

ORDINANCE 08-05-05

An Ordinance To Establish a Zoning Board of Adjustment

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RED BAY, ALABAMA, AS FOLLOWS:

Section 1. Board of Adjustment Created.

A Board of Adjustment is hereby created pursuant to §§ 11-52-80 Ala. Code (1975) as it grants municipalities the power to create a Board of Adjustment.

Section 2. Membership of Board.

The membership of the Board of Adjustment shall consist of five residents of the City appointed by the governing body. Their terms of office shall be three years. In addition to the five regular members herein provided for, two supernumerary members shall be appointed to serve on such board at the call of the chairman, only in the absence of regular members, and while so serving have and exercise the power and authority of regular members. Such supernumerary members shall be appointed to serve for three-year terms and shall be eligible for reappointment. The Board shall promptly notify the governing body of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold no other office in the City, except that not more than one member of the Board may also be a member of the Planning Commission.

Section 3. Functions.

The Board of Adjustment shall perform the following functions:

- A. To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, or determination made by the Zoning Officer in enforcement of this Chapter or any valid law or regulation governing the action of such officials.
- B. To hear and decide requests for special exceptions expressly allowed by this Chapter, subject to the warrants and criteria set forth in Article VII.
- C. To authorize upon appeal 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 the provisions of this Chapter will result in unnecessary hardship, and so that the spirit of this Chapter shall be observed and substantial justice done

Section 4. Procedure.

The Zoning Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meeting shall be held at the call of the Chairman or, in his absence, the acting Chairman. He may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Zoning Board of Adjustment shall keep minutes of its proceedings, showing the vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be public record and be immediately filed in the official records of the Board.

Section 5. Administrative Review.

The Zoning Board of Adjustment shall hear and decide appeals where it is alleged that an error exists in any order, requirement, decision or determination made by the Administrative Official in the enforcement of this Ordinance.

Section 6. Variances.

To authorize, upon appeal in specific cases, such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

Section 7. Justification.

Variances to the terms of this Chapter may be granted on an individual case by case basis upon a finding by the Zoning Board of Adjustment that the variance will not be contrary to the public interest; and, where owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. Another essential factor is that the spirit of the Ordinance shall be observed and substantial justice done. More specifically, the Board shall determine all of the following criteria have been satisfied:

- (1) The Board should make proper adjustment to prevent unnecessary hardship, even to the extent of authorizing non-conforming uses. Where a Board authorizes a non-conforming use in a district to prevent unnecessary hardship, all relevant factors, when taken together, must indicate that the plight of the premises in question is unique in that they cannot reasonably be put to a conforming use because of the limitations imposed upon them by reason of their classification in a specific zone.
- (2) Variances should be permitted only under peculiar and exceptional circumstances.
- (3) Variances should be permitted only if the ordinance has created an unnecessary hardship. Alabama Statutes require unnecessary hardship for

approval of variances.

(4) Mere financial loss of a kind, which might be common to all of the property owners in a district, is not an unnecessary hardship.

(5) When a hardship is self-inflicted or self-created, there is no basis for a claim that a variance should be granted.

(6) Variances should be granted sparingly and in the spirit of this Chapter, in harmony with the spirit of State Law; should be carefully preserved to the end that the structure of this Section would not disintegrate and fall apart by constant erosion at the hands of the Zoning Board of Adjustment.

Section 8. Application for A Variance

An application for a variance shall be filed with the Chairman of the Zoning Board of Adjustment at least fifteen (15) days prior to the scheduled hearing date before the Zoning Board of Adjustment. The application shall be filed by the property owner or the authorized agent of the property owner on a form made available by the City Clerk and shall include the following:

(1) Name, Signature and address of the property owner and agent of the property owner,

if any.

(2) Address of the property under consideration.

(3) Zoning and land use of the property under consideration.

(4) Justification for the variance in accordance with ALL of the criteria in Section 5.

(5) A vicinity map showing the location of the subject property.

(6) A plot plan, drawn to scale showing all dimensions, property boundaries and proposed development layout with the variance noted or highlighted.

(7) The names and addresses of adjacent property owners, as shown on the most recent

records of the Franklin County Tax Assessor's Office.

(8) A \$75.00 Administrative Fee is required from the applicant or agent at the time the application for a variance is made, plus the cost incurred in notification and publication.

Section 9. Public Notice Required.

At least seven (7) days prior to the scheduled Zoning Board of Adjustment public

hearing, the Chairman of the Zoning Board of Adjustment shall give written notice of the variance request to all adjacent property owners. Such notice shall be deemed given when deposited in the United States Mail, first class, postage prepaid, addressed to such property owners at the addresses as submitted with the variance application by the applicant, as well as publication in a newspaper of general publication throughout the City and/or posting of such notices in three (3) conspicuous places within the City (if there is no newspaper of general circulation). Any error in the address of such notices shall not invalidate the giving of notice, provided that no more than five percent (5%) of the total number of notices given contain any such error. Such notice shall state the following:

- (1) The name of the applicant.
- (2) The location of the property.
- (3) The nature of the variance and applicable zoning provisions.
- (4) The time, date and location of the Zoning Board of Adjustment public hearing at which said application is to be heard and considered.

Section 10. Action on Appeals.

In exercising the above-mentioned powers, the Zoning Board of Adjustment may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm (wholly or in part) or modify the order requirement, decision, or determination as to what should be made and, to that end, shall have powers of the Administrative Official from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement decision or determination of the City Clerk or other administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to affect any variation in the application of this Ordinance.

Section 11. Appeals - How Taken.

Appeals to the Zoning Board of Adjustment may be filed by any person aggrieved by any officer, department board or bureau of the City affected by any decision of the Administrative Official. Such appeals shall be taken within a reasonable time, not to exceed thirty (30) days or such lesser period as may be provided by the rules of the Board by filing with the City Clerk or other administrative official and the Zoning Board of Adjustment a notice of appeal specifying the grounds thereof. The Administrative Official shall forthwith transmit to the Board all papers constituting the record upon which the action was appealed.

The Zoning Board of Adjustment shall fix a reasonable time for hearing the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may

appear in person or by agent or attorney.

Section 12. Stay of Proceedings.

An appeal stays all proceedings in furtherance of the action appealed, unless the City Clerk or other administrative official certifies to the Zoning Board of Adjustment (after the notice of appeal is filed by him) that, by reason of facts stated in the certificate, a stay would, in his opinion, caused imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Zoning Board of Adjustment or by a court of record on application, on notice to the City Clerk or other administrative official from whom the appeal is taken and on due cause shown.. Any party aggrieved by any final judgment of the Zoning Board of Adjustment may appeal there from to the Circuit Court or court of like jurisdiction as provided by Section 11-52-81, Code of Alabama, 1975, or as same may be amended, within fifteen (15) days from the date of the Board hearing.

Section 13. Appeals From The Action Of The Board.

Any party aggrieved by any final judgment of the Zoning Board of Adjustment may appeal there from to the Circuit Court or court of like jurisdiction as provided by Section 11-52-81, Code of Alabama, 1975, or as same may be amended, within fifteen (15) days from the date of the Board hearing.

Section 14. Organization and Functions. The Board may adopt such other rules and regulations as shall not be inconsistent with this Chapter and the provisions of law.

Section 15. Should any section, subsection or provision of this ordinance be declared invalid or unconstitutional by judgment or decree of any court of competent jurisdiction, such judgment or decree shall not affect any other section, subsection or provision.

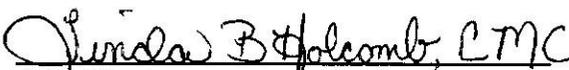
Section 16. This ordinance shall become effective upon its adoption and publication as provided by law.

ADOPTED and APPROVED this 20 day of MAY,
2008.



Mayor

ATTEST:



City Clerk

THEREUPON, Pat Hammock, a member, moved and Ricky Holland, a member, seconded a move that said Ordinance be given vote. Said Ordinance passed by vote of all members of the Council present and the Mayor declared the same passed.

Jeff Reed
Mayor
Bobby Nelson
Council Member
Dea. D. [unclear]
Council Member
Pat Hammock
Council Member
Ann Wilkins
Council Member
Ricky Holland
Council Member

ATTEST:

Linda B. Holcomb, CMC
City Clerk