

TITLE EIGHT--Board of Zoning Appeals
Chap. 1172 Board of Zoning Appeals

CHAPTER 1172
Board of Zoning Appeals

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1172.01 ESTABLISHMENT AND APPOINTMENT.

(a) A Board of Zoning Appeals is hereby established having the powers as hereinafter indicated. Such Board shall consist of seven (7) members appointed by the President of the City Commission with the consent of the Commission, and shall include one (1) member of the City Planning Board. The members of the Board of Zoning Appeals and their terms of office as of June 4, 1991, shall be established by an Ordinance enacted by the City Commission. The terms of the representative of the City Planning Board shall expire with that of his Planning Board appointment. No member shall serve more than three (3) consecutive terms. After a member has served during three (3) consecutive terms, he shall be ineligible for reappointment to the Board of Zoning Appeals. As the terms of all members expire, except the representative of the City Planning Board, their successors shall each be appointed for three-year terms. Vacancies shall be filled in the same manner as original appointments, and shall be for the unexpired term.

(b) The Director of Community Development or his designated representative shall be the Secretary for the Board. The Director of Community Development or his designated representative shall be technical adviser to the Board and shall be present at all meetings of the Board.

- (c) Persons eligible for service on the Board shall meet the following qualifications:
- (1) Persons serving on another City board or commission shall not be eligible to serve on the Board; provided, however one member may serve on both the

- City Planning Board and the Board of Zoning Appeals.
- (2) Persons serving on the Board shall be electors of the city.
 - (3) A person who is a member of a City employee's family, as defined in Section 111.04, or an elected public officials shall not be eligible to serve on the Board.
(Ord. 12-110. Passed 4-10-12.)
 - (4) Except as otherwise provided herein, if any member of the Board shall fail to meet any of the qualifications stated in subparagraphs (1) through (3) of Section 1172, his office shall immediately become vacant.
 - (5) The City Commission, by ordinance and upon finding that the particular expertise of a potential appointee or member is needed on the Board, may waive any or all of the requirements of subparagraphs (1) and (2) for such appointee or member.

(d) If any Board member is absent from three (3) of any six (6) consecutive regularly scheduled Board meetings, his office shall immediately become vacant. Such member shall have the opportunity to explain his absence to the City Commission and may be reappointed by a majority of the City Commission to complete the balance of his term.

1172.02 MEETINGS, RECORDS, AND GENERAL PROCEDURES.

(a) The Board shall elect from its membership a Chairperson, a Vice Chairperson, and such other officers as it may deem necessary. The Board shall establish by rule the term of office for its Chairperson, Vice Chairperson, and other officers; provided, however, no Chairperson shall serve more than three (3) years during a period of nine (9) consecutive years. The term "year" shall mean 12 consecutive months. It shall adopt rules and regulations consistent with all applicable laws and ordinances. Meetings of the Board shall be held once each month, and at such additional times as the Board may determine; provided, however, the Chairperson may cancel a meeting if no member has proposed business to be conducted at the meeting. The time of regular monthly meetings shall be specified in the rules and regulations of the Board. Special meetings shall be called by the Chairperson or, in his absence, by the Vice Chairperson. There shall be a fixed place of meeting.

(b) The Board shall keep minutes of its proceedings, showing the action of the Board and the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of all its official action, all of which shall be filed promptly in the office of the Board and shall be a public record. The presence of four (4) members shall constitute a quorum. The concurring vote of the majority of a quorum, but in no event fewer than the concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Director of Community Development or his authorized representative or to decide in favor of the applicant on any matter upon which it is required to pass in this Springfield Zoning Code, or to grant a variation from the requirements of this Springfield Zoning Code. The Board shall act by resolution and a copy of each resolution duly adopted shall be filed in the office of the Clerk of the City Commission.

(c) The Board may call on any City departments for assistance in the performance of its duties and it shall be the duty of such departments to render such assistance to the Board as may

reasonably be required. The Chairperson or, in his absence, the Vice Chairperson, may administer oaths. The Board shall have the power to subpoena and require the attendance and testimony of witnesses and may inquire into and hear and examine witnesses in relation to any matter which the Board has the authority to inquire into. In case any person in disobedience of any subpoena issued by the Board, fails or refuses to attend and testify to any matter regarding which he may be lawfully interrogated, the Board shall compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from a court or a refusal to testify therein.

1172.03 APPLICATIONS, APPEALS, HEARINGS AND DECISIONS OF THE BOARD.

The Board shall act in strict accordance with the procedures specified by law and by this chapter. All applications and appeals made to the Board shall be in writing and shall be filed with the Secretary at least 14 days before the meeting at which they are to be heard. Each application or appeal shall refer to the specific provision of the Springfield Zoning Code involved, and shall set forth exactly the interpretation that is claimed, the use for which a conditional use is sought, a clear description of the land involved or 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.

- (a) **Filing Application.** An application to the Board, in cases in which it has original jurisdiction under the provisions of this chapter, may be taken by any property owner or tenant, or by a governmental officer, department, board or bureau affected. Such application, in a form approved by the Board, shall be filed with the Director of Community Development or his authorized representative who shall transmit the same, together with all the plans, specifications and other papers pertaining to the application, to the Board.
- (b) **Filing Appeals.** An appeal to such Board from any ruling of the Director of Community Development or his authorized representative administering any portion of this Springfield Zoning Code may be taken by any property owner or tenant, or by any governmental officer, department, board or bureau affected. Appeals to the Board shall be taken within 20 days after the decision by filing with the Director of Community Development or his authorized representative a notice of appeal, in a form approved by the Board, specifying the grounds therefor. The Director of Community Development or his authorized representative shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken or, in lieu thereof, certified copies of such papers.
- (c) **Hearings, Dates and Notices.** When an application or appeal has been filed in proper form and with the required data, the Secretary of the Board shall immediately place such application or appeal upon the calendar for hearing and cause notices stating the time, place and object of the hearing to be served personally or by mail at least 10 days, excluding Saturday, Sundays and holidays, prior to the day of such hearing, upon the applicant or the appellant, and to such persons as the Board may specify in its rules and regulations which notices, if by mail, shall be sent to the last known address of the respective property owners. The Board shall also publish notice of such hearing in a newspaper of general circulation in Clark County at least seven (7) days prior to the public hearing. Any

party may appear at such hearings in person or by agent or attorney. Each application or appeal pertaining to one-, two-, and three-family structures only shall be accompanied by cash or check made payable to the City in the amount of \$57.00, all other applications or appeals shall be accompanied by cash or check made payable to the City in the amount of \$285.00. The Board shall not accept an application or appeal until such payment is received.

(Ord. 04-248. Passed 8-10-04.)

- (d) **Adjournment of Hearing.** Upon the day for hearing any application or appeal, the Board may adjourn the hearing to permit additional information to be secured, or to cause such further notice as it deems proper to be served upon such other property owners as it decides may logically be concerned with such application or appeal. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the time of resumption of such hearing unless the Board so decides.
- (e) **Decisions of the Board.** The Board shall decide all applications and appeals within 60 days after completion of the hearing thereon, and such decision shall become effective upon certification of the resolution of the Board. A certified copy of the Board's decision shall be transmitted to the applicant or appellant. Such decision shall be binding upon the Director of Community Development or his authorized representative and observed by him, and he 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. After the Board, by resolution, certifies its approval on any application or appeal, there shall be no further hearings upon such case. However, when the Board denies an application or appeal, a new application or appeal may be filed subject to the same procedure as an original application or appeal. If a new application or appeal is filed within one (1) year of the date of the Board's decision, the Secretary shall not schedule any hearing until the Board has received the application or appeal and decided that there is new matter, evidence or facts to be heard by the Board.
- (f) **Stay of Proceedings.** An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Director of Community Development or his authorized representative certifies to the Board, after notice of appeal shall have been 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 such case, proceedings shall not be stayed otherwise than by a restraining order which may, on due cause shown, be granted by the Board after notice to the Director of Community Development or his authorized representative, or by judicial proceedings.

1172.04 INTERPRETATIONS OF THE CODE AND MAP.

Upon appeal from a decision by the Director of Community Development or his authorized representative, the Board shall have the power to decide any question involving the interpretation of the Springfield Zoning Code text or map, as follows:

- (a) In case there is question as to the intended meaning of any provision of the Springfield Zoning Code text, the Board may interpret its meaning as it applies to a particular property. Before reaching a decision in response to any request, the Board shall obtain the opinion of the City Director of Law thereon.

- (b) Where the street or lot layout actually on the ground, or as recorded differs from the street and lot lines as shown on the Zoning Map, the Board, after notice of public hearing to the owners of the property, shall interpret the Map in such a way as to carry out the intent and purpose of this Springfield Zoning Code for the particular section or district in question. In case of any question as to the location of any boundary line between districts, an application for interpretation of the Zoning Map may be made to the Board and a determination shall be made by such Board by following the procedure established in Section 1172.04.
- (c) Where a specific use is proposed that is not listed or provided for in this Springfield Zoning Code, The Board of Zoning Appeals may make a determination that the proposed use is substantially similar to a specific use that is listed or provided for in the Springfield Zoning Code. If the Board finds that a use is substantially similar to a specific use listed in this Springfield Zoning Code, the substantially similar use is deemed to be a substantially similar permitted use in those districts where the specific use is a permitted use, and a substantially similar conditional use in those districts where the specific use is a conditionally permitted use. In formulating a determination that a proposed use is a substantially similar use, the Board shall include in its written findings the reasoning upon which the decision is based. The following standards shall be considered by the Board when making a determination that a use is substantially similar to a permitted or a conditional use within a specific district:
 - (1) The compatibility of the proposed use with the general use classification system as specified in this Springfield Zoning Code.
 - (2) The nature, predominant characteristics, and intensity of the proposed use in relation to those uses specified by this Springfield Zoning Code as being permitted, or in the case of a conditional use, conditionally permitted in that district.
 - (3) The size, dimensional requirements, parking requirements, traffic generation potential, and other regulatory considerations normally associated with uses as specified in this Springfield Zoning Code.Should a use be determined to be substantially similar to a specific permitted or conditionally permitted use provided for in this Springfield Zoning Code, it shall then be permitted in the same manner and under the same conditions and procedures as the use is permitted to which it has been found to be substantially similar. the Director of Community Development shall maintain, as a public record, a listing of all uses which have been determined to be substantially similar. For each such use the record shall include the use as listed in the Springfield Zoning Code, the use unlisted in the Springfield Zoning Code about which the determination of substantial similarity was made, and the dates of any actions thereupon by the Board of Zoning Appeals. This record shall also contain the same information for all uses which have been determined not to be substantially similar. The Director of Community Development shall consult this record in the process of issuing zoning permits.

1172.05 CONDITIONAL USES.

(a) The Board shall have the power and original jurisdiction to hear and decide, in accordance with the provisions of this Springfield Zoning Code, applications, filed as hereinbefore provided, for conditional uses.

(b) Application. Any person seeking a conditional use permit shall file a written application on a form to be prescribed by the Director of Community Development and in accordance with Section 1172.03 of the Springfield Zoning Code. The application shall specify the section of the Springfield Zoning Code under which the conditional use permit is sought and may suggest, in a draft conditional use permit, such proposed conditions as the applicant believes are necessary and sufficient to warrant issuances of the conditional use permit applied for. The application shall include such evidence as is necessary and sufficient to demonstrate that issuance of the applied for conditional use permit is warranted when the standards identified in subdivision (c) of this Section are applied. The application shall include the following material, at a minimum:

- (1) a site and development plan at an appropriate scale showing proposed placement of structures on the subject property; provisions for ingress and egress, offstreet parking and offstreet loading areas, and refuse and service areas; and required yards and other open spaces;
- (2) plans showing proposed locations for utility hook-ups;
- (3) plans for proposed screening and buffering, if any, with reference as to type, dimensions, and character;
- (4) proposed landscaping; signs and exterior lighting, if any, including type, dimensions, and character.

Where this Springfield Zoning Code places additional regulations on specific conditional uses, the application should demonstrate that such requirements will be met.

(c) In considering an application for a conditional use permit, the Board shall give due regard to the nature and condition of all adjacent uses and structures, and the therewith of the proposed use and development. Before authorizing a use as a conditional use, the Board shall review the facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that the proposed conditional use at the proposed location:

- (1) Would not be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of noise, smoke, odor, vibration, dust and dirt, cinders, noxious gases, glare and heat, fire and safety hazards, sewage wastes and pollution, transportation and traffic, aesthetic and psychological effects. The Board shall use and give recognition to those performance standards which are available in model codes or ordinances, or have been developed by planning, manufacturing, health, architectural and engineering organizations, and can be applied to the proposed use, to assist it in reaching a fair and objective decision;
- (2) Is in fact a conditional use as established under the provisions of this Springfield Zoning Code as eligible to be permitted in the district involved;
- (3) Will be harmonious with and in accordance with the general objectives, or with any specific objective of this Springfield Zoning Code;
- (4) Will be designed, constructed, operated and maintained as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that the use will not change the essential character of the same area;
- (5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal,

water and sewer, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

- (6) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- (7) Will have ingress and egress for the subject property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares and which shall not be detrimental to vehicular and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
- (8) Will locate offstreet parking, loading areas, refuse deposit locations, service areas, utility hookup facilities, signs and exterior lighting so as not be detrimental to vehicular and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe and so as not to result in detrimental economic, noise, glare or odor effects on adjoining properties and properties generally in the district.

(d) In considering the compatibility of the proposed conditional use with all adjacent uses and structures, the Board shall give consideration to:

- (1) The existing land use pattern;
- (2) The impact of the proposed conditional use upon the load on public facilities such as schools, utilities, and streets;
- (3) Changed or changing conditions which find the proposed use to be advantageous to the community and the neighborhood;
- (4) The impact of the proposed use upon living conditions in the neighborhood;
- (5) The impact of proposed use upon traffic congestion and public safety matters;
- (6) The impact of the proposed use upon stormwater drainage;
- (7) The impact of the proposed use upon light and air to adjacent areas;
- (8) The impact of the proposed use upon property values in the adjacent area;
- (9) The impact of the proposed use upon the improvement or development of adjacent property in accordance with existing regulations;
- (10) The impact of the proposed use with regard to the scale of needs of the neighborhood or the community.

(e) Upon authorizing a conditional use, the Board shall impose such requirements and conditions with respect to location, construction, maintenance and operation, in addition to those expressly stipulated in this Springfield Zoning Code for the particular conditional use, as the Board may deem necessary for the protection of adjacent properties and the public interest in furtherance of the purpose of this Springfield Zoning Code. The Board shall issue written findings of fact and its written determination that the standards specified in subdivision (c) of this Section, when applied to the conditional use permit applied for, warrant issuance of the conditional use permit.

(f) If, upon consideration of the application and the applicant's evidence submitted along with its application and after notice and a hearing held by the Board (in accordance with Section 1172.03 of the Springfield Zoning Code) on the issuance of the applied for conditional use permit, the Board is unable to find adequate evidence showing that the proposed conditional use at the proposed location is warranted when the standards specified in subdivision (c) of this Section are applied, then no conditional use permit shall issue. In denying issuance of a conditional use permit, the Board shall issue written findings of fact and its written determination that the standards specified in subdivision (c) of this Section when applied to the conditional use permit applied for do not warrant issuance of the conditional use permit.

(g) Repeated Applications. No person shall file a second or subsequent application for a

conditional use permit for a particular parcel of property, or part thereof, until the expiration of twelve (12) calendar months from the date of denial of the initial conditional use permit applied for; unless, the Board specifically waives the waiting period based upon a determination that either:

- (1) That the new application a proposes conditional use materially different from the initial conditional use which was denied or
 - (2) That not waiving the waiting period will impose a substantial hardship on the applicant resulting from the applicant's mistake or inadvertence or
 - (3) That newly discovered matters warrant waiving the waiting period.
- (Ord. No. 06-236. Passed July 3, 2006.)

1172.06 VARIANCES.

The Board of Zoning Appeals shall have the power to authorize upon appeal in specific cases, filed as hereinbefore provided, such variances from the provisions or requirements of this Springfield Zoning Code as will not be contrary to the public interest and meet the standards for granting variances established in this section, but in no other case. Any application for a variance which could be approved through rezoning to any other classification shall not be approved as a variance, since this act would be equal to rezoning. No variances from the maximum permitted sign areas may be granted by the Board.

- (a) No variance from the strict application of any provision of this Springfield Zoning Code which permits the use of land which is prescribed or which will result in a use of land in a manner inconsistent with the basic character of the district in which such land is located, shall be granted by the Board unless it finds that strict application of this Springfield Zoning Code would result in unnecessary hardship. The Board shall find unnecessary hardship only when all the following facts and conditions exist:
 - (1) The land in question cannot yield a reasonable return if used only for a purpose allowed in the district. To establish the inability of land to yield a reasonable return, the owner must demonstrate factually, by dollars and cents proof, an inability to realize a reasonable return under existing permissible uses in the district. An owner does not suffer hardship sufficient to warrant the granting of a variance simply because the land would be more valuable or yield more profits if the variance were granted. The requisite degree of hardship exists only when the only permissible uses are not economically feasible and strict application of the provisions or the Springfield Zoning Code deprive the owner of economically viable use of the land.
 - (2) The plight of the owner is due to unique circumstances and not to other general conditions in the neighborhood which may reflect the unreasonableness of the Springfield Zoning Code itself.
 - (3) The use to be authorized by the variance will not alter the essential character of the neighborhood.
- (b) No variance from the strict application of any provision of this Springfield Zoning Code that does not involve the use of land which is prescribed or which will result in a use of land in a manner inconsistent with the basic character of the district in which such land is located shall be granted by the board unless it finds that strict application of this Springfield Zoning Code would result in practical difficulties which will unreasonably deprive the owner of a permitted use of his property. Such area variances include, by way of example and not of limitation, relief from a set back requirement, height requirement, restrictions on the bulk of buildings, the extent of lot coverage or yard requirements. the Board shall consider and weigh the following factors and such other factors as the board may determine have a bearing on finding whether strict application of any provision of this Springfield Zoning Code would result in practical difficulties which will unreasonably deprive the owner of a permitted use of his property; however, no one of such factors shall control in a determination of whether such practical difficulty exists:
 - (1) The Property in question cannot yield a reasonable return and there can be no

beneficial use of the property without the variance, the variance would relieve a clearly demonstrable situation where strict application of the provisions of this Springfield Zoning Code created a practical difficulty that will deprive the owner of economically viable use of the land, as distinguished from a special privilege or convenience to the owner.

- (2) The variance is not substantial.
- (3) The essential character of the neighborhood will not be substantially altered or suffer a substantial detriment as a result of the variance.
- (4) The variance will not adversely affect the delivery of governmental services such as police and fire protection, water and sewer services, and solid waste regulation and disposal.
- (5) The property owner purchased the property without knowledge of the zoning restrictions.
- (6) The property owner's predicament feasibly can be obviated through some method other than granting a variance.
- (7) The property possesses conditions involving irregular, narrow, shallow or steep lots, or other exceptional physical conditions and because of such exceptional physical conditions, strict application of a provision or provisions of this Springfield Zoning Code would be unreasonable.
- (8) The spirit and intent behind the zoning requirement will be observed and substantial justice done by granting the variance.

1172.07 POWERS; EXERCISE AND EXTENT.

In exercising its powers, the Board, in conformity with the provisions of statute and this Springfield Zoning Code, may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination of the Director of Community Development appealed from, and may make such order, requirement, decision or determination as in its judgment ought to be made, and to that end shall have all powers of the office from which the appeal is taken. The Board shall have and shall be limited strictly to the powers and duties prescribed by law and this Springfield Zoning Code.

1172.08 EXPIRATION OF AUTHORIZATIONS.

Every authorized use or variation of the application of the literal provisions of this Springfield Zoning Code allowed or granted, as provided in this chapter shall expire and be of no force or effect after the expiration of six (6) months from the date thereof, unless:

- (a) The beneficiary of such variation or use shall have actually within such period, put the subject property to the purpose for which such variation or use shall have been granted or allowed.
- (b) The Board at the time of the original grant or allowance of such variation or use shall have granted a longer period, in which event the expiration thereof shall be on the date specified by the Board, or
- (c) The Board grants an extension of time at a later date.