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**CITY OF TROY**

**ORDINANCE NO. 2021 - 08**

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**AN ORDINANCE AMENDING TITLE XV – LAND USAGE; CHAPTER 154 – ZONING  
ORDINANCE – SECTION 154.155, AND SPECIFICALLY ESTABLISHING THE  
OFFICE OF ZONING HEARING OFFICER AND DELEGATING AUTHORITY TO  
SUCH OFFICE OF THE CODE OF ORDINANCES OF THE CITY OF TROY,  
ILLINOIS**

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**ADOPTED BY THE  
CITY COUNCIL OF THE  
CITY OF TROY, ILLINOIS  
THIS SEVENTH DAY OF JUNE, 2021**

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**Published in pamphlet form by the authority of the City Council of the City of Troy,  
Madison County, Illinois, this 7th day of June, 2021.**

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**ORDINANCE NO. 2021 - 08**

**AN ORDINANCE AMENDING TITLE XV – LAND USAGE; CHAPTER 154 – ZONING ORDINANCE – SECTION 154.155, AND SPECIFICALLY ESTABLISHING THE OFFICE OF ZONING HEARING OFFICER AND DELEGATING AUTHORITY TO SUCH OFFICE OF THE CODE OF ORDINANCES OF THE CITY OF TROY, ILLINOIS**

**WHEREAS**, the Mayor and the City Council of the City of Troy, Illinois, have the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety, and welfare of its citizens; and

**WHEREAS**, the City Council of the City of Troy, Illinois, has reviewed the provisions of the current text of Chapter 154 of the Code of Ordinances and determined that it requires certain amendments to conform with current legal standards and operational practices; and

**WHEREAS**, the City has the authority to create the position of Zoning Hearing Officer pursuant to 65 ILCS 5/11-13-14.1 and to delegate to the Zoning Hearing Officer the authority to conduct any public hearing required to be held in connection with applications for variances under the City Zoning Code and to hear and decide appeals from and review any order, requirement, decision or determination made by an administration official charged with the enforcement of the City Zoning Code; and

**WHEREAS**, the City finds that it is necessary to create the position of Zoning Hearing Officer in order to improve the efficiency and uniformity of variances to the City Zoning Code and of appeals from administrative orders.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TROY, MADISON COUNTY, ILLINOIS, AS FOLLOWS:**

Section 1. The recitals set forth above are hereby incorporated herein as if fully set forth.

Section 2. Sections 154.155 IS hereby AMENDED as follows:

TITLE XV    LAND USAGE

Chapter 154 – ZONING ORDINANCE

Section 154.155 – ZONING HEARING OFFICER, VARIANCES

**(1) ESTABLISHMENT OF OFFICE OF ZONING HEARING OFFICER.**

The position of City of Troy Zoning Hearing Officer is hereby created in accordance with 65 ILCS 5/11-13-14.1 and other applicable authority. The Zoning Hearing Officer ("Hearing Officer") shall be appointed by the Mayor with the approval of the City Council. Alternate hearing officers may serve when the Hearing Officer is not available and may be appointed in the same manner as the Hearing Officer. Hearing Officers shall be appointed on the basis of training and experience which qualifies them to conduct hearings, make recommendations or findings of fact and conclusions on the matters heard and otherwise exercise and perform the powers, duties and functions delegated in accordance with 65 ILCS 5/11-13-14.1.

**(2) POWERS AND DUTIES.**

The Hearing Officer shall have all the powers and duties prescribed by law and by this Ordinance, including the following:

- (a) Appeals. Upon an appeal from a decision by any administrative official, including but not limited to the Building Official, to decide any question involving the interpretation of any provision or term of the City of Troy Zoning Code ("Code"), including the determination of the exact location of any district boundary if there is uncertainty with respect thereto, or other claimed error in the decision or determination made by an administrative official in the enforcement of the Code; provided that such decision shall be bound by and consistent with the language of the ordinance or regulation at issue;
- (b) Variances. The Hearing Officer may vary the application of the requirements of the Code, except for use variances, as provided in this Chapter. The Corporate Authorities may reserve, by ordinance, any class of variance for approval only by the Corporate Authorities. In such cases where the City Council has reserved decision making authority, the Hearing Officer shall still conduct a hearing and provide notice in compliance with 65 ILCS 5/11-13-6.

1) Use Variances. To hold public hearings for applications for use variances and to forward a written report containing findings of fact and a separate conclusion recommendation thereon to the City Council, consistent with 65 ILCS 5/11-13-14.1.C (1), which the City Council may by ordinance without further public hearing adopt any proposed use variance, or the City Council may refer it back to the Hearing Officer for further consideration or deny the use variance request as a final action. For purposes of this Section, "use variances" shall be any variation that authorizes any use or classification of use to continue or commence in a zoning district in which that use is not a permitted use by right. Any proposed use variance which fails to receive the approval of the Hearing Officer shall not be approved except by the favorable vote of two-thirds (2/3) of all Aldermen. No variance shall be granted that shall authorize a use that may be granted by special use or planned use procedures. Use variances are not favored and shall be granted only when failure to authorize the use denies all economically viable use of the property or similar extreme hardship is demonstrated by the evidence presented.

2) Other authority. To hear and decide all other matters referred to it by the City Council or upon which it is required to pass under applicable ordinance.

**(3) APPEALS.**

An appeal may be taken to the Hearing Officer by any person, firm or corporation aggrieved by a determination or decision of any administrative official charged with the enforcement of any provision of or regulation adopted pursuant to the Code, or by any officer, department, or board of the City relating to such decision. The appeal shall be taken within forty-five (45) days of the action complained of by filing, with the City Clerk, a notice of appeal, specifying the grounds thereof. The City Clerk shall thereupon transmit to the Hearing Officer and the official from whom the appeal is taken all papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the official appealed from certifies to the Hearing Officer after the notice of appeal has been filed with him that by reason of facts stated in the certificate, the stay would, in his opinion, cause eminent peril to life or property, in which case the proceedings shall not be stayed except by a restraining order, which may be granted by the Hearing Officer or by a Court of Record on application, or notice to the official appealed from and on due cause shown. The Hearing Officer may reverse or affirm wholly or partly, or may modify or amend the order, requirement, decision or determination appealed from to the extent and in the manner that the Hearing Officer may decide to be fitting and proper to the premises. No challenge to any decision subject to this Section shall be filed in any court until or unless a timely appeal has been filed and prosecuted to completion by the applicant as provided for in this Chapter so as to establish a final appealable decision.

**(4) VARIANCES.**

A variance may be sought by filing a written application and payment of applicable fee to the City Clerk specifying the specific provision to be varied, the extent of the variation, and the basis therefore and including such requirements as are set forth in the Code. The Hearing Officer may grant a variance only if it is in harmony with the general purpose and intent of the Code and in accordance with general or specific rules adopted hereto and only in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any regulation of the Code relating to the use, construction, alteration of buildings, or structures or the use of land, but in no other case. No variance may be granted to any condition of approval placed on a special use permit or prior zoning action. The Hearing Officer may impose such conditions, safeguards and restrictions upon the premises, benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations. A request for a variance, other than a use variance, may be granted, upon a finding and determination on the record of the Hearing Officer that the requirements of this Section are met and that all of the following conditions are satisfied or upon such conditions as may the Hearing Officer establishes as will meet such conditions:

- (a) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zone;
- (b) The plight of the applicant is due to peculiar circumstances;
- (c) The peculiar circumstances engendering the variance request are not applicable to other property within the district, and therefore, that a variance would be a more appropriate remedy than an amendment;
- (d) The variance, if granted, will not alter the essential character of the area where the premises in question are located, nor materially frustrate implementation of this municipality's Growth Management Plan; and
- (e) The variance, if granted, will not be detrimental to the public health, safety, and welfare.

**(5) PROCEDURE.**

1) General. The Hearing Officer shall act in accordance with the procedure specified by law and by the Code. All appeals and applications to the Hearing Officer shall be in writing. Every appeal or application shall refer to the specific provision of the Code involved and shall exactly set forth the interpretation that is claimed, the use for which the variance is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. The City may appear by any designated official of the City Council and be heard as a party in interest in any hearing before the Hearing Officer, and the City may appeal any decision of the Hearing Officer to a court of competent jurisdiction.

2) Applications. All applications for variance shall be charged a fee by the City for filing, processing, postage and public notice in an amount as published in the City Code. Applicants shall provide a list of names and addresses of the owners of record for all properties located within two-hundred fifty (250) feet of the subject property's boundary. Property owner lists shall be obtained from the County Recorder of the county wherein the subject property is located.

3) Notice of hearing. No action of the Hearing Officer shall be taken on any variance application until after notice has been given of the hearing. The Hearing Officer shall fix a reasonable time for the hearing of the appeal or application and shall give due notice thereof to the parties and decide the matter within a reasonable time.

- (a) Notice of the time, date, and location of such hearing and a brief summary or explanation of the subject matter of the hearing shall be given by publishing at least one (1) notice thereof in a newspaper published in the City, such publication to be made at least fifteen (15) days before the public hearings but not more than thirty (30) days before the hearing.
- (b) At least fifteen (15) days before the public hearing but not more than thirty (30) days before the hearing, the Building Official or designee shall send all property owners on the aforesaid list a written notice by certified mail (return receipt required) or personal delivery. The notice shall state:

- (i) The address of the location for which the variance is requested;
- (ii) The applicant's name and address;
- (iii) A description of the variance requested;
- (iv) The date the application was filed; and
- (v) Notification of the public hearing with the hearing's date, time and location.

4) Hearings Procedure. All hearings conducted by the Hearing Officer shall be open to the public, held at the call of the Hearing Officer and at such times as he or she may determine. At hearings conducted by the Hearing Officer, the Building Official, or his designee, shall provide the Hearing Officer with the factual background of the application, the request sought by the applicant, and the relevant sections of the Code. At hearings conducted by the Hearing Officer, any interested person may appear in person or by duly authorized agent or attorney. All testimony before the Hearing Officer shall be given under oath. The Hearing Officer shall administer oaths and may compel attendance of witnesses. The Hearing Officer shall keep minutes of his or her proceedings and other official actions. The Hearing Officer shall adopt his or her own rules and procedures, not in conflict with this Ordinance or applicable Illinois statutes.

5) Decision and Findings of Fact. Every variation decision shall be accompanied by findings of facts and shall refer to any exhibits containing plans and specifications for the proposed use or variation, which shall remain a part of the permanent records of the Hearing Officer. The findings of facts shall specify the reason or reasons for making the variation. The terms of the relief granted shall be specifically set forth in a conclusion or statement separate from the findings of fact. Property for which relief has been granted shall not be used in violation of the specific terms of the findings of fact, as the case may be, unless its authorized use is changed by subsequent variance or ordinance. Every rule, regulation, decision or determination of the Hearing Officer shall immediately be filed with the City Clerk and shall be public record.

6) Expiration of variance approval. Any construction or use authorized by a variance approval shall substantially commence not later than one (1) year after the date of the decision granting the variance, or such other time as may be specified in the variance approval.

7) Cost. For any application to the Hearing Officer, a fee shall be charged by the City for processing and public notice in an amount as so published in the City Code as determined from time to time by the City Council. The fee is intended to defray the administrative costs connected with the processing/conducting of this process and procedure, and do not constitute a tax or other revenue-raising device. Any fee paid by the applicant to the city is non-refundable. A current schedule of fees shall be maintained on file with the City Clerk.

## **(6) CITY COUNCIL POWER OF ADMINISTRATIVE REVIEW.**

Immediately following the filing of the written decision of the Hearing Officer on any appeal or variance request under this Section, the City Clerk shall file a report with the City Council concerning such action. Within twenty-one (21) days after the Hearing Officer's decision, the City Council, upon majority vote, may exercise the power of administrative review of any Hearing Officer decision on an application for an appeal or variance.

Upon adoption of the motion to exercise the power of review, the City Council may act on the matter directly or first refer the matter to committee. Before acting on the variance or appeal, the City Council may set the matter for hearing before the committee or the City Council. The City Council will give written notice of any such hearing to the applicant and all other persons who appeared and spoke at the public hearing before the Hearing Officer. In addition, the City Council may, in its discretion, notify and allow to be heard at the hearing any other person who the City Council believes may be aggrieved by any decision or action concerning the application.

Following its review, the City Council may affirm, reverse, or modify, in whole or in part, any determination of the Hearing Officer. A favorable vote of two-thirds (2/3) of all Aldermen shall be required to overturn or modify a decision by the Hearing Officer. The decision of the City Council shall be made within forty-five (45) days of its vote to review the decision of the Hearing Officer, unless extended for specified cause by a majority vote of the City Council, or the Hearing Officer decision shall become final. In making any decision, the City Council may adopt and rely on the record of the hearing officer or may hold a new hearing to establish a record for final decision.

Unless the City Council exercises its power of review of administrative review, the decision of the Hearing Officer shall become effective after twenty-one (21) days following its decision.

## **(7) JUDICIAL REVIEW OF FINAL DECISION.**

Any officer, department or board of the City or any person whose legal rights, duties, or privileges have been affected by any final decision of the Hearing Officer, or any party affected by the decision of the City Council where such decision has been reserved or appealed to the City Council, may present to the Circuit Court having jurisdiction in the county, a complaint, duly verified, stating that such decision is illegal in whole or in part, specifying the grounds of the illegality and otherwise proceeding pursuant to the Administrative Review Law, Section 735 ILCS 5/3-101, et seq. which shall govern such appeals including as authorized in 65 ILCS 5/11-13-14.1. Such complaint shall be presented to the court within thirty-five (35) days after the filing of the final decision. The costs of preparing and certifying the record of proceedings for filing with the Circuit Court in an administrative review proceeding shall be paid to the City by the appellant prior to the filing of such records with the Court. To the full extent permitted by law, unless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision.

**Section 3:** That any and all references to the term "Zoning Board of Appeals" that exist in the current City of Troy's Code of Ordinances shall be replaced by the term "Zoning Hearing Officer" effective immediately upon passage of this Ordinance. That further, previous Code Sections 154.155 through 154.158 respectively, are hereby replaced in their entirety by the amendments contained in this Ordinance.

**Section 4:** That all other provisions of Chapter 154 of the Code of Ordinances shall remain unchanged and in full force and effect except as specifically amended by this Ordinance.

**Section 5:** If any section or provision of this Ordinance is declared invalid for any reason, such invalidity shall not affect or impair any of the remaining sections or provisions of this Ordinance which can be given effect without the invalid section or provision, and to this end, the sections and provisions of this Ordinance are declared to be severable.

**Section 6:** This Ordinance shall be effective upon its passage, signing and publication as required by law.

**PASSED** by the City Council of the City of Troy, Madison County, Illinois, approved by the Mayor, and deposited in the office of the City Clerk this 7<sup>TH</sup> day of JUNE, 2021.

Those voting aye: D. DAWSON, T. FLINT, E. HEURUNG, N. HENDERSON,

S. ITALIANO, T. MANLEY, T. TURNER

Those voting nay: \_\_\_\_\_

Those absent: \_\_\_\_\_

APPROVED:

By: 

DAVID NONN, Mayor  
City of Troy, Illinois

ATTEST:

BY:   
KIM THOMAS, Clerk  
City of Troy, Illinois

(SEAL)