

ARTICLE 9
BOARD OF APPEALS

900. ESTABLISHMENT.

A Board of Appeals is hereby established. Said Board shall consist of three (3) members, appointed by Town Council. The members shall serve for overlapping terms of four (4) years or thereafter until their successors are appointed. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall be removed for cause by the appointing authority upon written charges and after public hearing. The members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board. None of the members shall hold any other public office or position in the Town.

901. PROCEEDINGS.

The Board shall adopt rules necessary to the conduct of its affairs in accordance with the provisions of this Ordinance. Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine. The Chair, or in his/her absence the acting Chair, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record.

902. DECISION.

The concurring vote of two (2) members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to affect any variation of this Ordinance. On all appeals, applications and other matters brought before the Board of Appeals, the Board shall inform in writing all the parties involved of its decisions and the reasons thereof.

903. POWERS AND DUTIES.

In exercising its powers, the Board of Appeals may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or in part, or may modify the order, requirements, decisions or determinations, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The Board, in the execution of the duties for which appointed, may subpoena witnesses and in case of contempt may certify such fact to the Town of Gilbert Municipal Court. The Board of Appeals shall have the following powers and duties:

903.1. Administrative Review. Appeals to the Board of Appeals may be made by any person aggrieved. Such appeal shall be made within thirty (30) days by filing with the Zoning Administrator. The appeal must specify the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record from which the appealed action was taken. The Board of Appeals shall fix a reasonable time for hearing the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney. An appeal stays all proceedings unless the Zoning Administrator certifies to the Board of Appeals, after notice of appeal is filed with it, that by reason of facts stated in the certificate, a stay would constitute a clear and present danger to the public. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court record of application, on notice to the Zoning Administrator from whom the appeal is taken and due cause shown.

903.2. Variance.

903.2.1. Duties Of The Board.

- (1) The Board of Appeals shall have the power to authorize upon appeal in specific cases such Variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship, so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such Variance may be granted in such individual case of unnecessary hardship upon a finding by the Board of Appeals that:
 - (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography;
 - (b) Such conditions are peculiar to the particular piece of property involved; and
 - (c) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the Ordinance or Comprehensive Plan, provided, however, that no Variance may be granted for a use of land or building or structure that is prohibited in a given district by the Ordinance.
- (2) With respect to uses of land, buildings and other structures,

- (3) this Ordinance is declared to be a definition of the public interest by Town Council, and the spirit of this Ordinance will not be observed by a Variance which permits a use not generally permitted in the district involved or any use expressly or by implication prohibited by the terms of this Ordinance in said district. Therefore, under no circumstances shall the Board of Appeals grant a Variance to permit a use not generally permitted in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.
- (4) No nonconforming use of neighboring lands, structures, or buildings in the district, and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a Variance.
- (5) In granting any Variance, the Board of Appeals may prescribe conditions and safeguards in conformity with this Ordinance.

903.2.2. Procedures.

- (1) A written application for a Variance shall be submitted demonstrating that the applicant meets the provisions of Section 903.2.1.
 - (a) That extraordinary and exceptional conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
 - (b) That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
 - (c) That the extraordinary and exceptional conditions and circumstances do not result from the actions of the applicant;
 - (d) That granting the Variance requested would not cause substantial detriment to the public good or impair the purposes and intent of the Ordinance or the Comprehensive Plan; and

- (e) That the Variance, if granted, would not permit a use not generally permitted in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.
- (2) Notice of public hearing shall be posted on the property for which a Variance is sought and shall be published at least fifteen (15) days prior to the public hearing in a newspaper of general circulation in the Town of Gilbert.
- (3) The hearing shall be held. Any party may appear in person, or by agent or attorney.
- (4) The Board of Appeals shall make findings that the requirements of Section 903.2.1. (1) have been met by the applicant.
- (5) The Board of Appeals shall further make a finding that the reasons set forth in the application justify the granting of the Variance, and that the Variance is the minimum Variance that will make possible the reasonable use of the land, building, or structure.
- (6) The Board of Appeals shall further make a finding that the granting of the Variance will be in harmony with the general purposes and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (7) The Board of Appeals may prescribe a time limit within which the action for which the Variance is requested shall be begun or completed, or both.

903.2.3. Effect Of Failure To Meet Conditions.

- (1) Violation of conditions and safeguards prescribed in conformity with this Ordinance when made a part of the terms under which the Variance is granted shall be deemed as violations of this Ordinance, punishable under penalties established herein.
- (2) Failure to begin or complete, or begin and complete, an action for which a Variance is granted, within the time limit specified, when such time limit is made a part of the terms

under which the Variance is granted, shall void the Variance.

903.3. Special Exceptions.

903.3.1. Duties Of The Board.

- (1) To hear and decide only such applications for Special Exceptions as the Board of Appeals is specifically authorized to pass upon by the terms of this Ordinance;
- (2) To decide such questions as are involved in determining whether Special Exceptions should be granted;
- (3) To prescribe appropriate conditions and safeguards in conformity with this Ordinance; or
- (4) To deny Special Exceptions when not in harmony with the intent and purpose of this Ordinance.

903.3.2. Procedures.

- (1) A written application for a Special Exception shall be submitted indicating the section of this Ordinance under which the Special Exception is sought and stating the grounds on which it is requested.
- (2) Notice of public hearing shall be posted on the property for which Special Exception is sought and shall be published at least fifteen (15) days prior to the public hearing in a newspaper of general circulation in the Town of Gilbert.
- (3) The public hearing shall be held. Any party may appear in person, or by agent or attorney.
- (4) The Board of Appeals shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the Special Exception, and that granting of the Special Exception will not adversely affect the public interest.
- (5) The regulations of this Ordinance setting forth specific standards to be met prior to the establishment of any Special Exception shall be binding upon the Board of Appeals and no Variance to such requirements shall be granted.

- (6) The Board of Appeals shall grant no Special Exception for the establishment of any use or structure which necessitates the concomitant granting of a Variance.
- (7) The Board of Appeals may prescribe a time limit within which the action for which the Special Exception is required shall be begun or completed, or both.

903.3.3. Effect Of Failure To Meet Conditions.

- (1) Violation of conditions and safeguards prescribed in conformity with this Ordinance, when made a part of the terms under which the Special Exception is granted shall be deemed a violation of this Ordinance, punishable under penalties established herein.
- (2) Failure to begin or complete, or begin and complete, an action for which a Special Exception is required, within the time limit specified, when such time limit is made a part of the terms under which the Special Exception is granted shall void the Special Exception.

904. APPEALS FROM THE DECISIONS OF THE BOARD OF APPEALS.

Any person who may have substantial interest in any decisions of the Board of Appeals may appeal any decision of the Board by filing with the Town of Gilbert Municipal Court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within thirty (30) days after the decision of the Board is rendered.

Approved May 13, 2013