



MEMO

TO: Aldermen
CC.: Mayor Harold Perrin, L.M. Duncan, Phillip Crego, Carol Duncan, Donna Jackson
From: Otis T. Spriggs, AICP- Planning Department,
Date: August 5, 2014
Re.: Conditional Use Appeal Process- Requested Research

Dear Aldermen:

The existing Code language is extracted from the Jonesboro Code of Ordinances within the comparison chart below. Currently, the City of Jonesboro Code of Ordinances specifies that appeals of an MAPC Conditional Use decision of denial may only be appealed before the City Council by the applicant.

In the last Council meeting, Alderman Chris Moore requested further information and recommendation on the process of appeals on Conditional Use matters that are typically brought before the Planning Commission. Below is a summary report of research that was done, by evaluating a number of cities within State of Arkansas, and how they may or may not allow for appeal filings by the general public or neighborhood residents that claim to be adversely affected.

In reviewing the comparison table below, a few approaches to appeals of Conditional Uses may be found favorable. Overall, nothing within the State Code (*State Code Language is copied at the end of this memo*) appears to prevent the City Council from adopting or revising its procedures for Conditional Use approvals or denials, because such decisions tend to be administrative in nature.

Please read the 3 options or approaches below for consideration. Please note that any changes within the procedures will require a text amendment to be initiated by administration, which would be forwarded to the Planning Commission by Staff, then to the Public Works Council Committee, and finally to be adopted by Ordinance by the City Council.

Conclusions:

1. A number of Cities appear to forward all conditional use decisions to the City Council, of which Staff recommends against. This will cause a major overload of agenda items that Council may not want to be involved in. The Metropolitan Area Planning Commission is appointed by the Council, to act in an advisory role on administrative issues. The Commissioners are assumed to be equipped with the qualifications to act professionally, and concisely in deriving complete findings of fact on land use decisions. They in-effect serve to do the detailed analysis and provide opportunity for complete citizen input and consideration of all impacts prior to providing recommendations and proceedings to City Council. *See City of Conway, City of Little Rock, City of Springdale, and City of Fort Smith, which all appear to allow all appeals to be forwarded to City Council by anyone.*

2. One approach or recommendation of change within the City of Jonesboro ordinances would be to allow appeals of approval decisions to be filed to the City Council by individuals that own property within 300 ft. of the subject property, who have been aggrieved by a decision made by the Planning Commission regarding conditional uses. *See the City of Rogers, AR below.*

3. The final approach to appeals of Conditional Uses that appears to be unique, would be allowing appeals of an MAPC decision to be filed by a minimum of 3 Aldermen, of which 2 within the affected ward must be included. *See the City of Fayetteville, AR below.*

List of Cities	Process for Appeals by General Public by Ordinance
City of Jonesboro	Appeal: If the planning commission disapproves or denies a conditional use application, the reasons for such action shall be given to the applicant with 15 days from the date of the decision. The applicant may appeal such commission action, or any condition placed upon application approval, to the city council within 30 days of the commission's action. The appeal shall be in writing to the city clerk, and shall specifically state why the planning commission's findings and decision was arbitrary, capricious, and inappropriate. If denied, no application for such use or similar use shall be permitted involving any part of the same property for a period of six months.
City of Conway	<p>Appeals from <i>the Planning Commission acting as (O-11-99)</i> Board of Adjustment Any person or persons, or any board, taxpayer, department, board or bureau of the City aggrieved by any decision of the <i>Planning Commission Board of Adjustment (O-11-97)</i> may seek review by a court of record of such decision, in the manner provided by the laws of the State of Arkansas.</p> <p><i>Approval: If the Planning Commission recommends approval of a conditional use permit request, the Planning Commission shall send the request forward to the City Council for action.</i></p>

List of Cities	Process for Appeals by General Public by Ordinance
City of Rogers, AR	<i>The following persons or entities may appeal: The applicant, or a property owner or leaseholder who owns or leases property within 300 feet of the property to which the conditional use applies.</i>
City of Little Rock , AR	Right of appeal. Appeals from a decision of the board of directors may be filed with the appropriate court of jurisdiction. This filing shall occur within thirty (30) calendar days of the action by the board of directors.
City of Fort Smith, AR	Appeals. The decision of the planning commission concerning a conditional use request may be appealed to the board of directors. <i>Any interested party may file an appeal</i> provided that it is filed with the city clerk by 5:00 p.m. on the tenth calendar day following the date of the planning commission decision. A fee in an amount established by the board of directors is required for filing an appeal.
City of Springdale, AR	City council action. <i>If the planning commission approves the conditional use as submitted, or approves the conditional use with modifications, the conditional use will be referred to the city council for consideration.</i> The city council, by majority vote, may take one of the following actions: approve the conditional use as submitted by the planning commission; approve the conditional use with modifications; deny the conditional use; or, return the proposed conditional use to the planning commission for further study and recommendation. If action is not taken by the city council within sixty (60) days of the planning commission's submission of the proposed conditional use to the city council, then the applicant shall be required to re-petition for the conditional use. Appeal. <i>Any person who is aggrieved by the decision of the planning commission to deny a conditional use application shall have the right to appeal to the city council</i> by submitting a written request to the city clerk within fifteen (15) days, along with an affidavit stating that adjacent property owners have been notified of the appeal to the city council. The appeal will be placed on the city council agenda no later than the second meeting following the filing of the appeal.
Fayetteville , AR	Appeals from the decision of the Planning Commission under this subsection shall follow the requirements of §155 Appeals of the Unified Development Code, for conditional use permits. <i>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.</i> All other decisions by the Planning Commission must be appealed to Circuit Court.
North Little Rock, AR	Unclear Regulations

Supplemental Information: State of Arkansas

Arkansas Code of 1987 Annotated Official Edition
Title 14 Local Government
Subtitle 3. Municipal Government
Chapter 56 Municipal Building And Zoning Regulations -- Planning
Subchapter 4 -- Municipal Planning
A.C.A. § 14-56-425 (2013)

14-56-425. Appeals to circuit court.

(a) (1) Appeals from the final administrative or quasi-judicial decision by the municipal body administering this subchapter shall be taken to the circuit court of the appropriate county using the same procedure as for administrative appeals of the District Court Rules of the Supreme Court.

(2) The final administrative or quasi-judicial decision shall be tried de novo with the right to a trial by jury.

(b) (1) Appeals from the passage of legislative rezoning decisions by the municipal governing body administering this subchapter shall be taken to the circuit court of the county in which the rezoning was authorized using the same procedure as for administrative appeals of the District Court Rules of the Supreme Court.

(2) The legislative rezoning decision shall be reviewed by the court, and the decision shall be upheld unless it is arbitrary or capricious or lacking a rational basis.

HISTORY: Acts 1957, No. 186, § 7; 1965, No. 134, § 2; A.S.A. 1947, § 19-2830.1; Acts 2013, No. 749, § 1.