

ORDINANCE NO.: 2012-096

Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 17, Planning, Land Development and Zoning, Article III, Zoning, Division 3, Board of Zoning Appeals

BE IT ORDAINED by the Mayor and Council this 16th day of October, 2012, that the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 17, Planning, Land Development and Zoning, Article III, Zoning, Division 3, Board of Zoning Appeals, is amended to read as follows:

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DIVISION 3. BOARD OF ZONING APPEALS

Sec. 17-111. Organization and procedures.

(a) Establishment; membership. A board of zoning appeals and a board of zoning appeals – form based codes is hereby established.

(1) The board of zoning appeals (BoZA) shall consist of seven members appointed by the city council, a majority of which shall constitute a quorum. The members shall be appointed for staggered terms of three years and until successors are appointed and qualified. Members may be removed for cause by the city council upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board shall elect one of its members chairman for a one-year term.

(2) The board of zoning appeals – form based codes (BoZA-FBC) shall consist of five members appointed by city council, a majority of which shall constitute a quorum. The members shall be appointed for staggered terms of three years and until successors are appointed and qualified. Members may be removed for cause by the city council upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board shall elect one of its members chairman for a one-year term. Of the members appointed, one shall be an architect, one shall be an attorney, one shall be a landscape architect or urban planner and one shall be in real estate.

(b) Meetings and rules of procedure; records.

(1) Each board shall adopt rules necessary to the conduct of its affairs in accordance with the provisions of this article. Meetings of each board shall be held at the call of the chairman and at those other times as the board may determine. The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

(2) Each board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such facts, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the zoning administrator and shall be a public record.

(c) Appeal procedure. Appeals to each board may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the zoning administrator and/or the Consolidated Review Committee (CRC). That appeal shall be taken within 30 days by filing with the zoning administrator and with the applicable board a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board shall hear the appeal within thirty business days, give public notice thereof as well as due notice to the parties in

interest, and decide the appeal within ten business days. At the hearing, any party may appear in person or by agent or attorney.

(d) Stay of proceedings pending appeal. An appeal stays all proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the applicable board of zoning appeals, after notice of appeal is filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board or by a court of record on application, on notice to the zoning administrator from whom the appeal is taken and on due cause shown.

Sec. 17-112. Powers and duties of the board of zoning appeals.

The board of zoning appeals shall have the following powers and duties:

(1) Administrative review. The board of zoning appeals shall hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article, provided that those appeals must be taken within 30 days after the order, requirement, decision or determination which is alleged to be in error is made.

(2) Special exceptions.

a. Duties. Duties of the board are as follows:

1. Hear and decide only the applications for special exceptions as the board of zoning appeals is specifically authorized to pass upon by terms of this article;
2. Decide the questions as are involved in determining whether special exceptions should be granted;
3. Prescribe appropriate conditions and safeguards in conformity with this article; and
4. Deny special exceptions when not in harmony with the intent and purpose of this article.

b. Procedures in consideration of special exception applications.

1. A written application for a special exception shall be submitted indicating the section of this article under which the special exception is sought and stating the grounds on which it is requested.
2. Notice of public hearing shall be posted on the property for which special exception is sought and shall be published at least 15 days prior to the public hearing in a newspaper of general circulation in the city.
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
4. The board of zoning appeals shall make a finding that it is empowered under the section of this article described in the application to grant the special exception and that the special exception will not adversely affect the public interest.
5. The board of zoning appeals shall not vary the conditions and/or provisions of sections 17-259 through 17-274 that establish specific standards that must be met prior to the establishment of several principal uses that require a special exception.
6. The board of zoning appeals may prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both.

c. Criteria for special exceptions. In addition to definitive standards in this article, the board of zoning appeals shall consider the following:

1. Traffic impact;

2. Vehicle and pedestrian safety;
3. Potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property;
4. Adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and
5. Orientation and spacing of improvements or buildings.

d. Effect of failure to meet conditions.

1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms under which a special exception is granted, shall be deemed a violation of this article, punishable under the penalties established in this article.
2. Failure to begin or complete, or begin and complete, an action for which a special exception is required, within the time limit specified, when such time limit is made a part of the terms under which the special exception is granted, shall void the special exception.

(3) Variances.

a. Duties. Duties of the board are as follows:

1. It shall be the duty of the board to authorize upon appeal in specific cases a variance from the terms of this article as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this article will, in an individual case, result in unnecessary hardship, so that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the board of appeals that the conditions listed under subsection (3)b of this section have been met.
2. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts, shall be considered grounds for the issuance of a variance.
3. In granting any variance, the board may prescribe conditions and safeguards in conformity with this article.

b. Procedures in consideration of request for variance.

1. A written application for a variance shall be submitted demonstrating that:
 - (i) There are extraordinary and exceptional conditions pertaining to the piece of property;
 - (ii) These conditions do not generally apply to other property in the vicinity;
 - (iii) Because of these conditions, the application of this division to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
 - (iv) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.
2. The board may not grant a variance the effects of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably should a variance be granted, may not be considered grounds for a variance.
3. Notice of public hearing shall be given as described in subsection (2)b.2 of this section.
4. The hearing shall be held. Any party may appear in person, or by agent or by attorney.
5. The board of zoning appeals shall make findings that the requirements of subsection (3)b.1 of this section have been met by the applicant for a variance.

6. The board of zoning appeals 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 the land, building or structure.

7. The board of zoning appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

8. The board of zoning appeals may prescribe a time limit within which the action for which the variance is requested shall be begun or completed, or both.

c. Effect of failure to meet conditions.

1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article, punishable under penalties established in this article.

2. Failure to begin or complete, or begin and complete, an action for which a variance is granted, within the time limit specified, when such time limit is made a part of the terms under which the variance is granted, shall void the variance.

(4) Joint applications for special exception and variance(s). Whenever in conjunction with an application for special exception, an applicant files an application for variance, the board of zoning appeals may combine the applications and consider them simultaneously, provided that the procedures established for special exceptions and variances within this section 17-112 shall not be varied.

Sec. 17-113. Powers and duties of the board of zoning appeals – form based codes

The board of zoning appeals – form based codes shall have the following powers and duties:

(1) Administrative review. The board of zoning appeals – form based codes shall hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator or the Consolidated Review Committee in the enforcement of this article when the property is governed by a form based code established pursuant to Section 6-29-760, which shall be identified by City Council as being subject to the BoZA-FBC in the PUD ordinance or the zoning ordinance establishing the base zoning, provided that those appeals must be taken within 30 days after the order, requirement, decision or determination which is alleged to be in error is made.

(2) Variances.

a. Duties. Duties of the board are as follows:

1. It shall be the duty of the board to authorize upon appeal in specific cases a variance from the terms of this article as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this article will, in an individual case, result in unnecessary hardship, so that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the board of appeals – form based codes that the conditions listed under subsection (3)b of this section have been met.

2. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts, shall be considered grounds for the issuance of a variance.

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(b) All final decisions and orders of a board shall be in writing and be permanently filed in the office of the zoning administrator as a proper record. All findings of fact and conclusions of law shall be separately stated in final decisions or orders of the board.

Sec. 17-115. Appeals from decisions of board.

Any person who may have a substantial interest in any decision of a board of zoning appeals, or any officer or bureau of the city having authority, may appeal from any decision of a board to the circuit court in and for the county by filing with the clerk of such court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within 30 days after the decision of a board is mailed.

Requested by:

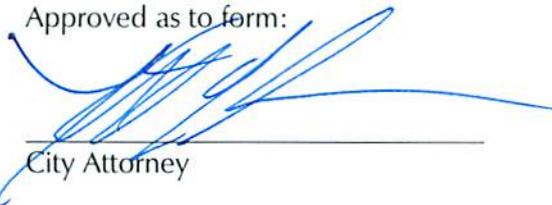
Planning and Development Services Director


MAYOR

Approved by:


City Manager

Approved as to form:


City Attorney

ATTEST:


City Clerk

Introduced: 10/2/2012

Final Reading: 10/16/2012

3. In granting any variance, the board may prescribe conditions and safeguards in conformity with this article.

b. Procedures in consideration of request for variance.

1. A written application for a variance shall be submitted demonstrating that:

(i) There are extraordinary and exceptional conditions pertaining to the piece of property;

(ii) These conditions do not generally apply to other property in the vicinity;

(iii) Because of these conditions, the application of this division to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

(iv) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

2. The board may not grant a variance the effects of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably should a variance be granted, may not be considered grounds for a variance.

3. Notice of public hearing shall be posted on the property for which variance is sought and shall be published at least 15 days prior to the public hearing in a newspaper of general circulation in the city.

4. The hearing shall be held. Any party may appear in person, or by agent or by attorney.

5. The board of zoning appeals – form based codes shall make findings that the requirements of subsection (3)b.1 of this section have been met by the applicant for a variance.

6. The board of zoning appeals – form based codes 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 the land, building or structure.

7. The board of zoning appeals – form based codes shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

8. The board of zoning appeals – form based codes may prescribe a time limit within which the action for which the variance is requested shall be begun or completed, or both.

c. Effect of failure to meet conditions.

1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article, punishable under penalties established in this article.

2. Failure to begin or complete, or begin and complete, an action for which a variance is granted, within the time limit specified, when such time limit is made a part of the terms under which the variance is granted, shall void the variance.

Sec. 17-114. Actions and decisions of board.

(a) Upon appeal of a decision of the zoning administrator or the CRC, a board of zoning appeals may, in conformity with the provisions of this article, 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 ought to be made, and to that end shall have the powers of the zoning administrator or the CRC from whom the appeal is taken.