

ORDINANCE NO. 2010-02

BE IT ORDAINED BY THE QUORUM COURT
OF THE COUNTY OF WASHINGTON,
STATE OF ARKANSAS, AN ORDINANCE
TO BE ENTITLED:

KAREN COMBS, CLERK
CO. & PROBATE CLERK
WASHINGTON CO. ARK.

2010 JAN 19 AM 9:06

FILED

AN EMERGENCY ORDINANCE AMENDING
PORTIONS OF WASHINGTON COUNTY CODE
11-191 ET SEQ PERTAINING TO ZONING.

WHEREAS, the Quorum Court previously adopted Ordinance No. 2006-66 which has since been amended and codified in Washington County Code 11-191, et. seq.; and,

WHEREAS, recent litigation indicates that conditional uses may be legislative in nature; and,

WHEREAS, there is an immediate need to amend said ordinance and the Code based on said litigation and the uncertainty it has caused.

NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM COURT OF WASHINGTON COUNTY, ARKANSAS:

ARTICLE 1. Portions of Washington County Code 11-191, et. seq. are hereby amended as follows:

Sec. 11-199. Zoning Board of Adjustment.

There is hereby established a Zoning Board of Adjustment which shall consist of the Washington County Planning Board; The two Boards shall sit concurrently when hearing any matter pertaining to zoning and are hereinafter referred to as "the Board".

Sec. 11-200. Criteria for allowance of conditional uses.

(1) ~~The Zoning Board of Adjustment~~ Board shall hear and decide requests for a conditional use and may authorize such if it finds:

- (a) That a written application has been filed with the Planning Office and the appropriate fee has been paid.
- (b) That the applicant has provided proof that each property owner as set out in section 11-204 has been notified by return receipt mail.
- (c) That adequate utilities, roads, drainage and other public services are available and adequate or will be made available and adequate if the use is granted.
- (d) That the proposed use is compatible with the surrounding area.
- (e) That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.

- (f) That the conditional use will not be injurious to the use and enjoyment of other property in the surrounding area for the purposes already permitted, nor substantially diminish and impair property values within the surrounding area.
 - (g) That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding area for uses permitted in the zone.
- (2) If it is determined that there exist conditions that could be imposed by the Board that would significantly lessen the impact of the aforesaid, then the Board has the power to impose said conditions which shall be specifically set forth.

Sec. 11-201. Conditional Use – Majority Vote.

- (a) A conditional use may only be allowed upon a majority vote of the entire Board membership; and must be ratified by the Quorum Court, sitting in its legislative capacity, by ordinance.
- (b) The Planning Administrator shall present Conditional Use rulings to the Quorum Court for ratification at its next meeting following the meeting of the Board; if in his/her opinion there is no likelihood of an appeal; however, ratification shall not be a bar to an appeal hearing as set forth in 11-206.

Sec. 11-202. Appeals to Board.

The Board may hear appeals from any decision of the Planning Administrator in respect to the enforcement and application of this article and may affirm or reverse, in whole or in part, such decisions.

Sec. 11-203. Variances.

The Board may hear requests for variances from the literal provisions of this article in instances where strict enforcement would cause undue hardship due to circumstances unique to the individual property under consideration, and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of this article. The Board may impose conditions in the granting of a variance to insure compliance and to protect adjacent property; a variance may only be allowed upon a three-fourths (3/4) majority of the entire Board membership.

Sec. 11-204. Notification.

- (a) The Planning Administrator on behalf of an applicant for a conditional use or a variance shall send a certified letter to all adjoining property owners within three hundred (300) feet of the exterior boundary of the proposed use at least fourteen (14) days prior to the scheduled meeting of the Board, at which the application is to be reviewed. Said letter shall state the date, time, place of the review of the proposed application and the location of the proposed use. Furthermore, said notice will state that the proposed use will be heard by the Quorum Court for ratification at its next meeting following the meeting of the Board. The applicant shall reimburse the Planning Office for the actual cost of mailing plus fifteen cents (\$0.15) (per notice sent).

- (b) In the case of Large Scale Developments as set out in section 11-100(a)(2), the Planning Administrator, on behalf of an applicant for a conditional use or a variance, shall send a certified letter to all adjoining property owners within one half (1/2) miles of the exterior boundary of the proposed use at least thirty (30) days prior to the scheduled meeting of the Board, at which the application is to be reviewed. Said letter shall state the date, time, place of the review of the proposed application and the location of the proposed use. The applicant shall reimburse the Planning Office in the same manner as set out above.

Sec. 11-205. Fees.

An applicant for conditional use or variance shall remit a fee in the amount of one hundred dollars (\$100.00) to the planning office upon submittal of any application.

Sec. 11-206. Appeals from Board.

- (a) Decisions of the Board shall be appealed first to the Quorum Court, sitting in its legislative capacity, said appeal shall be perfected by filing a Notice of Appeal on a form to be provided by the Planning Administrator and filed with the County Clerk no later than thirty (30) days after the decision of the Board. The appeal process set forth herein shall also be available for actions of the Quorum Court pursuant to Section 11-201.
- (b) Before said thirty (30) day period has expired, upon concurrence of the Planning Director and the Planning Board Chairman, any decision made by the Board shall be reconsidered by the Board, in which event the thirty (30) day period to appeal shall be tolled and will begin anew once the Board has reconsidered its decision.
- (c) After the expiration of said thirty (30) day period, if no appeal has been filed, upon concurrence of the Planning Director and Planning Board Chairman, the Board shall reconsider any conditions it has imposed due to unforeseen circumstances or consequences; such shall be heard by the Board in the same manner as the original Conditional Use Permit application; however, no submittal fees shall be charged. Any such change shall be submitted to the Quorum Court for ratification.
- (d) No hearing before the Quorum Court shall be set until the full thirty (30) day appeal period has run.
- (e) Individual notice to surrounding property owners shall be given by regular mail to those who were notified of the Board meeting no less than twenty (20) days prior to said hearing by the Planning Office.
- (f) Any written documents that are to be submitted to the Quorum Court shall be submitted to the County Judge's Office no later than ten (10) days prior to the hearing; by majority vote of the Quorum Court, any submission later than ten (10) days prior to the meeting may be received.
- (g) The Quorum Court will follow the same procedures as the Board, unless it decides otherwise by majority vote. The Quorum Court shall memorialize its decision by ordinance.

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(h) After the decision by the Quorum Court, an appeal may be taken to Circuit Court within thirty (30) days from said decision.

Sec. 11-207. Building Permits.

The provisions of this article shall be administered by the Planning Administrator; building permits are hereby deemed to be issued for agricultural and single-family residential uses. All conditional uses and uses requiring a variance are required to have a building permit or plat approval.

Sec. 11-208. Violations.

A violation of this article shall be punishable and enforceable as set out in Washington County Code section 11-114.

Sec. 11-209. Applicability.

This article shall apply to all uses that have not received preliminary approval by both the city and County before the effective date of this article. This article shall not apply to any business or industry currently negotiating with any city to locate adjacent to the city limits.

ARTICLE 2. SEVERABILITY. The provisions of this ordinance are hereby declared to be severable. If any section, paragraph, sentence or clause of this ordinance shall be held invalid, the invalidity of such section, paragraph, sentence or clause shall not affect the validity of the remaining portion of the said ordinance.

ARTICLE 3. EMERGENCY CLAUSE. It is hereby determined that it is in Washington County's best interest for this ordinance to be effective immediately; and the general health, safety and welfare of the citizens are affected by such for the reasons as set out above; therefore, an emergency is declared to exist and this ordinance shall be and is effective from the date of its passage.


MARILYN EDWARDS, County Judge

1-15-10
DATE


KAREN COMBS PRITCHARD, County Clerk

Sponsor: Steve Zega
Date of Passage: January 14, 2010
Votes For: 13 Votes Against: 0
Abstention: 0 Absent: 0