

DEC - 3 2018

**CITY OF COLUMBIA, ILLINOIS  
ORDINANCE NO. 3440**

*Debra J. Stoff*  
City Clerk

**AN ORDINANCE ESTABLISHING THE OFFICE OF ZONING HEARING  
OFFICER AND DELEGATING AUTHORITY TO SUCH OFFICE**

**WHEREAS**, the City of Columbia ("City"), Monroe and St. Clair Counties, Illinois is a duly created, organized and validly existing municipality of the State of Illinois under the 1970 Illinois Constitution and the laws of the State of Illinois, including particularly the Illinois Municipal Code, and all laws amendatory thereof and supplementary thereto; and

**WHEREAS**, the City has the authority to create the position of Zoning Hearing Officer pursuant to 65 ILCS 5/11-13-14.1 and to delegate to the Zoning Hearing Officer the authority to conduct any public hearing required to be held in connection with applications for special use, variation, amendment or other change to the City Zoning Code and to hear and decide appeals from and review any order, requirement, decision or determination made by an administration official charged with the enforcement of the City Zoning Code; and

**WHEREAS**, the City finds that it is necessary to create the position of Zoning Hearing Officer in order to improve the efficiency and uniformity of variances to the City Zoning Code and of appeals from administrative orders.

**NOW THEREFORE BE IT ORDAINED**, by the Mayor and City Council of the City of Columbia, as follows:

1. That the preceding recitations in the upper part of this Ordinance are realleged, restated and adopted as paragraph one ("1") of this Ordinance.
2. That Chapter 17.08 of the City's Revised Code of Ordinances ("City Code") shall be deleted in its entirety, and the following inserted in its place:

**CHAPTER 17.08 – ZONING HEARING OFFICER, VARIANCES**

**SECTION 17.08.010 ESTABLISHMENT OF OFFICE OF ZONING  
HEARING OFFICER.**

The position of City of Columbia Zoning Hearing Officer is hereby created in accordance with 65 ILCS 5/11-13-14.1 and other applicable authority. The Zoning Hearing Officer ("Hearing Officer") shall be appointed by the Mayor with the approval of the City Council. Alternate hearing officers may serve when the Hearing Officer is not available and may be appointed in the same manner as the Hearing Officer. Hearing Officers shall be appointed on the basis of training

and experience which qualifies them to conduct hearings, make recommendations or findings of fact and conclusions on the matters heard and otherwise exercise and perform the powers, duties and functions delegated in accordance with 65 ILCS 5/11-13-14.1.

## **SECTION 17.08.020 POWERS AND DUTIES.**

The Hearing Officer shall have all the powers and duties prescribed by law and by this Ordinance, including the following:

1) Appeals. Upon an appeal from a decision by any administrative official, including but not limited to the Building Official, to decide any question involving the interpretation of any provision or term of the City of Columbia Zoning Code ("Code"), including the determination of the exact location of any district boundary if there is uncertainty with respect thereto, or other claimed error in the decision or determination made by an administrative official in the enforcement of the Code; provided that such decision shall be bound by and consistent with the language of the ordinance or regulation at issue;

2) Variances. The Hearing Officer may vary the application of the requirements of the Code, except for use variances, as provided in this Chapter. The Corporate Authorities may reserve, by ordinance, any class of variance for approval only by the Corporate Authorities. In such cases where the City Council has reserved decision making authority, the Hearing Officer shall still conduct a hearing and provide notice in compliance with 65 ILCS 5/11-13-6.

3) Use Variances. To hold public hearings for applications for use variances and to forward a written report containing findings of fact and a separate conclusion recommendation thereon to the City Council, consistent with 65 ILCS 5/11-13-14.1.C(1), which the City Council may by ordinance without further public hearing adopt any proposed use variance, or the City Council may refer it back to the Hearing Officer for further consideration or deny the use variance request as a final action. For purposes of this Section, "use variances" shall be any variation that authorizes any use or classification of use to continue or commence in a zoning district in which that use is not a permitted use by right. Any proposed use variance which fails to receive the approval of the Hearing Officer shall not be approved except by the favorable vote of two-thirds (2/3) of all Aldermen. No variance shall be granted that shall authorize a use that may be granted by special use or planned use procedures. Use variances are not favored and shall be granted only when failure to authorize the use denies all economically viable use of the property or similar extreme hardship is demonstrated by the evidence presented.

4) Other authority. To hear and decide all other matters referred to it by the City Council or upon which it is required to pass under applicable ordinance.

## **SECTION 17.08.030 APPEALS.**

An appeal may be taken to the Hearing Officer by any person, firm or corporation aggrieved by a determination or decision of any administrative official charged with the enforcement of any provision of or regulation adopted pursuant to the Code, or by any officer, department, or board of the City relating to such decision. The appeal shall be taken within forty-five (45) days of the action complained of by filing, with the City Clerk, a notice of appeal, specifying the grounds thereof. The City Clerk shall thereupon transmit to the Hearing Officer and the official from whom the appeal is taken all papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the official appealed from certifies to the Hearing Officer after the notice of appeal has been filed with him that by reason of facts stated in the certificate, the stay would, in his opinion, cause eminent peril to life or property, in which case the proceedings shall not be stayed except by a restraining order, which may be granted by the Hearing Officer or by a Court of Record on application, or notice to the official appealed from and on due cause shown. The Hearing Officer may reverse or affirm wholly or partly, or may modify or amend the order, requirement, decision or determination appealed from to the extent and in the manner that the Hearing Officer may decide to be fitting and proper to the premises. No challenge to any decision subject to this Section shall be filed in any court until or unless a timely appeal has been filed and prosecuted to completion by the applicant as provided for in this Chapter so as to establish a final appealable decision.

## **SECTION 17.08.040 VARIANCES.**

A variance may be sought by filing a written application and payment of applicable fee to the City Clerk specifying the specific provision to be varied, the extent of the variation, and the basis therefore and including such requirements as are set forth in the Code. The Hearing Officer may grant a variance only if it is in harmony with the general purpose and intent of the Code and in accordance with general or specific rules adopted hereto and only in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any regulation of the Code relating to the use, construction, alteration of buildings, or structures or the use of land, but in no other case. No variance may be granted to any condition of approval placed on a special use permit or prior zoning action. The Hearing Officer may impose such conditions, safeguards and restrictions upon the premises, benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations. A request for a variance, other than a use variance, may be granted, upon a finding and determination on the record of the Hearing Officer that the requirements of this Section are met and that all three of the following conditions are satisfied or upon such conditions as may the Hearing Officer establishes as will meet such conditions:

- a) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the applicable zoning regulations;
- b) The plight of the owner is due to unique circumstances that cannot be attributed to any action or fault of the owner; and
- c) The variance, if granted, will not alter the essential character of the locality.

### **SECTION 17.08.041 PROCEDURE.**

1) General. The Hearing Officer shall act in accordance with the procedure specified by law and by the Code. All appeals and applications to the Hearing Officer shall be in writing. Every appeal or application shall refer to the specific provision of the Code involved, and shall exactly set forth the interpretation that is claimed, the use for which the variance is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. The City may appear by any designated official of the City Council and be heard as a party in interest in any hearing before the Hearing Officer, and the City may appeal any decision of the Hearing Officer to a court of competent jurisdiction.

2) Applications. All applications for variance shall be charged a fee by the City for filing, processing, postage and public notice in an amount as published in Title 18 of the City Code. Applicants shall provide a list of names and addresses of the owners of record for all properties located within two-hundred fifty (250) feet of the subject property's boundary. Property owner lists shall be obtained from the County Recorder of the county wherein the subject property is located.

3) Notice of hearing. No action of the Hearing Officer shall be taken on any variance application until after notice has been given of the hearing. The Hearing Officer shall fix a reasonable time for the hearing of the appeal or application and shall give due notice thereof to the parties and decide the matter within a reasonable time.

- (a) Notice of the time, date, and location of such hearing and a brief summary or explanation of the subject matter of the hearing shall be given by publishing at least one (1) notice thereof in a newspaper published in the City, such publication to be made at least fifteen (15) days before the public hearings but not more than thirty (30) days before the hearing.
- (b) At least fifteen (15) days before the public hearing but not more than thirty (30) days before the hearing, the Building Official or designee shall send all property owners on the

aforesaid list a written notice by certified mail (return receipt required) or personal delivery. The notice shall state:

- (i) The address of the location for which the special use is requested;
- (ii) The applicant's name and address;
- (iii) A description of the special use requested;
- (iv) The date the application was filed; and
- (v) Notification of the public hearing with the hearing's date, time and location.

3) Hearings Procedure. All hearings conducted by the Hearing Officer shall be open to the public, held at the call of the Hearing Officer and at such times as he or she may determine. At hearings conducted by the Hearing Officer, the Building Official, or his designee, shall provide the Hearing Officer with the factual background of the application, the request sought by the applicant, and the relevant sections of the Code. At hearings conducted by the Hearing Officer, any interested person may appear in person or by duly authorized agent or attorney. All testimony before the Hearing Officer shall be given under oath. The Hearing Officer shall administer oaths and may compel attendance of witnesses. The Hearing Officer shall keep minutes of his or her proceedings and other official actions. The Hearing Officer shall adopt his or her own rules and procedures, not in conflict with this Ordinance or applicable Illinois statutes.

4) Decision and Findings of Fact. Every variation decision shall be accompanied by findings of facts and shall refer to any exhibits containing plans and specifications for the proposed use or variation, which shall remain a part of the permanent records of the Hearing Officer. The findings of facts shall specify the reason or reasons for making the variation. The terms of the relief granted shall be specifically set forth in a conclusion or statement separate from the findings of fact. Property for which relief has been granted shall not be used in violation of the specific terms of the findings of fact, as the case may be, unless its authorized use is changed by subsequent variance or ordinance. Every rule, regulation, decision or determination of the Hearing Officer shall immediately be filed with the City Clerk and shall be public record.

5) Expiration of variance approval. Any construction or use authorized by a variance approval shall substantially commence not later than one (1) year after the date of the decision granting the variance, or such other time as may be specified in the variance approval.

6) Cost. For any application to the Hearing Officer, a fee shall be charged by the City for processing and public notice in an amount as published in Title 18 of the City Code.

#### **SECTION 17.08.042 CITY COUNCIL POWER OF ADMINISTRATIVE REVIEW.**

Immediately following the filing of the written decision of the Hearing Officer on any appeal or variance request under this Section, the City Clerk shall file a report with the City Council concerning such action. Within twenty-one (21) days after the Hearing Officer's decision, the City Council, upon majority vote, may exercise the power of administrative review of any Hearing Officer decision on an application for an appeal or variance.

Upon adoption of the motion to exercise the power of review, the City Council may act on the matter directly or first refer the matter to committee. Before acting on the variance or appeal, the City Council may set the matter for hearing before the committee or the City Council. The City Council will give written notice of any such hearing to the applicant and all other persons who appeared and spoke at the public hearing before the Hearing Officer. In addition, the City Council may, in its discretion, notify and allow to be heard at the hearing any other person who the City Council believes may be aggrieved by any decision or action concerning the application.

Following its review, the City Council may affirm, reverse, or modify, in whole or in part, any determination of the Hearing Officer. A favorable vote of two-thirds (2/3) of all Aldermen shall be required to overturn or modify a decision by the Hearing Officer. The decision of the City Council shall be made within forty-five (45) days of its vote to review the decision of the Hearing Officer, unless extended for specified cause by a majority vote of the City Council, or the Hearing Officer decision shall become final. In making any decision, the City Council may adopt and rely on the record of the hearing officer or may hold a new hearing to establish a record for final decision.

Unless the City Council exercises its power of review of administrative review, the decision of the Hearing Officer shall become effective after twenty-one (21) days following its decision.

#### **SECTION 17.08.043 JUDICIAL REVIEW OF FINAL DECISION.**

Any officer, department or board of the City or any person whose legal rights, duties, or privileges have been affected by any final decision of the Hearing Officer, or any party affected by the decision of the City Council where such decision has been reserved or appealed to the City Council, may present to the Circuit Court having jurisdiction in the county, a complaint, duly verified, stating that such decision is illegal in whole or in part, specifying the grounds of

the illegality and otherwise proceeding pursuant to the Administrative Review Law, Section 735 ILCS 5/3-101, et seq. which shall govern such appeals including as authorized in 65 ILCS 5/11-13-14.1. Such complaint shall be presented to the court within thirty-five (35) days after the filing of the final decision. The costs of preparing and certifying the record of proceedings for filing with the Circuit Court in an administrative review proceeding shall be paid to the City by the appellant prior to the filing of such records with the Court. To the full extent permitted by law, unless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision.

3. That Section 17.40.010.B of the City Code shall be deleted in its entirety, and the following inserted in its place:

**B. PROCESS.**

The process for considering approval of Special Use applications shall be as indicated below.

- (1) Applications. The Building Official shall refer all special use applications to the Plan Commission.
  - (a) All applications for Special Use shall be charged a fee by the City for filing, processing, postage and public notice in an amount as published in Title 18 of the City Code.
  - (b) Applicants shall provide a list of names and addresses of the owners of record for all properties located within two-hundred fifty (250) feet of the subject property's boundary. Property owner lists shall be obtained from the County Recorder of the county wherein the subject property is located.
  - (c) At least fifteen (15) days before the public hearing but not more than thirty (30) days before the hearing, the Building Official or designee shall send all property owners on the aforesaid list a written notice by certified mail (return receipt required) or personal delivery. The notice shall state:
    - (i) The address of the location for which the special use is requested;
    - (ii) The applicant's name and address;

- (iii) A description of the special use requested;
- (iv) The date the application was filed; and
- (v) Notification of the public hearing with the hearing's date, time and location.

(2) Public Hearing. The Plan Commission shall conduct a public hearing on the Special Use application, the date and place of which shall be fixed in advance by the Plan Commission at any regular or special meeting.

- (a) Notice of the time, date, and location of such hearing and a brief summary or explanation of the subject matter of the hearing shall be given by publishing at least one (1) notice thereof in a newspaper published in the City, such publication to be made at least fifteen (15) days before the public hearing but not more than thirty (30) days before the hearing.
- (b) The Plan Commission shall hear the application in accordance with its usual procedure. The Plan Commission may:
  - (i) recommend the application with or without conditions;
  - (ii) recommend denial of the application; or
  - (iii) refer the application back to the applicant for modification.

If the application is recommended, the application in final form shall clearly note all stipulated conditions.

- (c) A record of the proceedings shall be preserved in accordance with Plan Commission rules. Within thirty (30) days following the hearing, the Plan Commission shall submit to the City Council a report of the hearing and an advisory report with its recommendation.

(3) Advisory Reports. The Plan Commission's recommendation and advisory report shall include findings of fact that consider at least the following:

- (a) The proposal's consistency with and effect upon the City's Comprehensive or Land Use Plan;

- (b) The existing uses and zoning of nearby property;
- (c) The extent to which property values may be diminished or increased by the current or proposed zoning restrictions;
- (d) The extent to which approval or denial promotes the health, safety, morals, or general welfare of the public;
- (e) The relative public gain as compared to the hardship imposed upon the applicant;
- (f) The suitability of the property for the current or proposed zoning uses and purposes;
- (g) The length of time the property has remained vacant as currently zoned, when considered in the context of nearby development;
- (h) The community's need for the proposed use.

(4) City Council Procedure. Upon receipt of the Plan Commission's advisory report, the City Council shall act according to its legislative procedure. Every Special Use permit granted by the City Council shall be accompanied by a finding of fact specifying the reason for making such Special Use permit. If the application is referred back for modification by the City Council, the applicant may resubmit the application in accordance with the directions of the Plan Commission, if any, otherwise in time for the next regular meeting of the Plan Commission.

(5) Plan Changes. The site plan shall be a permanent site plan, which shall not be modified or have any additions made thereto, except minor changes in a development plan. Minor changes shall not take effect until the Director of Community Development and City Engineer concur with the changes, and they are approved by the Building Official. Major changes in the development plan shall require total review and reapplication.

(6) Revocation - Expiration. The City Council may revoke any Special Use approval if:

- (a) The proposal for which a permit has been issued is not carried out pursuant to the approved final site plan;
- (c) If any condition or requirement included in the permit is not complied with; or
- (c) Any permit shall expire:

- (i) At the time established for the individual permit;
- (ii) At the end of the development schedule submitted with the application;
- (iii) If construction has not been initiated within one (1) year of City Council approval; or
- (iv) If construction is not substantially complete within two (2) years of City Council approval.

(7) Extension - Renewal. Upon receiving a written request from the applicant, the City Council may extend or renew a permit issued under this Chapter for up to one (1) year. However, no more than two extensions/renewals shall be granted per approved Special Use.

4. That Subsection 17.02.050.A of the City's Revised Code of Ordinances ("City Code") shall be deleted in its entirety, and the following inserted in its place:

- A. The governing body may, from time to time, on its own motion or on petition, amend, supplement, change, modify or repeal by ordinance, the boundaries of districts or regulations or restrictions established. Any proposed amendment, supplement, change, modification or repeal shall first be submitted to the plan commission, hereinafter called "commission." If the commission makes no report within thirty (30) days, it shall be considered to have made a report approving the proposed amendment, supplement, modification, change or repeal. Within thirty (30) days after the proposed amendment, supplement, change, modification or repeal is submitted to the commission or upon the filing of the recommendations and report by the commission with respect to any proposed amendment, supplement, change, modification or repeal, the governing body shall cause a public hearing to be held before the plan commission in relation thereto, after giving at least fifteen (15) days notice of the time and place of such hearing and publishing such notice in a newspaper published in the city and after serving such notice personally (by personal delivery or certified mail) on each and every party who owns property that is the subject of rezoning. Such notice shall state the time and place of the hearing, the location of the property affected, and a brief statement of the amendment. Within ten (10) days following the hearing, the plan commission shall file a report of the hearing and its recommendations with the governing body.

5. That the title of Chapter 18.45 of the City Code shall be deleted in its entirety, and the following inserted in its place:

#### **CHAPTER 18.45 – ZONING AMENDMENTS, SPECIAL USES, VARIANCES, AND APPEALS**

6. That any and all references to the term “Zoning Board of Appeals” that exist in the current City of Columbia Revised Code of Ordinances shall be replaced by the term “Zoning Hearing Officer” effective immediately upon passage of this Ordinance.
7. This Ordinance shall take full force and effect immediately upon passage by the Corporate Authorities.

Alderman Huch moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Reis, and the roll call vote was as follows:

YEAS: Aldermen Agne, Niemietz, Roessler, Huch, Reis, Holtkamp, and Martens.

NAYS: None.

ABSTENTIONS: None.

ABSENT: Alderman Ebersohl.

**PASSED** by the City Council and **APPROVED** by the Mayor this 3rd day of December, 2018.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



WESLEY J. HOEFKEN, City Clerk

(SEAL)