

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE 7697 (“THE ZONING ORDINANCE”) BY REPEALING ARTICLE NINETEEN, BOARDS; ADOPTING ARTICLE NINETEEN, BOARDS; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, in its current form, Article Nineteen, Boards, contains discrepancies and inconsistencies that may confuse and prove burdensome to Community Planning employees, as well as property owners who both seek guidance and appear before the Board of Adjustment and Sign Board;

WHEREAS, in order to improve and simplify Article Nineteen, Boards, it is necessary that steps be taken to clarify and simplify the application and appeals processes to the Board of Adjustment and Sign Board; and

WHEREAS, the City Council has found that the rules established in Article Nineteen of the Zoning Ordinance are confusing and burdensome to Community Planning employees and property owners, and that it is in the best interests of the City and its residents that this section be repealed and a new Article Nineteen be adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That Article 19 of the Zoning Ordinance (Ordinance No. 7697) is hereby repealed in its entirety.

SECTION 2: That Article 19 of the Zoning Ordinance (Ordinance No. 7697) is hereby adopted with the following:

**ARTICLE NINETEEN
BOARDS**

Section 19.1 – Board of Adjustment

There shall be and hereby is created a Board of Zoning Adjustment (hereinafter called the “Board”) consisting of 5 members. The members of the Board shall be appointed by the Mayor with the approval of the Council for a term of 3 years and may be removed only for cause upon written charges and after public hearing. Any vacancy which occurs in the Board shall be filled by the Mayor with the approval of the Council for the unexpired term of any member whose term became vacant. No member of the board shall be on the staff of the City.

A. Powers of the Board. The Board shall have the power to consider appeals of an administrative officer and variances of the enforcement and application of certain regulations of the City. The Board shall also have the power to consider requests for reasonable accommodation as provided by the federal Fair Housing Act and the Arkansas Fair Housing Act (hereinafter called "fair housing laws").

1. Appeals. The Board may hear appeal by an applicant of any decision made by an administrative officer with respect to the enforcement and application of the Zoning Ordinance and/or the Municipal Code; and may affirm or reverse the decision, in whole or part. Appeal shall be made to the Planning Department on a form prescribed by the Planning Department when accompanied by such reasonable fee as may be established by the North Little Rock City Council.

2. Variances. The Board may authorize, upon appeal in specific cases, variance from the terms of the Zoning Ordinance. Variances may be sought by applying to the Planning Department on a form prescribed by the Planning Department when accompanied by such reasonable fee as may be established by the North Little Rock City Council. Conditions fixed by the Board will not be contrary to the public interest where, owing to exceptional and extraordinary circumstances, literal enforcement of the provisions of this ordinance will result in unnecessary hardship; provided, however, that no variance shall be authorized unless the board shall find that the following conditions exist:

- a. That the variance will not authorize the operation of a use other than those uses specifically permitted uses for the district in which the property for which the variance is sought;
- b. That the development or use of the property for which the variance is sought, if limited by a literal enforcement of the provisions of this ordinance, cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district;
- c. That the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, that the unique circumstances were not created by the owner of the property and are not due to or the result of general conditions in the district in which the property is located;
- d. That the variance will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;
- e. That the variance will not alter the essential character of the district in which the property for which the variance is sought is located;
- f. That the variance will not weaken the general purposes of this ordinance or the regulations herein established for the specific district;

- g. That the variance will be in harmony with the spirit and purpose of this ordinance;
 - h. That the variance will not adversely affect the public health, safety or general welfare.
3. Requests for Reasonable Accommodation. A request for reasonable accommodation may be made by an individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities, when the application of a land use, zoning, or building regulation, policy, practice or procedure restricts fair housing opportunities. In this context, "reasonable accommodation" means alleviating specific regulations, policies and procedures that restrict persons who are handicapped, as defined by the fair housing laws, from housing opportunities. Application shall be made to the Planning Department on a form prescribed by the Planning Department when accompanied by such reasonable fee as may be established by the North Little Rock City Council. The Director of the Planning Department shall submit complete applications to the Board for determination within thirty (30) days of submittal. The Board may approve any application that satisfies all of the following conditions:
- a. The accommodation will ensure that the City complies with fair housing laws and provides greater housing opportunities for individuals with disabilities;
 - b. The housing, which is the subject of the request for reasonable accommodation, will be used by one or more individuals with disabilities protected under fair housing laws;
 - c. The requested accommodation is necessary to make housing available to one or more individuals with disabilities protected under the fair housing laws;
 - d. The requested accommodation will not impose an undue financial or administrative burden on the City; and
 - e. The requested accommodation will not fundamentally alter (1) the City's land use plan; (2) the City's zoning design; (3) building codes; or (4) any regulation necessary to protect the health and safety of occupants.
4. Oaths and Attendance of Witnesses. For the purpose of exercising the powers herein enumerated, the Board shall elect a chairman and vice-chairman. The chairman, or, in his absence, the vice-chairman, shall administer oaths to or accept affirmations from witnesses and may compel the attendance of witnesses. A failure or a refusal to appear in response to a subpoena issued by the Board shall constitute a violation of this ordinance.

5. Limitations of Powers of Board. The concurring vote of 3 members of the Board shall be necessary to reverse any order, requirements, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass under this ordinance or to effect any variation in this ordinance.
 - a. Finding of Fact. Every decision of the Board shall be based upon findings of fact and every finding of fact shall be supported in the record of its proceedings. The enumerated conditions required to exist on any matter upon which the board is required to pass under this ordinance or to effect any variation in this ordinance shall be construed as limitations on the power of the Board to act. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific facts shall not be deemed findings of fact and shall not be deemed compliant with this ordinance.
 - b. Powers strictly construed. Nothing herein contained shall be construed to empower the Board to change the terms of this ordinance, to effect changes in the official map or to add to the specific uses permitted in any district. The powers of the Board shall be so construed that this ordinance and the official map are strictly enforced.
- B. Proceedings. The Board shall adopt rules governing all proceedings before it. Such rules shall provide and require that:
1. Public notice shall be given of all hearings and all hearings shall be open to the public;
 2. Due notice of all hearings shall be given to parties in interest, in writing;
 3. At any public hearing any interested party may appear in person, by agent, or attorney, to offer evidence and testimony;
 4. All witnesses shall be sworn or shall affirm their testimony in the manner required in courts of record;
 5. All evidence and testimony shall be presented publicly. The Board may take judicial notice of facts to the same extent and manner as courts of record and may consider any relevant facts within the personal knowledge of any member. For each case or matter heard, the Board shall cause a record of its proceedings to be prepared. The record of proceedings shall include all documents and physical evidence considered in the case together with a transcribed record of all public proceedings. The transcribed record shall include, but need not be limited to, the verbatim testimony offered by all witnesses in the case and all personal knowledge of members of the Board considered by the Board in reaching its decision. The deliberations of the Board shall show the grounds for each decision and the vote of each member

upon each question. The record of proceedings shall be filed immediately in the office of the Board and shall be a public record.

6. At the time of the Public Hearing, the applicant may appear in his own behalf or be represented by counsel or by agent. The applicant shall be given an opportunity for a final rebuttal.
7. Final Decision of any application or appeal to the Board shall be in the form of a motion. The Chairman shall vote on all matters and approval, in all cases, shall require a quorum of the membership of the Board.
8. Within 30 days after the hearing, the Board shall notify the parties in interest of its decision.

C. Appeals Process.

1. Any person, taxpayer, the municipality or any officer or department of the municipality may have a decision of the Board reviewed in the manner provided by rules relating to civil proceedings. No such review shall be granted unless a petition therefore, duly verified, setting forth that such decision is illegal, in whole or part, and specifying the grounds of the illegality, is presented to a court of record within 30 days after the filing of the decision in the office of the Board. The Board 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 such portions thereof as may be called for. The return shall concisely set forth such other facts as may be pertinent and material to the decision appealed from and shall be verified. The issuance of a writ on a petition hereunder shall not stay proceedings upon the decision appealed from but the court, on application after notice to the Board and on due cause shown, may grant a restraining order.
2. Liability. Any commissioner, or employee, or member of the Board of Adjustment, charged with the enforcement of this Code, acting for the City in the discharge of his duties, shall not thereby render himself liable personally, and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties. The exception being a violation of due process of civil rights or gross negligence. Any suit brought against any Commissioner or employee, or member of the Board of Adjustment, because of such act performed by him in the enforcement of any provision of this Code shall be defended by legal representative until the final termination of the proceedings.

D. Notice. Any property owner seeking a hearing with the Board shall adhere to the following:

1. Notice shall be given, in writing, to the property owners abutting the property where the variance is sought.

- a. If the abutting property is owned by the same property owner as the property where the variance is sought, then notice shall be given to the next abutting property or properties beyond.
- b. In the case where the City of North Little Rock is listed as a property owner, notice to the City shall be done by the Planning Department.
2. A public notice shall be placed in the newspaper at least one time 7 days prior to the meeting.
3. Any property owner seeking a variance shall place a sign designating the intent of a variance for the property, for a period of at least 14 days prior to the meeting.

Section 19.2 – Sign Board of Adjustment

There shall be and hereby is created a Sign Board of Adjustment (hereinafter called the “Sign Board”) consisting of 5 members. The members of the Sign Board shall be appointed by the Mayor with the approval of the Council for a term of 3 years and may be removed only for cause upon written charges and after public hearing. Any vacancy which occurs in the Sign Board shall be filled by the Mayor with the approval of the Council for the unexpired term of any member whose term became vacant. No member of the Sign Board shall be on the staff of the City.

- A. Powers of the Sign Board. The Sign Board shall have the power to consider variances of the Sign Regulations and Chapter 4 – Section 1.1.1 of the Municipal Code.
 1. Variances. The Sign Board may authorize, upon appeal in specific cases, variance from the terms of the Sign Regulations and Chapter 4 – Section 1.1.1 of the Municipal Code. Variances may be sought by applying to the Planning Department on a form prescribed by the Planning Department when accompanied by such reasonable fee as may be established by the North Little Rock City Council. Conditions fixed by the Sign Board will not be contrary to the public interest where, owing to exceptional and extraordinary circumstances, literal enforcement of the provisions of this ordinance will result in unnecessary hardship; provided, however, that no variance shall be authorized unless the Sign Board shall find that the following conditions exist:
 - a. That the variance will not authorize the operation of a use other than those uses specifically permitted uses for the district in which the property for which the variance is sought;
 - b. That the development or use of the property for which the variance is sought, if limited by a literal enforcement of the provisions of this ordinance, cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district;

- c. That the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, that the unique circumstances were not created by the owner of the property and are not due to or the result of general conditions in the district in which the property is located;
 - d. That the variance will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;
 - e. That the variance will not alter the essential character of the district in which the property for which the variance is sought is located;
 - f. That the variance will not weaken the general purposes of this ordinance or the regulations herein established for the specific district;
 - g. That the variance will be in harmony with the spirit and purpose of this ordinance;
 - h. That the variance will not adversely affect the public health, safety or general welfare.
2. Oaths and Attendance of Witnesses. For the purpose of exercising the powers herein enumerated, the Sign Board shall elect a chairman and vice-chairman. The chairman, or, in his absence, the vice-chairman, shall administer oaths to or accept affirmations from witnesses and may compel the attendance of witnesses. A failure or a refusal to appear in response to a subpoena issued by the Sign Board shall constitute a violation of this ordinance.
3. Limitations of Powers of Sign Board. The concurring vote of 3 members of the Sign Board shall be necessary to decide either in favor of or against the applicant on any matter upon which the Sign Board is required to pass under this ordinance or to effect any variation in this ordinance.
- a. Finding of Fact. Every decision of the Sign Board shall be based upon findings of fact and every finding of fact shall be supported in the record of its proceedings. The enumerated conditions required to exist on any matter upon which the Sign Board is required to pass under this ordinance or to effect any variation in this ordinance shall be construed as limitations on the power of the Sign Board to act. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific facts shall not be deemed findings of fact and shall not be deemed compliant with this ordinance.
 - b. Powers strictly construed. Nothing herein contained shall be construed to empower the Sign Board to change the terms of this ordinance, to effect changes in the official map or to add to the specific uses permitted in any district. The powers of the Sign Board shall be so construed that this ordinance and the official map are strictly enforced.

B. Proceedings. The Sign Board shall adopt rules governing all proceedings before it. Such rules shall provide and require that:

1. Public notice shall be given of all hearings and all hearings shall be open to the public.
2. Due notice of all hearings shall be given to parties in interest, in writing.
3. At any public hearing a representative or any other interested party may appear in person, by agent, or attorney, to offer evidence and testimony.
4. All witnesses shall be sworn or shall affirm their testimony in the manner required in courts of record.
5. All evidence and testimony shall be presented publicly. The Sign Board may take judicial notice of facts to the same extent and manner as courts of record and may consider any relevant facts within the personal knowledge of any member. For each case or matter heard, the Sign Board shall cause a record of its proceedings to be prepared. The record of proceedings shall include all documents and physical evidence considered in the case together with a transcribed record of all public proceedings. The transcribed record shall include, but need not be limited to, the verbatim testimony offered by all witnesses in the case and all personal knowledge of members of the Sign Board considered by the Sign Board in reaching its decision. The deliberations of the Sign Board shall show the grounds for each decision and the vote of each member upon each question. The record of proceedings shall be filed immediately in the office of the Sign Board and shall be a public record.
9. At the time of the Public Hearing, the applicant may appear in his own behalf or be represented by counsel or by agent. The applicant shall be given an opportunity for a final rebuttal.
10. Final Decision of any application or appeal to the Sign Board shall be in the form of a motion. The Chairman shall vote on all matters and approval, in all cases, shall require a quorum of the membership of the Sign Board.
11. Within 30 days after the hearing, the Sign Board shall notify the parties in interest of its decision.

B. Appeals Process.

1. Any person, taxpayer, the municipality or any officer or department of the municipality may have a decision of the Sign Board reviewed in the manner provided by rules relating to civil proceedings. No such review shall be granted unless a petition therefore, duly verified, setting forth that such decision is illegal, in whole or part, and specifying the grounds of the

illegality, is presented to a court of record within 30 days after the filing of the decision in the office of the Sign Board. The Sign Board 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 such portions thereof as may be called for. The return shall concisely set forth such other facts as may be pertinent and material to the decision appealed from and shall be verified. The issuance of a writ on a petition hereunder shall not stay proceedings upon the decision appealed from but the court, on application after notice to the Sign Board and on due cause shown, may grant a restraining order.

2. Liability. Any commissioner, or employee, or member of the Sign Board of Adjustment, charged with the enforcement of this Code, acting for the City in the discharge of his duties, shall not thereby render himself liable personally, and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties. The exception being a violation of due process of civil rights or gross negligence. Any suit brought against any Commissioner or employee, or member of the Sign Board, because of such act performed by him in the enforcement of any provision of this Code shall be defended by legal representative until the final termination of the proceedings.

D. Notice. Any property owner seeking a hearing with the Sign Board shall adhere to the following:

1. Notice shall be given, in writing, to the property owners abutting the property where the variance is sought.
 - a. If the abutting property is owned by the same property owner as the property where the variance is sought, then notice shall be given to the next abutting property or properties beyond, unless the distance is greater than 500 feet from the subject property.
 - b. In the case where the City of North Little Rock is listed as a property owner, notice to the City shall be done by the Planning Department.
2. A public notice shall be placed in the newspaper at least one time 7 days prior to the meeting.
3. Any property owner seeking a variance shall place a sign designating the intent of a variance for the property, for a period of at least 14 days prior to the meeting.

SECTION 3: That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 4: That the provisions of this Ordinance are hereby declared to be severable and if any section, phrase, or provision shall be declared or held invalid, such invalidity shall not affect the remainder of the sections, phrases, or provisions.

SECTION 5: It is hereby found and determined that repealing Article Nineteen of the Zoning Ordinance in its current form and adopting a new Article Nineteen in its updated form will clarify and simplify Board of Adjustment and Sign Board procedures; that the adoption of this amended Ordinance is immediately necessary for the orderly development of the City and the public health, safety, and welfare; THEREFORE, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

ATTEST:

Joe A. Smith
Mayor Joe A. Smith *by AT*

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields
Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/dm

FILED	<u>10:56</u>	A.M.	_____	P.M.
By	<u>A. Fields</u>			
DATE	<u>5-8-18</u>			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	<u>S. Ussery</u>			