

ORDINANCE NO. 2017-03

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF COLORADO CITY, ARIZONA, ADOPTING AMENDMENTS TO THE TOWN CODE TITLE XV, LAND USAGE

WHEREAS, on October 16, 2017 this document entitled “Ordinance No. 2017-03” adopting amendments to “Town Code Title XV, Land Usage was made a public record by Resolution No. 2017-25 and read by title; and

WHEREAS, on November 13, 2017 this document was read by title a second time; and

WHEREAS, the Mayor and Council deem it necessary to amend the Land Usage provisions of the Town Code to clarify and remove duplicative appeals processes and establish development standards;

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF COLORADO CITY, ARIZONA, as follows:

Section 1: That Town Code Title XV, Chapter 150, Building Code, Section §150.51(B) “Petition in Writing,” shall be amended as follows:

(B) The petition, along with the appropriate fee shall be submitted to the Town Clerk following the Appeal and Variance process outlined in Town Code Chapter 153 and placed on the next regular Town Council meeting for Council consideration.

Section 2: That Town Code Title XV, Chapter 151, Flood Damage Prevention, Section §150.28 (B)(2) & (3) “Abatement of Violations,” shall be amended as follows:

(2) Recommend that the property owner apply for a variance to the Hearing Officer ~~Issue a variance to this chapter~~ in accordance with the provisions of §§ 151.60 through 151.62;

(3) Order the owner of the property upon which the violation exists to provide whatever additional information may be required for determination. The information must be provided to the Floodplain Administrator within 30 days of the order, and he or she shall submit an amended report to the Floodplain Board within 20 days. At their next regularly scheduled public meeting, the Floodplain Board shall either order the abatement of the violation or they shall recommend that the property owner apply for a variance ~~grant a variance~~ in accordance with the provisions of §§ 151.60 through 151.62; or

Section 3: That Town Code Title XV, Chapter 151, Flood Damage Prevention, Section §151.61 “Appeal Board,” shall be amended as follows:

§151.61 Appeals Board

(A) The ~~Floodplain Board~~ Hearing Officer of Colorado City shall hear and decide appeals and requests for variances from the requirements of this chapter as outlined in Town Code Chapter 153.

(B) ~~The Floodplain Board~~ Hearing Officer shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

(C) In passing upon the applications, the ~~Floodplain Board~~ Hearing Officer, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:...

(D) Upon consideration of the factors of division (C) above and the purposes of this chapter, the ~~Floodplain Board~~ Hearing Officer may attach the conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

Section 4: That Town Code Title XV, Chapter 152, Airport Overlay Zoning, Section §152.03 “Definitions,” shall be amended as follows:

BOARD OF ADJUSTMENT. A quasi-judicial board consisting of not less than 5 nor more than 7 members appointed by the Colorado City Town Council to hear and decide appeals from the Hearing Officer ~~Planning and Zoning Administrator~~.

HEARING OFFICER. A quasi-judicial arbiter of issues involving the interpretation or application of airport zoning and land use ordinances.

Section 5: That Town Code Title XV, Chapter 152, Airport Overlay Zoning, Section §152.08 (H, I) “Permits, Variances,” shall be amended as follows:

(H) *Variances.* Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this chapter, may apply to the Hearing Officer ~~Board of Adjustment~~ for a variance from such regulations by following the appeal and variance process in Town Code Chapter 153. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of a proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the ~~spirit of this~~ appeal and variance procedure outlined in Town Code Chapter 153.

(I) Additionally, no application for variance to the requirements of this chapter may be considered by the ~~Board of Adjustment~~-Hearing Officer unless a copy of the application has been furnished to the Town of Colorado City for advice as to the aeronautical effects of the variance. If the Town of Colorado City does not respond to the application within 15 days after receipt, the ~~Board of Adjustment~~-Hearing Officer may act on its own to grant or deny said application.

Section 6: That Town Code Title XV, Chapter 152, Airport Overlay Zoning, Section §152.09 “Enforcement,” shall be amended as follows:

§ 152.09 ENFORCEMENT. ~~...Application for action by the Board of Adjustment shall be forthwith transmitted by the Town of Colorado City...~~

Section 7: That Town Code Title XV, Chapter 152, Airport Overlay Zoning, Section §152.10 “Board of Adjustment,” shall be deleted in its entirety.

Section 8: That Town Code Title XV, Chapter 152, Airport Overlay Zoning, Section §152.11 “Appeals,” shall be amended as follows:

(A) Any person aggrieved, or any taxpayer affected, by any decision of the Town of Colorado City made in the administration of this chapter, may appeal to the Hearing Officer by following the appeal and variance process

in Town Code Chapter 153 Board of Adjustment.

(B) All appeals hereunder must be taken within 15 days of such decision, by filing with the Town Clerk a notice of appeal specifying the grounds thereof. The Town of Colorado City shall forthwith transmit to the Hearing Officer Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

~~*(C) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Town Planning and Zoning Department certifies to the Board of Adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would in the opinion of the Planning and Zoning Department cause imminent peril to life or property. In such case, proceedings shall not be stayed except by the order of the Board of Adjustment on notice to the Town Planning and Zoning Department and on due cause shown.*~~

~~*(D) The Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice by both posting in conspicuous places close to the property affected, and publication in a newspaper in accordance with A.R.S. § 9-462.04, as well as due notice to the parties in interest. The Board of Adjustment will decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.*~~

~~*(E) The Board of Adjustment may, in conformity with the provisions of this chapter, reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as may be appropriate under the circumstances.*~~

Section 9: That Town Code Title XV, Chapter 153, Land Division, Section §153.005 “Board of Adjustment,” shall be amended as follows:

§ 153.005 BOARD OF ADJUSTMENT APPEALS AND VARIANCES.

~~*(A) A Board of Adjustment is hereby created in accordance with the provisions of A.R.S. §§ 9-462.06. The Town Council shall serve as the Board of Adjustment and shall hear and decide appeals from the decisions of the Hearing Officer.*~~

(AB) Pursuant to A.R.S. § 9-462.06, a Hearing Officer is hereby established to hear and decide requests for variances from the terms of the land use ordinances, appeals from decisions applying the land use ordinances, and appeals from a land use fee charged. The Hearing Officer shall be appointed by resolution of the Town Council. The Hearing Officer shall act in a quasi-judicial manner and serve as arbiter of issues involving the interpretation or application of land use ordinances.

(BC) Any appeal proceeding shall be conducted in a public meeting called for that purpose. The Hearing Officer shall fix a reasonable time to hear the appeal or variance. The chairperson of such hearing officer shall have the power to administer oaths and take evidence, and minutes of the proceedings and actions shall be filed with the office of Town Clerk.

(CD) As a condition precedent to judicial review, each aggrieved person shall specifically file a notice of appeal from a land use decision with the Town Clerk within 15 days of the decision, specifying the grounds thereof. Only those decisions in which the town has applied a land use ordinance to a particular application, person, or parcel may be appealed.

(DE) An appeal stays all proceedings in the matter appealed from, unless the Planning and Zoning Administrator certifies by the facts stated in the certificate, a stay would cause imminent peril to life or property. Upon such certification, proceedings shall not be stayed except by restraining order granted by the Hearing Officer, Board of Adjustment or by a court of record on application and notice to the Planning and Zoning Administrator. Proceedings shall not be stayed if the appeal requests relief which has previously been denied by an appeal except pursuant to a special action in district court.

(EF) The town shall fix a reasonable time for hearing the appeal, and shall give notice of hearing by both publication in a newspaper of general circulation and posting the notice in conspicuous places close to the property as well as due notice to the parties in interest. Upon the hearing, any party may appear in person or by agent or by

~~attorney. The Hearing Officer (or Board of Adjustment) shall determine the correctness of a decision of the town in its interpretation and application of a land use ordinance. The appellant has the burden of proving that the town erred. A decision of the Hearing Officer or Board of Adjustment takes effect on the date when a written decision is issued.~~

(FG) The Hearing Officer may grant a variance if:

(1) Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances. The Hearing Officer may not find an unreasonable hardship if the hardship is self-imposed or economic;

(2) There are special circumstances attached to the property that do not generally apply to other properties in the same zone such as size, shape, topography, location, or surroundings;

(3) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

(4) The variance will not substantially affect the general plan and will not be contrary to the public interest; and

(5) The spirit of the land use ordinance is observed and substantial justice done.

(GH) In granting a variance, the Hearing Officer ~~or Board of Adjustment~~ may impose additional requirements or conditions on the applicant that will mitigate any harmful effects of the variance or serve the purpose of the standard or requirement that is waived or modified. Variances run with the land.

(I) ~~The Hearing Officer (or Board of Adjustment) shall determine the correctness of a decision of the town in its interpretation and application of a land use ordinance. The Hearing Officer shall make written findings of facts and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming, or modifying any order requirement, decision or determination which comes before it. The decision must be made within a reasonable time (15 to 45 days). A decision of the Hearing Officer or Board of Adjustment takes effect on the date when a written decision is issued.~~

(J) The Hearing Officer may not make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance except for granting variances pursuant to the conditions listed above.

(KA) A Board of Adjustment is hereby created in accordance with the provisions of A.R.S. § 9-462.06, ~~The Town Council shall serve as the Board of Adjustment and shall hear and decide appeals from the decisions of the Hearing Officer.~~

(B) The Board of Adjustments shall consist of 5 members appointed by the Council. Members shall be selected without respect to political affiliation and shall receive a stipend pay for each Board of Adjustments meeting attended, as set by the Town Council.

(C) The initial terms of office for the appointive members of such Board of Adjustments shall be 2 years for 2 members, 4 years for 2 members and 6 years for the remaining member. Thereafter, the terms of office for each appointive member, shall be 6 years.

(D) Vacancies occurring otherwise than through the expiration of term shall be filled by appointment by the Town Council. Notwithstanding the length of term, members shall serve at the pleasure of the Town Council and may be removed at any time with or without cause.

(E) The Board of Adjustments shall act in a quasi-judicial manner to hear appeals from decisions of the Hearing Officer. Appeal proceedings shall be conducted as outlined in subsections B through J above. Action taken by the shall be by concurrence of a majority of the members of the Board of Adjustments.

Section 10: That Town Code Title XV, Chapter 153, Land Division, Section §153.007 “Exception form Standards...,” shall be amended as follows:

§ 153.007 EXCEPTION FROM STANDARDS FOR SPECIAL CIRCUMSTANCES.

(A) Any plat or land division survey submitted with a deviation(s) from these regulations or deviation(s) from required improvements shall be accompanied by an application for ~~exception~~ variance from these regulations or associated design or improvement standards made on a form provided by the town for this purpose.

(B) Any person seeking ~~an exception or exceptions~~ variances to the requirements of these regulations shall file 2 copies of the application with the Town Clerk in concert with the sketch plan application.

(C) The application shall be a request for ~~an exception~~ a variance to an ordinance provision in response to a circumstance actually delineated on the sketch plan. Requests shall include the specific reason for each and every ~~exception~~ variance requested.

(D) The application for ~~exception~~ variance shown on the sketch plan shall follow the Appeal and Variance process outlined in Section § 153.005 above. ~~be formally considered by the Planning and Zoning Commission.~~

(E) The ~~Commission~~ Hearing Officer may recommend that the Planning Commission and Town Council authorize exceptions to any of the requirements in these regulations. In order to do so, it shall be necessary for the Hearing Officer to find the following facts with respect thereto:

(1) There are extraordinary circumstances or conditions affecting the property or the purpose of these regulations may be served to a greater extent by an alternative proposal;

(2) That the granting of the exception will not be detrimental to the public safety, health and welfare or injurious to other property in the area in which the subject property is situated;

(3) The conditions upon which the request for an exception is based are unique to the property for which the exception is sought and are not applicable generally to other property; and

(4) That it will not have the effect of nullifying the intent and purpose of the town's general plan, transportation plan, Zoning Ordinance or these regulations.

(F) The Planning Commission shall forward a recommendation to the Town Council regarding approval, approval with conditions, or denial of the ~~application for exception of~~ variance to any portion of these regulations.

(G) Upon receipt of the Planning Commission's recommendation, the Town Council may approve or deny the ~~request for exception variance~~. The Council may approve the preliminary subdivision plat and associated plans with the exceptions and conditions deemed necessary to substantially uphold the objectives of these regulations.

Section 11: That Town Code Title XV, Chapter 153, Land Division, Section §153.025 “Sketch Plan, Appeal,” shall be amended as follows:

§ 153.025 APPEAL.

(A) If the subdivider objects to a decision by the Director to deny a sketch plan or to recommend a modification to same, the Director's decision may be appealed to the Hearing Officer following the Appeal and Variance procedure outlined in Section §153.005 above. ~~Planning and Zoning Commission. Upon submittal to the Planning and Zoning Director of a written statement of objection within 15 calendar days of the date of the Director's decision, the matter shall be placed on the agenda for the next available Planning and Zoning Commission meeting.~~

~~(B) The Commission's recommendation may be appealed to the Town Council by filing a written objection to~~

~~the Commission's recommendation with the Town Clerk within 15 calendar days of the date of the Commission's action. The Town Council's decision is considered final.~~

Section 12: That Town Code Title XV, Chapter 153, Land Division, Section §153.100 (E) “Supplemental Design Standards,” shall be amended as follows:

~~(1) In addition to the standards in this chapter, the subdivider shall comply with Town Code, Chapter 156, Development Standards. A set of standards may be recommended by town staff or the Commission and approved by the Town Council by resolution on each item as described herein.~~

~~(2) These standards shall be in addition to this chapter, and shall be developed by the Town Engineer, Public Works Director and Planning and Zoning Director, in consultation with the Planning and Zoning Commission if applicable.~~

Section 13: That Town Code Title XV, Chapter 153, Land Division, Section §153.102 Streets; General shall be deleted in its entirety.

Section 14: That Town Code Title XV, Chapter 153, Land Division, Section §153.103 Lots shall be deleted in its entirety.

Section 15: That Town Code Title XV, Chapter 153, Land Division, Section §153.104 Public Utilities shall be deleted in its entirety.

Section 16: That Town Code Title XV, Chapter 153, Land Division, Section §153.039 (B) Preliminary Plat, Sewage Disposal be amended as follows:

~~(B) Sewage disposal systems will not be by individual lot septic tanks, except as provided for in Town Code Chapter 156, Development Standards § 153.104(E).~~

Section 17: That Town Code Title XV, Chapter 153, Land Division, Section §153.117 (A) Land Splits, General Standards be amended as follows:

~~(A) All lots created through land splits shall comply with all requirements for the specific zoning district in which the land is located. This includes compliance with the standards in Town Code Chapter 156, Section § 156.21, Lots. 153.103 above.~~

Section 18: That Town Code Title XV, Chapter 153, Land Division, Section §153.119 (C) Application Review Process, be amended as follows:

~~(C) Review process. ...Approval or denial may be based upon the requirements listed in §153.103 Town Code Chapter 156 and § 153.117 above describing general standards...~~

Section 19: That Town Code Title XV, Chapter 153, Land Division, Section §153.119 (D) Application Appeal, be amended as follows:

~~(D) Appeal. Any applicant for a land split who is dissatisfied or aggrieved by the decision of the Planning and Zoning Director may appeal the decision by following the appeal process in Section §153.005 above. to the Planning and Zoning Commission, or if there is no Commission at the time, to the Town Council, by filing a written notice of appeal with the Town Clerk, not later than 15 days from the date of the Director's decision.~~

Section 20: That Town Code Title XV, Chapter 153, Land Division, Section §153.131 (A) Lot Line Adjustments, General Standards, be amended as follows:

(A) All lot line adjustments shall comply with all requirements for the specific zoning district in which the divisions are located. This includes compliance with the standards in Town Code Chapter 156, Section §156.21 Lots. §-153.103.

Section 21: That Town Code Title XV, Chapter 153, Land Division, Section §153.133 (C) Lot Line Adjustments, Appeal, be amended as follows:

(C) Appeal. Any applicant for lot line adjustment who is dissatisfied or aggrieved by the decision of the Planning and Zoning Director may appeal that decision by following the appeal process in Section §153.005 above. to the Planning and Zoning Commission, or if there is no Commission at the time, to the Town Council, by filing a written notice of appeal with the Town Clerk, not later than 15 days from the date of the Director's written notice.

Section 22: That Town Code Title XV, Chapter 154, Development Impact Fees, Section §154.09 Adoption and Modification Procedures, be amended as follows:

(A)(2)(d) At least 30 days prior to the date that any amendment pursuant to this section is adopted, the town shall post a notice of proposed amendments on the ~~League of Cities and~~ town's website.

(B)(2) The town shall make the Infrastructure Improvements Plan and underlying land use assumptions available to the public on the ~~League of Cities and~~ town's website 30 days prior to the public hearing described in division (B)(1) of this section.

Section 23: That Town Code Title XV, Chapter 154, Development Impact Fees, Section §154.14 Appeals, be amended as follows:

(B) Form of appeal. An appeal shall be initiated on such written form as the town may prescribe, ~~and submitted to the Town Manager.~~ may appeal the by following the appeal process in Section §153.005 above.

(C) Department action. The Town Manager shall act upon the appeal within 30 calendar days of the filing of the appeal and the applicant shall be notified of the director's decision in writing.

(D) Appeal to Town Council. The Applicant may further appeal the decision of the Town Manager to the Town Council within 14 calendar days of the decision.

(E) Action by Town Council. The Town Council shall act upon the appeal within 14 calendar days of receipt of the appeal, and the applicant shall be notified of the Town Council's decision in writing.

(F) Final decision. The Town Council's decision regarding the appeal is final.

Section 24: That Town Code Title XV, Chapter 154, Development Impact Fees, Section §154.16 (B) Oversight of Development Impact Fee Program, be amended as follows:

(4) The town shall post the findings of the audit on the website of the ~~League of Arizona Cities and Towns,~~ and shall conduct a public hearing on the audit within 60 days of the release of the audit to the public.

Section 25: Affected Code Sections shall be re-numbered to accommodate the deletion of Sections listed above.

Section 26: If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the Land Usage Code adopted herein by reference is for any

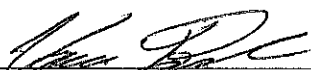
reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 27: The provisions of this ordinance and the public record adopted herein shall be effective from and after December 12, 2017.

PASSED AND ADOPTED by the Town Council of Colorado City, Arizona this 13th day of November, 2017.

ATTEST:


TOWN OF COLORADO CITY


Town Clerk




Mayor

APPROVED AS TO FORM:


Mangum, Wall, Stoops & Warden, P.L.L.C.
Town Attorney