

**Sec. 65-28. Zoning board of adjustment.**

- (a) A zoning board of adjustment is hereby created. The word 'board' when used in this section shall be construed to mean the zoning board of adjustment. The board shall consist of five (5) members, who shall be resident property owners, appointed by the mayor and approved by the board of aldermen, each to be appointed for a term of five (5) years; with the exception that when the board shall first be created one (1) member shall be appointed for a term of five (5) years, one (1) for a term of four (4) years, one (1) for a term of three (3) years, one (1) for a term of two (2) years, and one (1) for a term of one (1) year. Three (3) alternate members may be appointed to serve in the absence or disqualification of the regular members. Alternate members shall be appointed for a term of three (3) years, with the exception that when the alternate terms are first created the longest serving alternate shall be appointed for a term of one (1) year, the second longest serving shall be appointed for a term of two (2) years, and the third longest serving shall be appointed for a term of three (3) years. All members and alternates shall be removable for cause by the mayor and board of aldermen upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term only of any member whose term becomes vacant. The board shall elect its own chairman and vice chairman who shall serve for one (1) year.
- (b) The zoning board of adjustment shall adopt rules for the conduct of its business, establish a quorum and procedures, and keep a public record of all findings, decisions, and minutes of its meetings. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine, and all meetings shall be open to the public. ~~Any meeting at which an appeal is to be heard shall be a public meeting with public notice of said meeting and business to be carried on published in a newspaper of general circulation in the city at least one (1) time, seven (7) days prior to the meeting, as well as due notice to the parties in interest. Upon the hearing, any party may appear in person or by agent or attorney. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses.~~
- (c) An appeal may be taken to the zoning board of adjustment by any person, group or organization, public or private, affected by a decision of the building and planning superintendent. Such appeal shall be taken within such time as prescribed by the board by general rule by filing with the building and planning superintendent a notice of appeal specifying the grounds thereof. A fee of fifty dollars (\$50.00) shall accompany all notices of appeals. The building and planning superintendent shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.
- (d) An appeal stays all proceedings in furtherance of the action appealed from unless the building and planning superintendent certifies to the zoning board of adjustment, after the notice of appeal shall have been filed with said building and planning superintendent, that, by reason of facts stated in the certificate, a stay would, in the building and planning

superintendent's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the zoning board of adjustment or by a court of record on application or notice to the building and planning superintendent and on due cause shown.

(e) The zoning board of adjustment shall have the following powers:

- (1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decisions, or determination made by the building and planning superintendent in the enforcement of this chapter, and may affirm or reverse, in whole or part, said decision of the building and planning superintendent.
- (2) To hear and decide all matters referred to it or upon which it is required to pass under the provisions of this chapter.
- (3) To hear requests for variances from the literal provisions of the zoning ordinance that would cause undue hardship due to circumstances unique to the individual property under consideration and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the zoning ordinance. The zoning board of adjustment shall not permit, as a variance, any use in a district that is not permitted under this chapter. The zoning board of adjustment may impose conditions in the granting of a variance to ensure compliance and to protect adjacent property.
- (4) To hold public hearings on and decide the following exceptions to or variations of this chapter:
  - a. To permit the extension of a district where the boundary line thereof divides a lot held in a single ownership at the time of the adoption of this chapter.
  - b. Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan, as shown upon the zoning district map, where the street layout on the ground varies from the street layout as shown on this map.
  - c. Permit reconstruction of a nonconforming building otherwise prohibited by section 65-23.
  - d. Vary the yard regulations where there is an exceptional or unusual physical condition of a lot not generally prevalent in the neighborhood, which condition, when related to the yard regulations of this chapter, would prevent a reasonable or sensible arrangement of buildings on the lot.
  - e. Vary the parking regulations by not more than fifty (50) percent where it is conclusively shown that adequate off-street parking to serve a particular use has been provided by or is controlled by the municipality.
- (5) In exercising the above-mentioned powers, the zoning board of adjustment may reverse or affirm wholly or partly, 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 shall have all the powers of the building and planning superintendent. In considering all appeals to the provisions of this chapter, the board shall, before making any finding in a specific case, first determine that the proposed change will not constitute a change in the zoning district map and will not impair an adequate supply of light and air to adjacent property; or increase congestion in public streets; or increase the danger of fire; or materially diminish or impair established property values within the surrounding area; or in any other respect impair the public health, safety, comfort, morals, and welfare of the City of Jackson. Every change granted or denied by the board shall be accompanied by a written finding of fact, specifying the reason for granting or denying the variation. The decision of the board shall be made a part of any building permit in which the variation is allowed. The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision, or determination of the building and planning superintendent or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variation in this chapter.

- (6) A hearing requesting an appeal or variance shall be a public hearing at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days' notice of the time and place of such hearing shall be published in an official paper of general circulation in the city. Written notice of the public hearing shall be provided to all property owners and residents within one hundred eighty-five (185) feet of the subject property.
- (7) Any person or persons jointly or severally aggrieved by any decision of the zoning board of adjustment, or any officer, department, board, or bureau of the municipality, may present to the Circuit Clerk of Cape Girardeau County a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the zoning board of adjustment. Upon presentation of such petition, the court may allow a writ of certiorari directed to the zoning board of adjustment to review such decision of the board and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney which shall not be less than ten (10) days and 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. The zoning board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof, or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and materials to show the grounds of the decision appealed from and shall be verified. 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 the findings of fact and conclusions of law which shall constitute a part of the proceedings upon which a determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

( Ord. No. 21-25 , § 1, 5-17-21)