

ORDINANCE No. 12-92

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, COUNTY OF YAVAPAI, ARIZONA, AMENDING THE TOWN OF DEWEY-HUMBOLDT, ARIZONA CODE OF ORDINANCES, TITLE III ADMINISTRATION, CHAPTER 31 TOWN ORGANIZATIONS AND DEPARTMENTS, § 31.22 BOARD OF ADJUSTMENT, TITLE III ADMINISTRATION, CHAPTER 34 FINANCES AND TAXATION, § 34.01 FEE SCHEDULE FOR TOWN DOCUMENTS, AND TITLE XV LAND USES; CHAPTER 153 ZONING REGULATIONS, § 153.021 BOARD OF ADJUSTMENT RELATED TO CONFORMING THE REGULATIONS TO STATE LAW AND CLARIFYING THE POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING PENALTIES.

Now, Therefore, Be it ordained by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, as follows:

Section I. In General

The Town of Dewey-Humboldt, Arizona Code of Ordinances, Title III Administration, Chapter 31 Town Organizations and Departments, Section 31.22 Board of Adjustment is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~).

§ 31.22 Board of Adjustment.

The Board of Adjustment (BOA) is hereby established AS FURTHER SET FORTH IN SECTION 153.021 OF THIS CODE. ~~as a Board independent and separate from the Planning and Zoning Advisory Commission (P&Z COMMISSION). Until such time as members are appointed to the BOA, the P&Z Commission will continue to act as the BOA when required. The BOA shall be formed of five members, all of whom must be residents of the town. Each member will be appointed to a four-year term, unless filling a vacancy appointment (in which case the term is the balance of the term of the person replaced). The BOA will use the Arizona Rules of Civil Procedure, the Arizona Rules of Evidence, and, when hearing an appeal, the Arizona Rules of Civil Appellate Procedure, as if the Board was a Superior Court. The BOA may set its own meeting schedule, but meetings will be held at the request of the Mayor, a Councilmember, or an applicant/appellant. The BOA has the duty to diligently perform all duties allocated to the BOA by Arizona law or town ordinance.~~

The Town of Dewey-Humboldt, Arizona Code of Ordinances, Title III Administration, Chapter 34 Finances and Taxation, Section 34.01 Fee Schedule for Town Documents is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

§ 34.01 Fee Schedule for Town Documents

* * *

(D) *Reduced Fees.*

* * *

(2) Fees may be waived by the Town Council, OR the Town Hearing Officer, ~~or Board of Adjustment~~ to avoid undue hardship.

* * *

The Town of Dewey-Humboldt, Arizona Code of Ordinances, Title XV Land Usage, Chapter 153 Zoning Regulations, Section 153.021 Board of Adjustment is hereby renamed and amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

§ 153.021 Board of Adjustment; ZONING ADMINISTRATOR

~~There shall be a~~THE Board of Adjustment OF THE TOWN OF DEWEY-HUMBOLDT (THE "BOARD") IS ESTABLISHED PURSUANT TO ARIZONA REVISED STATUTES (A.R.S.) § 9-462.06. ~~and it shall have jurisdiction over this chapter.~~

(A) *Structure.* THE TOWN COUNCIL SHALL SERVE AS THE Board OF ADJUSTMENT ~~shall be composed of five resident taxpayers the incorporated area of the town. THE MAYOR SHALL BE THE CHAIRPERSON OF THE BOARD. who shall serve without pay. The Town Council may hire clerical and technical aid for the Board. The Zoning Administrator will serve as an ex-officio member (without vote) in official matters of the Board.~~

(B) *Procedure.* MEETINGS OF The Board shall ~~have meetings, hold hearings which shall be open to the public and HELD AT THE CALL OF THE CHAIR. make decisions for which aA quorum of three will be necessary;~~The Board shall adopt rules TO GOVERN ITS PROCEEDINGS not inconsistent with this chapter and the laws of Arizona; ~~The Board shall select, from its members, a Chairperson and a Secretary;~~The Chairperson shall be the executive officer of the Board with the power of ~~administering~~ADMINISTERING oaths and taking evidence and shall preside over its meetings and hearings; ~~The Secretary shall cause THE minutes of the meetings and RECORDS OF ALL BOARD PROCEEDINGS SHALL hearings to be kept AS REQUIRED BY A.R.S. § 38-431.01, showing records of votes examinations, and other official actions, all of which shall be AND filed AS PUBLIC RECORDS in the office of the Zoning Administrator~~TOWN CLERK.

(C) *Powers AND DUTIES.* THE BOARD HAS THE FOLLOWING POWERS AND DUTIES:

(1) ~~The jurisdiction of the Board shall be limited to the incorporated area of the town.~~ HEAR AND DECIDE APPEALS FROM A DECISION, DETERMINATION OR INTERPRETATION MADE BY THE ZONING ADMINISTRATOR IN WHICH IT IS ALLEGED THERE IS AN ERROR IN AN ORDER, REQUIREMENT OR DECISION MADE BY THE ZONING ADMINISTRATOR IN THE ENFORCEMENT OF A ZONING ORDINANCE.

(2) HEAR AND DECIDE APPEALS FOR VARIANCES FROM THE TERMS OF THE ZONING ORDINANCE ONLY IF, BECAUSE OF SPECIAL CIRCUMSTANCES APPLICABLE TO THE PROPERTY, INCLUDING ITS SIZE, SHAPE, TOPOGRAPHY, LOCATION, OR SURROUNDINGS, THE STRICT APPLICATION OF THE ZONING ORDINANCE WILL DEPRIVE SUCH PROPERTY OF PRIVILEGES ENJOYED BY OTHER PROPERTY OF THE SAME CLASSIFICATION IN THE SAME ZONING DISTRICT. ANY VARIANCE GRANTED SHALL BE SUBJECT TO SUCH CONDITIONS AS WILL ASSURE THAT THE ADJUSTMENT AUTHORIZED SHALL NOT CONSTITUTE A GRANT OF SPECIAL PRIVILEGES INCONSISTENT WITH THE LIMITATIONS UPON OTHER PROPERTIES IN THE VICINITY AND ZONE IN WHICH SUCH PROPERTY IS LOCATED.

(3) HEAR AND DECIDE APPEALS FROM DECISIONS OF THE ZONING ADMINISTRATOR IN REQUESTS FOR ADJUSTMENTS AS SET FORTH IN SUBSECTION F, BELOW.

~~(2) The Board shall have power to:~~

~~—— (a) Decide if there is error in any order, requirement or decision of the Zoning Administrator in the enforcement of this chapter;~~

(4) reverse or affirm, wholly or partly, or modify the order or decision appealed from and make such order or decision as ought to be made, ~~and to that end shall have the powers of the Zoning Administrator;~~

~~(5b) Interpret this chapter when the meaning of any word, phrase, or section is in doubt, or where doubt exists as to the proper district of a specific use;~~

(6) THE BOARD SHALL NOT:

(a) MAKE ANY CHANGES IN THE USES PERMITTED IN ANY ZONING CLASSIFICATION OR DISTRICT;

(b) MAKE ANY CHANGES IN THE ZONING ORDINANCE;

(c) GRANT A VARIANCE IF THE SPECIAL CIRCUMSTANCES APPLICABLE TO THE PROPERTY ARE SELF-IMPOSED BY THE PROPERTY OWNER.

~~_____ (c) Authorize in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of these provisions will, in the Board's opinion, result in unnecessary hardships;~~

~~_____ (d) Allow the extension of a district where the boundary thereof divides a lot and providing the Board authority to grant this extension conditional upon development of the extended area following an approved plan, with particular significance in instances where the Town Council has adopted a zoning request in such a manner that a project development is to follow permission to extend the zoning;~~

~~_____ (e) Determine the location of a district boundary where doubt exists as to the location of same on the zoning map;~~

~~_____ (f) Modify the Zoning Administrator's protective requirements in instances where a district use is conditional upon certain stipulations to be specified by the Zoning Administrator; and~~

~~_____ (g) Grant the Zoning Administrator clearance to issue a building permit where the applicant has failed to secure such prior to commencing construction (but only in cases where the Zoning Administrator or Building Official has chosen to allow the application to be filed prior to court action).~~

(D) *Hearing applications.* Hearing applications shall be filed IN WRITING in the office of the Zoning Administrator on forms provided therefor by any person or by any officer, department, board or bureau of the town affected by any order or decision of the Zoning Administrator within 30 days thereafter, and specifying the grounds thereof; or for rulings on other matters of Town Council jurisdiction.

(1) An appeal shall stay all proceedings in the matter appealed unless the Zoning Administrator certifies to the Board that, by reason of the fact stated in his or her approval letter, a stay would (in his or her opinion) cause imminent peril to life or property. In this case, proceedings shall not be stayed except by restraining order granted by the Board or by a court of record on application and notice to the Zoning Administrator.

(2) IN ADDITION TO ANY OTHER REQUIREMENTS SPECIFIED, APPLICATIONS FOR A-variances SHALL AT A MINIMUM INCLUDE THE FOLLOWING ~~appeal applicant should be prepared to show that:~~

(a) EVIDENCE SHOWING WHY, DUE TO ~~There are special~~ circumstances or conditions applicable to the property of application,

INCLUDING ITS SIZE, SHAPE, TOPOGRAPHY, LOCATION OR SURROUNDINGS, ~~or to the adjacent property, or to the neighborhood, that justify variance from the requirements so that~~ strict application thereof THE ZONING ORDINANCE WOULD DEPRIVE THE PROPERTY OWNER OF PRIVILEGES ENJOYED BY OTHER PROPERTY OWNERS OF THE SAME CLASSIFICATION IN THE SAME ZONING DISTRICT; ~~would work an unnecessary hardship and that the granting of the request is necessary for preservation and enjoyment of substantial property rights; and/or~~

(b) EVIDENCE SHOWING THAT THE VARIANCE WILL NOT CONSTITUTE A GRANT OF SPECIAL PRIVILEGES INCONSISTENT WITH LIMITATIONS UPON OTHER PROPERTIES IN THE VICINITY AND DISTRICT IN WHICH THE PROPERTY IS LOCATED; AND

(c) EVIDENCE THAT THE SPECIAL CIRCUMSTANCES APPLICABLE TO THE PROPERTY WERE OR ARE NOT SELF-IMPOSED BY THE PROPERTY OWNER; AND

(d) EVIDENCE SHOWING WHY ~~The granting~~ THE VARIANCE SUBSTANTIALLY MEETS THE INTENT AND PURPOSE OF THE ZONING DISTRICT IN WHICH THE PROPERTY IS LOCATED AND will not materially-DETRIMENTALLY affect the health or safety of the neighborhood residents or the public welfare or be injurious to property or improvements.

(E) *Hearings and rulings.* The Board of Adjustment shall hold at least one public hearing, within a reasonable time from the date of application, after giving a minimum of 15 days' notice thereof to parties of interest and the public by posting at the property of application (if property is involved) and by publishing once in a newspaper of general circulation in the ~~county-~~TOWN. The Board of Adjustment shall render a decision within 30 days after the initial hearing on same, unless an extension is agreed to by the Board and the applicant.

(1) In approving an application, in all or in part, the Board of Adjustment may ~~designate such~~ IMPOSE REASONABLE conditions ~~in conjunction therewith that will, in its opinion,~~ NECESSARY TO ~~secure substantially~~ ACHIEVE the GENERAL PURPOSES AND objectives of this chapter and PROTECT THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE OR TO ENSURE OPERATION AND MAINTENANCE OF THE USE IN A MANNER COMPATIBLE WITH EXISTING AND POTENTIAL USES ON ADJOINING PROPERTIES OR IN THE SURROUNDING AREA ~~may require guarantees in such form as it deems proper under the circumstances to ensure that the condition be complied with.~~ Where any ~~IF~~ such conditions are violated or not complied with, UPON NOTICE TO THE PROPERTY OWNER BY THE ZONING ADMINISTRATOR, A HEARING SHALL BE HELD AND, IF THE VIOLATION IS SUSTAINED, the approval ~~shall cease~~ MAY BE REVOKED ~~and the Zoning Administrator shall act accordingly.~~

~~(2) In granting of permission to proceed on a specific development scheme or of a permit for a construction variance, the same shall be contingent upon permits being obtained and work commenced within six months and being diligently pursued. Failure of such shall void the ruling unless a longer time had been granted or an extension in time is secured.~~

(32) The concurring vote of ~~three~~FOUR members shall be necessary to render a ruling, UNLESS OTHERWISE REQUIRED BY STATE LAW OR THE TOWN ZONING ORDINANCE.

(3) DECISIONS OF THE BOARD OF ADJUSTMENT MAY BE APPEALED TO THE SUPERIOR COURT WITHIN 30 DAYS OF THE DECISION BY THE BOARD.

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Section II. Savings Clause

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance as amended 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 remainder of this Ordinance.

Section III. Repeal of Conflicting Ordinance

All other code provisions, ordinances, or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed as of the effective date hereof.

Section IV. Penalties

Any person found responsible for violating any provision of this Ordinance shall be subject to the civil sanctions and habitual offender provisions set forth in Section 10.99 of the Dewey-Humboldt Code of Ordinances

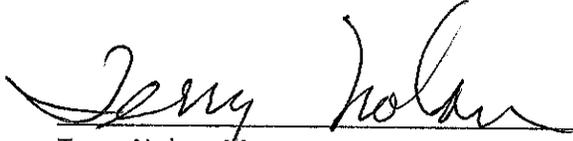
PASSED AND ADOPTED by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, this 10th day of July, 2012, by the following vote:

AYES: 5

NAYES: 2 ABSENT: 0

EXCUSED: 0 ABSTAINED: 0

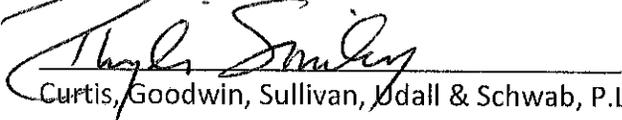
APPROVED this 10th day of July, 2012.


Terry Nolan, Mayor

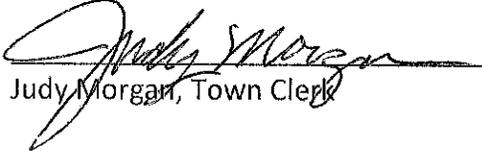
ATTEST:


Judy Morgan, Town Clerk

APPROVED AS TO FORM:


Curtis Goodwin, Sullivan, Odall & Schwab, P.L.C.
Town Attorneys
By Susan D. Goodwin

I, JUDY MORGAN, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 12-92 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, ARIZONA ON THE 10th DAY OF July, 2012 WAS POSTED IN THREE PLACES ON THE 16th DAY OF July, 2012


Judy Morgan, Town Clerk