

CHAPTER 16

BOARD OF ADJUSTMENT

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SECTION 1600. ESTABLISHMENT OF THE BOARD OF ADJUSTMENT

- A. There is hereby established a Board of Adjustment of the City of Catoosa with the powers and duties established in this Chapter. The Board of Adjustment shall consist of five (5) members. The Mayor appoints the members of the Board of Adjustment subject to confirmation by the City Council. Members of the Board of Adjustment shall serve without compensation for a term of three (3) years.
- B. Vacancies shall be filled for an unexpired term of any member in the manner established for appointments. A Board member may be removed for cause by the Mayor and City Council after notice, written charges and public hearing.
- C. The Board shall organize, elect its chairperson, appoint a secretary and adopt rules necessary to conduct its affairs.

SECTION 1601. POWERS OF THE BOARD

The Board has the power to hear appeals from the determinations of the Zoning Officer in enforcing this Code, to grant Variances and Special Exceptions, and to make interpretations of the Zoning Map and Text, in accordance with the substantive and procedural standards established in this Chapter.

- A. Appeals from an Administrative Official

The Board of Adjustment has the power to hear and decide an appeal where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Officer in the enforcement of this Code.

- 1. Notice of Appeal

An appeal shall be taken within ten (10) days from the determination which resulted in the complaint. Notice of appeal, specifying the grounds, shall be filed with the Zoning Officer. Upon receiving the notice of appeal, the Zoning Officer shall transmit to the Board of Adjustment copies of all papers constituting the record of said matter. Upon receipt of the record, the appeal shall be set for public hearing in accordance with the rules established by the Board. (See Section 1602, Proceedings of the Board and Section 1603, Notice of Public Hearings)

2. Board of Adjustment Action

- a. The Board shall hold the public hearing.
- b. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed.
- c. The Board may make such order, requirement, decision, or determination as necessary. To that end, the Board has all the powers of the Zoning Officer from whom the appeal is taken.
- d. The concurring vote of three (3) members of the Board shall be required to reverse any order, requirement, decision or determination of the Zoning Officer enforcing this Code.

3. Stay of Proceedings

Notice of an appeal to the Board stays all proceedings on the action appealed, unless the Zoning Officer from whom the appeal is taken certifies to the Board that by reason of facts stated, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order granted by the Board on due and sufficient cause shown.

B. Interpretation

1. The Board shall interpret the text of this Code or the Official Zoning Map upon an appeal from a determination of the Zoning Officer and/or City Planner. Upon receipt of the request, a public hearing shall be set in accordance with the rules established by the Board. (See Section 1602, Proceedings of the Board and Section 1603, Notice of Public Hearings)
2. Where a question arises as to the Zoning District classification for a particular use, the Board of Adjustment, upon written request of the Zoning Officer and/or City Planner, may find and determine the classification of the use in question. Upon receipt of the request, a public hearing shall be set in accordance with the rules established by the Board. (See Section 1602, Proceedings of the Board and Section 1603, Notice of Public Hearings)

C. Variances

1. The Board of Adjustment, upon application and after public hearing, and subject to the procedural and substantive standards established in this Chapter may grant a Variance from the terms of this Code as follows: (See Section 1602, Proceedings of the Board and Section 1603, Notice of Public Hearings)
 - a. A Variance shall only be granted if it is determined it shall not cause substantial detriment to the public good or impair the spirit, purposes and intent of this Zoning Code or the Comprehensive Plan;
 - b. Variances shall be considered when by reason of exceptional narrowness, shallowness, shape, topography, or other extraordinary or exceptional situation, condition, or circumstance peculiar to a particular property, the literal enforcement of the Code will result in unnecessary hardship;
 - c. The Board shall not vary any jurisdictional requirement such as notice; and
 - d. The Board shall not permit by Variance a principal use not otherwise permitted in the applicable Zoning District.
2. Application
 - a. A request for a Variance is initiated by filing an application with the Zoning Officer or City Planner. The application shall be in such form and contain such information as established by the Board. The request will then be set for public hearing in accordance with the rules established by the Board.
 - b. Each applicant shall submit with the application a list certified by a Bonded Abstractor of the names and addresses of all property owners of record within 300 feet of the affected property as well as the legal description of each property to receive notice. (For additional Applicant responsibilities as to notice see Section 1603, Notice of Public Hearing)
3. Board of Adjustment Action
 - a. The Board shall hold the public hearing and upon the concurring vote of three (3) members may grant a Variance after finding:
 - 1) That by reason of extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship;
 - 2) That such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same Zoning District;

- 3) That the Variance to be granted shall not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; or
 - 4) That the Variance to be granted shall be the minimum necessary to grant relief.
- b. The Board in granting a Variance shall prescribe appropriate conditions and safeguards, and may require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions attached.
 - c. No Nonconforming Use of neighboring lands, structures or buildings in the same Zoning District and no Permitted or Nonconforming Use of land, structures or building in other districts shall be considered grounds for the issuance of a Variance.

4. Time Limitation on Variances

A Variance which has not been utilized within one (1) year from date of the order granting the Variance shall thereafter be void, provided that the Board has not extended the time for utilization. For the purpose of this provision, utilization shall mean actual use or the issuance of a Building Permit, when applicable, provided construction is diligently carried to completion.

D. Special Exceptions

- 1. The Board of Adjustment upon application and after hearing subject to the procedural and substantive standards established in this Chapter, may grant the following Special Exceptions:
 - a. Special Exception uses as designated and regulated within the permitted principal use provisions, accessory use provisions or Use Unit provisions of the Zoning Districts;
 - b. Modification of restrictions as provided within Section 209 Height Exceptions;
 - c. The change of a Nonconforming Use as provided in Section 1402, Chapter 14, Nonconformities;
 - d. The restoration of a partially destroyed structure containing a Nonconforming Use as provided in Section 1402, Chapter 14, Nonconformities;
 - e. The restoration of a partially destroyed Nonconforming Structure as provided in Section 1405, Chapter 14, Nonconformities;
 - f. The modification of a screening requirement, as provided in Chapter 2,

Section 216;

- g. The modification of a screening requirement, as provided in Chapter 12, Section 1229;
 - h. The modification of the Off-street Parking and Off-street Loading requirements as provided in Section 1407, Chapter 14, Nonconformities;
 - i. Antennas and Antenna Supporting Structures as provided in Section 1204;
 - j. The modification of Permitted Yard Obstructions as provided in Chapter 2, Section 211;
 - k. Permit residential accessory uses and structures on abutting residentially zoned lots which are under common ownership;
 - l. The modification of the requirements in Sections 1211.E, 1212.E, 1214.E, 1215.E, and 1223.E;
 - m. Reduction of the number of required Off-street Parking spaces on a lot or may allow the required Off-street Parking on a lot other than the lot which contains the Adult Entertainment Establishment or Dance Hall as provided in Sections 1408 and 1409; and
 - n. The modification of front yard requirements as provided in Chapter 4, Section 404.
2. Application

A request for a Special Exception shall be initiated by the filing of an application with the Zoning Officer and/or City Planner. The application shall be in such form and contain such information as required by the Board. The request shall then be set for public hearing in accordance with the rules established by the Board. (See Section 1602, Proceedings of the Board and Section 1603, Notice of Public Hearings)

3. Board of Adjustment Action

- a. The Board shall hold the public hearing and upon the concurring vote of three (3) members may grant a Special Exception after finding:
 - 1) That the Special Exception will be in harmony with the spirit and intent of the Code and the Comprehensive Plan, and will not be injurious to the neighborhood or otherwise detrimental to the public safety and welfare; and
 - 2) That the relief granted shall be the minimum relief necessary.

- b. The Board in granting a Special Exception shall prescribe appropriate conditions and safeguards. The Board may limit the grant of the Special Exception to a specified period of time, and may require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions attached.

4. Time Limitation on Special Exceptions

A Special Exception which has not been utilized within one (1) year from date of the approval by the Board is void, unless the Board has extended the time for utilization. For the purposes of this provision, utilization means actual use or the issuance of a Building Permit, when applicable, provided construction is diligently carried to completion.

SECTION 1602. PROCEEDINGS OF THE BOARD

- A. Meetings shall be held at the call of the Chairperson and at such other times as the Board may determine.
- B. The Chairperson, or in the absence of the Chairperson, the acting Chairperson, may administer oaths and compel attendance of witnesses.
- C. All meetings, deliberations, and voting of the Board shall be open to the public.
- D. The Board shall keep minutes of its proceedings. The minutes shall show the vote of each member upon each question, or if absent or failing to vote, indication of such fact, and include records of its examinations and other official actions and findings. (See Section 1601.C.3 and Section 1601.D.3) All of this information shall be immediately filed in the office of the City Clerk and be a public record.
- E. The quorum, notice, filing and substantive requirements concerning the Board's exercise of a particular power are established within this Chapter.

SECTION 1603. NOTICE OF PUBLIC HEARINGS

- A. The Board of Adjustment shall give notice and conduct a public hearing before acting on any Appeal from the Zoning Officer enforcing this Code, or before granting any Special Exception or Variance.
- B. Responsibility for Giving Notice

It shall be the responsibility of the Applicant for giving notice and for the payment of all fees and costs.
- C. For a Special Exception, Variance or an Appeal from a determination of the Zoning

Officer enforcing this Code, a minimum of ten (10) days notice of public hearing shall be required.

D. Type of Notice Required

1. Publication in a Newspaper of General Circulation (See Section 1603.E);
2. Mailing written notice to all owners of property within a 300 foot radius of the exterior boundary of the subject property (See Section 1603.E); and
3. Posting of a sign on the property. (See Section 1603.E)

E. Specifics of Notice

1. Notice given by publication in a Newspaper of General Circulation in the City of Catoosa shall include:
 - a. Notice of the date, time and place of the hearing;
 - b. A map of the area to be affected which indicates street names or numbers, streams, or other significant landmarks in the area;
 - c. Street address and legal description; and
 - d. The present zoning classification and the type relief requested by the applicant.
2. Posting of the affected property by a sign.
 - a. The sign shall state:
 - 1) The date, time and place of public hearing;
 - 2) Who will conduct the public hearing;
 - 3) The present zoning classification, and the type relief requested by the applicant; and
 - 4) Other information which may be necessary to provide adequate and timely public notice.
 - b. The dimensions of this sign, design, content and location shall conform to the specifications established by the Board of Adjustment. (Available from the City Planner or the Zoning Officer.)

3. Written Notice

At least ten (10) days prior to the hearing, written notice must be sent to all owners of real property included in the application and all owners of real property with a 300 foot radius of the exterior boundary of the property included in the proposed change. Written notice shall include:

- a. The legal description of the property and the street address or the approximate location in the City of Catoosa;
- b. The present zoning of the property and the type of relief sought by the applicant; and
- c. The date, time and place of the public hearing.
- d. Each Applicant shall submit with the application a list certified by a Bonded Abstractor of the names and addresses of all property owners of record within 300 feet of the affected property as well as the legal description of each property to receive notice.

F. Affidavit Attesting Public Notice Has Been Given

Prior to the Board of Adjustment Public Hearing an Affidavit shall be submitted by the applicant, to the City Planner or Zoning Officer, which attests that all Public Notice requirements have been achieved.

SECTION 1604. FEES

An application for an Appeal from the Zoning Officer enforcing this Code, or any Variance or Special Exception shall be accompanied by the payment of a fee in accordance with the Schedule of Fees adopted by resolution by the City Council of the City of Catoosa. (See Appendix F for the Fee Schedule)

SECTION 1605. APPEAL TO THE DISTRICT COURT

A. Procedure

1. An appeal from any action, decision, ruling, judgment, or order of the Board of Adjustment may be taken by any person or persons aggrieved, or any taxpayer or any officer, department, board or bureau of the City to the District Court.
2. Notice of appeal which shall specify the grounds of such appeal shall be filed within ten (10) days from the date of the action appealed. An appeal shall be filed with the City Clerk. No bond or deposit for costs shall be required for such appeal.

3. Upon filing of the notice of appeal, the Board shall forthwith transmit to the Court Clerk of the County the original or certified copies of all the papers constituting the record in the case, together with the order, decision or ruling of the Board.

B. Stay of Proceedings

An appeal to the District Court stays all proceedings in furtherance of the action appealed from unless the Chairperson of the Board certifies to the Court Clerk, after notice of appeal shall have been filed, that by reason of facts stated in the certificate a stay would cause imminent peril of life or property. In such case, proceedings shall not be stayed other than by a restraining order granted by the District Court.

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