

ARTICLE XIII. BOARD OF ZONING ADJUSTMENTS

Section 130.00 ESTABLISHMENT AND MEMBERSHIP. A Board of Zoning Adjustments is hereby established (hereafter referred to as the Board). The Board shall consist of five members, each to be appointed for a term of three years by the Town Council. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Each member may be removed for cause by the appointing authority upon written charges and after a public hearing. All members of the Board shall be citizens and residents of the Town of Westover. The Board of Zoning Adjustments shall correspond to the board referred to as the Board of Adjustment in the Code of Alabama

Section 131.00 MEETINGS, PROCEDURE, AND RECORDS. Meetings of the Board shall be held at the call of the chairman and at such time as the Board may determine. Such chairman, or in the absence of the chairman 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 adopt and publish its own rules of procedure and 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 of other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

Section 132.00 POWERS AND DUTIES. The Board, in appropriate cases and subject to appropriate conditions and safeguards, shall have the following powers:

Section 132.01 INTERPRETATION OF BOUNDARIES. To hear and decide upon interpretation of the boundaries of districts established and shown on the map in accord with criteria specified in Article II.

Section 132.02 APPEALS. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Officer of this ordinance. Such appeal may be taken to the Board by any person aggrieved or by any officer, department, Board or bureau of the city affected by any decision of any city officer under this ordinance. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall transmit forthwith to the Board all papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken 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 on notice to the officer from whom the appeal is taken and on due cause shown.

Section 132.03. VARIANCES. To authorize upon appeal in specific cases a variance from the terms of this ordinance such as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this ordinance will result in unnecessary hardship, but where the spirit of the ordinance shall be observed and substantial justice done. Such special conditions shall be limited to exceptional narrowness, shallowness or shape of a specific piece of property existing at the time of the enactment of this ordinance, or exceptional topographic conditions or other extraordinary and exceptional situation or condition of property as would result in peculiar, extraordinary and practical difficulties. No variance shall be authorized unless the Board finds all of the following exist:

- a. That the special circumstances or conditions applying to the building or land in question are peculiar to such premises and do not apply generally to other land or buildings in the vicinity.

- b. That the granting of the application is necessary for the preservation and enjoyment of a property right and not merely to serve as a convenience to the applicant.
- c. That the condition from which relief or a variance is sought did not result from action by the applicant.
- d. That the authorizing of the variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of the Town of Westover.

Section 132.04. SPECIAL EXCEPTIONS. When any modification authorized pursuant to this section will not tend to impair the health, safety, convenience or comfort of the public, including that portion of the public occupying the property immediately contiguous to the parcel of land which the modification concerns, to be determined by the Board upon the adduction of competent evidence, including a view of the premises and its surroundings at the discretion of the Board, the Board may modify the strict application of the provisions of this ordinance and cause a Special Exception Permit to be issued upon such reasonable conditions as it may prescribe for the location, construction, extension, structural alteration and operation of any of the following, in addition to those uses prescribed as being permitted upon special exception in Article VII.

- a. Building on lots of record as defined in Section 110.00.
- b. Resumption, extension, reconstruction, or change of a non-conforming use as specified in Section 110.00.
- c. Erection, extension and use of a structure, or use of premises not otherwise authorized or permitted by this ordinance for a public service corporation for public utility purposes which shall be deemed reasonably necessary for the public convenience or welfare.
- d. Reduction in parking requirements specified in Article V.
- e. Unclassified uses as outlined in Article VI.
- f. Erection, and residential use of a manufactured home for temporary use (for a time period as specified by the Board not to exceed 9 month) during the construction renovation, or reconstruction of a permanent residential structure on the same lot.
- g. Modification of Highway 280 Overlay District provisions as permitted in Article IX Section 93.10.

Section 132.05. CONDITIONS FOR APPROVAL OF SPECIAL EXCEPTION USES. In considering Special Exception Uses, the Board shall, at a minimum, take into account the following and may prescribe conditions on the use to mitigate or remedy such impacts in order that the exception may be reasonably granted:

- Consistency with the Comprehensive Plan
- Vehicular and pedestrian access
- Extent of traffic, noise, or light generated by the use
- Air and water pollutants generated by the use
- Preservation of the density and character of the surrounding area
- Negative impacts on surrounding property values

Section 133.00 HEARINGS. The Board shall fix a reasonable time for hearing of each appeal or other request for interpretation or exception, give public notice thereof, 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 designated agent or by attorney.

Section 134.00 APPEALS FROM ACTION OF THE BOARD OF ZONING ADJUSTMENTS. Any party aggrieved by any final judgment or decision of the Board may, within 15 days thereafter, appeal therefrom to the circuit court or court of like jurisdiction, by filing with the Board a written notice of appeal specifying

the judgment or decision from which appeal is taken. In case of such appeal, the Board shall cause a transcript of the proceedings in the cause to be certified to the court to which the appeal is taken and the cause in such court shall be tried *de novo*.