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OFFICIAL RECORDS
OF MOHAVE COUNTY
CAROL MEIER,
COUNTY RECORDER



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MOHAVE COUNTY ORDINANCE NO. 2013-02

AN ORDINANCE AMENDING THE MOHAVE COUNTY ZONING ORDINANCE TO REVISE SECTION 30, BOARD OF ADJUSTMENT AND VARIANCES.

WHEREAS, at the regular meeting of the Mohave County Board of Supervisors held on February 4, 2013, a public hearing was conducted to determine whether approval should be granted to amend Section 30, Board of Adjustment and Variances, of the Mohave County Zoning Ordinance (“the Ordinance”), and

WHEREAS, Arizona Revised Statutes § 11-816 authorizes the Board of Supervisors of each county to establish one board of adjustment that has jurisdiction countywide and that is composed of one member who is a resident of each supervisorial district, or one board of adjustment in each supervisorial district that has jurisdiction in that supervisorial district and that is composed of not less than three nor more than five members, each of whom is a resident of that supervisorial district, and

WHEREAS, the establishment of five new supervisorial districts from the former three supervisorial districts will require either the establishment of five new boards of adjustment for the newly redistributed districts or the establishment of a single county-wide board of adjustment, and

WHEREAS, because a request for a variance or interpretation may be received at any time, and to avoid a delay in hearing a potential applicant’s request by a new board of adjustment, the provisions of the Ordinance relating to the boards of adjustment should be revised to accommodate the structural changes. Review of Section 30, of the Ordinance, also found that additional amendments and corrections are appropriate, and

WHEREAS, a separate board of adjustment for each supervisorial district has the advantage of having more localized consideration by members who may be more familiar with conditions in their district than those living in other parts of the county. Board members in individual districts would generally have fewer meetings to attend since they would not be involved in the requests from the other four districts. The individual boards of adjustment are not bound by the interpretations of other district boards, which can be an advantage when differing conditions make different interpretations appropriate, however conflicting interpretations among the districts can be problematic for administration of the Ordinance. Creation of five district boards of adjustment in place of the three previously created, can proceed without amendment to the Zoning Ordinance, but revisions to current language to correct errors and eliminate unnecessary, conflicting or redundant language would be useful, and

WHEREAS, a single county-wide board of adjustment has the advantage of requiring only five appointments as opposed to the minimum of fifteen or maximum of twenty-five appointments for five boards of three to five persons. A five-member board makes it easier to obtain a quorum for the conduct of business and avoids the potential for a violation of open meeting rules when two members meet. The difficulty of conflicting interpretations is not present with a single board, however in the event of an adverse ruling by a court on appeal of the board's decision, the decision would be binding county-wide. Establishment of a single county-wide board of adjustment would necessitate some changes in the Ordinance in addition to the suggested revisions to current language to correct errors and eliminate unnecessary, conflicting or redundant language, and

WHEREAS, the language to be added has been **bolded and underlined**. The language to be deleted has been ~~struck~~, and

WHEREAS, at the public hearing before the Mohave County Planning and Zoning Commission on January 9, 2013, the Commission recommended APPROVAL of this Ordinance, amending Section 30, of the Mohave County Zoning Ordinance, and

WHEREAS, the notice of hearing was published in the Kingman Daily Miner, a newspaper of general circulation in Kingman, Mohave County, Arizona, on January 20, 2013, and was posted on January 18, 2013, as required by Arizona Revised Statutes and the Mohave County Zoning Regulations.

NOW THEREFORE BE IT RESOLVED, that the Board of Supervisors, at their regular meeting on Monday, February 4, 2013, APPROVED this Ordinance as recommended by the Mohave County Planning and Zoning Commission and outlined herein.

Amend Section 30 of the Mohave County Zoning Ordinance as follows:

- A. Boards of Adjustment Established. There is hereby created, as provided by ARS 11-816, a Board of Adjustment in each of the supervisorial districts of Mohave County. Each Board of Adjustment shall be composed of **between** three (3) **and five (5)** members, each of whom shall be residents and taxpayers of the supervisorial district from which he/she is appointed. The members of each such Board shall be appointed for staggered terms of four (4) years each, except the first members shall be appointed for terms of 2, 3, and 4 years.

Each Board of Adjustment shall meet regularly at least twice per year and more often, if necessary, for the transaction of business, it shall elect its own officers, establish its own rules, keep a record of its actions and render a report to the Supervisors and the Planning and Zoning Commission after each meeting. Any finding, ruling, or decision of said Board relating to the administration of the Zoning Ordinance and Regulations shall be an order of business **as at** either a regular or special meeting of said Board, and shall be fully reported in the minutes of the Board.

- B. Powers and Duties. The jurisdiction of each Board of Adjustment shall be limited to unincorporated areas of the supervisorial district from which the members thereof are appointed. The authority of said Board, in each instance, shall extend ~~only~~ to the interpretation of the Zoning Ordinance and Regulations, to the granting of variances and to the adjustment of the application of these Regulations to overcome practical difficulties and prevent unnecessary hardship in the application of regulations so contained herein.

Each Board of Adjustment shall have power to:

1. Interpret the Zoning Ordinance and Regulations when the meaning of any word or phrase or section is in doubt, when there is dispute as to such meaning between the appellant and the enforcing officer, or when the location of a zone boundary is in doubt; such interpretation may be made after consultation with other Boards in said County for purposes of uniformity.
2. Allow a variance from the terms of the Ordinance and Regulations when, owing to peculiar conditions, a strict interpretation would work an unnecessary hardship, if in granting such variance the general intent and purpose of the zoning ordinance will be preserved.
3. ~~Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, grant or refusal made by the Zoning Inspector or Department staff in the enforcement of the provisions of this Ordinance and Regulations.~~
If authorized by the board of supervisors, review decisions by a hearing officer who hears and determines zoning violations pursuant to section 11-815 and render a final decision. Judicial review of the final decision by the board of adjustment shall be pursuant to title 12, chapter 7, article 6.
4. ~~Allow a variance in the form of a reduction of building site area and yard requirements where, in its judgment, the shape of the building site, topography, the location of existing buildings or other conditions make a strict compliance with said regulations impossible without practical difficulty or hardship; but, in no case, except as herein after provided, shall these Regulations be reduced in such manner as to violate the intent and purpose of this Ordinance and Regulations.~~

- C. Variance - Definition.

1. As used in these Regulations, a variance may be authorized for height, area, and size of structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by a variance, nor shall a variance be granted because of the presence of nonconforming uses in the zoning district or adjoining zoning districts.
2. A variance may also be authorized for no more than a ten (10) per cent decrease in parking spaces required by Section 26 and no more than a ten (10) per cent increase in the size of signage allowed by Section 31.G.1.f and Section 31.H.4.c.1.

D. Application for Variance.

1. Who submits: An application for a variance may be submitted by the property owner or an agent authorized in writing to act on the owner's behalf, in the supervisorial district in which said variance is desired, to the Planning **Development Services** Director (hereafter "Director").
2. Application: Application for any permissible variance of regulations, as provided herein, shall be made by the owner or his representative to the Board of Adjustment in the supervisorial district in which said variance is desired, in the form of a written application, four (4) copies of which are to be sent to the ~~Planning and Zoning~~ Director, and be accompanied by:
 - a. Four (4) copies of accurate plot plans and descriptions of the property involved and the proposed use with preliminary outline plans of all existing and proposed buildings.
 - b. Evidence of the ability and intention of the applicant to proceed with actual construction work in accordance with said plans after issuance of permit.
 - c. A list showing the names and addresses of all persons, firms, or corporations appearing on public record as owning property within the area proposed to be affected and within 300 feet of any part of the property for which a variance is requested. The list must include the names of all persons purchasing land under recorded contracts of sale, and must be certified as to completeness by the applicant or some person otherwise qualified by knowledge of the public records. The ~~Planning and Zoning~~ Director shall determine the completeness of the list before accepting it for filing.
 - d. Appropriate fee as adopted by the Board of Supervisors.

E. Procedures for Variance.

1. The ~~Planning and Zoning~~ Director shall submit his/her report containing the County staff's findings and recommendations on each application for a ~~major~~ variance to the Board of Adjustment.
2. The Board of Adjustment shall hold a public hearing not later than thirty (30) days after the ~~application and~~ report and recommendation of the Director is filed with the secretary of the board. Published and personal notice of the public hearing shall be given in the manner provided in Section 40.C.1-2.

F. Approval Standards for Variances.

1. The Board of Adjustment shall not approve a variance unless it finds:
 - a. That there are special circumstances or conditions applicable to the property referred to in the application that do not prevail on other property in that zone;
 - b. That the strict application of the regulations would result in an unnecessary hardship and that the granting of the application is necessary for the preservation and enjoyment of substantial existing property rights;
 - c. That the granting of such application will not materially affect the health or safety of persons residing or working in the neighborhood and will not be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood; **and**
 - d. ~~That substantial conformity to standards previously established in the zone may be secured.~~
 - e. ~~That detriment of injury to the neighborhood will not result from the granting of a variance as applied for.~~
 - f. **d.** That substantial conformity to standards previously established in the zone may be secured and that detriment of injury to the neighborhood will not result from the granting of a variance as applied for.

G. Decision on Variance. The Board of Adjustment shall approve, approve with conditions or deny the application for variance.

1. Action on applications. The Board may approve, conditionally approve, or deny the issuance of said ~~permit~~ **variance** and transmit notice of its action to the ~~Zoning Inspector~~ **Director**. A report of its findings, decision, and any conditions imposed or required, shall also be submitted promptly to the Planning and Zoning Commission and to the Board of Supervisors.
2. Conditional approval: In approving any variance, the Board of Adjustment may attach such conditions as will, in its opinion, substantially secure the objectives of the regulation or provisions to which such variance is granted, and to provide adequately for the maintenance of the integrity and character of the zone in which such permit is granted. ~~The Board shall provide the Planning and Zoning Director with a copy of the same.~~

3. Guarantees: Where necessary, the Board of Adjustment may require guarantees, in the form of Performance Bond, Trust Agreement, or Unconditional Guarantee, from a local bank or Federally Insured Savings and Loan Association, to insure that the conditions designated in connection therewith are being, or will be, complied with. ~~Where any condition under which a variance has been granted is violated, the variance shall cease to exist, and the permit shall become null and void. If the Planning and Zoning Director, after inspection by County staff, will determine if there are reasonable grounds to find that a permit has become null and void, he/she shall set a hearing before the Board of Adjustment for a final decision. Where any condition under which a variance has been granted is violated, the variance shall cease to exist, and the permit shall become null and void.~~
4. Disapproved applications: In the event the Board of Adjustment disapproved an application for a variance, no permit shall be issued pending further action thereon by an appeal to the Superior Court within thirty (30) days from the date said disapproval is officially entered on the minutes of the Board, if said Court shall overrule the action of the Board, then the ~~Zoning Inspector~~ **department** shall issue the requested permit without further action by the Board, unless the Court orders the Board to hold a further hearing to permit the Board to fix conditions or require guarantees.
5. **Violation of conditions: If the Director, after inspection by County staff, determines that there are reasonable grounds to find that any condition under which a variance has been granted is violated, he/she shall set a hearing before the Board of Adjustment for a final decision. If the Board determines that any condition under which a variance has been granted is violated, the variance shall cease to exist, and any permit issued pursuant to the variance shall become null and void.**

H. Limitations on Variance.

1. No variance shall be granted that allows a land use prohibited in the zoning district in which it is located or that changes any boundary of the district, nor shall any variance be granted that changes the density of residential use by more than five (5) per cent. Any variance so granted is null and void, and any activities undertaken pursuant to such variance shall be ~~deeded~~ **deemed** in violation of this title.
2. The Board of Adjustment, in approving a variance, shall impose the following conditions:
 - a. Commencement of construction within six (6) months and completion within one (1) year of the granting of the variance; and
 - b. Conformance to plans approved as a part of the variance.

- I. Appeals. Any person aggrieved in any manner by an action of a Board of Adjustment may, within thirty (30) days, appeal to the Superior Court, and the matter shall be heard de novo as appeals from Justice Court.

- J. Limits on Code Enforcement: If the application for a variance is to clear or relieve a zoning violation which has pending enforcement action, that action shall be suspended upon the submission of the application and the determination that the application is complete, unless the violation is considered by the Planning Director prior to Board action or the Board of Adjustment following action to be a nuisance or a hazard to the surrounding area.

PASSED, APPROVED AND ADOPTED THIS 4TH DAY OF FEBRUARY, 2013

MOHAVE COUNTY BOARD OF SUPERVISORS



Gary Watson, Chairman



Peggy Prince, Clerk

