

**Memorandum  
Community Economic Development Department**



**To:** Thomas Thomas, City Manager  
**Subject:** BZA Procedural Changes  
**Date:** August 11, 2016

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Per the City Council's request, the CED Department and the Assistant to the City Manager have presented options for Council consideration to amend the sections of the Code of Ordinances dealing with the review and approval process for cases that go before the Board of Zoning Appeals. At the July 25 study session, Council directed staff to prepare an ordinance amendment that would provide an appeal process for applicants where the City Council would hear cases denied by the Board. The proposed changes are enclosed and depicted with redline and strike out. In addition to the BZA procedural change, staff adjusted the filing fee to be consistent with current practices.

As required by Illinois Statute, a public hearing on the proposed amendment was held before the Planning Commission on September 7, 2016. At that meeting the Planning Commission requested staff to provide additional information as to the rationale for the proposed change.

**RECOMMENDATION:** Suspend the rules and and approve the proposed amendment to Appendix A, Article V and Chapter III, Article IV of the Code of Ordinances pertaining to the Board of Zoning Appeals.

**Submitted by:** Brandy Howe, AICP, Interim Planning & Redevelopment Administrator

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**Approved by:** Thomas Thomas, City Manager

## Appendix A, Article V: Board of Zoning Appeals

5.0 *Creation, Membership And Procedure:* A board of appeals consisting of seven (7) members shall be appointed by the mayor and approved by city council in accordance with the provisions of the Illinois Compiled Statutes. The city council may remove any member of the board for cause and after a public hearing.

5.1 *Chairman Elected:* The board shall elect its own chairman and have the power to adopt rules and regulations for its own government, not inconsistent with law or with the provisions of this appendix or any other ordinance of the city of Rock Island. Meetings shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the vice chairman, may administer oaths and compel attendance of the witnesses.

5.2 *Meetings:* Meetings of the board shall be open to the public, minutes shall be kept of proceedings, showing the action of the board and the vote of each member upon each question, or if absent, or failing to vote, indicating that fact and records shall be made of the board's examinations and other official actions, all of which shall be filed immediately in the office of the board.

5.3 *Quorum:* Four (4) members of the board shall constitute a quorum. The board shall act by resolution, and the concurring vote of four (4) members shall be necessary to reverse any order, requirement, decision or determination of the building official, or to decide in favor of an applicant any matter upon which it is required to pass under this appendix, or to effect any variation in the requirements of this appendix.

5.4 *Assistance To Board:* The board may call on the 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.

5.5 *Applications And Appeals:* An application to the board, in cases in which it has original jurisdiction under the provisions of this appendix, may be taken by any property owner, including a tenant, or by any governmental officer, department, board or bureau. Such application shall be filed with the planning and redevelopment administrator who transmits the same, together with all the plans, specifications and other papers pertaining to the application, to the board.

5.6 *Appeal:* An appeal to the board may be taken by any property owner, including a tenant, or by any governmental officer, department, board or bureau, affected by any ruling of the building official. Such an appeal shall be taken within a reasonable time, as prescribed by the rules of the board, by filing with the planning and redevelopment administrator a notice of appeal, specifying grounds thereof. The planning and redevelopment administrator shall forthwith transmit to the board such notice of appeal, together with all the plans and papers constituting the record upon which the action appealed from was taken. Said application shall be accompanied by a fee in the amount of one hundred ~~and fifty~~ and fifty dollars (~~\$400~~150.00) to ~~cover ward~~ the costs associated with of processing the application and legal notification. Should the application be withdrawn prior to publication of legal notice thereon, such fee will be returned upon the written request of the applicant.

5.7 *Hearing:* The board shall fix a reasonable time for the hearing on an application for appeal. It shall give at least fifteen (15) days' notice of the time and place of such hearing by insertion in a daily newspaper published in the city of Rock Island, and shall also give notice delivered personally or by mail at least five (5) days before the time fixed for such hearing to the applicant or appellant, and to the building official and to the respective owners of record of property adjoining or adjacent to the premises in question. Any party may appear at such hearing in person or by agent, or by attorney. The board shall decide the application or appeal within a reasonable time.

5.8 *Stay Of Proceedings*: An appeal shall stay all proceedings in furtherance of the action appealed from, unless the building inspector certifies to the board that by reason of facts stated in the certificate, a stay would in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by an order which may on due cause shown, be granted by the board on an application, after notice to the building inspector or by a court of record.

5.9 *Powers Of The Board*: The board shall have jurisdiction in matters and shall have the specific and general powers provided by this appendix pertaining to:

- Administrative review.
- Certain industries in I-2 districts.
- Interpretation of maps.
- Nonconforming uses.
- Special exceptions.
- Temporary uses.
- Variances.

5.10 *Variances*: To authorize or appeal in specific cases, such variances from the terms of this appendix as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of this appendix will result in unnecessary hardship and so that the spirit of this appendix shall be observed and substantial justice done, as follows: Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property, at the time of enactment of this ordinance, or by reason of topographic conditions, or other extraordinary and exceptional situation or condition of such piece of property, or of the use or development of property immediately adjoining the piece of property in question, the literal enforcement of the provisions of this appendix would result in peculiar and exceptional practical difficulties or exceptional and undue hardship upon the owner of such property, unnecessary to carry out the spirit and purpose of this appendix shall be observed and substantial justice done. In authorizing a variance, the board may attach thereto such reasonable conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable in the interest of the furtherance of the purposes of this appendix.

5.10a No such variance in the provisions or requirements of this appendix shall be authorized by the board unless the board finds that all of the following conditions exist:

- (1) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zone;
- (2) The plight of the owner is due to unique circumstances. There are exceptional or extraordinary circumstances or conditions applying to the property in question as to the intended use of the property that do not apply generally to other properties or classes of uses in the same zoning district; and
- (3) The variation, if granted, will not alter the essential character of the locality. Such variance is necessary for the preservation and enjoyment of a substantial property right of way possessed by other properties in the same zoning district and in the vicinity.

5.10b No variance shall be authorized unless the board specifically finds that the condition or situation of the specific piece of property for which the variance is sought is not of so typical or recurrent a nature as to make reasonably practicable the formulation of a general regulation, under an amendment of this appendix, for such conditions or situations.

5.11 *Special Exceptions*: In addition to permitting the special exceptions heretofore specified in this appendix, the board shall have the authority to permit the following.

5.12 *Nonconforming Uses*: The substitution of a nonconforming use for another nonconforming use, if no structural alterations, except those required by law or ordinance are made; provided, however, that any use so substituted shall be of the same or a more restricted classification. The expansion of a nonconforming use through structural alterations, provided that said expansion shall not be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood, as determined by the board. In all cases, the expansion shall be made to conform to the requirements of the zone in which said nonconforming use is located at the time of the appeal, unless a variance to said requirements is granted by the board.

5.13 *Temporary Uses And Permits*: The temporary use of a building or premises in any district for a purpose or use that does not conform to the regulations prescribed by this appendix, provided that such use be of a true temporary nature and does not involve the erection of substantial buildings. Such permit shall be granted in the form of a temporary and revocable permit for not more than a twelve (12) month period, subject to such conditions as will safeguard the public health, safety, convenience and general welfare.

5.14 *Certain Industries In I-2 Districts*: In authorizing certain industries under section 31.2 of this appendix, the board shall find due regard to the nature and condition of all adjacent uses and structures, and the consistency therewith of the proposed use and development. Before authorizing a use as a special exception, the board shall determine whether the proposed exception or use would 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 waste and pollution, transportation and traffic, aesthetic and psychological effects. The board may utilize 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 research organizations, and can be applied to the proposed use, to assist it in reaching a fair and objective decision.

5.15 *Requirements And Conditions*: Upon authorizing a temporary use and/or special exception, the board may impose such reasonable requirements and conditions, in addition to those expressly stipulated in this appendix for the particular temporary use and/or special exception as the board may deem necessary for the protection of adjacent properties and the public interest.

5.16 *Interpretation Of Map*: Where the street or lot layout actually on the ground, or as recorded, differs from the street and lot lines indicated on the zoning map, the board after notice to the owners of the property, and after a public hearing, shall interpret the map in such a way as to carry out the intent and purpose of this appendix for the particular section or district in question.

5.17 *Action Of The Board*: In exercising its powers, the board may, in conformity with the provisions of the Illinois Compiled Statutes, and of this appendix, reverse, 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, in the board's opinion ought to be made, and to that end, the board has all the powers of the officer from whom the appeal is taken.

5.18 *Appeal to City Council*: An appeal to the City Council of a board decision may be made by any applicant affected by any ruling of the board. Such an appeal shall be made within 10 days of the ruling of the board by filing with the planning and redevelopment administrator a notice of appeal, specifying grounds thereof. The planning and redevelopment administrator shall forthwith transmit to the City Council such notice of appeal, together with all the plans and papers constituting the record upon which the action appealed from was taken. Said application shall be accompanied by a fee in the amount of one hundred and fifty dollars (\$150.00) to cover costs associated with processing the application and legal notifications.

5.19 City Council Public Hearing: A public hearing before the City Council shall be conducted within a reasonable time not to exceed 45 days of receipt by the planning & zoning administration of a complete application for appeal, including all applicable fees. Notice of said hearing shall be published in a daily newspaper with circulation in the City of Rock Island at least fifteen (15) days prior to said public hearing. Said notice shall also be delivered personally or by mail at least five (5) days before the time fixed for such hearing to the applicant and to the respective owners of record of all property within 250 feet of the premises in question. Any party may appear at such hearing in person, by agent, or by attorney. City Council's review of any board decision shall be in accordance with the provisions outlined within this Article V. The City Council shall decide the application or appeal within a reasonable time.

5.2048 *Judicial Review:* All final administrative decisions ~~of the board of appeals~~ under this Article shall be subject to judicial review, pursuant to the provisions of the "administrative review act", approved May 8, 1945, and all amendments and modifications thereof, and the rules adopted pursuant thereto.

5.2149 *Refiling Of Board Of Zoning Appeals Cases:* The refiling of denied requests or requests for removal of stipulations attached to approved cases by the board of zoning appeals, that are not substantially or materially different from the previously filed request, shall not be accepted from the same or different person for the following periods of time:

(1) For a six (6) month period from the date of the first decision by the board of zoning appeals on the request.

(2) For a one year period from the date of subsequent decisions by the board of zoning appeals on the request.

The city planning and redevelopment administrator shall determine whether a request is substantially or materially different and submittable, although the board of zoning appeals may, by majority vote, reverse a decision of the planning and redevelopment administrator to not accept a request following a denied request on the property or request for removal of stipulations attached to approved cases by the board of zoning appeals. (Ord. 98-2002, 11-25-2002; Ord. 33-2003, § 1, 4-21-2003; Ord. 008-2009, § 3, 2-2-2009)

## **Chapter 4, Article III Signs**

### **Sec. 4-63. Administration And Appeal:**

(a) *Administration* : This article shall be administered by the inspection division and the planning and redevelopment division, each according to its obvious responsibilities according to the meaning of the language contained herein. Upon presentation of proper credentials, these persons or their duly authorized representatives may enter at reasonable times any building, structure or premises in the city of Rock Island to perform any duty imposed upon them by this article.

(b) *Right Of Appeal* : Any person aggrieved by any ruling of any person charged with the administration of this article may take an appeal to the appropriate appeal board: building code board of appeals, electrical code board or the board of zoning appeals.

(c) *Jurisdiction* :

(1) Appeals taken from requests relating to construction shall be filed with the building official or the electrical inspector, as the case may be, shall be subject to the procedures established by those respective commissions, and are not subject to the provisions of this section.

(2) In addition to the jurisdiction authorized in section 5.9 of the Rock Island zoning ordinance, the board of zoning appeals, hereinafter referred to as "the board", is hereby vested with the following jurisdiction and authority:

a. To hear and decide appeals from and review any order, requirement, decision or determination made by any person charged with the administration of this article, except appeals relating to the construction as identified under subsection (c)(1) of this section. The board may reverse or affirm, wholly or in part, or may modify or amend the order, requirement, decision or determination appealed from to the extent and in the manner that the board may decide to be fitting and proper on the premises, and to that end, the board shall also have all the power of the officer from whom the appeals are taken.

b. To hear and decide all matters referred to it or upon which it is required to pass under this article.

c. To hear and pass upon applications for variances from a strict application of the terms of this article, in the manner and subject to the standards set out in subsection (f) of this section.

(d) *Provision Of Regulation* : The creation, membership and meeting rules, application process and fee, and stay of proceedings provisions for the board, as established under article V of the Rock Island zoning ordinance shall apply to all appeals and variances from this article.

(e) ~~*Hearing Of Appeals Judicial Review*~~:

(1) An appeal of a decision shall be taken within thirty five (35) days after such decision is made.

(2) All final administrative decisions of the board under this section shall be subject to judicial review pursuant to the provisions of the "administrative review act" of the state of Illinois, approved May 8, 1945, and all amendments and modifications thereto. The term "administrative decision" is defined as in the "administrative review act".

(f) *Variances* :

(1) The board may vary the application of this article in harmony with its general purpose and intent, in accordance with the procedure set forth herein, where there are practical hardships in the way of carrying out the strict letter of any provisions of this article. Any such variance shall be granted only after a public hearing before the board.

(2) A variance may be granted only when special circumstances involving size, shape, topography, location or surroundings affect the property referred to in the application, when denial of said application would cause unreasonable or unnecessary hardship, and when said sign will not cause substantial injury to the value of other property in the vicinity nor be detrimental to the public safety or welfare and the neighborhood in which it is located.

~~(g) *Decisions Of The Board* : All decisions and findings of the board, on appeal or upon application for a variance, after a hearing, shall in all instances be final administrative determinations and shall be subject to review by court as may be provided by law. (Ord. 115-2004, § 1, 12-6-2004)~~