

Board of Adjustment and Appeal

Ordinance 78-5 Amended Sec. 27-11-1 adding two alt. members

Ordinance 68-12 Established the Board of Adjustment and Appeal

DIVISION 3. BOARD OF ADJUSTMENT AND APPEAL*

Sec. 134-91. Established.

There is established a board of adjustment and appeal. The board shall be composed of five citizens of the city appointed by the city commission. Each member shall be a resident of the city. No member shall be employed by the city or be engaged in regular business with the city. The members of such board shall serve without compensation, but shall be entitled to reimbursement of expenses incurred in the performance of their official duties. Members of the board shall serve for two-year terms. The terms of the members shall be staggered so that three positions shall be available for reappointment in the following year. All appointments shall be for two-year terms or the remainder of an unexpired term created by a resignation or other vacancy. Vacancies shall be filled within 30 days of their effective date. The city commission shall also appoint two alternate members to the board. The alternate members shall be appointed for two-year terms and shall be required to have the same qualifications as regular members. The alternate members shall be authorized to participate fully in the business of the board in the absence of a regular member. The chairman of the board shall select the alternate to replace the absent member.

(UDC 1990, § 27-3-11-1)

Sec. 134-92. Proceedings.

The board of adjustment and appeal shall hear and decide on such matters as they are empowered to do so by the provisions of this division. The chair of the board shall be elected for a one-year term by the members of the board. Meetings of the board shall be at the call of the chair and at other such times as the majority of the board shall determine. Such chairman, or in his absence, the acting chair, may administer oaths and require the attendance of witnesses to its hearings. 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

*Cross reference—Boards, committees, commissions, § 1 et seq.

question, each member absent or failing to vote; indicating the substance of such examination, witnesses, and all other official actions. The city clerk shall sit as secretary to the board, shall keep the records and minutes of the board, and shall file them as a public record as required by law. (UDC 1990, § 27-3-11-2)

Sec. 134-93. Powers.

The board of adjustment and appeal shall exercise the following powers, none of which requires the amendment of the Uniform Development Code, but all of which require public notice and public hearing as set forth in this division:

- (1) *Administrative review.* To hear and decide appeals where it is alleged there is an error in the decision or interpretation of any administrative official in the enforcement of the Uniform Development Code.
- (2) *Variations.* To authorize, upon appeal, such variations from the terms of the regulations of this chapter as will not be contrary to the public interest, where owing to a special condition the literal enforcement of the provisions thereof would result in unnecessary hardship so that the spirit of the regulations or restrictions shall be observed and substantial justice done subject to the standards specified in this article.
- (3) *Special exceptions.* To authorize special exceptions for specified use in a zoning district when a petitioner has filed an application with the city manager and has complied with the prerequisites and standards specified in this chapter and subject to such conditions as the board of adjustment and appeal may deem necessary for the public interest and welfare.
- (4) *Nonconforming uses.* To grant permission to allow a less nonconforming use or structure in place of an existing nonconforming use or structure in accordance with section 134-194 when it is clearly for the general welfare.
- (5) *Boundaries.* If dispute arises over the actual location of land use plan categories

or zone district boundaries, the board of adjustment and appeal shall determine the boundaries in accordance with section 134-354.

- (6) *Interpretation or grievance.* Any official of the city or other person who has an alleged grievance regarding a matter of planning or zoning may apply by written appeal to the board. Where there is some disagreement as to the proper interpretation of this article, the board is authorized to make such interpretation as may be required to gain an equitable solution, and the board shall be held to be the final authority on all such interpretations of wording or intent of this article and the zone district atlas.
- (7) *Off-street parking and loading.*
- a. Off-street parking spaces for uses not listed in article IX, division 21 of this chapter shall be determined by the board.
 - b. For uses which contain less than 10,000 square feet of floor space, the building official may recommend and the board may authorize the waiving or reduction of the minimum loading requirements of article IX, division 21 of this chapter.
- (8) *Centerline of road.* In cases of dispute, the centerline of a road shall be determined by the board.
- (9) *Submerged land study.* The board shall determine whether or not the evidence gathered meets the criteria outlined in section 134-237 before granting a special exception for a structure or alteration of elevation in the MP zone.
- (10) *Amendments to Uniform Development Code.* The board of adjustment and appeal may recommend to the local planning agency and to the city commission any amendments to the Uniform Development Code which appear desirable to them, stating the reasons for their option.
- (11) *Reverse, affirm or modify.* In exercising the powers of this section, the board may

reverse, affirm or modify any order, requirement, decision or determination by any administrative official charged with the enforcement of the provisions of this chapter.

- (12) *Special requirements.* The board may prescribe special requirements, conditions or safeguards it deems necessary for the health, safety, convenience, and general welfare of the people; provided the appeal decision, the grant of a variance, or the grant of a special exception shall not be valid until after such requirements, conditions or safeguards are entirely implemented by the petitioners.

- (13) *Home occupations.* If the zoning administrator refers a case to the board under section 134-1864, the board shall review the case based on the home occupation provisions of this chapter and the conditions, safeguards and criteria for special exceptions. The board is not empowered to waive any of the standards for home occupations.

(UDC 1990, § 27-3-11-3)

Sec. 134-94. Stay of proceedings.

An appeal or application to the board of adjustment and appeal stays all proceedings in the furtherance of the action appealed from, unless the building official certifies to the board of adjustment and appeal that a stay would cause imminent peril to life or property. In this case, proceedings shall not be granted by the board of adjustment and appeal or by a court of record.

(UDC 1990, § 27-3-11-4)

Sec. 134-95. Conditions for variance.

The board of adjustment and appeal shall grant no variance unless the following conditions exist:

- (1) The special circumstances or conditions applying to the structure or premises in question are peculiar to such structure or premises and do not apply generally to other structures or premises in the vicinity.

- (2) The granting of application is necessary for the preservation and enjoyment of a property right and not serve merely as a convenience for the applicant.
- (3) The relief or variance sought did not result from an action by the applicant or with prior knowledge or approval of the applicant.
- (4) The variance sought shall not substantially impair the purpose or intent of this chapter and shall not be a detriment to public welfare.
- (5) Reasonable safeguards and conditions may be imposed by the board including the following:
 - a. Site plans clearly showing the circumstances requiring the variance and the proposed remedy for the hardship.
 - b. Special requirements of lighting, drainage, setbacks, screening, and parking may be imposed.
 - c. The board may require a reasonable time for compliance of conditions and safeguards, but a variance permit shall expire six calendar months after granting of such variance unless all conditions and safeguards are met within such time.

(UDC 1990, § 27-3-11-5)

Sec. 134-96. Grant of special exceptions; standards and conditions.

(a) The board of adjustment and appeal shall have the power to authorize special exceptions for specified uses in a zoning district when the applicant has filed an application for such usage with the city and has complied with the standards specified in this section, and such usage shall be in harmony with the general purpose and intent of the policies of the city comprehensive plan, this chapter, and in accordance with the specific rules contained in this section. In determining whether or not an application for a special exception should be approved, the board shall review such application against the following standards:

- (1) The requested use is compatible with the existing natural environment of the site

and with properties in the neighborhood, as is further reflected in the land use plan applicable within the city limits.

- (2) There is adequate provision for water supply and for sanitary sewers and sewerage treatment.
- (3) There is adequate provision for public facilities, such as schools, parks and utilities within the service areas involved, and the proposed use can be accommodated by existing and/or proposed facilities.
- (4) There is adequate provision for traffic movement, both vehicular and pedestrian, both internal to the use and in the area which will serve the use.
- (5) There are adequate provisions for drainage systems to service the use, with particular attention to the necessity for on-site retention systems to alleviate drainage and pollution problems.
- (6) There are adequate setbacks, buffering and general amenities in controlling adverse effects of noise, lights, dust, fumes and other nuisances.
- (7) The land area for the proposed use is sufficient, appropriate and adequate for the use and its reasonably anticipated operation and expansion thereof.
- (8) The use is compatible with the desired growth and land use patterns reflected in the city land use plan or other planning documents.
- (9) There is reasonable need for such facilities at the site under consideration and on a city-wide basis.
- (10) The proposed use will comply with all appropriate regulations for the district in which it is located and the policies of the comprehensive plan that apply to that district.
- (11) The proposed use will not adversely affect the health and safety of the public and the workers and residents in the area, and

will not be detrimental to the use or development of adjacent properties or of the general neighborhood.

- (12) The proposed use will comply with other policies and special standards which are designated elsewhere in the city comprehensive plan and this chapter, which standards and policies will be supplemental to those set forth in this section.

(b) Any material change in applied for and permitted usage, whether or not specifically contained in the conditions imposed by the board, or any violation of any condition imposed by the board, will immediately and automatically terminate and void the special exception granted by the board. It is the property owner's obligation to continue to use the special exception rights granted by the board in accordance with the terms and conditions of the application and any other conditions specifically imposed by the board.

(c) A special exception granted under the provisions of this section shall automatically lapse if building construction, in accordance with the plans for which the special exception was granted, has not been initiated within 12 months of the date of the granting of such special exception by the board or, if judicial proceedings to review the board's decision shall be instituted, from the date of entry of the final order in such proceedings, including all appeals. If all conditions and safeguards imposed upon the special exception have not been fully complied with within 12 months of the initiation of construction incident to the special exception, the special exception shall lapse. The board may grant extensions to both the required initiation of construction and compliance with condition time periods set forth in this subsection, upon application prior to the date that such special exception will lapse. Such extension shall be granted only upon good cause being shown to the board and shall be for the shortest possible period of time consistent with the facts associated with the particular request. In situations where no construction activities are involved in the granting of the special exception, the 12-month time period will commence as of the date of the granting of such special exception.

(d) All special exceptions for group homes, residential centers and care units granted by the board will be commenced or used by substantial construction beginning, substantial occupancy occurring, or by substantial beginning of the use granted by the special exception no later than six months from the date the special exception has been approved by the board. If such use is not commenced within such period of time, the special exception shall be null and void and of no further force and effect; and all rights to such use shall terminate automatically upon the expiration of the six-month period of time. Any interruption in the use of any rights granted by a special exception for a period in excess of six months will constitute an abandonment of such use, and no proof of the owner's intention to abandon such use shall be necessary for such use to be automatically terminated and made null and void and of no further force and effect. For good cause shown which is outside the applicant's direct control, the board may grant one extension for commencement of a special exception use for an additional period not exceeding six months or the shortest possible period of time consistent with the facts associated with the particular request. A request for such extension must be granted within the initial six-month period following the granting of such special exception, or such request shall not be heard by the board.

(e) The conditions and safeguards imposed shall include all of the following:

- (1) Parking requirements, as set forth in article IX, division 21 of this chapter.
- (2) Final site plan, as required in section 134-232, excluding the requirements specifically set forth in subsections 134-232(2), (3).
- (3) Reasonable hours of operation, to be determined by the board.
- (4) Performance standards, as set forth in section 134-1442.
- (5) Such additional reasonable safeguards as the board deems necessary for the protection of the surrounding property and the general welfare.

(f) For group homes, residential centers, and care units requiring a special exception, the burden of proof that all standards have been met and that the abutting property and the community will not be significantly adversely affected, shall be upon the applicant, and the following factors shall be considered in addition to the standards in subsection (a) of this section:

- (1) Character of neighborhood would not be adversely affected by impact factors generated by such housing. Such factors include, but are not limited to, traffic/parking generation, noise, light, fire protection, water service, sewer service, number of residents, and nature of facility.
- (2) Compliance with state department of health and rehabilitative services regulations or applicable city codes, whichever is more restrictive regarding:
 - a. Space requirements per resident.
 - b. Maximum occupancy requirements for sleeping rooms.
 - c. Fire regulations.
 - d. Building standards.
 - e. Sanitary standards.
 - f. Health requirements.
 - g. Supervisory standards.
 - h. Licensing requirements.
- (3) The impact of the people density on public facilities.
- (4) Each application for special exception for a group home, residential center or care unit shall be accompanied by a certification from an attorney at law, or a title company regarding the status of the title of such property, and shall specifically state whether or not any deed restrictions or deed covenants apply to the property. If any covenants or restrictions apply to the property, a copy of such shall be supplied and attached to the application. During the consideration of the application before the board, the substance of any deed restrictions will be made part of the record of the proceeding. The presence of a deed

restriction or covenant precluding the use applied for shall not be grounds for denial of the requested specific exemption, but the board may consider the effect of the deed restriction as it has been defined on the character and quality of the neighborhood relative to any possible negative impact of the proposed group home, residential center or care unit.

(g) Applications for special exceptions for medically related uses shall be evaluated based upon the guidelines and criteria established in this section. Conditions on special exceptions shall be based upon such guidelines. The guidelines and criteria are:

- (1) Lot area and dimensions:
 - a. Area, 10,000 square feet.
 - b. Width, 100 feet.
- (2) Yard setbacks:
 - a. Front, 25 feet.
 - b. Side, ten feet.
 - c. Rear, 20 feet.
- (3) Building height and lot coverage:
 - a. Height, up to 35 feet maximum, if no adverse effect on surrounding property.
 - b. Lot coverage, 65 percent of lot area (lot coverage is that portion of the lot covered by impervious surfaces such as roofs, sidewalks, parking lots and driveways).
- (4) Parking requirements shall be determined by the special exception process using the zoning code parking requirements as a guide.
- (5) Landscape requirements. Compliance with article IX, division 22 of this chapter shall be required.
- (6) Performance standards. Compliance with the standards set out in section 134-1442 shall be required.
- (7) Screening shall be as provided for in section 134-238 and as required as a condition of the special exception.

- (8) Sign regulations. Only the following signs shall be permitted:
- a. One sign identifying each medical professional seeing patients. The sign shall be no larger than two square feet and mounted flush to the building.
 - b. One sign identifying the building, professional group, or institution. The sign shall be no larger than ten square feet.
 - c. All signs shall comply with the sign code.
- (9) Pedestrian access. The following shall be required:
- a. A standard five-foot wide sidewalk (wider if appropriate) along the street frontage, the location of which shall be approved by the appropriate city officials.
 - b. Curbs shall be ramped to facilitate wheelchair access.
 - c. Interior walkways within a site and between facilities where appropriate.
- (10) Other criteria:
- a. No retail sales of any kind.
 - b. Medical care for humans only.
- (h) Additional standards for certain special exception:
- (1) Standards for the storage of recreational equipment in the MH zone:
- a. The area designated for storage of recreational equipment shall occupy a minimum of one-half acre and occupy not more than 20 percent of the area zoned MH.
 - b. Ingress and egress to the storage area shall not be through the residential area of the mobile home park.
 - c. Recreational equipment must meet all the standards specified in section 74-175.

- d. Recreational equipment must be effectively screened from streets, adjoining properties, and from the mobile homes.
- (UDC 1990, § 27-3-11-6)

Sec. 134-97. Public notice and public hearing.

(a) The city manager shall cause to be published and posted public notice, at least 14 days prior to a public hearing, and abutting property owners shall be notified by regular mail at least 14 days prior, of the time, date and substance of the public hearing which shall be held on matters before the board of adjustment and appeal. A public hearing shall be held not sooner than 14 days and not later than 60 days after filing of an application by the petitioner.

(b) At the public hearing, the applicant or other person having interest in the matter advertised shall be heard by the board of adjustment and appeal. The chair will direct all proceedings of the public hearing and shall establish procedures under which all matters are to be heard or presented. The board shall have the power to compel the attendance of witnesses to such public hearings.

(UDC 1990, § 27-3-11-7)

Sec. 134-98. Decisions.

The board of adjustment and appeal, in deciding on matters presented to it, shall set forth such decision in writing together with all required conditions and safeguards and the reasons for such decision. The chair of the board shall sign such decision. If an administrative order is set forth by the board, such order shall be enforced by the powers as provided in this division. A concurring vote of the majority of the total membership of the board shall be required to decide on any matter presented to it, except that it shall require a four-fifths concurring vote of the total membership to override the decision of the building official. After official action has been taken regarding the property owner's application for variance under this division, the board of adjustment and appeal shall not hear a similar application unless substantial change in conditions has occurred or

until six months have elapsed following board of adjustment and appeal action on the application. (UDC 1990, § 27-3-11-8)

Secs. 134-99—134-120. Reserved.

DIVISION 4. LOCAL PLANNING AGENCY

Sec. 134-121. Creation.

The local planning agency, which shall also serve and act as the land development regulation commission of the city, is created to assist the city commission, various appointive boards and administrative officials in advice and counsel concerning matters relating to the planning and future development of the city and its adjacent urbanized planning area. (UDC 1990, § 27-3-12-1)

Sec. 134-122. Membership.

The local planning agency shall consist of seven members appointed by the city commission to serve for a term of two years each. The terms will be staggered so that four members shall serve for terms ending on December 31 in each odd-numbered year and the remaining three members shall serve terms ending on December 31 in each even-numbered year. Appointments shall be for terms beginning January 1 or for the remainder of any unexpired term created by resignation or other vacancy. A member shall receive no compensation for his participation as a member of the agency but shall be allowed to receive reimbursement for actual expenses incurred in the performance of his duties. (UDC 1990, § 27-3-12-2)

Sec. 134-123. Officers, meeting and records.

The local planning agency shall elect each year from its own membership, a chair who shall preside at all meetings attended by him and a vice-chair who shall preside in the absence of the chair. The city clerk shall serve as secretary to the agency and shall keep the minutes and records of all proceedings of the agency. The agency shall fix the time and place for its regular and special meetings. Meetings may be held at the call of the

chair or by a majority vote of the membership. Proceedings of the agency shall be made public and recorded as provided in this division. (UDC 1990, § 27-3-12-3)

Sec. 134-124. Voting; quorum.

In taking a vote of the members of the local planning agency, all decisions shall be by a majority vote. A quorum shall consist of at least four members of the agency. (UDC 1990, § 27-3-12-4)

Sec. 134-125. Duties.

The local planning agency shall make recommendations to the city commission and other interested parties concerning the future development of the city. The local planning agency shall also make recommendations and studies upon the following matters:

- (1) *Planning.* The local planning agency shall make studies or have such studies made to plan for the development of the city and its designated planning area. The agency may call public hearings or consult with such persons as it deems necessary to obtain information for such studies. The city manager shall supply such administrative data as is necessary for these studies.
- (2) *Review of plats.* In accordance with the subdivision regulations of the Uniform Development Code, the local planning agency shall examine all preliminary plats before they are presented to the city commission for approval. The preliminary plats shall be presented to the agency so that they might designate changes, alterations, or revisions to the design and proposed facilities before the final engineering is done. In the event of deviations from the preliminary plat, the local planning agency shall review the revised plat and make recommendations of approval of the final plat, disapproval or approval with specific recommendations, revisions or deletions of the final plat, before it is presented to the city commission for their review and action.

ORDINANCE NO. 78 - 5

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF DUNEDIN, SECTION 27-11-1, BY DELETING REFERENCE TO CHAPTER 176, FLORIDA STATUTES, AND TO PROVIDE FOR TWO ALTERNATE MEMBERS TO THE BOARD OF ADJUSTMENT & APPEAL, AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DUNEDIN, FLORIDA, IN SESSION DULY AND REGULARLY ASSEMBLED:

Section 1. That Section 27-11-1 of the Code of Ordinances of the City of Dunedin, Florida, being a portion of the zoning code, is amended in its entirety to read as follows:

"Section 27-11-1. Establishment.

There is hereby established a Board of Adjustment and Appeal. The Board shall be composed of five citizens of Dunedin appointed by the City Commission. Each member shall be a resident of the City. No member shall be employed by the City or be engaged in regular business with the City. The members of said Board shall serve without compensation but shall be entitled to reimbursement of expenses incurred in the performance of their official duties. Members of the Board shall serve for two (2) year terms. The terms of the members shall be staggered so that three positions shall be available for reappointment in one year and two positions shall be available for reappointment in the following year. All appointments shall be for two (2) year terms or the remainder of an unexpired term created by a resignation or other vacancy. Vacancies shall be filled within thirty (30) days of their effective date.

The City Commission shall also appoint two (2) alternate members to the Board. The alternate members shall be appointed for two (2) year terms and shall be required to have the same qualifications as regular members. The alternate members shall be authorized to participate fully in the business of the Board in the absence of a regular member. The Chairman of the Board shall select the alternate to replace the absent member."

Section 2. This ordinance shall become effective immediately upon its final passage and adoption.

PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF DUNEDIN, FLORIDA, THIS 6th DAY OF FEBRUARY, 1978.

ATTEST:

M. E. Jeremiah
City Clerk

Andy Ford
Mayor-Commissioner

PASSED ON FIRST READING: JANUARY 23, 1978

PASSED ON SECOND READING: FEBRUARY 6, 1978

ORDINANCE NO. 68-12

AN ORDINANCE AMENDING IN ITS ENTIRETY CHAPTER 26 CODE OF ORDINANCES, CITY OF DUNEDIN, THE SAME BEING THE DUNEDIN PLANNING AND ZONING CODE, TO PROVIDE FOR THE FOLLOWING ZONED DISTRICTS: AGRICULTURAL, RESIDENTIAL, DISTRICT, R-100 SINGLE FAMILY RESIDENTIAL DISTRICT, R-60 SINGLE FAMILY RESIDENTIAL DISTRICT, TR-2 AND -3 FAMILY RESIDENTIAL DISTRICT, MF-MULTI FAMILY RESIDENTIAL DISTRICT, MH-MOBILE HOME RESIDENTIAL DISTRICT, PR-PLANNED RESIDENTIAL DISTRICT, TF-TOURIST FACILITIES DISTRICT, NB-NEIGHBORHOOD BUSINESS DISTRICT, GB-GENERAL BUSINESS DISTRICT, SC-SHOPPING CENTER DISTRICT, GI-GENERAL INDUSTRIAL DISTRICT, AND MP-MARINE PARK DISTRICT, ADOPTING A NEW ZONING DISTRICT MAP, ADOPTING THE COMPREHENSIVE DEVELOPMENT PLAN OF THE CITY OF DUNEDIN, FLORIDA, PROVIDING FOR DEFINITIONS, PROVIDING GENERAL ZONING REGULATIONS, PROVIDING FOR OFF-STREET PARKING AND LOADING REQUIREMENTS, PROVIDING PERFORMANCE STANDARDS CONCERNING THE CREATION OF NOISE, VIBRATION, SMOKE, DUST OR OTHER MATTER, TOXIC OR OTHER NOXIOUS WASTE MATERIALS, ODORS, FIRE AND EXPLOSIVE HAZARD OR GLARE, PROVIDING FOR THE HEIGHT REGULATIONS, PROVIDING FOR REGULATIONS FOR THE FILL, EXCAVATION OR ALTERATION OF LAND, PROVIDING FOR SPECIAL ACCESSORY AND TEMPORARY STRUCTURE REGULATIONS, PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF SAID CODE, PROVIDING FOR A BOARD OF ADJUSTMENT AND APPEAL, PROVIDING FOR ADMINISTRATIVE REVIEW BY SAID BOARD OF ADJUSTMENT AND APPEAL, PROVIDING FOR A PLANNING AND ZONING BOARD, PROVIDING FOR SPECIAL EXCEPTIONS AND VARIANCES UNDER CERTAIN CIRCUMSTANCES, PROVIDING FOR A METHOD OF AMENDMENT OF SAID CHAPTER, PROVIDING FOR PUBLIC NOTICE AND PUBLIC HEARING AND PROVIDING FOR PENALTIES FOR VIOLATION OF ANY PROVISION OF SAID CODE OR AMENDMENTS OR SUPPLEMENTS THERETO, PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES AND PROVIDING FOR AN EFFECTIVE DATE OF SAID ORDINANCE.

WHEREAS, the City Commission of the City of Dunedin has, pursuant to Chapter 19782 Laws of Florida 1939 as further supplemented by Chapter 19539 Laws of Florida 1939 caused to be published due notice of public hearing for the adoption of a new revised Planning and Zoning Code for the City of Dunedin and an appropriate zoning map in connection therewith; and

WHEREAS, due and proper public hearing on the recommended adoption of a revised Planning and Zoning Code for the City of Dunedin has been duly conducted by the City Commission, and the recommendations of the Planning and Zoning Board, and by the Pinellas County Planning Consultant having been found by the