

## **Ordinance 534**

### **An Ordinance to Amend Section 230-53 and 230-57 of the City Code to Revise the Composition of the Board of Adjustment as a Citizen Board, Establish Civil Fines for the Violation of Conditions Imposed by the Board of Adjustment, and Revise the Requirements for Special Exceptions Granted by the Board of Adjustment.**

**WHEREAS**, Section 230-53 of the City Code currently provides that the City’s Board of Adjustment (the “Board”) is comprised of the Mayor, the City Solicitor and the City Engineer; and

**WHEREAS**, the City Council believes it is in the best interest of the City of New Castle for the Board to be composed solely of City residents, and for Board members to be appointed by the Council to multi-year, staggered terms; and

**WHEREAS**, the City Council proposes to expand the Board of Adjustment to include the Mayor and four (4) appointees who are residents of the City, who shall serve upon confirmation by City Council for three (3) year terms, staggered to ensure continuity of Board leadership and administration; and

**WHEREAS**, under the proposed structure of the Board of Adjustment, it is necessary to clarify the role of the City Solicitor in order to ensure the Board is properly advised with respect to administrative and legal issues; and

**WHEREAS**, under the proposed structure of the Board of Adjustment, it is further necessary to establish a role for the City Planner or City Engineer to provide recommendations on all pending applications before the Board; and

**WHEREAS**, the City Council also acknowledges that improved means of enforcing and assuring compliance with conditions and safeguards prescribed by the Board of Adjustment in its decisions is necessary for the orderly administration of City affairs; and

**WHEREAS**, the City Council believes that implementation of a civil fining regimen that establishes a lien on real estate in favor of the City is the most effective and efficient means of enforcing such conditions and safeguards, to the benefit of City administration, and for the public welfare of City residents; and

**WHEREAS**, certain provisions relating to special exception applications in the DG zoning district are currently included in Section 230-21.1 of the Code, but are more logically placed in Section 230-57 of the Code so as to apply to all special exception applications regardless of zoning district.

**NOW, THEREFORE**, be it ordained by the Council of the City of New Castle, as follows:

**SECTION 1:** Section 230-53 of the City Code is hereby amended and replaced in its entirety with the following:

**§230-53. Creation; Members.**

A. A Board of Adjustment is hereby established which shall consist of the Mayor, the City Engineer, the City Solicitor and two (2) individuals who have been residents of the City of New Castle for at least one year appointed by City Council. The Mayor shall act as Chairperson and a permanent member of the Board of Adjustment. The City Engineer and City Solicitor shall also be permanent members of the Board of Adjustment. Of the remaining two members, the first new appointee to the Board of Adjustment shall serve for a term of two (2) years. The second new appointee shall serve for a term of three (3) years. After the expiration of the initial terms of such newly appointed non-permanent members of the Board of Adjustment, all subsequent appointments shall be for three (3) year terms.

B. The City Council shall have the power and duty to fill all vacancies in the Board of Adjustment by appointment. Any such appointment to replace a member whose position becomes vacant for any reason prior to the expiration of that member's term shall be filled only for the remainder of that member's term.

C. The City Solicitor shall attend all meetings, hearings, and proceedings of the Board of Adjustment, including when sitting as the Board of Building Appeals, to ensure compliance with applicable law, respond to legal questions posed by the Board, and to review, address, and provide recommendations regarding any legal and administrative issues which may arise or otherwise present themselves at such meetings.

D. The City Planner or City Engineer shall attend all meetings, hearings, and proceedings of the Board of Adjustment. The City Planner or City Engineer shall review the application involved and such other materials and information as they deem appropriate. Prior to rendering any decision, the City Planner or City Engineer shall provide the Board of Adjustment with a recommendation as to the disposition of each matter presented for decision to the Board of Adjustment. Such review and recommendations shall not be binding on the Board of Adjustment and shall not apply to decisions of the Board of Building Appeals unless expressly required by law or requested by the Board.

**SECTION 2:** Section 230-57 B (2) is hereby deleted in its entirety and replaced with the following:

**§230-57 B. Special exceptions; conditions governing applications; procedures.**

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(2) In considering any special exception application, the Board of Adjustment shall:

(i) Consider the suitability of the property for the use desired, including but not limited to the impact of the floodplain on the use desired. Assure itself that the proposal is consistent with the spirit, purpose, and intent of this chapter, the Comprehensive Plan, and other relevant plans.

(ii) Determine that the proposal will not substantially injure or detract from the use of neighboring property or from the character of the neighborhood and that the use of the adjacent property is adequately safeguarded.

(iii) Determine that the proposal will serve the best interests of the City, the convenience of the community, and benefit the public welfare.

(iv) Consider the effect of the proposal upon the public services and facilities such as public water, sewers, police and fire protection, and public schools.

(v) Consider the probable effects upon highway traffic and pedestrian movements, and assure adequate access and circulation arrangements in order to protect major roads from undue congestion and hazard.

(vi) Be guided in its decision by sound standards of subdivision and land development practice where applicable.

(vii) Prescribe conditions and safeguards in addition to those otherwise required by City Code as are necessary to assure that the intent of this chapter is complied with, which conditions may include (but are not limited to) harmonious design of buildings, planting and its maintenance as a sight and sound screen, the minimizing of noxious, offensive or hazardous elements, and adequate standards of parking, loading and sanitation.

**SECTION 3:** A new Section 230-57 B (3) is hereby established and adopted which Section shall read, in its entirety, as follows:

**§230-57 B. Special exceptions; conditions governing applications; procedures.**

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(3) Violation of conditions and safeguards, when made a part of the decision by which the special exception is granted, shall be deemed a violation of this chapter and punishable under §230-57 F and §230-65 F of this chapter. The Board of Adjustment shall prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both. Failure to begin or complete, or both such action within the time limit set shall void the special exception.

**SECTION 4:** Section 230-57 C (2) is hereby deleted in its entirety and replaced with the following:

**§230-57 C. Variances; conditions governing applications; procedures.**

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(2) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the decision by which the variance was granted,

shall be deemed a violation of this chapter and punishable under §230-57 F and §230-65 F of this chapter.

**SECTION 5:** Section 230-57 F of the City Code is hereby amended and replaced in its entirety with the following:

**§230-57. Powers and Duties.**

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F. Decisions of the Board of Adjustment.

(1) In exercising its various powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made and to that end shall have powers of the administrative official from whom the appeal is taken.

(2) The concurring vote of the majority of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of the administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variation in the application of the chapter.

(3) Full compliance with any and all conditions and safeguards prescribed by the Board of Adjustment in rendering any decision is a prerequisite to the use or maintenance of the improvements or other variances authorized by such decision. Failure to abide by and comply with such conditions and safeguards runs contrary to the interests of the City, the health and welfare of its residents, administrative economy, and the rule of law.

(a) In the event of a violation or other failure to comply with such conditions and safeguards imposed by the Board of Adjustment, the Code Official shall send written notice of such violation or failure to comply via registered or certified US Mail to the legal owner of the real property involved at the address maintained for such owner on the real estate tax rolls of the City, and to any tenant or occupant in possession of such real property at the property address. The written notice shall specify the corrective action to be taken and shall state that fines representing a lien on the real estate in question will be assessed if the violation or other failure to comply with conditions or safeguards is not corrected within 20 days from the mailing of such notice.

(b) The failure to correct such violations or to comply with any conditions or safeguards prescribed by the Board of Adjustment under §230-57 shall constitute a civil offense, subject to a fine of \$100.00 for each day such failure to correct or comply continues, commencing 20 calendar days after mailing of the notice required by Section 230-57 F (3)(a). Such fines shall be the

joint and several obligations of the legal title holder to the real property in questions and any tenant or occupant of such property.

(c) Any fines assessed by the Code Official under this Section shall, until paid, constitute a civil debt due and owing to the City and shall further constitute a lien in favor of the City on the real property subject to condition or safeguard prescribed by the Board of Adjustment. The amount of the lien shall be considered a tax lien, executable as such via *praecipe* for monition or otherwise, and shall include all court costs and legal fees associated with the enforcement of such lien.

(d) In addition to any other available remedy for violation or failure to comply with conditions or safeguards prescribed by the Board of Adjustment, the Code Official may, upon written notice to the legal title holder to the real property in question and any tenant or occupant of such property, temporarily or permanently revoke any outstanding building permit, certificate of occupancy or other certificate, license or permit issued by the City in connection with the real property that is the subject of such violation or non-compliance.

(e) Appeals from the Code Official's assessment of a fine, or revocation of any permit, license or certificate for a violation or other failure to comply with a condition or safeguard imposed by the Board of Adjustment may be taken to the Board of Adjustment in accordance with §230-55 of this chapter provided such appeals are filed with the City within 20 days of such assessment or revocation. An appeal shall not be deemed timely filed until the appropriate filing fee has been paid to the City.

(f) The provisions of this Section 230-57 F (3) shall apply to all conditions and safeguards imposed by the Board of Adjustment in connection with any special exception, variance, or other application, whether imposed prior to the adoption hereof or thereafter. Notwithstanding the foregoing, nothing in this Section 230-57 F (3) is intended to, nor shall, create an *ex post facto* criminal liability for preexisting violations of this Chapter

**SECTION 6:** Section 230-57 B(1)(B) of the City Code is hereby amended and replaced in its entirety with the following:

**§230-57B. Special exceptions; conditions governing applications; procedures..**

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(1) To hear and decide only such special exception as the Board of Adjustment is specifically authorized to pass on by the terms of this chapter; to decide such questions as are involved in determined whether special exceptions and safeguards as are appropriate under this

chapter or to deny special exceptions when not in harmony with the purpose and intent of this chapter. A special exception shall not be granted by the Board of Adjustment unless and until:

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(b) The Planning Commission or the Historic Area Commission has reviewed the application and forwarded a recommendation to the Board where such review is required under this chapter.

**SECTION 7:** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 8:** In the event any existing Ordinances or parts of Ordinances are in conflict herewith, the provisions of this Ordinance shall control.

**SECTION 9:** This Ordinance shall become effective immediately upon passage.

First Reading	January 11, 2022
Second Reading	March 8, 2022

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2022

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Michael M. Platt, President of Council

Attest: \_\_\_\_\_  
Kathleen M. Walls, City Clerk

Approved: \_\_\_\_\_  
Michael J. Quaranta, Mayor