

Article IX

Board of Zoning Appeals

Section

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9.010 Creation and Appointment

A Municipal Board of Zoning Appeals is hereby established in accordance with Section 13-7-205, Tennessee Code. The Municipal Board of Zoning Appeals shall consist of five (5) members and have jurisdiction within the corporate limits of the City of White House.

A Regional Board of Zoning Appeals is hereby established in accordance with Section 13-7-304, Tennessee Code. The Regional Board of Zoning Appeals shall consist of three (3) members, the majority of whom shall be residents within the planning region and have jurisdiction within the planning region outside the corporate limits of White House.

9.020 Term of Office of Board Members, Removal and Vacancies

The members of both boards shall serve for a three (3) year term, or until their respective successors are appointed and qualified, except that the board first appointed shall serve respectively for the following terms: one, for one (1) year, one, for two (2) years, one, for three (3) years. All members of the board shall serve with such compensation as may be fixed by the Board of Mayor and Aldermen. The Board of Mayor and Aldermen may remove a member for cause upon written charges and after a public hearing. Vacancies shall be filled for an unexpired term of those members whose position has become vacant in the same manner as the original appointment.

9.030 Procedure

Meetings of the Board of Zoning Appeals shall be held at the call of the chairman, and at such other times as the board may determine. Such chairman or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall adopt rules of procedure and shall keep records of applications and action taken, hereon. The records and minutes shall be filed in the office of the building inspector and shall be public record.

9.040 Appeals to the Board

An appeal to the White House Board of Zoning Appeals may be taken by any person, firm, or corporation aggrieved by, or by any governmental office, department, board, or bureau affected by, any decision of the building inspector based in whole or in part upon the provisions of this ordinance. Such appeal shall be taken by filing with the Board of Zoning Appeals a notice of appeal specifying the grounds, thereof. The building inspector shall transmit to the board all papers constituting the record upon which the action appealed was taken. The Board shall fix a reasonable time for the hearing of the appeal, give public notice, thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any person or party may appear in person, by agent, or by attorney.

9.050 Powers of the Board

The Board of Zoning Appeals shall have the following powers:

A. Administrative Review

To hear and decide appeals where it is alleged by the applicant that there is error in any order, requirements, permit, decision, determination, or refusal made by the building commissioner or other administrative official in the carrying out or enforcement of any provisions of this ordinance.

B. Special Exceptions

To hear and decide applications for uses permitted as special exceptions as specified in this ordinance, hear requests for interpretation of the zoning map, and for decision on any special questions upon which the Board of Zoning Appeals is authorized to pass.

C. Variances

To hear and decide applications for variances from the terms of this ordinance.

D. Rules and Regulations of the Board

1. The presence of three (3) members of the Municipal Board, or the presence of two (2) members of the Regional Board, shall constitute a quorum and the concurring vote of at least two (2) members of the Board shall be necessary to deny or grant any application before the Board.
2. No action shall be taken by the Board on any case until after a public hearing and notice, thereof. Said notice of public hearing shall be a legal notice published in a newspaper of general circulation in White House at least ten (10) days before the hearing of an appeal. No appeal shall be considered and heard by the Board less than fifteen (15) days after filing such appeal. If new information is uncovered regarding an action of the Board that

could not have been reasonably presented in a public hearing before the Board, the Board shall establish a date for the purpose of rehearing in accordance with the appropriate procedures, herein.

3. The Board may call upon any other office or agency of the government for information in the performance of its duties and it shall be the duty of such other agencies to render such information to the Board as may be reasonably required.
4. The Planning Commission shall be permitted to submit an advisory opinion on any matter before the Board and such opinion shall be made part of the record of such public hearing.
5. Any officer, agency, or department of the city or other aggrieved party may appeal any decision of the Board to a court of competent jurisdiction as provided for by State law.
6. Any decision made by the Board on a special exception shall indicate the specific section of this ordinance under which the permit is being considered and shall state clearly the specific conditions imposed in granting such permit.
7. Appeals will be assigned for hearing in the order in which they appear on the calendar, thereof, except that appeals may be advanced for hearing by order of the Board, good, and sufficient cause being shown.
8. At the public hearing of the case before the Board, the appellant shall appear in his own behalf or be represented by counsel or agent. The appellant's side of the case shall be heard first and those in objection shall follow. To maintain orderly procedure, each side shall proceed without interruption from the other.

E. Stay of Proceedings

An appeal shall stay proceedings in furtherance of the action appealed from, unless the building inspector certifies to the Board after such notice of appeal shall have been filed, that by reason of facts stated in the certificate such stay would cause eminent peril to life or property. In such instance, the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by a court of competent jurisdiction on application, on notice to the Building Inspector, and on due cause shown.

F. Liability of Board Members, Building Inspectors and Employees

Any board member, building inspector, or other employee charged with the enforcement of this ordinance, acting for the City of White House, within the scope of the responsibilities assigned him under this ordinance shall not thereby render himself liable personally, and he is hereby relieved from all personal liability and shall be held harmless by the city of any damage that may occur to persons or property as the result of any act

required or permitted in the proper discharge of their duties. Any suit brought against any board member, building inspector, or employee charged with the enforcement of any provision of this ordinance shall be defended by legal representatives furnished by the city, until the final termination of such proceedings.

G. Right of Entry upon Land

Upon notice to property owners, the Board, its members and employees in the performance of its work, may enter upon any land within its jurisdiction and make examinations and surveys.

H. Rehearings

1. No rehearing of the decision by the Board shall be had except:
 - a. On motion to reconsider the vote; or
 - b. On a written request for a hearing.
2. If the motion to reconsider receives a majority affirmative vote, the Board of Zoning Appeals may vote on the motion to grant the request for a rehearing, subject to such conditions as the Board may, by resolution in each case, stipulate.
3. No request to grant a rehearing will be entertained unless new evidence is submitted which could not reasonably be presented at the previous hearing.
4. No rehearing for a variance shall be granted to an applicant found by a court of competent jurisdiction to be in willful violation of the express provisions of a prior variance granted under the authority of this article.

9.060 Variances

The purpose of this procedure is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

A. Application

After written denial of a permit, a property owner may make application for a variance, using any form which might be made available by the Board of Zoning Appeals.

B. Hearings

Upon receipt of an application and fee, the Board shall hold a hearing to decide whether a variance to the ordinance provisions is, in fact,

necessary to relieve unnecessary hardships. The Board shall consider and decide all applications for variances within thirty (30) days of such hearing and in accordance with the standards provided below. A fee of one hundred-fifty dollars (\$150.00) shall be charged to cover review and processing of each application for a variance, except that the fee shall be waived for a governmental agency. Before a variance is granted, relative to a parcel of land containing a structure, a permit fee of five hundred dollars (\$500.00) shall be paid, which is nonrefundable, in order for the Board of Zoning Appeals to hear the request. The Board of Mayor and Aldermen by resolution may waive the permit fee if found justifiable.

C. Standards for Variances

The Board shall not grant a variance, except where special circumstances or conditions, fully described in the findings of the Board, do not apply generally in the district. The burden of showing that the variance should be granted shall be upon the person applying for the variance. In granting a variance, the Board shall ascertain that the following criteria are met:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
3. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this ordinance, to other land structures, or buildings in the same district.
4. Financial returns only shall not be considered as a basis for granting a variance.
5. The variance is the minimum variance that will relieve such difficulties or hardship and thereby make possible the reasonable use of the land, building, or structure.
6. The variance will not authorize activities otherwise excluded from the particular district in which requested.
7. That the granting of the variance will not be detrimental to the public welfare, injurious to other property or improvements in the area in which the subject property is located, or a substantial impairment to the intent and purpose of the zoning district wherein such property is located or of the general provisions of this ordinance.

8. The proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, endanger the public safety.
9. That the alleged difficulty or hardship has not been knowingly and intentionally created by any person having an interest in the property after the effective date of this ordinance.

D. Restrictions and Variances

1. 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.
2. Under no circumstances shall the Board of Appeals 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 ordinance in said district.
3. The Board may impose such conditions and restrictions upon the premises benefitted by a variance as may be necessary to comply with the provisions set out in Section 7.070, C., above, to reduce or minimize the injurious effect to such variation upon surrounding property and better carry out the general intent of this ordinance. The Board may establish expiration dates as a condition or as a part of any variances.

9.070 Procedure for Authorizing Special Exceptions (Amended Special Exception Land Use Table, Items 20 and 21 by Ordinance 05-09, May 19, 2005)

A. Application

An application shall be filed with the Board of Zoning Appeals for review. Said application shall show the location and intended uses of the site, the names of the property owners, existing land uses within two hundred (200) feet, and any other material pertinent to the request which the Board may require.

B. Restrictions

In the exercise of its approval, the Board may impose such conditions upon the proposed uses of buildings or land as it may deem advisable in the furtherance of the general purposes of this ordinance.

- C. A fee of one hundred-fifty dollars (\$150.00) shall be charged to cover review and processing of each application for a special exception.

D. Validity of Plans

All approved plans, conditions, restrictions, and rules made a part of the approval of the Board shall constitute certification on the part of applicant that the proposed use shall conform to such regulations at all times.

E. Time Limit

All applications reviewed by the Board shall be decided within sixty (60) days of the date of application, and the applicant shall be provided with either a written notice of approval or denial.

F. General Requirements

A special exception shall be granted provided the Board finds that the activity:

1. Is so designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected.
2. Will not adversely affect other property in the area in which it is located.
3. Is within the provision of "Special Exceptions" as set forth in this ordinance.
4. Conforms to all applicable provisions of this ordinance for the district in which it is to be located and is necessary for public convenience in that location.
5. Determine that the means of ingress and egress to the property and proposed structures can safely accommodate the traffic generated by the facility.
6. Off-street parking and loading areas as required by the ordinance that protect the surrounding areas from noise, vibration, glare and odor.
7. Properly screened refuse and service areas.
8. Screening and buffering that meet the requirements established in Section 3.120, of this ordinance.

G. Special Exceptions Appeals

Any person or agency of the county government may appeal to a court of competent jurisdiction from the Board's decision as provided under statutes of the State of Tennessee. The judgement and findings of the Board on all questions of fact that may be involved in any appeal, cause, hearing or proceeding under this article shall be final, and subject to review only for illegality or want of jurisdiction.

X = Permitted by Special Exception

Special Exceptions:	Agricultural	Residential				Commercial				Industrial			Flood
	A	R40	R20	R15	R10	C1	C2	C3	C4	I1	I2	I3	F1
1. Churches	X	X	X	X	X								
2. Public/Private Schools	X	X	X	X	X								
3. Day Care Centers	X	X	X	X	X	X		X		X	X		
4. Public-Semi Public Recreational Centers	X	X	X	X	X								
5. Utility Facilities	X	X	X	X	X								
6. Government Buildings/Community Centers	X			X	X								
7. Cemeteries	X	X	X	X	X								
8. Bed/Breakfast Home Residences		X	X	X	X								
9. Duplexes			X										
10. Multi-Family Dwellings				X									
11. Automotive Parking Lot						X							
12. Warehouse and Storage Uses						X							
13. Vehicular Craft, and Related Equipment sales, Rental and Delivery						X							
14. Research Services						X							
15. Retail Business Supply						X							
16. Warehousing with No Manufacturing							X						
17. Automobile Sales							X						
18. Food Service Establishments									X				
19. Special Institutional Care Facilities										X	X		
20. Twenty Four Hour Veterinarian/Medical Clinic Accessory Residential Quarter						X	X		X				
21. Residential Agricultural Use		X	X	X									
22. Twenty Four Hour Veterinarian Clinic Accessory Residential Quarter										X	X		
23. Accessory Open Space Uses and Structures or uses permitted as special exception													X
24. Circuses, carnivals, and similar transient, amusement enterprises													X
25. Drive-in theaters, new/used car lots, roadside stands, signs													X
26. Extraction of sand, gravel, and other materials													X
27. Marinas, boat rentals, docks, piers, and wharf's													X
28. Railroads, streets, bridges, utility and pipe lines													X
29. Storage yards for equipment, machinery, materials													X
30. Kennels, stables													X
31. Other uses similar to 21-28, consistent with provisions of section													X

* All Flood zone Special Exceptions shall be under the provisions of the Flood and Flood Fringe Districts Ordinance, Section 5.055