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City of Conway, Arkansas

Ordinance No. O-11-97

AN ORDINANCE AMENDING THE CONWAY ZONING ORDINANCE O-94-54 NAMING THE CONWAY PLANNING COMMISSION AS THE BOARD OF ZONING ADJUSTMENT; AND FOR OTHER PURPOSES:

WHEREAS, Arkansas State Code 14-56-416.B.1 allows the Planning Commission to serve as the zoning variance regulating board, and

WHEREAS, due to the infrequent meetings of the Board of Zoning Adjustment, and gained experience of the Planning Commission, it is desirable to allow the appeal of zoning variances to the Conway Planning Commission;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS THAT:

SECTION 1. Ordinance O-94-54, Section 201.4 – Interpretation of District Boundary shall be amended as follows:

Where due to scale, lack of detail or illegibility of the zoning map, there is uncertainty, contradiction or conflict as to location of any zoning district boundary as shown thereon, the Designated Staff shall make an interpretation of the map upon request of any person. Any person in disagreement with any such interpretation may appeal such interpretation to the *Planning Commission acting as the* Board of Zoning Adjustment. All City Commissions, Boards or personnel interpreting the zoning map or deciding any appeal, shall apply the following standards:

G. If, after all of the previously stated rules have been applied, uncertainty shall exist as to exact location of a zoning district boundary line, the boundary line shall be determined in a reasonable manner, considering the history of zoning ordinances and amendments in the City as well as other relevant facts. The *Planning Commission acting as the* Board of Zoning Adjustment, upon motion, shall interpret and determine the location of said boundaries based on the above- mentioned guidelines.

SECTION 1. Ordinance O-94-54, Section 301.2 – Definitions of Terms and Uses shall be amended as follows:

Board: The word "Board" shall mean the *Planning Commission acting as the* Board of Zoning Adjustment.

Mini-Warehouse Storage: Mini-warehouse storage facilities shall be deemed to include one (1) or more permanent structures, meeting applicable City building requirements, which contain separate storage units or cubicles that are intended to be leased by members of the public. ~~On commercially zoned lands, not more than ten percent (10%) of such structure or structures may be leased to a single lessee, unless specific permission is first obtained from the Board of Adjustment. Furthermore, †~~The active utilization of any storage space or cubicle within a mini-warehouse storage area for a retail or wholesale business operation on such site is expressly prohibited.

Variance: A device which grants a property owner relief from certain provisions of a zoning ordinance when, because of the particular physical surroundings, shape, or topographical condition of the property,

compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money. ~~A variance may be granted, for example, to reduce yard or setback requirements, or the number of parking or loading spaces, or to increase the permitted size of a sign. Some ordinances specifically preclude the granting of a use variance. Authority to decide variances usually is vested in the Board of adjustment.~~

SECTION 2. Ordinance O-94-54, Section 401.4 – Residential Districts - C. Lot, Yard and Height Regulations, the third paragraph shall be amended as follows:

A minimum of ten (10) feet shall separate all detached buildings. Each lot must have a minimum of thirty-five (35) feet of street frontage. Each lot in R-1, R-2, R-2A, and SR and HR zoning districts shall have a minimum street frontage equal to the minimum lot width required at the building line, except for lots fronting on cul-de-sac turnarounds and on curving street frontages, which must have no less than thirty-five (35) feet of street frontage with the two side lot lines intersecting the street diverging until they are separated by the minimum required lot width at the building line. Each lot in the remaining zoning districts shall have a minimum of thirty-five (35) feet of street frontage. Each lot must be a minimum of one hundred (100) feet in depth at its shallowest point with the depth measured at right angles or radial to the centerline of the street line. That all lots existing at the time of the passage of this Ordinance that are rendered nonconforming by the passage of this Ordinance shall not be required to obtain a variance from such created nonconformity ~~from the Board of Zoning Adjustment~~ in order to obtain a building permit.

SECTION 3. Ordinance O-94-54, Article 801 – Board of Zoning Adjustment shall be amended as follows:

SECTION 801.1 - CREATION AND APPOINTMENT

The Planning Commission shall serve as the Board of Zoning Adjustment

~~There is hereby reappointed a Board of Zoning Adjustment, which shall consist of seven (7) members; each to be appointed by the Mayor and confirmed by the City Council for a term of three (3) years. Not less than one (1) member shall be appointed from the membership of the Planning Commission. A member of such Board of Zoning Adjustment, once qualified, can thereafter be removed during his/her term of office only for cause on a majority vote of the City Council. In the event of the death, resignation, or removal of any such member before the expiration of his/her term, a successor shall be appointed by the Mayor and confirmed by the City Council to serve his/her unexpired term.~~

SECTION 801.2 – ORGANIZATION

A. Officers

~~A Chairperson and Vice Chairperson shall be elected annually by the Board from among its membership. The Chairperson, or in his/her absence, the Vice Chairperson, shall preside at all meetings, shall decide all points of order or procedure, and, as necessary, shall administer oath and compel the attendance of witnesses. The Mayor shall appoint a secretary, who shall hold office during the will and pleasure of the Mayor, and shall receive such compensation from the City of Conway as may be fixed from time to time by the City Council of the City of Conway.~~

B. Rules and Meetings

~~The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Zoning Ordinance. Meetings shall be held on a regular schedule and at such other times as the Board may determine. All meetings shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or if failing to vote, indicating such fact; it shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board. A quorum of the Board shall consist of five (5) members. The concurring vote of five (5) of the Board members shall be necessary to revise any order or decision of the enforcement officer or to decide on any matter upon which it is required to pass under this Ordinance.~~

SECTION 801.3 – POWERS AND DUTIES

The **Planning Commission acting** as the Board of Adjustment shall have all the powers and duties prescribed by law and by this Ordinance, which are more particularly described as follows:

A. Administrative Review

To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the administrative official in the enforcement of this Zoning Ordinance. The ~~Board Commission~~ may affirm or reverse, in whole or in part, said decision of the administrative official.

B. Variances

To authorize upon appeal in specific cases such variance from the terms of this Zoning Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Zoning Ordinance would result in unnecessary hardship that would deprive the owner of any reasonable use of the land or building involved. A variance from the terms of this Zoning Ordinance shall not be granted by the **Planning Commission Board of Adjustment** unless and until:

1. The applicant demonstrates that special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structure or buildings in the same district; that literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Zoning Ordinance; that special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by this Zoning Ordinance to other lands, structures, or buildings in the same district.
2. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
3. The ~~Planning Commission Board of Adjustment~~ 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 land, building or structure.
4. The ~~Planning Commission Board of Adjustment~~ shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Zoning Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

In granting any variance, the ~~Planning Commission Board of Adjustment~~ may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Zoning Ordinance.

Under no circumstances shall the ~~Planning Commission Board of Adjustment~~ grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Zoning Ordinance in said district.

C. Special Exceptions

In addition to the powers and duties specified above, the ~~Commission Board~~ shall also have the following powers and duties to hold public hearings and decide the following special exceptions:

1. Permit the extension of a zoning district boundary where the boundary divides a lot held in a single ownership at the time of adoption of this Ordinance.

2. Interpret zoning district boundaries where uncertainty exists as to the boundaries of the zoning districts or when the street or property lines existing on the ground are at variance with those shown on the Zoning District Map.

SECTION 801.4 – PROCEDURE FOR APPEALS

A. Application

Appeals to the **Commission Board** may be taken by any person aggrieved or by any officer, department, or board of the City affected by any decision of the administrative official. All appeals and applications made to the **Commission Board** shall be made in writing on forms prescribed by the **Commission Board** within ten (10) days after the decision has been rendered by the administrative official. Every appeal or application shall refer to the specific provision of the Code involved and shall exactly set forth (1) the interpretation that is claimed, (2) the use for which the permit is sought, or (3) 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. The appeal or application shall be filed with the officer from whom appeal is taken who shall forthwith transmit to the **Commission Board** all papers constituting the record upon which the action appealed from was taken.

B. Public Notice and Hearing

The **Commission Board** shall conduct a public hearing of an appeal at the next available regular meeting of the Planning Commission. The applicant shall publish a public notice at the applicant's expense at least once not less than fifteen (15) days preceding the date of such hearing in a newspaper of general circulation in Conway. ~~fix a reasonable time for the public hearing of an appeal, cause public notice to be given of the time and place thereof, as well as due notice to the parties in interest, and decide same within a reasonable time. Said public notice shall be published at the applicant's expense at least once not less than seven (7) days preceding the date of such hearing in a newspaper of general circulation in Conway.~~ The public notice shall give the particular location of the property on which the appeal is requested, including a legal description and an address (if no address is available, a description which is clear to the average lay person will suffice), as well as a brief statement of what the appeal consists.

Each applicant for the variance shall be required to post a **public hearing notice** sign ~~obtained from the Planning Department~~ on the property for which the variance is being sought at least ~~seven (7) fifteen (15)~~ fifteen (15) days prior to the date of the public hearing. This sign shall be in plain view of and easily readable from a public street, state the variance being sought, and give the place, date, and time of the public hearing. The applicant shall obtain the sign from the Conway Planning Department and shall pay a fee as established by the City of Conway for the sign. The fee is not refundable and the sign is not required to be returned.

In addition, the petitioner shall be required to notify by certified letter with return receipt and/or petition, all property owners within two hundred (200) feet of his property of his intentions to seek a variance, not less than ~~seven (7) fifteen (15)~~ fifteen (15) days prior to the hearing. The petitioner shall state the date and time and location of the public hearing and describe the requested variance with the certified letter and/or petition. The postmarked certified receipts and/or return receipts and/or petition shall be submitted to the Planning Department staff not less than ~~five (5) fifteen (15)~~ fifteen (15) days prior to the meeting of the **Planning Commission Board of Zoning Adjustment** along with a map showing the location of the property in question, as well as the owners within 200 feet of the property and a letter from the petitioner certifying that the map shows a complete list of those property owners.

Each applicant must submit, at least ~~ten (10) fifteen (15)~~ fifteen (15) days prior to the public hearing, a scale drawing showing the requested variance along with all relevant information, including the exceptional condition or situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.

~~Public hearings may be adjourned from time to time, and, if the time and place of the adjourned meeting be publicly announced when the adjournment is made, no further notice of such adjourned meeting need be published. At a public hearing any party may appear in person, by agent, or by attorney.~~

C. Effect of appeal

An appeal shall stay all proceedings of the action appealed from, unless the person affected by such appeal certifies to the **Commission Board**, that, by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the **Commission Board** or a court of record on application, and notice to the person from whom the appeal was taken.

D. Time Limit on Permits

No order permitting the use of a building or premises, or the alteration or erection of a building shall be valid for a period longer than sixty (60) days unless such use is established or the erection or alteration is started within such period and proceeds to completion in accordance with the terms of a building permit.

E. Fee

The fee for any appeal or application to the **Commission Board** shall be three hundred twenty-five dollars (\$325.00), no part of which shall be refundable. The administrative official shall deposit with the City Treasurer each month all fees collected during the preceding month.

F. Appeals from the Planning Commission acting as Board of Adjustment

Any person or persons, or any board, taxpayer, department, board or bureau of the City aggrieved by any decision of the **Planning Commission Board of Adjustment** may seek review by a court of record of such decision, in the manner provided by the laws of the State of Arkansas.

SECTION 3: Ordinances in Conflict

All ordinances in conflict herewith are repealed to the extent of the conflict.

PASSED this 22nd day of November, 2011.

Approved:



Mayor Tab Townsell

Attest:



Michael O. Garrett
City Clerk/Treasurer