

Sec. 28-178. Board of adjustment.

(a) Members; appointment; terms. The board of adjustment shall consist of five (5) members, all of whom shall be landowners and qualified voters. The membership of the first board shall serve, respectively, one (1) for one (1) year, one (1) for two (2) years, one (1) for three (3) years, one (1) for four (4) years and one (1) for five (5) years. Thereafter members shall be appointed for terms of five (5) years each. Of the two (2) alternate members first appointed, one (1) alternate member shall be appointed for a term of three (3) years, and the other for a term of two (2) years. Thereafter each alternate member shall be appointed for a term of three (3) years. Alternate members shall serve only when called upon to form a quorum, and when so serving shall have all the powers and duties of regular members.

(b) Rules of procedure. The board of adjustment shall elect its chairman from among its members and shall adopt rules of procedure in accordance with the provisions of this chapter. Rules of procedure or amendments thereto adopted by the board of adjustment shall become effective upon their approval by the parish council.

(c) Hearings. The board shall fix a reasonable time for the hearing of an appeal, which hearing shall be open to the public. Public notice of the hearing shall be given, and notice shall be given to the appellant or applicant and to the office of zoning administration. The chairman or the acting chairman may administer oaths and compel the attendance of witnesses. Any interested person may appear in person or by agent or attorney.

(d) Records. The board shall prepare a record of its proceedings for each case or matter heard. The record shall show the grounds for each decision and the vote of each member upon each question or if absent or failing to vote, shall indicate such fact. The record of proceedings shall be filed in the office of the board and shall be a public record. All testimony, objections thereto and rulings thereon shall be taken down by a reporter employed by the board.

(e) Decisions. The concurring vote of a majority of the members of the board present and voting shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, to decide in favor of the applicant on any matter upon which the board is required to pass under this chapter or to allow any variance. Every decision of the board shall be based upon findings of fact, and every finding of fact shall be supported in the record of proceedings. The enumerated conditions required to exist on any matter upon which the board is required to pass under this chapter or to allow any variance shall be construed as limitations on the power of the board to act. A mere finding or recitation of the enumerated conditions, unaccompanied by findings of specific facts, shall not be deemed findings of fact and shall not be deemed compliance with this chapter. Nothing herein contained shall be construed to empower the board to change the terms of this chapter, to effect changes in the zoning map or to add to the specific uses permitted in any district. The powers of the board shall be so construed that this chapter and the zoning map are strictly enforced.

(f) Powers of the board. Subject to the limitations enumerated herein, the board shall have and exercise the following powers. In the exercise of its powers, the board may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from and may make such

order, requirement, decision or determination as ought to be made, and to that end, the board shall have all of the powers of the officer of the department from whom the appeal is taken.

(1) Administrative review. To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision or refusal made by the building inspector or zoning administrator or administrative official in the carrying out of enforcement of any provision of this chapter.

(2) Interpretation. To interpret the zoning map and to pass upon disputed questions as they arise in the administration of the zoning regulations.

(3) Special exceptions. To hear and decide, in accordance with the provisions of this chapter, requests for special exceptions upon which the board is authorized by this chapter to pass. Special exceptions shall be subject to such terms and conditions as may be fixed by the board. No exception shall be authorized unless the board shall find that all of the following conditions exist:

- a. That the exception will not authorize the operation of a use other than those uses specifically enumerated for the district in which is located the property for which the exception is sought;
- b. That the full development is designed and intended to serve the district in which the development is sought to be operated and maintained;
- c. That the exception is essential to maintain the functional design and architectural integrity of the development;
- d. That the exception will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;
- e. That the exception will not alter the essential character of the district in which is located the property for which the exception is sought;
- f. That the exception will not weaken the general purposes of this chapter or the regulations herein established for the specific district;
- g. That the exception will be in harmony with the spirit and purposes of this chapter;
- h. That the exception will not adversely affect the public health, safety or welfare or the master plan.

(4) Variances. Where, by reasons of exceptional narrowness, shallowness or shape of a specified piece of property at the time of enactment of the ordinance from which this section derives or by reason of exceptional topographic conditions or other extraordinary or exceptional characteristics of such piece of property, the strict application of any regulation in this chapter would result in peculiar and exceptional or undue hardship upon the owner of such property, the board may authorize, upon an appeal relating to such property, a variance from such strict

application so as to relieve such difficulties or hardship, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter. Variances shall be subject to such terms and conditions as may be fixed by the board. No variance shall be authorized unless the board shall find that all of the following conditions exist:

- a. That the variance will not authorize the operation of a use other than those uses specifically enumerated for the district in which is located the property for which the variance is sought;
- b. That the development or use of the property for which the variance is sought, if limited by a literal enforcement of the provisions of this chapter, cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district;
- c. That the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, that the unique circumstances were not created by the owner of the property and are not due to or the result of general conditions in the district in which the property is located;
- d. That the variance will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;
- e. That the variance will not alter the essential character of the district in which is located the property for which the variance is sought;
- f. That the variance will not weaken the general purposes of this chapter or the regulations herein established for the specific district;
- g. That the variance will be in harmony with the spirit and purposes of this chapter;
- h. That the variance will not adversely affect the public health, safety or welfare or the master plan.

(5) Use variances; nonconforming structure variances. When sections of this chapter pertaining to the termination of nonconforming uses and the restoration of damaged nonconforming structures, respectively, would otherwise require the termination of a nonconforming use or prohibit the restoration of damaged nonconforming structure, or both, and the owner, tenant or to the person having a legal or equitable interest in the nonconforming structure or nonconforming use and affected by the damage to or destruction of the structure can meet all of the following conditions, the board may grant a use variance to permit the continuance of the nonconforming use in question or a variance to authorize the reconstruction of the nonconforming structure in question, or both, provided the board shall find that all of the following conditions are met:

- a. That the applicant will sustain provable, unusual, exceptional and serious pecuniary loss if the nonconforming use cannot be continued and/or the nonconforming structure cannot be reconstructed;
- b. That the variance will not substantially and adversely affect the public health, safety or welfare or the master plan;
- c. That the plight of the applicant by whom the variance is sought is due to unique circumstances not due to or the result of general conditions in the district in which the property is located;
- d. That the damage to or destruction of the structure in question is the result of fire, flood, windstorm, earthquake or other unforeseen cause and not the result of or attributable to the obsolescence or natural deterioration of the structure. Any such variance granted by the board shall be subject to such terms and conditions as may be fixed by the board. Any variance sought under the authority of this subsection must be applied for by the applicant within one (1) year from the date that the damage to or destruction of the structure occurs or becomes evident. Any variance granted under the authority of this subsection shall be automatically revoked unless restoration of the structure is commenced within one (1) year from the date the variance is granted and completed within two (2) years from the date the variance is granted. Any nonconforming structure reconstructed under authority of a variance granted under this subsection shall meet all requirements of this chapter, except those as to which the variance is granted.

(g) Appeals from the board.

(1) Procedure. Any person or persons jointly or severally aggrieved by any decision by the board of adjustment, of any officer, department, board, or bureau of the parish, may present to the district court of the parish a petition, duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the board.

(2) Certiorari. Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review the decision of the board of adjustment and shall be prescribed therein the time within which a return may be made and served upon the relator's attorney, that shall be not less than ten (10) days but which may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from but the court may, on application on notice to the board and on due cause shown, grant a restraining order.

(3) Return. The board of adjustment shall not be required to return the original papers acted upon by it, but may return certified or sworn copies thereof or such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) Evidence. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take additional evidence or appoint a referee to take

such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(5) Decision. The court may reverse or confirm, wholly or in part, or may modify the decision brought up for review. Costs shall not be allowed against the board unless it appears to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

(h) Application Process.

List of property owners adjacent to the property and those property owners within 250 feet of the site shall be submitted to the Planning Office and shall be notified via either regular or certified mail, as follows:

Notification shall be sent by Parish Staff by certified mail to the applicant and to the adjacent property owners and by first class mail to all remaining property owners within a two hundred fifty-foot (250') radius. The notice shall advise the purpose, date, time and place of the hearing. The cost of any postal fees associated with the notification process shall be borne by the applicant.

(City Code 1965, App. A, art. VIII, § C; Ord. No. 4215, § I, 7-27-88; Ord. No. 4563, 10-10-90; Ord. No. 6825, § I, 12-3-03; Ord. No. 7350, § I, 9-12-07; Ord. No. 7419, § I, 2-13-08)

Cross references: Administration, Ch. 2.

State law references: Board of adjustment, R.S. 33:4727.

Secs. 28-179--28-200. Reserved.