

023476

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Introduced by Treece
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Ordinance No. 023476 Council Bill No. B 34-18

AN ORDINANCE

adopting the Rules of Procedure for the City of Columbia Board of Adjustment; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Council hereby adopts the Rules of Procedure for the City of Columbia Board of Adjustment, as required by Section 29-6.1(c)(2)(iii)(B) of the Unified Development Code of the City of Columbia, Missouri. The form and content of the Rules of Procedure for the City of Columbia Board of Adjustment shall be substantially as set forth in "Exhibit A" attached hereto and made a part hereof.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this 19th day of February, 2018.

ATTEST:

Treece
City Clerk

BS
Mayor and Presiding Officer

APPROVED AS TO FORM:

[Signature]
City Counselor

RULES OF PROCEDURE FOR THE CITY OF COLUMBIA BOARD OF ADJUSTMENT

GENERAL

These procedures have been prepared by the Board of Adjustment to aid any citizen in deciding whether any person or entity has a basis for an appeal to the Board. These rules are not intended to replace the Unified Development Code, and in cases where there may be a conflict, the Unified Development Code will prevail. Before making an application or filing an appeal with the Board, citizens should avail themselves of the information and provisions contained in the current Unified Development Code. If a citizen has questions they may seek consultation with a design professional, an attorney or a member of the staff of the Community Development Department.

POWERS OF THE BOARD

As set forth in Chapter 29 Article 6 of the City Code, the Board shall have the following authority and duties:

(i) Appeals.

To hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an administrative official in the administration or enforcement of the Unified Development Code, as described in Section 29-6.3(f).

(ii) Variances.

To hear and decide applications for variances from the terms or conditions of the Unified Development Code under Section 29-6.4(d)(Variances).

(iii) Other Powers.

(A) Assume any other powers and perform any other duties as are provided for by the Charter, City Code, Council action, or state law.

(B) The Board may adopt rules for the conduct of its business that are consistent with the purposes of the Board and the requirements of the Unified Development Code, which shall be approved by Council ordinance.

MEMBERS OF THE BOARD

(i) The Board shall consist of five (5) members who shall be residents of the City. The terms of office of the members of the Board shall be for five (5) years, except that

the five (5) members first appointed shall serve respectively for terms of one (1), two (2), three (3), four (4), and five (5) years. Thereafter all members shall be appointed by the Council for terms of five (5) years each. No member shall serve more than two (2) consecutive full terms. The presence of four (4) members shall be necessary to constitute a quorum.

(ii) Three (3) alternate members, who shall be residents of the City, shall be appointed by the Council to serve in the absence of, or disqualification of, the regular members. The first three (3) alternates appointed shall serve for terms of three (3), four (4), and five (5) years, respectively. Thereafter, all alternates shall be appointed for five (5) year terms.

(iii) The vacancy of any member or alternate member shall be filled by appointment of the Council for the unexpired term only.

(iv) All members and alternates may be removed for cause by the Council, upon written charges after public hearing.

OFFICERS OF THE BOARD

CHAIR: The Chair of the Board shall be elected by a majority of the members. The term of office will be for one year or until another member is elected Chair. The Chair will preside at all meetings of the Board, except as hereinafter provided. The Chair will also sign all official notices and certificates, call special meetings and represent the Board in official or unofficial capacities as the need arises.

VICE-CHAIR: The Vice-Chair shall be elected by a majority of the members. The term of office will be for one year or until another member is elected Vice-Chair. The Vice-Chair shall assume the duties of the Chair whenever the Chair is unable to perform such duties or whenever this member disqualifies himself/herself.

TIME OF ELECTION: Elected officers shall be elected at the next regular meeting of the Board after the time when any one of the elected officers has ceased to be a member of the Board or when the regular term of the elected officer has come to an end.

TEMPORARY CHAIR: Whenever a meeting is called and neither the Chair nor Vice-Chair is present at the appointed time, any member may serve as a Temporary Chair without election other than by the members present. For the purposes of that meeting, such Temporary Chair shall have all of the powers and duties of the Chair. If a quorum is not present, such Temporary Chair shall have no power and the meeting must be rescheduled.

LIAISON: The Liaison of the Board shall be the Director of Community Development or their designee. The Liaison shall maintain a supply of the various blank forms, informational material, Unified Development Codes or other material used by or

pertaining to the Board; distribute the forms necessary to file an application to those persons requiring them; receive notices given to the Board by others; receive notices of application or appeal; arrange for the proper advertising of hearings before the Board; notify parties in interest of hearings; notify the members of the Board of all meetings of the Board or any other matter addressed to the Board; prepare and distribute minutes of Board meetings to all of the members of the Board; arrange for the presence of a court reporter qualified to record the minutes of all meetings and swear in all persons to be heard under sworn testimony at meetings or hearings; have custody of all minutes and records of the Board and make same available to any person wishing to inspect them.

OFFICE OF THE BOARD

The Office of the Board shall be the Community Development Department.

The Office of the Board shall be open for business during the regular working days and hours of the Community Development Department.

MEETING TIME AND PLACE AND RECORDS OF THE BOARD

(i) Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine. Meeting will be conducted at 7 pm on the Second Tuesday of every month within the City Council Chambers of City Hall, located at 701 E. Broadway, unless otherwise adjusted by the Chair as provided above.

(ii) All meetings of the Board shall be open to the public.

(iii) The Board shall keep minutes of the 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 Board and shall be a public record.

(iv) All testimony, objections thereto, and rulings thereon shall be taken down by a reporter employed by the Board for that purpose and who shall receive reasonable compensation for such from the city. The reporter shall furnish to any person or persons a transcript of all or part of such proceedings upon payment to the reporter of a fee equal to that set forth in section 492.590(2), Revised Statutes of Missouri.

(v) The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter before the Board.

CONTINUED MEETINGS: When a case before the Board has not been brought to its conclusion before adjournment, a continuance will be announced by the Chair and the case will be continued to a subsequent meeting.

POSTPONEMENT OF MEETINGS: When a meeting is scheduled, but there is no quorum, the meeting cannot take place and any cases will be rescheduled to the next regular meeting date.

When a hearing is proceeding in the usual manner and the person making the application or appeal to the Board is found to not be present at the hearing, the Board may continue the hearing or dismiss the application or appeal by vote of a majority of the members of the Board.

OPTIONAL CONTINUED HEARINGS: When a meeting is scheduled to be held, and there is a quorum of only four members, any applicant or appellant may request that the hearing for their application or appeal be continued and the Chair shall grant such continuance. The Chair shall, in all cases where the fifth member of the Board is not present, inform all applicants or appellants who are present at the meeting of this option. In the case of such a continuance, the continuance shall be announced by the Chair and the case shall be continued to the next regular meeting of the Board.

SPECIAL MEETINGS: Special meetings may be called by the Chair and may be held at any time and place. Such meetings shall be called only if a need exists. There shall be no waiver of the usual preliminary actions required to initiate a meeting of the Board, nor any relaxation of the rules pertaining to a meeting of the Board. Notice, pursuant to the Revised Statutes of the State of Missouri, will be given of all special meetings.

APPLICATIONS AND APPEALS TO THE BOARD

A notice of appeal or variance shall be filed with the Community Development Department and shall be transmitted to the Board prior to the scheduled public hearing. The original copy of the appeal or variance shall be filed and will become a part of the permanent record of the Board. Duplicates shall be provided to members of the Board.

All notices shall be signed by the owner of the property in question, or by this person's duly authorized representative, and shall be on forms supplied by the Community Development Department.

If the owner of record (per the Boone County Assessor's Office) is:

- an individual, he or she can sign;
- a partnership, a partner can sign; and
- in joint ownership, a joint owner can sign.

Any other type of ownership, to include but not limited to a corporation or limited liability company, requires the signature of a duly qualified and authorized attorney at law licensed in the State of Missouri.

In addition, all notices must be accompanied by a filing fee, a letter of denial from the City (if applicable), and a site plan (if applicable).

The Board Liaison shall inform all applicants and appellants of the number of copies of any pertinent plats or other pertinent documents that are to be submitted with the application or appeal, if said documents cannot be easily duplicated with existing photocopy equipment. Up to twelve copies could be required to ensure each member of the Board and pertinent staff receive a copy.

The Board Liaison is to inform all applicants or appellants that exhibits may be used in the hearing before the Board, but that such exhibits are to be considered expendable since they will become a part of the records of the Board. Such exhibits may include drawings, writings, photographs or other such documents, if pertinent to the hearing. Exhibits should be capable of being filed and should pertain to the case for which exhibited.

Applications for appeals or variances must be filed not later than 12:00 p.m. (noon) on the date indicated in the annually published Board of Adjustment Submission Schedule. Such schedule shall indicate the date upon which an application may be heard before the Board.

TIME FOR APPEAL

Persons wishing to be heard by the Board, relative to an appeal from any order, requirement, decision or determination of any administrative official of the City of Columbia, shall file the notice of appeal with the Community Development Department within 90 days after the date of such order, requirement, decision or determination. Said 90 days is hereby established by the Board to be reasonable time in which such appeals may be taken.

FILING FEE FOR APPLICATIONS OR APPEALS

Applications for appeals or variances shall be accompanied by a deposit payable to the City of Columbia to cover the cost of advertising the public hearing. If the cost of advertising is less than the deposit, the remainder will be returned to the applicant or appellant. If the cost of advertising is more than the deposit, the applicant or appellant will be asked to provide the difference. In the event additional advertising fees must be paid, the release of the Board's decision and authorization to pursue activities suspended on the subject site shall not become effective until the remaining balance is paid.

PARTIES IN INTEREST

Upon receipt of an application for appeal or variance, the Board Liaison will compile a list of "Parties in Interest" (all property owners within 185 feet of the subject tract) and their addresses. This list will be generated utilizing information from the Boone County Assessor's Office and the City GIS.

NOTICE OF HEARING FOR APPEALS OR VARIANCES

A notice of hearing for appeals or variance applications shall be published at least fifteen (15) days before the public hearing in a newspaper of general circulation in the City of Columbia, Missouri. Said notice shall contain the date, time, and location of the public hearing as well as specify the purpose of the hearing.

The Board Liaison shall arrange for such notice and shall obtain an affidavit from the publisher of such notice that such notice did appear in publication. Such affidavit shall include the name of the newspaper, the date of publication and the notice as published. The affidavit shall become a part of the record of the application or appeal pertaining thereto.

If an item is continued or tabled more than three times, a notice must be published in a newspaper of general circulation in the City of Columbia, Missouri, again. Therefore, the applicant or appellant must provide another deposit payable to the City of Columbia to cover the cost of re-advertising the public hearing.

APPLICATIONS INVOLVING CONSTRUCTION OR MODIFICATION OF COMMUNICATIONS TOWERS OR CONSTRUCTION OF DISGUISED SUPPORT STRUCTURES FOR PERSONAL WIRELESS COMMUNICATION

The Board shall act upon applications to construct or alter a communications tower or construct a disguised support structure for personal wireless communications facilities within 150 days of the applicant filing the application with the Board Liaison. Nothing in this rule shall prevent a different time period if both the applicant and City staff agree to a longer time for acting on the application.

MEETINGS OF THE BOARD

Meetings of the Board shall be presided over by the Chair (or the Vice-Chair in absence of the Chair or the Temporary Chair in absence of the Chair and Vice-Chair). The Chair shall open the meeting at the appointed time.

The Board Liaison shall call the roll.

Four (4) members of the Board being present shall constitute a quorum.

The Chair will ask for approval or modifications to the agenda.

The Chair will ask for approval or correction of the minutes of the immediately preceding meeting or meetings. Such minutes will then be entered into the record of the Board.

The hearing of the cases shall be in the order of sequence of filing as indicated by the case numbers assigned to each case. Also, postponed or continued cases will be heard first.

For each case, the following order will prevail:

The Chair will read the notice of public hearing and determine the notice of public hearing has been properly advertised, the pertinent property was posted with a notice of public hearing, and the parties in interest were properly notified of the hearing.

The person making the appeal or application to the Board will be asked to appear before the Board to testify on the matter to be heard. The Chair will ask other persons in favor of the Board granting the appeal or application request to come forward to be heard. The Chair will then ask persons opposed to the Board granting the appeal or application request to come forward to be heard. All persons who appear to be heard by the Board are required to be sworn to tell the truth and will be asked to give their name and address before being heard.

Such persons may then give such facts or statements as they deem pertinent to the matter before the Board. All remarks, questions or testimony shall be directed to the Board and not to other persons who may be present at the hearing. Unsworn persons may not give testimony. Since the testimony of opponents may give proponents cause to speak after all opponents have spoken, a period of time can be allotted for once-heard proponents, once-heard opponent or possible late comers to be heard at the discretion of the Chair. The Board may ask questions of those persons appearing before the Board at any time.

When all persons present have been heard to the satisfaction of the Board, the Board shall request that staff provide its report and ask questions of the staff relating to the matter under deliberation. Once the board has exhausted its questions of staff it may permit the applicant to respond to staff's comments or board questions. Afterwards, the public hearing portion of the meeting will be declared closed by the Chair. The Board may engage in discussion of the application and upon satisfaction will make a motion and call for a vote of its members as to whether the appeal or application before the Board shall be granted or denied.

Each vote will be publicly held and recorded. Four (4) positive votes shall be required to grant in favor of an appeal or application. Any less than four positive votes shall be reason for denial. It is normal, but not mandatory for the Board to render a decision the same night that an appeal or application is heard.

When the Board lacks a sufficient number of members at a meeting to form a quorum, the matters before the Board shall be continued.

When the hearing before the Board does not provide sufficient information for the Board to make a decision, the Board, by majority vote of the members present, may

continue the hearing and such hearing will be continued to the next succeeding regular meeting of the Board.

When an application or appeal is being heard, and the hour becomes so late as to cause reason for termination of the meeting, the application or appeal then being heard, and any application or appeal yet to be heard at the meeting, shall, by majority vote of the members present, be continued and the Chair shall immediately set and announce a rescheduled date for the hearing of such continued applications or appeals.

REPRESENTATION:

The owner of record of the property in question at the hearing before the Board or the owner's duly authorized attorney at law licensed in the State of Missouri must appear to be heard. If the owner is an individual, this person may represent himself/herself. If the owner is a partnership, a partner may represent the partnership. If the property is held in joint ownership, any of the joint owners may appear. If the owner is someone other than an individual, a partnership, or a joint tenancy, the owner must be represented by a duly qualified and authorized attorney at law licensed in the State of Missouri.

Any person may testify before the Board with regard to the matter being heard.

All persons appearing before the Board shall be sworn in before being heard by the Board.

Any party to the hearing shall have a right to examine a witness while that witness is being heard by the Board if said party stands and is recognized by the Chair. All other remarks, questions or testimony shall be directed to the Board and not to other persons who may be present at the hearing.

CONFLICT OF INTEREST OF BOARD MEMBER(S)

Where there is a conflict between the interests of a member of the Board and an application, appeal, applicant or appellant before the Board, the Board member bearing the conflict shall disqualify himself/herself and elect not to hear or decide on such application or appeal, subject to the following:

Disqualification shall be the duty of the Board member who has the conflict of interest and no other person shall have the right to disqualify a member of the Board on account of a conflict of interest.

In certain situations, a member of the Board is automatically disqualified under Missouri law (Chapter 105 of the Revised Statutes of Missouri). Among the statutory reasons a Board member must disqualify himself/herself if a relative or a company in which this person has a financial interest is party to the Board of Adjustment proceeding, or if the Board member may receive a financial gain from any result of the proceeding.

Where there is a conflict of interest, the Chair shall inform all persons assembled at the meeting that there is a conflict of interest in the matter to be heard, that four votes in favor of an application or appeal are necessary in order for the Board to grant in favor of such application or appeal and that there is a greater chance of obtaining said four favorable votes when there are five members present at the meeting and eligible to vote than when only four members are present and eligible to vote.

If a Board member is aware of a conflict in advance, he/she may contact the Board Liaison and request an alternate member attend in his/her place.

CERTIFICATE OF DECISION

A certificate of decision will be given by the Board Liaison to each appellant or applicant whose appeal or application was granted.

The Board Liaison shall inform recipients of those certificates of decision that it is their obligation and responsibility to have such certificates recorded.

MISCELLANEOUS

Once a decision is made by the Board, the exact same case will not be heard again, except under highly unusual circumstances and then only by a vote of four or more members of the Board. The Board will attempt to preserve public safety and welfare at all times. Matters decided on are not reviewable by the City Council, except that a new ordinance may revise or replace an old ordinance.

In the event that any party believes that the decision of the Board is unfair or illegal, such party has recourse through the courts.

An appellant or applicant may withdraw their appeal or application at any point up to the actual vote by the Board. In such cases, the appellant will be granted a "no prejudice" withdrawal and is then not prohibited from applying anew. In such cases, advanced costs will not be returned to the appellant or applicant.

ACCEPTANCE OF UNIFIED DEVELOPMENT CODE

The Board shall accept the Unified Development Code of the City of Columbia as it finds it and in no way shall attempt to hold it invalid or repeal it, either in whole or in part.

Where the Board finds that it is not sufficiently competent to interpret the true meaning of the Unified Development Code, the Board shall request an opinion from the City Counselor or staff for purposes of clarification or interpretation.

NEW RULES

The Board may, by unanimous vote of the entire Board, recommend modifications, changes, additions to or repeal any of the rules herein written, but such modifications, changes, additions, or repeal shall comply in all respects to existing laws and ordinances and shall receive final approval by the City Council as required by the Unified Development Code.

The Board Liaison shall notify all members of the Board of any proposed change in rules or proposed new rules at least seven days prior to the meeting at which such changes or new rules shall be considered and shall at that time furnish each member with a copy of such proposed rules change or new rules.

Any changes in rules will be kept as a record by the Board Liaison.

COPIES OF RULES

The official copy of these rules shall be kept on file in the Community Development Department for use by the Board or any member of the public. Copies shall be made available to the public at costs allowed by law.

RECORDS

The transcript of any proceeding before the Board and all papers and documents relating to the proceeding or introduced in evidence shall be preserved as records of the Board.

Such papers or documents shall include, but are not limited to, appeals as filed, applications as filed, letters of denial, notices of appeal, notices of public hearing, minutes of meetings of the Board, rules of the Board, Unified Development Codes, letters to and from the Board, letters to parties in interest, certificates of decisions, opinions of the City Counselor rendered for the Board or affecting the Board, exhibits given to the Board and copies of forms used by the Board.

The Board Liaison shall make such records available to any person requesting same, but shall not allow such records to be removed from the Community Development Department.

The Board Liaison shall duplicate the minutes of proceedings before the Board, or any part thereof, or any paper or document thereof, if same can be duplicated with existing equipment, for any person requesting same, but shall charge the cost allowed by law of such duplication to the person requesting same.

NOTICES AND FORMS

The following forms shall be used in connection with notices to, and actions of, the Board. Such forms can be obtained from the City of Columbia's website (www.CoMo.gov) by selecting the link to the "Boards and Commissions" under the "City Government" tab.

NOTICE OF APPEAL TO BOARD OF ADJUSTMENT FROM A DECISION MADE BY AN OFFICIAL OF THE CITY OF COLUMBIA. This form should be used in connection with a decision given to the appellant by an official of the City of Columbia, Missouri.

NOTICE OF APPLICATION TO THE BOARD OF ADJUSTMENT FOR A VARIANCE. This form should be used when requesting a variance from the strict letter of the Unified Development Code because of practical difficulties or unnecessary hardship.

NOTICE OF APPLICATION TO THE BOARD OF ADJUSTMENT FOR CONDITIONAL USE PERMIT. This form should be used when requesting the Board grant a Conditional Use Permit for a "communication antenna or tower" or "wind energy conversion system" as allowed by the Unified Development Codes of the City of Columbia, Missouri.