

## **ARTICLE XI - APPEALS, VARIANCES, SPECIAL EXCEPTIONS AND AMENDMENTS**

### **SECTION 11.1 APPEALS**

The Board of Adjustment shall hear and decide appeals from any order, requirement, decision, or determination of the Development Regulations Administrator in the enforcement of these Regulations. In regard to any matter being appealed, the Board shall have all the powers of the Development Regulations Administrator.

Appeals may be taken by any person aggrieved or by any officer, board, department or agency of Town government adversely affected by any decision of the Development Regulations Administrator. An appeal shall be taken within 30 days after rendition of the order, requirement, decision or determination, by filing with the Development Regulations Administrator and with the Town Clerk, a written Notice of Appeal specifying its grounds. The appeal shall be on a form prescribed by the Board.

Upon receipt of the Notice of Appeal, the Development Regulations Administrator shall transmit to the Board all documents, plans, papers or other materials relating to the appealed decision.

#### **11.1.1 Effect of Appeals on Proceedings**

An appeal to the Board of Adjustment does not stay any work on the premises unless the Development Regulations Administrator certifies to the Board that, by reason of facts stated in that certificate, there is an imminent peril to life or property. Upon the filing of that certificate, all work must be stopped, and an order from the Board or a circuit court must be obtained before it can be recommenced.

#### **11.1.2 Public Hearing**

The Board of Adjustment shall hold a public hearing on any appeal, after due public notice and notice to all owners of contiguous property. It shall decide the appeal within a reasonable time. At the hearing, any person may appear in person or by agent or attorney. If the Board finds that the Town should pay the costs of an appeal, it may so recommend to the Town Council for appropriate disposition.

### **SECTION 11.2 VARIANCES**

The Board of Adjustment may authorize, upon application, such variance from the terms of the Code as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of these Regulations would result in unnecessary and undue hardship.

#### **11.2.1 Written Petition**

A written petition for a variance shall be submitted to the Development Regulations Administrator demonstrating:

- A. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning classification.
- B. The special conditions and circumstances do not result from the actions of the applicant.
- C. Literal interpretation of the provisions of these Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classifications, under the terms of the Code, and would work an unnecessary and undue hardship on the applicant.
- D. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
- E. The grant of the variance will be in harmony with the general intent and purpose of the Code and that such variance will not be injurious to the area involved.

The Development Regulations Administrator shall refer a copy of the application to the Board at least one (1) week prior to the meeting of the Board before which the application is to be heard.

#### **11.2.2 Public Hearing**

The Board of Adjustment shall hold a public hearing on any application for variance, after due public notice and notice to all owners of contiguous property. It shall decide the application within a reasonable time. At the hearing, any person may appear in person, or by agent or attorney.

#### **11.2.3 Conditions and Safeguards**

The Board of Adjustment may impose on the grant of any variance, any conditions or safeguards not otherwise required, if deemed necessary or desirable in furthering the purposes of these Regulations. Violation of any such conditions or safeguards may result in a revocation of any variance permit, in addition to any other remedy for such violation provided in these Regulations or by law.

#### **11.2.4 Limitation of Power to Grant Variances**

A variance may be granted only to modify the area, size, setbacks, or open space requirements of these Regulations. Under no circumstances shall the Board of Adjustment grant a variance to permit or expand a use not generally or by special exception permitted in its zoning classification. A variance may be granted only if the applicant meets all of the conditions listed in Section 10.2.1.

No non-conforming use of neighboring land, structures, or buildings in the same zoning classification and no permitted use of lands, structures or buildings in other zoning classifications shall be considered grounds for the authorization of a variance.

#### **11.2.5 Expiration of Variance**

If a variance does not begin to serve the purpose for which it was granted within 12 months from the date of rendition, or, if its use is abandoned for 12 consecutive months from the date of rendition, it shall expire. A shorter or longer period of time may be set by the Board of Adjustment.

### **SECTION 11.3 SPECIAL EXCEPTIONS**

The Town Council<sup>1</sup> shall hear and decide applications for such special exceptions as are specifically authorized under these Regulations, in the following manner:

#### **11.3.1 Written Petition; Application Procedure**

A written petition for a special exception shall be submitted to the Development Regulations Administrator. The petition shall include any information or exhibits necessary to demonstrate that the grant of a special exception will be in harmony with the general intent and purpose of these Regulations. Such information or exhibits may include:

- A. Site plans to scale, showing proposed placement of structures on the property; provisions for ingress and egress, off-street parking and loading areas, refuse and service areas, required yards and other open spaces.
- B. Utilities.
- C. Landscaping or buffer areas.
- D. Proposed signs and lighting.
- E. Any additional information deemed necessary by any reviewing department or agency.

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<sup>1</sup> As amended per Ordinance 99-2, February 24, 1999.

The Development Regulations Administrator shall refer a copy of the application to the Planning Commission at least one (1) week prior to the meeting of the Commission before which the application is to be heard.

### **11.3.2 Public Hearing**

The Planning Commission shall hold a public hearing, after due public notice and notices to all owners of contiguous property, for review of each application for special exception. after due public notice and notices to all owners of contiguous property. The Development Regulations Administrator shall refer a copy of the application to the Planning Commission at least one week prior to this hearing.

Following its review of the application, the Planning Commission shall recommend to the Town Council that the application be approved, approved with conditions or denied.<sup>2</sup>

### **11.3.3 Town Council Review: Public Hearing**

The Town Council shall hold a public hearing, after due public notice, for review of each application for special exception. The Development Regulations Administrator shall refer a copy of the application and the Planning Commission's recommendation to the Town Council at least one (1) week prior to this public hearing.

Following its review of the application and the recommendation of the Planning Commission, the Town Council may approve, deny, or approve with conditions such application for special exception.<sup>3</sup>

### **11.3.4 Conditions and Safeguards**

The Town Council<sup>4</sup> may impose on the grant of any special exception any conditions or safeguards not otherwise required, if deemed necessary or desirable in furthering the purpose of these Regulations. Violation of any such condition or safeguards shall be deemed a violation of these Regulations, and may result in a revocation of any special exception permit, in addition to any other remedy for such violation provided in these Regulations or by law.

### **11.3.5 Reasons for Denial**

The Town Council<sup>5</sup> may deny any application for a special exception for one or more of the following reasons:

- A. It is inconsistent with the purpose or intent of these Regulations.
- B. It is inconsistent with any element of the Comprehensive Plan.
- C. It will adversely affect the public interest.
- D. It does not meet the expressed requirements of the applicable special exception.
- E. The applicant will not be able to meet all requirements imposed by federal, state or local governments, or by the Commission.
- F. It will generate undue traffic congestion.
- G. It will create a hazard, a public nuisance, or be dangerous to individuals or to the public.

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<sup>2</sup>As amended per Ordinance 99-2, February 24, 1999.

<sup>3</sup> Same

<sup>4</sup> Same

<sup>5</sup> Same

H. It will materially alter the character of surrounding neighborhoods, or adversely affect the value of surrounding land, structures, or buildings.

I. It will adversely affect the natural environment, natural resources, or scenic beauty, or cause excessive pollution.

### **11.3.6 Expiration or Abandonment of Special Exception Uses**

If a special exception does not begin to serve the purpose for which it was granted within 12 months from the date of rendition, or, if its use is abandoned for 12 consecutive months from the date of rendition, it shall expire.

Special exceptions are not transferable from the applicant to any other person, and do not run with the land. A special exception shall immediately expire if the applicant to whom the special exception was granted does vacate the premises.

### **11.3.7 Preservation of Special Exception Uses**

A particular use or structure which was legally authorized under the terms of Ordinance No. 57 or any subsequent amendment thereto, and which would be permitted as a special exception under the terms of these Regulations, may be continued after the effective date of these Regulations as if a special exception under these Regulations has been expressly granted therefore. Any terms or conditions which applied to such use or structure prior to the effective date of these Regulations, including limitations on time, shall remain in full force and effect following the effective date of these Regulations.

## **SECTION 11.4 APPEALS FROM THE BOARD OF ADJUSTMENT**

Any person aggrieved by any decision of the Board of Adjustment may apply to the circuit court for review by certiorari, within 30 days after the rendition of the decision by the Board. He shall notify all interested persons, and all persons entitled by these Regulations to receive notice of the original public hearing, by certified mail, return receipt requested, of his taking of such an appeal. An appeal pending on the effective date of these Regulations shall continue and be governed by the previous Zoning Ordinance No. 57.

## **SECTION 11.5 REHEARING AND ADMINISTRATIVE RES JUDICATA**

If it is alleged that the Board of Adjustment has overlooked or misapprehended some facts or points of law, a rehearing of any decision of the Board may be granted by the Board, either on the motion of any member voting on the prevailing side, or on the motion of any person aggrieved by its decision. The motion shall be in writing, shall be filed with the Development Regulations Administrator within 10 working days after the rendition of the decision, and shall state its grounds. The movant shall serve it by Certified Mail, upon all Board members and all other interested persons, together with a notice stating the date, time and place it will be orally presented to the Board.

If the Board grants such a motion, it shall state its reasons for doing so, and set a time, date and place for another public hearing upon due public notice.

The Board shall not otherwise rehear a petition based upon the same facts or issues until at least 1 year has elapsed from the date of rendition.

## **SECTION 11.6 AMENDMENT OF OFFICIAL ZONING CODE**

### **11.6.1 Application for Amendment**

An application for amendment of the Official Zoning Regulations or Map shall be on a form supplied by the Development Regulations Administrator, which shall be filed with the Development Regulations Administrator, together with any applicable fees.

The Development Regulations Administrator shall refer a copy of the application to the Planning Commission at least one week prior to the meeting of the Planning Commission before which the application is to be heard.

**11.6.2 Planning Commission Review; Public Hearing**

The Commission shall hold a public hearing on each application after due public notice, and forward its recommendation to the Town Council and to the applicant.

In its review of each application, the Commission shall consider:

- A. Whether it is consistent with all adopted elements of the Comprehensive Plan.
- B. Its impact upon the environment or natural resources.
- C. Its impact upon the economy of any affected area.
- D. Its impact upon any existing necessary governmental services such as schools, sewage disposal, solid waste or transportation systems.
- E. Any changes in circumstances or conditions affecting the area.
- F. Any mistakes in the original classification.
- G. Its effect upon the use or value of the affected area.
- H. Its impact upon the public health, welfare, safety or morals.

**11.6.3 Town Council Review and Determination; Public Hearing**

The Town Council shall hold a public hearing after due public notice on all recommendations from the Commission. The Town Council shall apply those standards as contained in Section 10.6.2, A through H in making its determination. It may accept, reject, modify, return or seek additional information on those recommendations. No approval of an amendment of these Official Zoning Regulations shall be made unless, upon motion, three (3) members of the Town Council concur.

**11.6.4 Consistency of Zoning and the Comprehensive Plan**

An amendment of the zoning regulations or map that is not consistent with the adopted comprehensive plan of the Town of Pierson or any part or element thereof shall not become effective unless and until the comprehensive plan is amended to the extent that such zoning amendment shall be consistent with the plan.