



Agenda
CITY OF FERGUSON
JOINT MEETING OF: BUILDING, HOUSING BOARD OF APPEALS, AND BOARD OF
ADJUSTMENT
Thursday, February 23, 2023
10:00 a.m.
Meeting held at City Hall, 110 Church Street, and on Zoom

I. CALL MEETING TO ORDER

II. INTRODUCTION

III. NEW BUSINESS:

A. Discussion of proposed merger between Building/Housing Boards of Appeal, and Board of Adjustment.

B. Next steps

IV. ANNOUNCEMENTS & UPDATES

V. ADJOURNMENT

PLEASE CALL ELLIOT LIEBSON 314.524.5257
IF YOU ARE UNABLE TO PARTICIPATE IN THIS MEETING

Due to the recent State of Emergency, this meeting will be held virtually (RSMO 610.015). We will only discuss matters of importance. A copy of the recording will be made accessible via the City's Website.

Topic: **Building/Housing Boards of Appeal, Board of Adjustment**

Time: **February 23, 2023 10:00 a.m.** Central Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/82600184711?pwd=Q3BTWFFqTGZlL2xGMHpxL3h1WllsZz09>

Meeting ID: **826 0018 4711**

Passcode: **844600**

Dial by your location +1 312 626 6799 US (Chicago)

Date Posted: February 17, 2023

Staff notes for BBOA/HBOA/BZA proposed merger discussion

- City Council Bill 7238 (BZA/HBOA): no initial comments.
- City Council Bill 7239 (BZA/BBOA):
 - reference to City Building Code needs to be updated to 2018 ICC Code.
 - “zoning board of appeals” should be changed to Board of Adjustment.
 - City Landmark and Floodplain Administrator appeal responsibility not mentioned in Bill (*but see below for alternate suggestion*).

Roles of each Board

- HBOA:
 - appeals of decision of code enforcement official.
 - Variance from exterior appearance code.
- BBOA:
 - Appeals of decision of floodplain administrator.
 - Appeals of decision of building official regarding City designated historic landmarks.
- BZA:
 - Appeals of decisions of building official with respect to zoning.
 - Requests for variance from zoning code due to land use hardship. Variances include:
 - Boundary lines
 - Non-conforming uses
 - Street layout (subdivisions)
 - Parking requirements
 - Signs and billboards.

Comment from Staff:

- Consideration of the possibility of moving the BBOA responsibilities to the joint Plan Commission/ARB, as those appear to be more planning and/or architectural concerns, and less of a zoning variance.

INTRODUCED BY: Council Members Present

AN ORDINANCE AMENDING CERTAIN SECTIONS WITHIN THE CODE OF ORDINANCES FOR THE CITY OF FERGUSON ALL RELATING TO THE HOUSING BOARD OF APPEALS OF THE CITY OF FERGUSON.

WHEREAS, the regulation of the structure, style, and appearance of buildings in the City of Ferguson represents a matter of public health that is properly subject to municipal regulation; and

WHEREAS, pursuant to RSMo. § 89.020, the City is empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, the preservation of features of historical significance, and the location and use of buildings, structures and land for trade, industry, residence or other purposes; and

WHEREAS, the City Council desires to transfer the authority of the Housing Board of Appeals to the Board of Adjustment pursuant to the authority vested in Article V, Section 5.1 of the City Charter of the City of Ferguson;

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

SECTION 1. Chapter 7, Article VII, Sections 7-139 through 7-144 of the Code of Ordinances of the City of Ferguson ("Code") is hereby amended to read as follows:

Sec. 7-139. The Jurisdiction of the Board of Adjustment under this Article.

(a) For the purposes of Chapter 7 of the Ferguson City Code, the Board of Adjustment ("board") shall have jurisdiction to:

- (1) Hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the enforcement official;
- (2) Authorize a variance from the strict application of any provision of the exterior appearance code where a property owner can show that this would result in an exceptional practical difficulty and be a particular hardship as distinguished from a mere inconvenience to such owner, if such relief can be granted without substantial detriment to the public welfare and without substantially impairing the general purpose and intent of this code.

(b) Any person claiming to be aggrieved by any order, requirement, decision or determination made by the enforcement official hereunder, or seeking a variance from the provisions of this code, shall have the right to appeal to the board. Upon

filing of a notice of appeal or request for variance, the enforcement official shall forthwith submit to the board all papers constituting the record upon which the action appealed from or request for variance was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the enforcement official certifies to the board that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed.

- (c) A councilmember selected by the council may attend meetings of the board and shall have the right of discussion in accordance with the board's rules and regulations, but shall not be entitled to vote.
- (d) Meetings of the board may be called by the mayor.

Sec. 7-140. Procedure for filing appeals.

Any appeal pursuant to Section 7-139(b) must be taken within ten (10) calendar days after the decision is rendered. The notice of appeal must be filed with the City Clerk, with a courtesy copy directed to the attention of the City Manager. The appeal must specify the grounds in support thereof. A copy of any brief, memorandum, diagram, figure, illustration, or other material upon which the appeal relies must be furnished to the board.

Sec. 7-141. Appeal—Information to be furnished to Board.

It shall be the duty of the building commissioner to furnish the board, upon request, with copies of the reports of any or all inspections made by such officers in the matter on appeal, and to furnish such other information as may be available to them and requested by them. The board may also request supplemental reports or investigations.

Sec. 7-142. Same—Notice and hearing.

The board shall fix a time and place for the hearing of appeals. Such a date of hearing shall be established within fifteen (15) calendar days after the filing of the notice of appeal. Notice of the time and place of hearings shall be sent by mail to the appellant or to his or her attorney of record, and such hearing shall not be less than fifteen (15) calendar days after the mailing of the notice of the hearing date. At such hearing, any party may appear in person, or by agent or attorney.

Sec. 7-143. Same—Action and decision of board generally.

- (a) In exercising the powers enumerated in this article, the board 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.

- (b) The board shall act by majority vote. A majority of the board shall constitute a quorum. The action of the board shall not become effective until after the resolution of the board and the vote of each member participating therein has been spread upon the minutes. Such resolutions immediately following the board's final decision shall be filed in the office of the City Clerk and shall be open for public inspection. The board may issue a written decision setting forth the reason for its decision.

Sec. 7-144. Review of decisions of board.

Any of the parties interested and affected by the decision of the board may appeal said decision in the manner established by Chapter 536 of the Revised Statutes of Missouri, and the venue shall be to the circuit court of St. Louis County, Missouri, but such appeal must take place no later than thirty (30) days after the filing of the decision with the secretary of the board and the mailing of a copy of the decision to the interested persons and their attorneys, if so represented.

SECTION 2. The entity known as the Housing Board of Appeals is hereby ABOLISHED pursuant to the City Council's authority vested in Article V, Section 5.1 of the City Charter of the City of Ferguson. The City Council hereby transfers all authority previously vested in the Housing Board of Appeals to the Board of Adjustment. Any matters that were pending before the Housing Board of Appeals shall be transferred to the Board of Adjustment for further review consistent with the Code of Ordinances of the City of Ferguson. The City Council thanks the members of the Housing Board of Appeals for their service to the City.

SECTION 3. In conformity with the provisions of said Code, the City Clerk shall cause appropriate copies to be made hereof and shall insert such copies in each edition of said Code.

SECTION 4. All ordinances and parts of ordinances in conflict with this ordinance are, to the extent of such conflict, hereby repealed.

SECTION 5. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

BILL NO. 7238

ORDINANCE NO. _____

FIRST READING: _____ SECOND READING: _____

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FERGUSON,
MISSOURI, THIS _____ DAY OF _____, 2023.**

ATTEST:

Ella M. Jones, Mayor

Octavia Pittman, City Clerk

BILL NO. 7239

ORDINANCE NO. _____

INTRODUCED BY: Council Members Present

AN ORDINANCE AMENDING CERTAIN SECTIONS WITHIN THE CODE OF ORDINANCES FOR THE CITY OF FERGUSON ALL RELATING TO THE BUILDING BOARD OF APPEALS AND ZONING BOARD OF APPEALS OF THE CITY OF FERGUSON.

WHEREAS, the regulation of the structure, style, and appearance of buildings in the City of Ferguson represents a matter of public health that is properly subject to municipal regulation; and

WHEREAS, pursuant to RSMo. § 89.020, the City is empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, the preservation of features of historical significance, and the location and use of buildings, structures and land for trade, industry, residence or other purposes; and

WHEREAS, the City Council desires to transfer the authority of the Building Board of Appeals and ~~Zoning Board of Appeals~~ to the Board of Adjustment pursuant to the authority vested in Article V, Section 5.1 of the City Charter of the City of Ferguson;

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

SECTION 1. Chapter 7, Article III, Sections 7-43 of the Code of Ordinances of the City of Ferguson ("Code") is hereby revised by adding and amending the terms as stated herein to read as follows:

The following sections of the 2018 International Building Code, adopted in section 7-41, are hereby amended, deleted, inserted, or added as indicated below:

Section 113.3 Qualifications. is hereby amended to read as follows:

"Notwithstanding any provision to the contrary, the board of appeals shall mean and refer to the Board of Adjustment as provided under the Ferguson City Code."

Section 113.4 Membership of Board. is hereby added to provide as follows:

"The board of appeals shall mean and refer to the members of the board of adjustment as provided under the Ferguson City Code."

SECTION 2. Chapter 7, Article IX, Sections 7-195 of the Code is hereby amended to read as follows:

Sec. 7-195. Appeals to the Board of Adjustment.

- (a) The owner, occupant, mortgagee, or lessee or any other interested person therein may appeal from a decision or finding of the building official to the board of adjustment ("board").
- (b) The board for purposes of this article shall be the board of adjustment as provided for under the Ferguson City Code. For the purposes of this section, the Board shall also have all powers as provided under section 124.0 of the Basic Building Code (BOCA Code) 1984, as adopted and set forth in Chapter 7 of the Code of the City of Ferguson, 1985, as amended.
- (c) Upon receipt of written notice of any interested person of their intention to appeal the decision or finding of the building official, all proceedings in furtherance of the action appealed from shall be stayed, unless the building official certifies to the board, after the notice of appeal shall have been filed with him, that by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by a proper court of record on application thereto.
- (d) Procedure on appeal shall be as follows:
 - (1) *Time of appeal.* Appeals to the board shall be within ten (10) days of the building official's decision.
 - (2) *Notice of meetings.* The board shall meet upon notice of the chairman within ten (10) days of the filing of an appeal or as soon thereafter as possible, or at stated periodic meetings, if warranted, by the volume of work.
 - (3) *Public hearings.* All hearings shall be public; and the appellant, his legal or other representative, the official of the municipality, and any other person whose interest may be affected by the matter on appeal, shall be given an opportunity to be heard.
 - (4) *Adjourned meeting.* When a quorum of the board is not present to consider a specific appeal, either the appellant, the building official or their representatives may request a postponement of the meeting.
 - (5) *Action of board.* The board shall affirm, modify or reverse the decision of the building official by a majority vote.
 - (6) *Determining vote.* Failure by the appellant to secure a majority vote shall be deemed a confirmation of the decision of the building official.
 - (7) *Enforcement of decision.* The building official shall take immediate action in accordance with the decision of the board.

- (e) Special meetings. Meetings of the board may be called by the mayor.

SECTION 3. Chapter 7, Article IX, Section 7-197 of the Code is hereby amended to read as follows:

Sec. 7-197. Duties of the director of law.

The director of law or his assistants shall:

- (1) Prosecute all persons failing to comply with the terms of the notices provided for herein in section 7-193, subsections (4) and (5), and the order provided in section 7-194, subsection (4).
- (2) Appear at all hearings before the building official and board in regard to "dangerous buildings."
- (3) Bring suit to collect all liens, assessments, or costs incurred by the building commissioner in repairing or causing to be vacated or demolished "dangerous buildings."
- (4) Take such other legal action as is necessary to carry out the terms and provisions of this article.

SECTION 4. Chapter 7, Article IX, Section 7-201 of the Code is hereby amended to read as follows:

Sec. 7-201. Judicial review.

Any of the parties interested and affected by the decision of the board may appeal said decision in the manner established by Chapter 536 of the Revised Statutes of Missouri, and the venue shall be to the circuit court of St. Louis County, Missouri, but such appeal must take place no later than thirty (30) days after the filing of the decision with the secretary of the board and the mailing of a copy of the decision to the interested persons and their attorneys, if so represented.

SECTION 5. Chapter 7, Article IV, Division 1, Sections 7-68 of the Code is hereby amended to read as follows:

Sec. 7-68. - Appeals.

Whenever the code official shall reject or refuse to approve the mode or manner of electrical installation proposed to be followed, or materials proposed to be used, or whenever any person shall feel aggrieved by any ruling of the code official, such person may appeal from the code official to the board of adjustment as provided under the Ferguson City Code. For the purposes of this section, the Board may exercise such powers as provided in the Building Code, Section 121, Means of Appeal.

SECTION 6. Chapter 7, Article XII, Sections 7-241 of the Code is hereby amended to read as follows:

Sec. 7-241. - Jurisdiction of board of adjustment over nonresidential buildings.

Sections 7-195 and 7-201 setting forth the jurisdiction of the board and judicial review are hereby incorporated by reference and the board shall have jurisdiction over nonresidential buildings under this article, using the procedures as set forth in sections 7-195 and 7-201.

SECTION 7. Chapter 17, Article III, Sections 17-57 of the Code is hereby revised by adding and amending the terms as stated herein to read as follows:

Section 109. Board of Appeals. This section and all of its subsections should be repealed in their entirety and replaced with a new Section 108 to read as follows:

"Means of Appeal: Shall be governed by the same rules as appointed under the provisions of the 2018 International Building Code. Notwithstanding any provision to the contrary, the "board of appeals" shall mean and refer to the Board of Adjustment and any appeal shall be directed to the Board of Adjustment as provided in the Ferguson City Code."

SECTION 8. Chapter 18, Article II, Division 2, Section 18-24 of the Code is hereby amended to read as follows:

Sec. 18-24. Variance procedures.

- (a) The Board of Adjustment ("board") as established by the city shall hear and decide appeals and requests for variances from the floodplain management requirements of this chapter.
- (b) Where an application for a floodplain development permit or request for a variance from the floodplain management regulations is denied by the public works director, the applicant may apply for such floodplain development permit or variance directly to the board of building appeals. The board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the public works director in the enforcement or administration of this chapter.
- (c) Any person aggrieved by the decision of the board or any taxpayer may appeal such decision to the Circuit Court of St. Louis County in the same manner that appeals from decisions of boards of adjustment are taken as provided in section 89.110 R.S.Mo.

- (d) In passing upon such applications for variances, the board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this chapter, and the following criteria:
 - (1) The danger to life and property due to flood damage;
 - (2) The danger that materials may be swept onto other lands to the injury of others;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of a waterfront location, where applicable;
 - (6) The availability of alternative locations, not subject to flood damage, for the proposed use;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and
 - (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.
- (e) Conditions for approving variances:
 - (1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items 2 through 6 below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
 - (2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination provided the proposed activity will not preclude the structure's continued historic designation.
 - (3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

- (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances shall only be issued upon:
 - (i) A showing of good and sufficient cause;
 - (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (6) The administrator shall notify the applicant in writing that:
 - (i) The issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage; and
 - (ii) Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this chapter.
- (f) Conditions for approving variances for accessory structures. Any variance granted for an accessory structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in subparagraphs (d) and (e) of this section.

In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for accessory structures that are constructed at-grade and wet-floodproofed.

- (1) Use of the accessory structures must be solely for parking and limited storage purposes in flood-prone areas only.
- (2) For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below highest adjacent grade, must be built with flood-resistant materials in accordance with this chapter.
- (3) The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with this chapter. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
- (4) Any mechanical, electrical, or other utility equipment must be located above highest adjacent grade or floodproofed so that they are contained within a

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watertight, floodproofed enclosure that is capable of resisting damage during flood conditions.

- (5) The accessory structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the 100-year flood, contain openings that will permit the automatic entry and exit of floodwaters in accordance with the NFIP regulations.
- (6) Equipment, machinery, or other contents must be protected from any flood damage.
- (7) No disaster relief assistance under any program administered by any federal agency shall be paid for any repair or restoration costs of the accessory structures.
- (8) The floodplain administrator shall notify the applicant in writing that:
 - (i) The issuance of a variance to construct a structure below highest adjacent grade will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage; and
 - (ii) Such construction below highest adjacent grade increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this chapter.
- (9) Wet-floodproofing construction techniques must be reviewed and approved by administrator and registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

SECTION 9. Chapter 49, Article 15, Section 15.3(8) of the Code is hereby amended to read as follows:

8. *City Determination.* When a proposed land use is not explicitly listed in Table 15.3B(1), Permitted Uses, the City shall determine whether or not it is included in the definition of a listed use or is so consistent with the size, scale, operating characteristics and external impacts of a listed use that it should be treated as the same use. Any such determination may be appealed to the Board of Adjustment.

SECTION 10. The entity known as the Building Board of Appeals is hereby ABOLISHED pursuant to the City Council's authority vested in Article V, Section 5.1 of the City Charter of the City of Ferguson. The entity known as the Zoning Board of Appeals is likewise abolished. The City Council hereby transfers all authority previously vested in the Housing Board of Appeals and Zoning Board of Appeals to the Board of Adjustment. Any matters that were pending before the Building Board of Appeals or Zoning Board of Appeals shall be transferred to the Board of Adjustment for further review consistent with the Code of Ordinances of the City of Ferguson. The City Council thanks the members of the Housing and Zoning Boards of Appeals for their service to the City.

BILL NO. 7239

ORDINANCE NO. _____

SECTION 11. In conformity with the provisions of said Code, the City Clerk shall cause appropriate copies to be made hereof and shall insert such copies in each edition of said Code.

SECTION 12. All ordinances and parts of ordinances in conflict with this ordinance are, to the extent of such conflict, hereby repealed.

SECTION 13. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

FIRST READING: _____ SECOND READING: _____

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FERGUSON, MISSOURI, THIS _____ DAY OF _____, 2023.

Ella M. Jones, Mayor

ATTEST:

Octavia Pittman, City Clerk

25.0. - APPEALS TO THE BOARD OF ADJUSTMENT

25.1. - ESTABLISHMENT.

A Board of Adjustment is hereby established. The word "Board," when used in this and the following sections shall be construed to mean the Board of Adjustment.

25.2. - COMPOSITION.

- 25.21. The Board of Adjustment shall consist of five (5) members, all of whom shall be residents of the City of Ferguson, Missouri. They shall be appointed by the Mayor and approved by the City Council.
- 25.22. The term of office of the members of the Board of Adjustment shall be for five years except that the membership of the first Board appointed shall serve respectively for terms of one for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter, members shall be appointed for terms of five years each. Vacancies shall be filled for the unexpired term only. Members shall be removed for cause by the Mayor and the City Council upon written charges and after public hearing.
- 25.23. The Board of Adjustment shall elect its own chairman and vice chairman who shall serve for one year.
- 25.24. The Board shall adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this chapter.
- 25.25. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board 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 Board and shall be a public record. All testimony, objections thereto and rulings thereon shall be taken down by a reporter employed by the Board for the purpose.
- 25.26. The Mayor, with the approval of a majority of the Council, shall appoint three (3) alternate members to the Board of Adjustment any of which shall serve in the absence or the disqualification of any of the regular members of the Board of Adjustment. Each alternate shall be a resident of the City of Ferguson and shall hold office for a term of five years. Alternates shall be removable for cause by the Council upon written charges and after public hearing. Any vacancy shall be filled by the Mayor, with the approval of a majority of the Council, for the unexpired term of an alternate whose term becomes vacant.

25.3. - APPEALS.

- 25.31. Appeals to the Board of Adjustment on any matter over which the Board is herein specifically granted jurisdiction may be taken by any person aggrieved or by an officer, department or board, other than the Board of Adjustment, or bureau of the city affected by any decision of the Director of Public Works. Such appeal shall be taken within a reasonable time, as shall be prescribed by the Board of Adjustment by general rule, by filing with the Director of Public Works and with the Board of notice of appeal specifying the grounds thereof. The Director of Public Works shall immediately transmit to the Board all the papers constituting the record upon which the action appealed from is taken.
- 25.32. An appeal stays all proceedings in furtherance of the action appealed from, unless the Director of Public Works certifies to the Board after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his 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 Board or by a court of record on application or notice to the Director of Public Works on good cause shown.
- 25.33. The Board shall fix a reasonable time for the hearing of the appeal, give not less than 15 days notice thereof in a newspaper of general circulation, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.
- 25.34. At the time the notice of appeal is filed, the applicable fee shall be paid to the Director of Public Works and deposited in the general revenue fund of the City of Ferguson.

25.4. - POWERS OF THE BOARD.

The Board of Adjustment shall have the following powers:

- 25.41. *Powers Relative to Errors.* To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of this ordinance.

- 25.42. *Powers Relating to Variations.*

- 25.42.1. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the provisions of this chapter, to vary or modify the application of any of the regulations or provisions of this chapter relating to the construction or alteration of buildings or structures or the use of land so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done.

An applicant for a use variance shall meet the following requirements:

- A. The applicant must be suffering unnecessary hardship in carrying out the strict letter of the ordinance. Unnecessary hardship can be shown by the applicant if he demonstrates the following:
 - (i) That (s)he is deprived of all beneficial use of the property, or that (s)he would incur unwarranted economic hardship in achieving a permitted use; and
 - (ii) The conditions causing the hardship are unique and peculiar to the applicant's property and are not prevalent in the neighborhood; and
 - (iii) The hardship must be due to conditions not personal to the owner, but rather to conditions affecting the land, thereby making the land unsuitable for the permitted use in the zone in which it lies.
- B. The applicant must prove that relief is necessary because of the unique character of the property.
- C. The proposed variance will not destroy the preservation of the City's Comprehensive Zoning plan.
- D. The use proposed by the applicant must be specific and must be a use that is allowed as a permitted use in at least one other zoning district in the City.

25.42.2. Permit lots within the R-1A, R-1B, R-1C and R-1D single- family districts that were of record at the time of the introduction of this chapter, and which contain less area or less width than the lot area per family requirements of the dwelling district in which they are located, to be used for single-family dwellings only upon compliance with the following conditions:

That the owner or owners of such lots held the record title thereto at the time of the passage of this chapter;

That said owner or owners furnish record proof that at the time of the passage of this chapter such owner or owners held the record title to only one such lot, and did not at such time hold the record title to adjoining property;

That said owner or owners of such lots furnish substantial and definite proof of the inability to acquire, or to acquire at a reasonable price, additional land adjoining said lot, which would be necessary to provide the required lot area or width.

(Ord. No. 94-2679, 1-25-94)

25.43. *Powers Relative to Exceptions.* Upon appeal, the Board is hereby empowered to permit the following exceptions:

To permit the extension of a district where the boundary line of a district divides a lot in single ownership as shown of record.

To permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God, or by the public enemy to the extent of more than 60 percent of its value where the Board shall find some compelling public necessity requiring a continuance of the nonconforming use, but in no case shall such a permit be issued if its primary function is to continue a monopoly.

To permit the erection and use of a building or the use of premises in any location for a public service corporation for public utility purposes which the Board deems reasonably necessary for the public convenience or welfare.

To interpret the provisions of this chapter where the street layout actually on the ground varies from the street layout as shown on the map fixing the several districts, which may be attached to and made a part of this ordinance.

To vary the parking regulations of this chapter whenever the character or use of the building is such as to make unnecessary the full provision of parking facilities or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.

- 25.44. In exercising the above-mentioned powers, such Board may, in conformity with the provisions of this chapter, 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 sought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. In considering all appeals to 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 district map and will not impair an adequate supply of light and air to adjacent property, or increase the 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 Ferguson. Every change granted or denied by the Board shall be accompanied by a written finding of fact based on sworn testimony and evidence specifying the reason for granting or denying the variation.
- 25.45. The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Director of Public Works, or to decide in favor of the application on any matter upon which it is required to pass under this chapter, or to effect any variation in this chapter.

25.5. - REVOCATION.

Any variance granted by the Board of Adjustment, not exercised within 12 months from the date of approval, may be revoked by the Board of Adjustment.

25.6. - PETITION OF PERSONS, OFFICERS, DEPARTMENTS, ETC., AGGRIEVED BY DECISION OF BOARD.

Any person jointly or severally aggrieved by any decision of the Board of Adjustment or of any officer, department, board or bureau of the City may present to the Circuit Court having jurisdictions in the County a petition duly verified, stating that such decision is illegal in whole or in part, specifying the grounds of the illegality and asking for relief there from. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Board.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the Board for review of the data and records acted upon or it may appoint a referee to take additional evidence in the case. The court may reverse or affirm 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.

Sec. 7-139. - Jurisdiction of housing board of appeals under article.

- (a) The exterior housing board of appeals is hereby established. It shall consist of seven (7) members, all of whom shall be residents of the City of Ferguson and appointed by the council. The term of office of the members of the board shall be three (3) years, except that of the first members selected, three (3) shall be appointed for a term of three (3) years; two (2) for a term of two (2) years; and two (2) shall be appointed for a term of one (1) year. Vacancies shall be filled for unexpired term only. The board shall elect its own chairman and vice-chairman, who shall serve for one (1) year. The board shall adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions hereof, but in any case it shall take at least four (4) affirmative votes to overrule the decision of the director of public works.
- (b) The board shall have the following jurisdiction:
 - (1) To hear and decide appeals where it is alleged that there is error, in any order, requirement, decision or determination made by the enforcement official;
 - (2) To authorize a variance from the strict application of any provision of the exterior appearance code where a property owner can show that this would result in an exceptional practical difficulty and be a particular hardship as distinguished from a mere inconvenience to such owner, if such relief can be granted without substantial detriment to the public welfare and without substantially impairing the general purpose and intent of this code.
- (c) Any person claiming to be aggrieved by any order, requirement, decision or determination made by the enforcement official hereunder, or seeking a variance from the provisions of this code, shall have the right to appeal to the board. Upon filing of a notice of appeal or request for variance, the enforcement official shall forthwith submit to the board all papers constituting the record upon which the action appealed from or request for variance was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the enforcement official certifies to the board that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed.
- (d) A councilman selected by the council shall attend meetings of the housing board of appeals and shall have the right of discussion in accordance with the board's rules and regulations, but shall not be entitled to vote.
- (e) *Meetings of the board may be called by the mayor.*

(Ord. No. 85-2118, § 1, 12-17-85; Ord. No. 89-2391, § 1, 12-5-89; Ord. No. 97-2955, § 1, 11-10-97)

Sec. 7-140. - Procedure for filing appeals.

Any appeal herein shall be taken within fifteen (15) calendar days after the decision is rendered by filing with the building commissioner a notice of appeal, specifying the grounds therefor.

(Ord. No. 85-2118, § 1, 12-17-85; Ord. No. 91-2498, § 1, 8-20-91)

Sec. 7-141. - Appeal—Information to be furnished to housing board of appeals.

It shall be the duty of the building commissioner to furnish the housing board of appeals, upon request, with copies of the reports of any or all inspections made by such officers in the matter on appeal, and to furnish such other information as may be available to them and requested by them.

(Ord. No. 85-2118, § 1, 12-17-85)

Sec. 7-142. - Same—Notice and hearing.

The housing board of appeals shall fix a time and place for the hearing of appeals. Such a date of hearing shall be established within fifteen (15) calendar days after the filing of the notice of appeal. Notice of the time and place of hearings shall be sent by mail to the appellant or to his attorney of record, and such hearing shall not be less than fifteen (15) calendar days after the mailing of the notice of the hearing date. At such hearing, any party may appear in person, or by agent or attorney.

(Ord. No. 85-2118, § 1, 12-17-85)

Sec. 7-143. - Same—Action and decision of board generally.

- (a) In exercising the powers enumerated in this article, the housing board of appeals 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.
- (b) The housing board of appeals shall act by majority vote and a quorum shall consist of at least four (4) members, but in any case it shall take at least four (4) affirmative votes to overrule the director of public works. The action of the board shall not become effective until after the resolution of the board setting forth the reason for its decision and the vote of each member participating therein has been spread upon the minutes. Such resolutions immediately following the board's final decision shall be filed in the office of the board and shall be open for public inspection.

(Ord. No. 85-2118, § 1, 12-17-85)

Sec. 7-144. - Review of decisions of board.

Any decision of the board under this article shall be subject to review by a writ of certiorari to the Circuit Court of St. Louis County, Missouri.

(Ord. No. 85-2118, § 1, 12-17-85)

Sec. 7-195. - Board of appeals.

- (a) The owner, occupant, mortgagee, or lessee or any other interested person therein may appeal from a decision or finding of the building official to the board of appeals.
- (b) The board of appeals for purposes of this article shall be the building board of appeals as provided under section 124.0 of the Basic Building Code (BOCA Code) 1984, as adopted and set forth in Chapter 7 of the Code of the City of Ferguson, 1985, as amended.
- (c) Upon receipt of written notice of any interested person of their intention to appeal the decision or finding of the building official, all proceedings in furtherance of the action appealed from shall be stayed, unless the building official certifies to the board of appeals, after the notice of appeal shall have been filed with him, that by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by a proper court of record on application thereto.
- (d) Procedure on appeal shall be as follows:
 - (1) *Time of appeal.* Appeals to the board of appeals shall be within ten (10) days of the building official's decision.
 - (2) *Notice of meetings.* The board shall meet upon notice of the chairman within ten (10) days of the filing of an appeal or as soon thereafter as possible, or at stated periodic meetings, if warranted, by the volume of work.
 - (3) *Public hearings.* All hearings shall be public; and the appellant, his legal or other representative, the official of the municipality, and any other person whose interest may be affected by the matter on appeal, shall be given an opportunity to be heard.
 - (4) *Adjourned meeting.* When five (5) qualified members are not present to consider a specific appeal, either the appellant, the building official or their representatives may request a postponement of the meeting.
 - (5) *Action of board.* The board shall affirm, modify or reverse the decision of the building official by a concurring vote of three (3) members.
 - (6) *Determining vote.* Failure to secure three (3) concurring votes shall be deemed a confirmation of the decision of the building official, except that the appellant shall be entitled to further hearing before a full board if there were not five (5) qualified members present when the vote was taken.
 - (7) *Enforcement of decision.* The building official shall take immediate action in accordance with the decision of the board.
- (e) Special meetings. Meetings of the board may be called by the mayor.

Sec. 18-24. - Variance procedures.

- (a) The building board of appeals as established by the city shall hear and decide appeals and requests for variances from the floodplain management requirements of this chapter.
- (b) Where an application for a floodplain development permit or request for a variance from the floodplain management regulations is denied by the public works director, the applicant may apply for such floodplain development permit or variance directly to the board of building appeals.

The board of building appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the public works director in the enforcement or administration of this chapter.

- (c) Any person aggrieved by the decision of the building board of appeals or any taxpayer may appeal such decision to the Circuit Court of St. Louis County in the same manner that appeals from decisions of boards of adjustment are taken as provided in section 89.110 R.S.Mo.
- (d) In passing upon such applications for variances, the building board of appeals shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this chapter, and the following criteria:
 - (1) The danger to life and property due to flood damage;
 - (2) The danger that materials may be swept onto other lands to the injury of others;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of a waterfront location, where applicable;
 - (6) The availability of alternative locations, not subject to flood damage, for the proposed use;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and
 - (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.
- (e) Conditions for approving variances:
 - (1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items 2 through 6 below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
 - (2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the

National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination provided the proposed activity will not preclude the structure's continued historic designation.

- (3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances shall only be issued upon:
 - (i) A showing of good and sufficient cause;
 - (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (6) The administrator shall notify the applicant in writing that:
 - (i) The issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage; and
 - (ii) Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this chapter.
- (f) Conditions for approving variances for accessory structures. Any variance granted for an accessory structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in subparagraphs (d) and (e) of this section.

In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for accessory structures that are constructed at-grade and wet-floodproofed.

- (1) Use of the accessory structures must be solely for parking and limited storage purposes in flood-prone areas only.
- (2) For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below highest adjacent grade, must be built with flood-resistant materials in accordance with this chapter.
- (3) The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with this chapter. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
- (4) Any mechanical, electrical, or other utility equipment must be located above highest adjacent grade or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of

resisting damage during flood conditions.

- (5) The accessory structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the 100-year flood, contain openings that will permit the automatic entry and exit of floodwaters in accordance with the NFIP regulations.
- (6) Equipment, machinery, or other contents must be protected from any flood damage.
- (7) No disaster relief assistance under any program administered by any federal agency shall be paid for any repair or restoration costs of the accessory structures.
- (8) The floodplain administrator shall notify the applicant in writing that:
 - (i) The issuance of a variance to construct a structure below highest adjacent grade will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage; and
 - (ii) Such construction below highest adjacent grade increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this chapter.
- (9) Wet-floodproofing construction techniques must be reviewed and approved by administrator and registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

(Ord. No. 2015-3571, § 1, 1-27-15)

Sec. 2-424. - Permit for demolition, new construction, alteration, repairs, or restoration of landmark.

No permit for the demolition, material alteration, substantial modification or other change shall be issued by the city for any landmark designated by the city council, until the plans and specifications upon which the application for such permit are based, shall have first been submitted to the landmarks commission for its recommendation.

Upon submission to the commission of any such application for a permit, the commission shall have a maximum of thirty (30) days in which to study and review such application and the plans and specifications upon which such application is based, and to confer with the owner, occupant, or other person having an interest in such building or structure, for the purpose of making suggestions and recommendations with respect to any and all means or methods considered feasible and proper for the preservation of such landmark.

When considering such plans and specifications for new construction, alteration, repairs, or restoration, the commission shall use the Secretary of the Interior's Standards for Rehabilitation as guidelines in making its recommendations. In addition, the commission shall consider any other guidelines for local historic districts and local historic buildings that have been enacted by ordinance of the city council. The commission shall consider whether the landmark in question may be preserved and maintained in a state which will not deface, mar, materially alter or destroy, in whole or in part, the historical significance or aesthetic value of such landmark.

The commission's recommendation is advisory only. In the event that a permit is denied by the appropriate official of the city, such denial shall be subject to review by the board of building appeals under the provisions of the applicable building code provisions and/or subject to judicial review in accordance with the Administrative Procedures Act.

All permit applications shall be held as pending and no permit shall be issued during the thirty (30) day review period by the commission.

(Ord. No. 2006-3286, § 9, 9-26-06)