

ORDINANCE NO. 710

AN ORDINANCE OF THE CITY OF KIRKLAND, WASHINGTON CREATING A BOARD OF ADJUSTMENT, DETERMINING ITS MEMBERSHIP, JURISDICTION AND PROCEDURES, AND PROVIDING FOR A \$25.00 FILING FEE FOR FILING PETITIONS WITH SAID BOARD OF ADJUSTMENT.

THE CITY COUNCIL OF THE CITY OF KIRKLAND DO ORDAIN AS FOLLOWS:

SECTION 1. CREATION OF

A Board of Adjustment is hereby established. The word "Board", when used herein, shall mean the Board of Adjustment.

SECTION 2. MEMBERSHIP, TERM, AND COMPENSATION

The Board shall consist of five members, all of whom shall serve without salary. The Board members shall be appointed by the Mayor with consent of the Council and shall consist of citizens having an understanding of the benefits of zoning to the municipality to serve without compensation. In case any vacancy should occur in the membership of the Board, for any cause, the Mayor shall fill such vacancy by making an appointment with the consent of the Council. The members of the Board may be removed by the Mayor, subject to the approval of the Council, for such causes as he shall deem sufficient, which shall be set forth in a letter filed with the Council. The initial membership shall consist of one member appointed for one year, one for two years, one for three years, and two for four years; and each appointment thereafter will be for four years.

SECTION 3. APPELLANT

Any person or persons aggrieved, or any officer, official of any department, board or commission of the city, jointly or severally, may be the appellant, and may make a request for a special exception to the Board for relief from any provision of the zoning ordinance or any determination of the Building Inspector in the application of the provisions of the zoning ordinance to the appellant's land and/or structure. The appellant shall appear at the public hearing at the time and place fixed by the Board in person, by agent, or by attorney.

SECTION 4. PETITIONS

Any person or persons aggrieved, jointly or severally, and any person, officer or official of any department, board or commission of the city may support or oppose, by petition or letter, the appellant's request for a special exception. The petition or letter shall specify the reasons for supporting or opposing the appellant's request, and shall contain the signature and description of the land of each property owner signing the petition or letter. The petition or letter shall be submitted to the Board at the time designated in its rules of procedure.

SECTION 5. INITIATION OF ACTION

The Board may initiate a review of the Building Inspector's interpretation of the provision of the zoning ordinance by a motion, by virtue of a vote by a majority of the quorum, or a majority of the members present if such number exceeds a quorum; it also shall review any interpretation of the provisions of the zoning ordinance made by the Building Inspector and any order, requirement, decision, or determination relating thereto, upon receipt of an application or petition requesting a review of the interpretation; and it shall hear and decide all applications for special property uses and variances.

SECTION 6. JURISDICTION - REVIEW OF DECISION OF BUILDING INSPECTOR

The Board may review any interpretation of the provisions of the zoning ordinance made by the Building Inspector, and any order, requirement, decision, or determination relating thereto, in the application of the specific provision of the zoning ordinance to any parcel of land and/or structure. The Board may affirm or reverse the interpretation of the provisions of the zoning ordinance made by the Building Inspector, and any order, requirement, decision, or determination relating thereto; and the Board's decision shall be based upon the record and the findings in each case, and to that end it shall have all of the powers of the Building Inspector.

SECTION 7. JURISDICTION - SPECIAL PROPERTY USES

The Board shall have and exercise original jurisdiction in receiving, granting, or denying all requests for special exceptions, in which

applications for such special property uses provided for herein are made, after public hearing, and a finding by the Board that the conditions of the ordinance upon which these special uses are permitted, have been fulfilled, and after the Building Inspector has found that the provisions of all other ordinances, with which compliance is required, have been fulfilled.

SECTION 8. JURISDICTION - VARIANCES

Where there are unnecessary hardships and practical difficulties which render it difficult to carry out the provisions of the zoning ordinance, the Board shall have power, in passing upon requests for special exceptions, to grant a variance in harmony with the general purpose and intent of the provisions herein contained, and such variances may vary any rules, regulations, or provisions of the zoning ordinance relating to the use of land and/or structures and any construction, structural or equipment changes, or alteration of structures relating to the zoning ordinance, so that the spirit of the ordinance will be observed; public safety, secured; and substantial justice, done. However, the Board shall not vary any of the rules, regulations, or provisions of the ordinance unless it shall find that all of the following conditions exist in each case of a request for a special exception by an application for a variance from the decision of the Building Inspector:

1. That the land and/or structure in question cannot be reasonably used, and cannot yield a reasonable return, if used only for the purposes permitted and in accordance with other requirements in the (district) zone in which the land and/or structure is located;

2. That the plight of the owner is due to unique circumstances which are not the general condition of the neighborhood, and are not the result of the owner's action;

3. That the use requested by the appellant, if established, will not be of a general classification differing from the essential use provisions of the (district) zone in which the land and/or structure is located.

SECTION 9. BOARD'S FINDINGS FOR VARIANCES

The Board's findings shall include a report, prepared by the planning commission, in which a comparison is made of the appellant's request for a special exception for a variance in harmony with the provisions of the zoning ordinance, and of the present land utilization pattern within the neighborhood area of the appellant's land; and such report may contain other pertinent information regarding any existing or pre-existing conditions related to topography, geology, traffic, utilities, existing and proposed land utilization, and such conditions set forth by the official plans, development plans, and the comprehensive plans, as may be included in the Board's findings. The Board's findings shall include all of the relevant facts of the appellant's request and such facts which support and oppose the contention of the appellant.

SECTION 10. TIME DECISION EFFECTIVE

The decision of the Board, granting or denying a special property use and/or variance, shall not become final until the expiration of five days from the date of entry of such decision in the official records of the Board, unless the Board shall find that the making of the decision effective immediately is necessary for the preservation of property or personal rights; and shall so certify on the record of the request for special exception; and if a building permit and/or occupancy permit is not obtained by the appellant within one year from the date of the Board's decision, the Board's decision shall cease to be effective. The decision of the Board shall be final, subject to review by the superior court.

SECTION 11. MEETINGS

Meetings of the Board shall be held at such times as the Chairman of the Board may determine. There shall be a fixed place of meeting, and all regular Board meetings shall be open to the public. Three notices of all public hearings of the Board shall be posted within the vicinity of the land and/or structures in question ten (10) days prior to the public hearing. The Board shall adopt its own rules of procedure and keep a record of its proceedings, findings, and action in each case,

and the vote of each member on each question considered in the proceedings. The presence of three members shall be necessary to constitute a quorum.

SECTION 12. PROCEDURE

Applications for request for special exceptions for special property uses, and variances from the ruling of the Building Inspector, concerning the provisions herein contained, may be made to the Board within such time as shall be prescribed by the Board. The Secretary of the Board shall receive all applications for requests for special exceptions, requesting review of the Building Inspector's interpretations of the provisions of the zoning ordinance and any orders, requirements, decisions, or determinations relating thereto, for a special property use permit, and for a variance; and shall maintain and be custodian of all records of the minutes of the meetings, and findings of the Board. All records shall be open to the public. Copies of the appellant's notice of request for all special exceptions shall be filed with the Building Inspector, planning commission, and the Board, containing the decision of the Building Inspector and the reasons why the appellant is aggrieved, specifying the grounds therefor; and with each application of request for a special exception filed with the Secretary, there shall be paid a fee of \$25.00 to cover the city's cost of handling said request for a special exception. Upon the filing of such an application, the Building Inspector shall forthwith transmit to the Board all papers constituting the record and decision of the Building Inspector relating to the request for a special exception. The Board shall concur by a two-thirds vote of the quorum, or of two-thirds of the members present at each meeting, if such number exceeds a quorum, reversing the decision of the Building Inspector. A majority vote of the quorum or of the members present, if such number exceeds a quorum, is required to affirm the decision or determination of the Building Inspector. The Board shall fix a reasonable time for the hearing of the request for a special exception, give due notice thereof to the parties and general public, and decide the same within a reasonable time after the hearing. The final disposition

by the Board of any request for a special exception shall be in the form of an order.

SECTION 13. STAY

A request for any special exception (i.e. review, special property use, and variance) to the Board stays all proceedings, in furtherance of the action from which the request for a special exception was taken, unless the Building Inspector from whom the request for a special exception is taken, certifies to the Board, after the notice of a request for a special exception shall have been filed with him, that by reason of facts stated in the certification, a stay would, in his opinion, cause imminent peril to life or property, in which case such action shall not be stayed otherwise than by a restraining order which may be issued by the superior court. The decision of the Board on the request for a stay shall be transmitted to the Building Inspector.

SECTION 14. EFFECT OF PARTIAL INVALIDITY

If any provision, section, part of section, sentence, or clause of this ordinance shall be held unconstitutional or invalid, all other parts, provisions, and sections of this ordinance not expressly so held to be void or unconstitutional shall continue in full force and effect.

SECTION 15. EFFECTIVE DATE OF ORDINANCE

This ordinance shall be in force and take effect 5 days from and after its passage, approval and publication according to law.

Passed by the City Council this 18th day of March, 1957.

Attest:

Lawrence L. Ditch
City Clerk

Charles W. Johnson Jr.
Approved as to form by City Attorney

Edgar D. [Signature]
Mayor