding properties as will tend to prevent or reduce the harm that might otherwise result from the proposed use of surrounding properties and neighborhoods.

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### Section 11, Temporary Structures and Uses.

A. Any use designated as temporary such as neighborhood block parties, fairs, and festivals, re-enactments, or outdoor concerts including seasonal uses such as fireworks stands, Christmas tree sales, roadside produce stands, not including those agricultural products grown on-site, but including other uses requiring retail sales must have a permit to be allowed in any Agricultural or Residential Zoning District.

1. Activities conducted as fund raising events for non-profit organizations such as churches, libraries and museums do not require a permit so long as they do not exceed six (6) events per calendar year and each event shall not exceed a period of three (3) consecutive days.

2. The Board of Adjustment shall have the authority to allow any use proposed, finding that such use is not inappropriate for neighborhood or for adjacent properties. The Board of Adjustment may make requirements, limitations or conditions with respect to the location, construction, maintenance and operation deemed reasonably necessary for the protection of the neighborhood or adjacent properties.

3. No permit shall be granted for a period exceeding six (6) days except to promote seasonal sales or to allow a reasonable period in which to erect and take down temporary structures.

4. A site plan must be submitted with all applications showing temporary structures, parking facilities and drives, emergency access easements and any applicable setbacks.

5. Garage sales do not require a use permit.

B. Outdoor events must include provisions for public safety, ensurance of sanitary conditions, and adequate site design to accommodate vehicles, pedestrians, and temporary structures. At a minimum an applicant must include:

1. Provisions for adequate parking facilities,

2. Estimates of the expected attendance for adequate restroom and wastewater disposal facilities,

3. Access easements for ambulance and other emergency services to the entire festival area,

4. A litter control plan showing location of all trash receptacles,

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5. Arrangements must be made for policing during and after the hours of the event, and
6. Provisions must be made for any temporary street closure with the proper County office.

### **Section 12, Interpretation of Zoning Map.**

- A. Where the street or lot layout actually on the ground, or as recorded, differs from the street and lot line as shown on the zoning map, the Board of Adjustment, after notice to the owners of the property and after public hearing, shall interpret the map in such a way as to carry out the intent and purposes of these Zoning Regulations.
- B. In case of any question(s) as to the location of any boundary line between Zoning Districts, a request for interpretation of the zoning map may be made to the Board of Adjustment and a determination shall be made by said Board of Adjustment.

### **Section 13, Administrative Review and Variances.**

- A. **Administrative Review.** The Board of Adjustment shall have the power to hear and decide appeals, filed as is provided in these Zoning Regulations, where it is alleged by the appellant that there is an error in any order, requirements, decisions, grant or refusal made by the Planning & Zoning Director or the Planning & Zoning Commission in the provisions of these Zoning Regulations.
- B. **Variances**
  1. The Board of Adjustment shall have the power to authorize upon appeal in specific cases, filed as is provided in these Zoning Regulations, such variances from the provisions of requirements of these Zoning Regulations, as will not be contrary to the public interest; but only in such cases where, owing to special conditions pertaining to a specific piece of property, the literal enforcement of the provisions or requirements of these Zoning Regulations would cause undue and unnecessary hardship.
  2. Where, by reasons of the exceptional narrowness, shallowness or unusual shape of a specific piece of property on the effective date of these Zoning Regulations, or by reasons of exceptional topographic conditions, or other extraordinary situation or condition on such piece of property immediately adjoining the piece of property in question, the literal enforcement of the requirements of these Zoning Regulations would involve practical difficulty or would cause unnecessary hardship to carry out the spirit and purpose of these Zoning Regulations. The Board of Adjustment shall have the power to authorize a variance from the terms of these Zoning Regulations, so as to relieve such hardship and so that the spirit and purpose of these Zoning Regulations shall be observed and substantial justice done.

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3. In authorizing a variance, the Board of Adjustment may:
  - a. attach thereto such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the interest of the furtherance of the purposes of these Zoning Regulations and in the public interest.
  - b. require a guarantee or bond that the conditions attached are being and will be complied with, secured by:
    - (1) a performance bond or surety bond issued by an insurance company licensed pursuant to the laws of the State of Missouri whose claims-paying ability is rated in the highest category by at least one nationally recognized statistical rating agency. The bond shall be written on terms acceptable to the County Commission provided by a surety company authorized to do business in Missouri.
    - (2) a cash bond,
    - (5) cash that shall be deposited and held by the County,
    - (6) a certified check that shall be cashed and the proceeds deposited and held by County, or
    - (7) an irrevocable standby letter of credit issued by a Federal Home Loan Bank with offices in Missouri, possessing the highest rating issued by at least one nationally recognized statistical rating agency. The letter of credit shall be written on terms acceptable to the County Commission, and shall contain an assurance that the letter of credit will be automatically renewed or replaced by the issuing bank upon expiration, until such time as the letter of credit is released by the County.
4. No variance from the provisions or requirements of these Zoning Regulations shall be authorized by the Board of Adjustment unless the Board of Adjustment finds that all the following facts and conditions exist:
  - a. That there are exceptional or extraordinary circumstances or conditions applying to the property in question, or to the intended use of the property that do not apply generally to other properties or classes of uses in the same Zoning Districts.

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b. That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same Zoning District and in the same vicinity.

c. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of these Zoning Regulations or the public interest.

5. No grant of a variance shall be authorized unless the Board of Adjustment specifically finds that the condition or situation of the specific piece of property, or the intended use of said property, for which variance is sought, one or the other in combination is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

### **Section 14, General.**

In exercising its power, the Board of Adjustment may in conformity with the provisions of statute and of these Zoning Regulations, 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 sought to be made, and to that end shall have all the power of the office from whom the appeal is taken.

### **Section 15, Appeal from Decision by the Board of Adjustment.**

Appeals from any decision of the Board of Adjustment shall be to the Circuit Court of Stone County, Missouri.