

ZONING ORDINANCE 22__

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF COCHISE COUNTY, ARIZONA, AMENDING ARTICLE 21 BOARD OF ADJUSTMENT OF THE COCHISE COUNTY ZONING REGULATIONS

WHEREAS, Arizona Revised Statutes (“A.R.S.”) §§ 11-811, et seq. gives the Cochise County Board of Supervisors (the “Board”) the authority to adopt zoning regulations to address land use; and

WHEREAS, Arizona Revised Statutes (“A.R.S.”) §§ 11-816, et seq. gives the Board the authority to create one Board of Adjustment for the county; and

WHEREAS, the Board originally adopted Zoning Regulations in Cochise County pursuant to that authority in 1975 and has, with periodic modification, maintained them in effect since that time; and

WHEREAS, the Board recognizes that amendments to the Zoning Regulations can affect countywide land use patterns and, therefore, warrant careful consideration of regional impacts; and

WHEREAS, Article 21 of the Zoning Regulations establishes the Board of Adjustment for Cochise County and rules and procedures; and

WHEREAS, the Board recognizes the general purpose of this amendment is to amend Article 21 Board of Adjustment to remove one Board of Adjustment in each supervisorial district and replace it with one Board of Adjustment that has jurisdiction countywide and that is composed of one member who is a resident of each supervisorial district. Provide guidelines for the Board of Adjustment to consider when approving or denying a variance request; and

WHEREAS, on May 24, 2022, the Board of Supervisors held a duly noticed work session on the proposed amendments to the Zoning Regulations; and

WHEREAS, on July 13, 2022, the Planning and Zoning Commission held a duly noticed public hearing on the proposed amendments to the Zoning Regulations, hereby known as Docket R-22-01, and attached hereto as Exhibit A; and

WHEREAS, on July 26, 2022, the Board of Supervisors held a duly noticed public hearing of the proposed amendments to the Zoning Regulation, Docket R-22-01 attached hereto as "Exhibit A" that will amend Article 21 of the Cochise County Zoning Regulations and found them to be in the public interest.

NOW, THEREFORE, BE IT RESOLVED THAT by the Board of Supervisors of Cochise County, Arizona that the Cochise County Zoning Regulations shall be amended as contained in "Exhibit A," attached hereto.

PASSED AND ADOPTED by the Board of Supervisors of Cochise County, Arizona, this 26th day of July 2022.

Ann English, Chair
Cochise County Board of Supervisors

ATTEST:

Timothy Mattix
Clerk of the Board

APPROVED AS TO FORM:

Paul Correa

Paul Correa, Esq.
Civil Deputy County Attorney

EXHIBIT A

ARTICLE 21

BOARDS OF ADJUSTMENT

~~2101 CREATION AND MEMBERSHIP~~

~~A Board of Adjustment is hereby established in each supervisorial district of Cochise County. Each Board of Adjustment shall consist of three members each of whom shall be a resident of the supervisorial district from which he is appointed. Appointments shall be made by the Board of Supervisors. Members shall serve without compensation except for reasonable travel expenses. No member of any Board of Adjustment shall be a member of the Cochise County Planning Commission, and no employee of said Planning Commission shall be appointed to a Board of Adjustment. The terms of the members of each Board of Adjustment first appointed shall be two, three, and four years; thereafter, each term shall be four years. Any member may be removed by the Board of Supervisors for neglect of duty, inefficiency, or misconduct in office, after a 10-calendar day written notice and public hearing thereon. A written statement of the reason for removal shall be filed with the Clerk of the Board of Supervisors. If a member moves from the supervisorial district from which he is appointed, his office shall at once become vacant. Vacancies shall be filled for the unexpired term of any member whose office has become vacant.~~

~~2102 MEETINGS AND RULES~~

~~**2102.01** Each Board of Adjustment shall hold at least one regular meeting each month if there is a need, and such additional meetings as the Chairman or a majority of the members deem necessary for the transaction of business. All regular and special meetings shall be open to the public.~~

~~**2102.02** Each Board of Adjustment shall adopt its own by-laws and rules of procedure, which shall be filed with the Clerk of the Board of Supervisors. The Planning Director shall serve each Board of Adjustment as Executive Secretary.~~

~~**2102.03** Each Board of Adjustment shall keep written or recorded minutes of its proceedings showing the vote of each member upon each question or indicating any member's absence or failure to vote, and shall keep records of its examinations and other official actions, all of which shall be filed and maintained by the Planning Director and shall be available for public inspection during customary office hours.~~

~~**2102.04** A majority of the Board of Adjustment shall constitute a quorum. All action shall be by resolution, and the concurring vote of a majority of the quorum shall be necessary to reverse any order or determination of the County Zoning Inspector or to decide in favor of an Applicant in any matter of which the Board of Adjustment has original jurisdiction under these Zoning Regulations or to grant any Variance from the requirements contained in these Zoning Regulations.~~

~~**2102.05** Each Board of Adjustment may call upon any Cochise County officer, department, board, Planning Commission or agency for assistance in the performance of its duties, and it shall be their duty to render such assistance as may be reasonably required.~~

EXHIBIT A

~~2103~~2101 JURISDICTION AND POWERS

~~Each~~ The Board of Adjustment, as established per A.R.S 11-816, ~~shall have jurisdiction only within the supervisorial district from which its members are appointed and~~ shall have the following powers and may exercise any other powers specifically conferred by any provision of these Zoning Regulations:

~~2103.01~~ 2101.01 INTERPRETATIONS AND APPEALS OF INTERPRETATIONS

The Board of Adjustment shall have the power to interpret any word, phrase, or section of these Zoning Regulations when there is a dispute between the Appellant and the County Zoning Inspector or when the location of any Zoning District boundary is in doubt.

An appeal concerning the interpretation or administration of these Zoning Regulations may be taken to the Board of Adjustment by any person aggrieved or affected by any decision of the County Zoning Inspector. Such appeal shall be taken within 30-calendar days by filing with the County Zoning Inspector a notice of appeal specifying the grounds, therefore, on forms provided by the Inspector. The County Zoning Inspector shall transmit to the Board of Adjustment all papers constituting the record of the action being appealed. Such appeal shall stay all proceedings in the matter being appealed unless the County Zoning Inspector certifies to the Board of Adjustment that, by reason of the facts stated in the certificate, the stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by a restraining order granted by the Board of Adjustment or by a court of record. The Board of Adjustment shall fix a time for hearing the appeal and give notice thereof to the parties in interest and the public as set forth herein.

Appeals of decisions made by the County Zoning Inspector that fall within the scope of Arizona Revised Statutes shall follow those procedures established by ordinance by the Board of Supervisors for the processing of such appeals.

~~2103.02~~ 2101.02 VARIANCES

A. Power

1. The Board of Adjustment may allow variances from the terms of these Zoning Regulations

B. The Board of Adjustment shall consider the following findings of fact when approving or denying a variance request.

1. The strict application of the terms of these Zoning Regulations would work an unnecessary hardship;
2. The unnecessary hardship arises from a physical condition that is unusual or peculiar to the property and is not generally caused to other properties in the zone;
3. The unnecessary hardship does not arise from a condition created by an action of the owner of the property;
4. The Variance is the minimum to afford relief;
5. The Variance does not allow a use that is not permitted in the zone by the Zoning Regulations;
6. The Variance will not cause injury to or adversely affect the rights of surrounding property owners and residents;
7. The Variance is in general harmony with the intent and purposes of the Zoning Regulations;
8. The Variance does not violate state or federal law.

EXHIBIT A

~~The Board of Adjustment may grant a Variance from the terms of these Zoning Regulations when, owing to peculiar conditions, a strict interpretation would work an unnecessary hardship, if in granting such Variance the general intent and purposes of the Zoning Regulations will be preserved. It shall be the responsibility of the Applicant to submit any studies and/or data necessary to demonstrate the effectiveness of the alternative conditions.~~

These Zoning Regulations generally intend to yield results that comply with all other applicable laws. Accordingly, a request for a "reasonable accommodation" in these regulations, pursuant to any Federal or State housing law or other similar legislation, as may be necessary to afford an equal opportunity to housing under any such law, shall be considered to be an appropriate condition for a Variance from the strict application of these Zoning Regulations. The Board of Adjustment is authorized to grant any such Variance to the extent that any such accommodation is required pursuant to any applicable State or Federal law.

Any decision of the Board of Adjustment allowing a Variance shall be considered for revocation by the ~~Board of Adjustment~~ County Zoning Inspector if substantial construction, in accordance with the plans for which such Variance was granted, has not been initiated within 12 months of the date of approval, building permit issuance, or if judicial proceeding to review the Board of Adjustment's decision has been instituted, 12-months from the date of entry of the final order in such proceedings, including appeals. Additionally, if any of the conditions of the Variance approval are not complied with within 12-months or within the time ~~period~~ set by the Board, it shall be revoked after 30-calendar days' written notice to the owner and Applicant unless a request for a review hearing before the Board of Adjustment is made by the Applicant within this 30-calendar day appeal period. The Board of Adjustment may grant reasonable extensions to the time limits upon a hearing pursuant to a timely written request by the Applicant.

~~2104~~ 2102 APPLICATION FOR VARIANCE

Application for any Variance from these Zoning Regulations shall be made to the Board of Adjustment after the formal applicable permit application has been submitted and reviewed. Such applications shall be made on forms prescribed by the Board of Adjustment, shall be filed with the ~~Planning Director~~ County Zoning Inspector, and shall be accompanied by: Reasons for requesting the Variance, which shall include a notation of the specific provisions of the Zoning Regulations under which the Variance is requested. Any documents necessary to demonstrate compliance with the cited provision shall be attached.

~~2105~~ 2103 FEES

Applications to the Boards of Adjustment shall be accompanied by the appropriate fee as set forth in the adopted ~~Planning and Zoning~~ Development Services Fee Schedule.

~~2106~~ 2104 HEARINGS

Upon receipt of notice of appeal of interpretation, application for a Variance, or any other application properly invoking its jurisdiction, the Board of Adjustment shall schedule a public hearing to take place within a reasonable time frame established by the County Zoning Inspector. Public notice of every hearing shall be given not less than 15-calendar days prior to the hearing by the publication of the notice at least once in a newspaper of general circulation in the County seat.

In the case of a Variance, the property shall also be posted ~~in no less than two places~~ not less than ~~10~~15-calendar days in advance of the hearing. Notice shall also be mailed, via first class, to each real property owner, as shown on the last assessment of the property, within a 300 ~~feet~~ foot radius of the proposed Variance.

EXHIBIT A

~~2107~~ **2105 DECISIONS**

~~Decisions of the Board of Adjustment shall be made within a reasonable time.~~ Every decision of the Board of Adjustment shall be based upon findings of fact, and every finding of fact shall be supported in the record of its proceedings.

~~2108~~ **2106 CONDITIONS**

In approving any Variance, the Board of Adjustment may prescribe appropriate conditions in harmony with the general purpose of these Zoning Regulations, which will maintain the integrity and character of the Zoning District ~~within which~~ where the use is situated.

~~Where necessary, the Board of Adjustment may require that securities be deposited with the Cochise County Treasurer, in such form and amount as it may deem proper under the circumstances, to ensure compliance with the conditions designated in connection therewith. If any regulation, restriction, condition, or stipulation is violated, the said securities shall be forfeited to Cochise County, and the decision allowing the Variance or granting the use or building permit shall become null and void.~~

Failure to fulfill any condition shall be deemed a violation of these Zoning Regulations.

~~2109~~ **2107 APPEAL OF A DECISION MADE BY THE BOARD OF ADJUSTMENT**

Any person aggrieved by a decision of the Board of Adjustment may at any time within 30-calendar days of such decision appeal to the Superior Court, and the matter shall be heard in like manner as appeals from courts of justices of the peace.