

**TITLE XV UNIFIED DEVELOPMENT CODE
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CHAPTER 155 APPEALS

155.01 Circuit Court

Unless set forth otherwise below, all appeals from final actions taken by the City Council, Planning Commission, Board of Adjustment, Construction Board of Adjustment and Appeals, and the Zoning and Development Administrator shall be taken to the Circuit Court of Washington County.

(Code 1965, App. A., Art. 9(6); Ord. No. 1747, 6-29-70; Ord. No. 2323, 4-5-77; Ord. No. 2538, 7-3-79; Code 1991, §160.175; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04)

State law reference(s)--Appeals to circuit court, A.C.A. §14-56-425.

155.02 Form/Time/Place

Unless an appeal is filed with the court, the following requirements shall be met:

(A) *Form*. All appeals shall be submitted in writing referencing the applicable UDC section(s) and setting out the reasons the applicant contends the decision was in error.

(B) *Time*.

(1) *Appeals*. Appeals shall be submitted within 10 working days from the date of the final action taken.

(2) *Hearings*. The entity hearing the appeal shall fix a reasonable time for hearing an appeal.

(C) *Place*. Appeals shall be filed with the following:

(1) *City Clerk*. Appeals made to the City Council shall be filed with the City Clerk.

(2) *Zoning and Development Administrator*. Appeals made to the Planning Commission or Board of Adjustment shall be filed with the Zoning and Development Administrator.

(3) *Building Safety Division Director*. Appeals made to the Board of Adjustment, [for inspecting purposes] shall be filed with the Building Safety Division Director.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 4652, 12-07-04)

155.03 Stay

An appeal shall stay all proceedings in furtherance of the action appealed from unless the person in charge of administration of the chapter certified that a stay would, in their opinion cause imminent peril to life or property.

(Code 1965, App. A., Art. 13(3); Ord. No. 1747, 6-29-70; Code 1991, §160.173; Ord. No. 4100, §2 (Ex. A), 6-16-98)

155.04 Alderman Appeal On Behalf Of Resident

An alderman may bring an appeal on behalf of any resident of the city a decision by the Planning Commission to approve or deny the requests as set forth below.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 5296, 12-15-09)

155.05 Appeals From Planning Commission Decisions

(A) *Appeals to City Council*.

(1) Owners of record of the property being considered may appeal a decision by the Planning Commission to deny the following requests, in accordance with the procedures set forth in §155.02.

- (a) Annexation
- (b) Rezoning
- (c) Planned Zoning District
- (d) Subdivision (Preliminary Plat, Final Plat, Concurrent Plat, Lot split)
- (e) Large Scale Development
- (f) Vacation of utility easement, access easement, public right-of-way
- (g) Commercial Design Standards
- (h) Tree Preservation Plan
- (i) Variances and waivers of the UDC

(2) *Conditions of Approval*. An owner of record may appeal the conditions of approval determined by the Planning Commission for any of the requests listed in (A)(1).

(3) *Conditional Use Request*. Three aldermen, two of whom must reside in the effected ward, may in unison appeal a decision by the Planning Commission approving or denying a conditional use request.

(B) All other decisions by the Planning Commission must be appealed to Circuit Court.

(Code 1965, §13A-40, App. C., Art. II, Art. V., §B; Ord. No. 1509, 8-8-66; Ord. No. 1750, 7-6-70; Code 1991, §§156.017, 159.12, 159.54(F)(1), (2), 159.66; Ord. No. 3781, §1, 4-19-94; Ord. No. 3925, §6, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 4334, 9-4-01; Ord. No. 4340, 10-2-01)

155.06 Appeals From Staff Interpretations/Actions

(A) *Appeals to City Council*. The following staff interpretations/actions may be appealed to the

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City Council by an owner of record of the property in question or an alderman on behalf of a resident of the city:

(1) *Zoning and Development Administrator.*

- (a) *Design Overlay District requirements.* The decision of the Zoning and Development Administrator not to exempt property from the Design Overlay District requirements as allowed in §161.28(G).
- (b) *Development Matters.* An interpretation or decision of the Zoning and Development Administrator regarding development matters, including subdivisions, large scale developments, parking and loading, and outdoor lighting may appeal.

(2) *City Engineer.*

- (a) *Stormwater, Drainage, and Erosion Control requirements.* The decision of the City Engineer to issue a violation notice related to these requirements.
- (b) *Development Matters.* An interpretation or decision of the City Engineer regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems may appeal.
- (c) *Floodplain regulations.* The decision of the Floodplain Administrator, provided that the City Council shall hear and decide an appeal only 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 Chapter 168.
- (d) *Streamside Protection Zones.* An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.

(3) *Urban Forester – Landscape and Tree Preservation and Protection requirements.* Decisions of the Urban Forester related to landscape and tree preservation and protection requirements.

(4) *Impact Fee Administrator.* Any person aggrieved by any decision of the Impact Fee Administrator made in the enforcement or administration of Chapter 159 Fees.

(B) *Appeals to the Board of Adjustment.* The following interpretations and decisions may be appealed by an owner of record of the property in question or an alderman on behalf of a resident of the city to the Board of Adjustment:

- (1) *Zoning and Development Administrator - Zoning.* An interpretation or decision of the Zoning and Development Administrator regarding zoning matters may appeal.
- (2) *Building Safety Division Director - Airport Zone.* Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Division Director, made in the administration of Airport Zone, Chapter 165, may appeal.

(C) *Appeals to the Planning Commission.*

(1) Required dedications and improvements.

- (a) An owner or developer who is aggrieved by the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement, which are in excess of the “rough proportionality” of the impact of the development upon the city’s infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, subdivision, building permit, lot split, development permit, or otherwise within 10 days of notification of such development requirements. The appeal must be presented to the Planning Division in writing and state the grounds, or reasons for the appeal.
- (b) The Planning Commission shall determine after public hearing whether the required dedications and improvements meet the “rough proportionality” of the impact of the development on city infrastructure and services. If the requirements are in excess of the “rough proportionality,” the Planning Commission is empowered to modify or reduce such requirements to achieve “rough proportionality.”

(2) Administrative Approvals.

- (a) A resident of the city or an owner/developer who is aggrieved by a decision of the Zoning and Development Administrator regarding development

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matters that are approved administratively, as required by Chapter 166.02 (C) may appeal the decision to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within 10 days of the final decision. The appeal shall be limited to the applicable approval or denial criteria as follows:

- (i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with UDC Ch. 166 pertaining to required on-site and off-site improvements.
- (b) The appellant must include in the letter of appeal the specific code section with which the development application does not comply.
 - (c) The Planning Commission shall determine after public hearing whether the interpretation or discretionary decision should be upheld or modified in part or in whole.

(D) *Appeals to the Construction Board of Adjustment and Appeals.* When the administrative authority under Chapter 173 shall disapprove an application, or the applicant is aggrieved by the interpretation of the administrative authority, the applicant may appeal the decision to the Construction Board of Adjustment and Appeals.

(Code 1965, §17B-11.2(d), (e), App. A., Art. 10(6), 19(2), App. B, §III, App. C., Art. 10(6), 19(2), App. B, §III, App. C., Art. V, §A; Ord. No. 1747, 6-29-70; Ord. No. 1750, 7-6-70; Ord. No. 2109, 6-375; Ord. No. 2252, 7-6-76; Ord. No. 2538, 7-3-79; Ord. No. 2585, 12-4-79; Ord. No. 2697, 1-20-81; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-14-88; Code 1991, §§150.03, 158.67(B), 158.68(A), (B), 159.65, 160.048, 160.172, 160.176(A), (B), 161.11, 162.03(B), (C), 163.10(D); Ord. No. 3551, 6-4-91; Ord. No.3587, §1, 1-7-92; Ord. No. 3699, §3, 4-20-93; Ord. No. 3716, §2, 6-15-93, Ord. No. 3806, §1, 6-28-94; Ord. No. 3895, §1, 6-20-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3925, §7, 10-3-95; Ord. No. 3963, §9, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4368, §2, 2-5-02; Ord. No. 4377, §§1, 2, 3-5-02; Ord. 4652, 12-07-04; Ord. 5206, 12-16-08; Ord. 5296, 12-15-09; Ord. 5390, 3-1-11)

155.07 Appeals To The Housing Board – Mobile Homes And Mobile Home Parks

(A) *Permit denied.* Any person whose application for a permit under Chapter 175 has been denied may request and shall be granted a hearing on the matter before the Housing Board.

(B) *Permit suspended.* Any person whose permit has been suspended, or who has received notice from the enforcement officer that his permit will be suspended unless certain conditions or practices at the mobile home park are corrected, may request and be granted a hearing on the matter before the Housing Board.

(C) *Petition deadline.* When no petition for hearing shall have been filed within 10 days following the day on which notice of suspension was served, such permit shall be deemed to have been automatically revoked at the expiration of such 10 days.

(Code 1965, §17B11.2(e); Ord. No. 2109, 6-3-75; Ord. No. 2583, 12-4-79; Ord. No. 3152, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-15-88; Code 1991, §158.67; Ord. No. 4100, §2 (Ex. A), 6-16-98)

(Code 1965, §§13A-40, 13A-43; Ord. No. 1509, 8-8-66; Code 1991, §§156.017, 156.029; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04)).

155.08 Appeals From The Construction Board of Adjustments And Appeals

If the Construction Board of Adjustments and Appeals refuses to extend a building permit pursuant to §173.02 (B)(8) or to issue a new building permit for

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property for which a building permit has expired pursuant to §173.02 (B)(8), the owner may appeal to the City Council.

(Ord. 5019, 5-15-07)

155.09-155.99 Reserved