

ORDINANCE NO. 2022-1551

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AMENDING GOODYEAR ZONING ORDINANCE SECTION 1-2-5 ("PLANNING AND ZONING COMMISSION"), SECTION 1-2-7 ("BOARD OF ADJUSTMENT"), AND SECTION 1-3-3 (VARIANCE); AND PROVIDING FOR CORRECTIONS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Goodyear Zoning Ordinance currently requires a concurring vote of four members of the Planning and Zoning Commission to recommend approval of an application, which is problematic when not all of the commissioners are present for a vote; and

WHEREAS, the Goodyear Board of Adjustment rarely meets due to a small caseload making the appointment and retention of members of the Board difficult; and

WHEREAS, the Mayor and Council of the City of Goodyear, Arizona find that changing the requirements for the number of votes needed to recommend approval of an application, designating the City of Goodyear Planning and Zoning Commission as the City of Goodyear Board of Adjustment (BOA), and modifying the BOA's responsibilities, powers and processes are in the best interests of the City and its citizens and businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. Goodyear Zoning Ordinance Section 1-2-5 ("Planning and Zoning Commission") is hereby amended to revise paragraph B subparagraph 4 as follows (with additions shown with double underlining and deletions shown with ~~strikeouts~~) with the other subparagraphs of said paragraph B remaining unchanged:

4. The concurring vote of ~~four members~~ a simple majority of the Commission shall be necessary to recommend approval of any application. Any other motion shall be governed by Robert's Rules of Order.

SECTION 2. Goodyear Zoning Ordinance Section 1-2-5 (Planning and Zoning Commission") is hereby amended to revise paragraph C subparagraph 4 as follows (with additions shown with double underlining and deletions shown with ~~strikeouts~~) with the other subparagraphs of said paragraph C remaining unchanged:

4. To promulgate rules of procedure and to supervise the enforcement of rules so promulgated by the Commission ~~and approved by the City Council.~~

SECTION 3. Goodyear Zoning Ordinance Section 1-2-7 ("Board of Adjustment") is hereby amended to revise paragraph A as follows (with additions shown with double underlining and deletions shown with ~~strikeouts~~):

A. ~~CREATION, COMPOSITION, TERMS OF MEMBERS.~~

1. The Board of Adjustment is created to provide for relief from the terms of this Ordinance through the grant of variances, and to hear and decide appeals from decisions of the **Zoning Administrator**.

- ~~2. The Planning and Zoning Commission shall sit as the A Board of Adjustment (and is referred to as the "Board" when it is acting in that capacity) shall consist of five (5) members, each of whom shall be a resident of the City of Goodyear. The members of the Board shall be appointed by the Mayor with the approval of the City Council for three (3) year terms, unless sooner removed by the Council, provided nothing herein shall affect the expiration of the current terms of said Board. Members may be appointed to shorter terms at the discretion of the Mayor and City Council as necessary to provide for staggered terms. Any member of the Board may be removed by the Mayor with the consent of a majority vote of the City Council for inefficiency, neglect of duty, malfeasance in office, or other good and sufficient cause. Vacancies shall be filled for the unexpired term of the member whose position has become vacant. The members of the Board shall serve without compensation.~~
- ~~3. If the legislative body is established as the Board, it shall exercise all of the functions and duties of the Board in the same manner and to the same effect as provided in this Section.~~
- ~~3. 4. The chairman of the Commission shall serve as the chairman of the Board and shall elect a chairman and vice chairman from among its own members who shall have power to administer oaths and to take evidence. The vice-chairman of the Commission shall serve as the vice-chairman of the Board and shall act as the chairman of the Board in the absence of the chairman.~~
- ~~4. 5. Meetings of the Board shall be open to the public. The minutes of its proceedings, showing the vote of each member and records of its examinations and other official actions shall be kept and filed in the office of the City Clerk as a public record.~~
- ~~5. 6. The Board shall adopt rules of procedure not inconsistent with the provisions of this **Ordinance** for the conduct of its business and procedure.~~
- ~~7. The concurring vote of three (3) members of the Board shall be necessary to grant a **variance**, reverse any order or decision of the **Zoning Administrator**, or to decide in favor of the applicant on any matter upon which it is required to act.~~
- ~~8. When any Board member has direct pecuniary or proprietary interest in any matter before the Board, said member shall be excused and refrain from participating in discussion and voting on any matter in which such conflict exists.~~
- ~~6. 9. The **Zoning Administrator** Goodyear City Clerk or his/her designee shall serve ex-officio as the Secretary of the Board, but shall have no vote.~~
- ~~10. The Board may hold closed executive sessions or like sessions for the purposes and in the power provided by Arizona law.~~

7. In the event a conflict of interest prevents the City Attorney or his/her designee from representing the Board on an appeal of a decision of a Zoning Administrator, the City shall appoint outside counsel to represent the Board in such appeals.

SECTION 4. Goodyear Zoning Ordinance Section 1-2-7 ("Board of Adjustment") is hereby amended to revise paragraph B ("POWERS") subparagraphs 1, 2, 5, and 6 as follows (with additions shown with double underlining and deletions shown with ~~strikeouts~~), with the other subparagraphs of said paragraph B remaining unchanged:

1. Except as otherwise expressly provided in this **Ordinance** or the Goodyear City Code, the Board shall hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the **Zoning Administrator** in the enforcement of this **Ordinance**.
2. Upon determination by the Board that there is an error in an order, requirement or decision by the Zoning Administrator in the enforcement of this Ordinance. ~~The the~~ Board, ~~in connection with its consideration of an appeal,~~ may reverse or affirm, wholly or partly, or modify the order, requirement or decision of the **Zoning Administrator** being appealed and may impose conditions as the Board deems necessary to fully carry out the provisions and intent of this **Ordinance**. The violation of any conditions of approval or other condition imposed by the Board shall be a violation of this **Ordinance**.
5. ~~The concurring vote of three (3) members of the Board shall be necessary to reverse or modify a decision of the Zoning Administrator, or to grant a variance.~~
6. ~~The decision of the Board shall be final on such matters for which it has jurisdiction under this section.~~

SECTION 5. Goodyear Zoning Ordinance Section 1-2-7 ("Board of Adjustment") is hereby amended to revise paragraph C ("APPEALS OF DECISION OF **ZONING ADMINISTRATOR**") and subparagraph 5 as follows (with additions shown with double underlining and deletions shown with ~~strikeouts~~), with the other subparagraphs of said paragraph C remaining unchanged:

- C. APPEALS OF DECISION OF ZONING ADMINISTRATOR. Unless otherwise provided in this Ordinance or the Goodyear City Code, ~~p~~Persons with standing who are aggrieved by a decision of the **Zoning Administrator**, ~~except for decisions on applications for a Site Plan or Design Review,~~ shall be entitled to appeal such decision by filing a written notice of appeal within fifteen (15) calendar days of the date the decision was issued. The appeal shall be filed with the **Zoning Administrator** and shall be processed in accordance with the

procedures generally described herein and more fully described in the **Administrative Process Manual**.

5. The concurring vote of ~~three (3) members~~ a simple majority of the Board shall be necessary to reverse or modify any decision of the **Zoning Administrator**.

SECTION 6. Goodyear Zoning Ordinance Section 1-2-7 (“Board of Adjustment”) is hereby amended to revise paragraph D (“SPECIAL ACTION IN SUPERIOR COURT”) (with additions shown with double underlining and deletions shown with ~~strikeouts~~):

D. *SPECIAL ACTION IN SUPERIOR COURT.* A person aggrieved by a decision of the Board, a taxpayer who owns or leases the adjacent property, or a property within three hundred feet from the boundary of the immediately adjacent property, and/or an officer or a department of the municipality affected by a decision of the Board may, at any time within thirty days after a decision has been rendered, file a complaint for special action in the superior court of Maricopa County to review the Board’s decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed.

SECTION 7. Goodyear Zoning Ordinance Section 1-3-3 (“Variances”) is hereby amended to revise paragraph C (“APPROVAL”) as follows (with additions shown with double underlining and deletions shown with ~~strikeouts~~), shall be deleted:

C. *APPROVAL.* The Board shall hold a public hearing for which due and proper notice has been provided in accordance with Section 1-3-9 and all interested persons shall be given the opportunity to be heard. The concurring vote of ~~three (3) members~~ a simple majority of the Board shall be necessary to ~~reverse any decision of an Administrative Official, or to pass any variations from this Ordinance~~ grant a variance. Any **variance** granted may be subject to such conditions deemed applicable by the Board. **Variances** shall be void if the subject property does not conform to all conditions, requirements, and standards prescribed by the Board as a condition for approval of the **variance**.

SECTION 8. As soon as practicable after the effective date of this Ordinance, the City of Goodyear Planning and Zoning Commission shall modify its Rules of Procedure, with the assistance of City of Goodyear staff and consultants, to accommodate its additional role as the City of Goodyear Board of Adjustment.

SECTION 9. CORRECTIONS

The City Clerk, and the codifiers of this Ordinance are authorized to make necessary clerical corrections to this Ordinance, including, but not limited to, the

correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

SECTION 10. SEVERABILITY

If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions of the ordinance or parts thereof.

SECTION 9. EFFECTIVE DATE

This Ordinance shall become effective thirty days after adoption in the manner prescribed by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, by a _____ vote, this _____ day of _____, 20____.

Joe Pizzillo, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney