

ORDINANCE NUMBER 10-05

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, ADOPTING "ARTICLE 16-5 BOARD OF ADJUSTMENT" BY REFERENCE AS SECTIONS 16-5-1 THROUGH 16-5-14 OF THE MARICOPA CITY CODE AND REPEALING ARTICLE 24 OF CHAPTER 16 OF THE MARICOPA CITY CODE AND PROVIDING FOR SEVERABILITY AND THE EFFECTIVE DATE THEREOF.

WHEREAS, that certain document known as "Article 16-5 Board of Adjustment" was adopted as a public record by Resolution No. 10-19 on May 4, 2010;

WHEREAS, on June 1, 2004, the City of Maricopa adopted a Zoning Code as part of the City Code;

WHEREAS, the Mayor and City Council of the City of Maricopa believe, after consultation with its staff, that adopting Article 16-5 and repealing Article 24 of Chapter 16 would be in the best interest of the City of Maricopa; and

WHEREAS, A.R.S. §9-802 allows a City to adopt a public record by Ordinance as a means to reduce publication costs while ensuring that the public gets fair notice and opportunity to review its operative provisions;

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

SECTION 1. Pursuant to Arizona Revised Statutes Section 9-802, that certain document known as "ARTICLE 16-5 BOARD OF ADJUSTMENT" of the Maricopa City Code, three copies of which are on file in the office of the City Clerk of the City of Maricopa, Arizona, which document was made a public record by Resolution No. 10-19 of the City of Maricopa, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

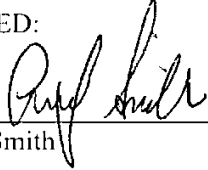
SECTION 2. Article 24 of Chapter 16 of the Maricopa City Code, entitled Board of Adjustment and Appeals, and all amendments thereto are hereby repealed in its entirety and replaced with "ARTICLE 16-5 BOARD OF ADJUSTMENT" which was made public record by Resolution No. 10-19 of the City of Maricopa, Arizona.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. This Ordinance shall become effective August 1, 2010.


PASSED AND ADOPTED by the Mayor and Council of the City of Maricopa, Arizona, this 4th day of May, 2010.

APPROVED:




Anthony Smith
Mayor

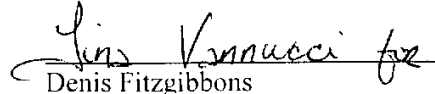
ATTEST:



Ee Ann Schirato, CMC
Deputy City Clerk



APPROVED AS TO FORM:



Denis Fitzgibbons
City Attorney

Article 16-5 Board of Adjustment

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Section 16-5-1 Establishment

There is hereby established, pursuant to Arizona Revised Statutes A.R.S. § §9-462.06, a Board of Adjustment known as the City of Maricopa Board of Adjustment ("Board"). Until a separate Board of Adjustment is appointed by the City Council, the City Council shall serve as the Board of Adjustment, as permitted by A.R.S. §9-462.06(A).

Section 16-5-2 Powers

The Jurisdiction of the Board of Adjustment shall be throughout the incorporated area of the City of Maricopa. The Board shall have the following authorities:

- A. Interpret the Zoning Ordinance when: the meaning of any word, phrase, or section is in doubt; when there is dispute as to such meaning between the appellant and the Zoning Administrator or their designee; or when the location of a zone boundary is in doubt.
- B. Authorize a reduction of the off-street parking and loading requirements of the City of Maricopa Zoning Ordinance, if it should find that in the particular case the peculiar nature of the building or premises, or an exceptional situation or condition, would mitigate the need for the parking spaces specified.
- C. Authorize variances from the strict application of the provisions of the Zoning Ordinance in cases in which the strict application of such provisions would result in the serious impairment of substantial property rights, provided the long-term interests of the community are given full consideration. The applicant at the hearing shall present a statement and adequate evidence in such

form as the Board shall require satisfying, at minimum, the requirements set forth below:

1. There exist special circumstances or conditions regarding the land, building, or use referred to in the applications which do not apply to other properties in regards to the Zoning designation of the property.
 2. The special circumstances or conditions are preexisting and are not created or self-imposed by the owner or the applicant.
 3. The Variance is necessary for the preservation of substantial property rights. Without a Variance the property cannot be used for purposes otherwise allowed within the Zoning designation. The need for adequate financial return is not a legitimate basis for a variance.
 4. The authorizing of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, or to the neighborhood or the public welfare.
 5. Any other requirements as defined in ARS § 9-462.06 G. 2.
- D. Act on disputed Temporary Use Permits (TUP). Such disputed TUP shall be approved, approved with conditions or denied by the Board.
- E. Hear and decide Notice of Appeals from the decisions of the Zoning Administrator ("Notice of Appeal").

Section 16-5-3 Duties

In addition to any other authority granted to the Board of Adjustment by Arizona law, other ordinances of the City or by this Ordinance, the Board of Adjustment shall have the following duties:

- A. To conduct public meetings and hold public hearings: as often as reasonably necessary for the orderly transaction of business; as needed to maintain compliance with all City administrative procedures, ordinances of the City and the laws of Arizona; as requested by the City Manager or his designee, or, when required by law. The BOA will convene if, and when, an appeal is made by an applicant. A variance is needed with respect to the Zoning Code, or a Temporary Use Permit is disputed
- B. Elect officers; Chairperson and Vice-Chairperson.

- C. Adopt rules and procedures necessary and/or convenient to conduct business.
- D. Keep a record of its actions, minutes of the meeting.
- E. Render a quarterly report to the City Council and the Planning and Zoning Commission; when applicable.

Section 16-5-4 Membership

The Board of Adjustment shall consist of:

- A. The Board consists of seven (7) members. Each Council Member shall sponsor one of the seven (7) Board members. Each Board member shall be nominated by the sponsoring Council Member and appointed by a majority approval of Council at a Council meeting. Such appointments shall occur within three (3) months of the seating of the sponsoring Council Member.
- B. Board members shall be of good character, be a registered voter within the City of Maricopa and have established residency within the City of Maricopa incorporated limits for a duration of no less than one (1) year prior to their appointment. Board members shall maintain residency within the City for the duration of the term to which they have been appointed.
- C. Board members shall not: hold any City, County, State or Federal elected office; be employed or under contract with the City while a member of the Board of Adjustment; be a member of any City standing committee or commission.
- D. Board members shall serve at the pleasure of Council without compensation, except reimbursement for actual and reasonable expenditures.
- E. Board members shall meet all requirements, technical and otherwise, as set forth in the Board of Adjustment membership application.

Section 16-5-5 Term of Office

The term of office of the members of the Board of Adjustment shall correspond to the election term of the sponsoring Council member. Upon expiration of the sponsoring Council member's term, Board members shall continue to hold office until their sponsoring Council Member's successor is elected. In the event of a death, resignation, or removal from the Board, a resident of the City may apply to

be appointed by the sponsoring Council member and once approved by Council shall fill the vacancy.

Section 16-5-6 Nonattendance/Removal

Members of the board shall serve at the pleasure of Council and may be removed by a majority vote of the Council. Any member who accumulates two successive un-excused absences during a calendar year from any regular or special meeting shall, unless there is a good cause for the absences is established prior, be removed by the Council.

Section 16-5-7 Organization

- A. Officers. The Board of Adjustment shall elect a chairperson and vice-chairperson from among its own members. The vice-chairperson shall perform the duties of the chairperson in the latter's absence or disability. The chairperson shall have the following powers:
1. Preside at all meetings, and take such actions as necessary to preserve order and the integrity of all proceedings before the Board of Adjustment.
 2. Administer oaths and take evidence
- B. Meetings. The Board of Adjustment shall meet as may be necessary to fulfill their duties. Meetings of the Board shall be open to the public, with only such exceptions as may be permitted by state law with respect to executive session. Public input shall be permitted in all public meetings on matters before the Board. The minutes of the 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. City will provide support staff including: Zoning Administrator, Attorney, BOA Secretary for taking Minutes, and other staff as necessary
- C. Quorum. Four (4) members of the Board shall constitute a quorum for the transaction of business. No matter may be considered by the Board unless there are four (4) or more members present who are eligible/qualified to vote on the matter. The affirmative vote of at least the majority of the quorum present and voting shall be required to pass a motion. If a member has been present for the entire presentation of an issue that member may abstain from voting only because they have a conflict of interest. If a member has a conflict of interest he/she shall declare said conflict of interest prior to the presentation or as soon as the conflict is discovered and shall abstain from all discussion and deliberation on the matter in

question. The Chairperson shall seek direction to proceed from legal council when conflict of interests is raised.

- D. Rules and Regulations. The Board shall follow the general procedures of *Robert's Rules of Order* for the conduct of its meetings in the event of a procedural dispute. The Board may make and publish by-laws to govern its proceedings and to provide for its meetings which shall not be inconsistent with the ordinances of the City and the laws of Arizona. The by-laws and any amendments thereto shall, prior to adoption, be reviewed by the City Attorney and approved by the City Council.

Section 16-5-8 Procedure

- A. All applications for, Variance(s) shall be made by the owner or their representative to the Board of Adjustment in the form of a written application. Said applications shall be made on forms provided by the Development Services Department, shall be filed with the Development Services Department and shall be accompanied by all necessary information as indicated by the application and evidence satisfactory to the Board of Adjustment, of the ability and intention of the applicant to proceed with actual construction or location of use in accordance with said plans within six (6) months after approval.
- B. All Temporary Use Permit (TUP) Dispute requests shall be made by a property owner within the notification area as set forth in the City of Maricopa Zoning Ordinance and shall be submitted to the City of Maricopa Development Services Department, over the counter, within the ten (10) day posting period as defined by the City of Maricopa Zoning Ordinance. The dispute shall be written and submitted to the City of Maricopa Development Services Department by hand delivery prior to 5:00 PM on or prior to the last regular business day in which the ten (10) day posting period expires; which ever occurs first. Requests submitted by mail via carrier, email or phone call shall not constitute a formal Temporary Use Permit Dispute and will not be accepted for consideration. The following must be included within the dispute letter:
1. Name, address and signature of the disputer.
 2. Date of dispute.
 3. Reason for dispute of the Temporary Use Permit.
 4. Address of disputed Temporary Use Permit.

5. Name of Business and/or property owner, Temporary Use Permit Case Number; example: "TUP00.00."
6. Any other information as requested by the Board of Adjustment, the City of Maricopa Zoning Administrator or their designee.

Note any dispute which does not meet the above criteria shall not be accepted by the City of Maricopa

C. A Notice of Appeal of a Zoning Administrator Decision(s) to the Board of Adjustment may be submitted by person(s) aggrieved or by an officer, department, board, or bureau of the City of Maricopa affected by the decision of the Zoning Administrator. All Notice of Appeals shall be filed with the Development Services Department in the following manner:

1. A Notice of Appeal of a Zoning Administrator Decision must be filed with the Development Services Department, submitted over the counter, within thirty (30) days of receipt of the written decision by the Zoning Administrator and/or the approval or denial by the City Council. Such Notice of Appeal shall specify the grounds of the appeal. The Zoning Administrator, once a Notice of Appeal is received, shall immediately transmit all records pertaining to the action appealed to the Board. A Notice of Appeal submitted by Mail via carrier, email or phone call shall not constitute a formal submittal of a Notice of Appeal of a Zoning Administrator Decision and will not be accepted for consideration.
2. The following must be included to constitute a formal Notice of Appeal of a Zoning Administrator decision:
 - a. The formal written decision of the Zoning Administrator and/or the City Council.
 - b. Name address and signature of the property owner and/or their designee.
 - c. Date of appeal.
 - d. Reason for appeal and any justification for such appeal.
 - e. Address as it relates to the location of the appeal or information as necessary to determine the location in which was affected by the Zoning Administrator decision.
 - f. Case number of project; if applicable.
 - g. A list showing the names and addresses of all persons, firms or corporations appearing of public record as owning property within the area proposed to be affected and within three hundred (300) feet of any

part of the property for which the Notice of Appeal is requested. The list must include the names of all persons purchasing land under recorded contracts of sale, and must be certified as to completeness by the applicant or a person/entity otherwise qualified with knowledge of the public records.

- h. Any other information as requested by the Board of Adjustment.

Section 16-5-9 Fees

Uniform non-refundable fees are set forth in the City of Maricopa Development Services Fee Schedule approved by the City of Maricopa City Council.

Section 16-5-10 Public Hearings

All submittals to the City of Maricopa Board of Adjustment shall require Public Hearings. Such Public Hearing Requirements shall be in accordance with the City of Maricopa Zoning Ordinance and ARS § 9-462.04 & 9-462.06. Where there are deviations in Public Hearing requirements between that of the City of Maricopa Zoning Ordinance and the Arizona Revised Statutes the Zoning Administrator or their designee may have the right to waive certain requirements of the City of Maricopa Zoning Ordinance; but may not waive any of the minimum requirement as set forth within ARS § 9-462.04 & 9-462.06.

Section 16-5-11 Board of Adjustment Approval Action

- A. Variance: In the event the Board of Adjustment finds that substantial conformity to standards previously established in the zone and/or on the property may be secured and that detriment, nuisance or injury to the neighborhood will not result from the granting of a variance, as applied for, the Board may approve or conditionally approve the issuance of said variance and transmit notice of the Board's action to the Zoning Administrator. A report of the findings and recommendations and any conditions imposed or required shall also be submitted promptly to the Planning and Zoning Commission and the City Council.

- B. Temporary Use Permit Dispute Request: In the event the Board of Adjustment receives a Temporary Use Permit Dispute Request and finds that substantial conformity to standards previously established in the zone and/or on the property shall not impose a detriment, nuisance or injury to the neighborhood as a result from the approval of a Temporary Use Permit as applied for, the Board may approve or conditionally approve the issuance of said Temporary Use Permit and transmit notice of the Board's action to the Zoning Administrator. A report of the findings and recommendations and any conditions imposed or required shall

also be submitted promptly to the Planning and Zoning Commission and the City Council.

- C. Notice of Appeal: In the event the Board of Adjustment receives a Notice of Appeal and finds that substantial conformity to standards previously established in the zone and/or on the property may be secured and that detriment, nuisance or injury to the neighborhood will not result from the overturning the ruling of the Zoning Administrator, the Board may overturn or conditionally overturn the Zoning Administrator Decision and transmit notice of the Board's action to the Zoning Administrator. A report of the findings and recommendations and any conditions imposed or required shall also be submitted promptly to the Planning and Zoning Commission and the City Council.

Section 16-5-12 Board of Adjustment Denial Action

- A. Variance: In the event the Board of Adjustment denies an application for a variance, no variance shall be issued pending further action thereon by an appeal to the Superior Court within thirty (30) days from the date said denial is officially entered on the minutes of the Board. If said Court shall overrule the action of the Board, then the Zoning Administrator or their designee shall issue the requested variance without further action by the Board, unless the Court orders the Board to hold further hearings to permit the Board to fix conditions or require guarantees, as set forth in Sections 16-5-13 and 16-5-14.
- B. Temporary Use Permit Dispute Request: In the event the Board of Adjustment denies a Temporary Use Permit as a result of a Dispute Request, no permit shall be issued pending further action thereon by an appeal to the Superior Court within thirty (30) days from the date said denial is officially entered on the minutes of the Board. If said Court shall overrule the action of the Board, then the Zoning Administrator or their designee shall issue the requested permit without further action by the Board, unless the Court orders the Board to hold further hearings to permit the Board to fix conditions or require guarantees, as set forth in Sections 16-5-13 and 16-5-14.
- C. Notice of Appeal: In the event the Board of Adjustment upholds the ruling of the Zoning Administrator Decision, no decision by the Board shall be issued pending further action thereon by an appeal to the Superior Court within thirty (30) days from the date said denial is officially entered on the minutes of the Board. If said Court shall overrule the action of the Board, then the Zoning Administrator or their designee shall issue the requested appeal without further action by the Board, unless the Court orders the

Board to hold further hearings to permit the Board to fix conditions or require guarantees, as set forth in Sections 16-5-13 and 16-5-14.

Section 16-5-13 Board of Adjustment Conditional Approval

In approving any application, appeal or request heard by the Board, the Board of Adjustment may designate such conditions in connection therewith as will, in its opinion to secure substantially the objectives of the regulation or provision to which such application, appeal or request is granted, to provide adequately for the maintenance of the integrity and character of the zone and/or property in which such application, appeal or request is granted, and shall provide the Zoning Administrator with a copy of the same. A report of its findings shall also be submitted promptly to the Planning and Zoning Commission and the City Council.

Section 16-5-14 Board of Adjustment Guarantees

Where necessary, the Board of Adjustment may require guarantees, in such form as it may deem proper under the circumstances, to insure that the conditions designated in connection therewith are being or will be complied with. Where any condition under which a Variance, Temporary Use Permit, Notice of Appeal has been granted is violated, the Variance, Temporary Use Permit, Notice of Appeal shall cease to exist and the approval of the action shall become null and void.