

VOICED  
SER Ord 5:  
41613, 14 & 15

ORDINANCE #1607

AN ORDINANCE AMENDING THE EUREKA SPRINGS ZONING ORDINANCE, TITLE 14, MUNICIPAL CODE OF THE CITY OF EUREKA SPRINGS, AR, SECTION 3-9, REGARDING RADIO-TYPE TOWERS; SECTION 5-19, REGARDING TREE CUT APPLICATIONS; AND SECTION 8-2, DEFINING "UNIT"

WHEREAS, the Planning Commission of the City of Eureka Springs, Arkansas, did on the 9th day of June, 1994, hold public hearings pursuant to notice published in a newspaper of general circulation at least one time fifteen (15) days prior to the date of the hearing, and upon due consideration and deliberation, the Planning Commission has recommended to the City Council of the City of Eureka Springs the adoption of this ordinance:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS:

Section 1: Title 14, Section 3-9, Table of Permitted Uses, is amended in part as follows:

	<u>R*</u>	<u>C-3</u>	<u>C-2</u>	<u>C-1</u>	<u>I</u>	<u>Pkg. Group</u>
Radio transmitting station or tower, similar-type towers			P		X	4

Section 2: Title 14, Section 5-19 F, Preservation of Trees, is amended in part as follows:

(5) Should any completed application not comply with conditions 1-4 stated above, the Building Inspector shall not issue a certificate, and the application shall be automatically appealed to the Board of Zoning Adjustment for placement on the agenda of the next regularly scheduled meeting along with a written statement by the Building Inspector of the reasons for denial of the issuance of the certificate. The publication of the agenda, with the proposed tree cut appearing therein, shall constitute, for the purposes of this section, notice that the Board of Zoning Adjustment will take comments from the public at such meeting in regard to the proposed tree cut. The Board of

Zoning Adjustment shall review the application and shall, if a majority of the Board of Zoning Adjustment concurs, either uphold the decision of the Building Inspector or determine that, in the best interests of the City of Eureka Springs and in furtherance of the intent of this Section 5-19, the applicant should be permitted to proceed upon such terms and conditions as the Board of Zoning Adjustment shall set forth; and

(6) The foregoing conditions (1-4) may be waived for any tree that is imminently hazardous to any building, sidewalk, driveway or public street, if in the opinion of the Building Inspector or the Chairman of the Board of Zoning Adjustment, an emergency exists; provided further, however, that the Building Inspector or Chairman of the Board of Zoning Adjustment must file, within ten (10) days following a waiver under this subsection, a written statement with the Board of Zoning Adjustment setting forth the reasons for the waiver.

Section 3: Title 14, Section 8-2, Decision and Appeal, is amended in part as follows.

8-2.4 CONDITIONAL USE PERMITS FOR BED AND BREAKFAST/TOURIST LODGING:

(a) In addition to all other requirements set forth in this section, applications requesting a conditional use permit to operate tourist lodging ("Application for Conditional Use Permit") shall also specify whether the applicant wishes to operate a bed and breakfast establishment or a tourist home.

(b) An "Application for Conditional Use Permit" further shall state the number of UNITS OF TOURIST LODGING ("Lodging Unit") being applied for, using the following definition: ONE "LODGING UNIT" shall equal any room, suite of rooms or building to be rented for compensation as either a bed and breakfast establishment or a tourist home and which, at capacity, will accommodate no greater number of adults than two (2) for an overnight stay. Any such room, suite of rooms or building which, at capacity, will accommodate more than two (2) adults shall be required to state as the number of "Lodging Units" applied for that number determined by taking the maximum number of adults which the property subject to the "Application for Conditional Use Permit" can accommodate for an overnight stay, divided by two (2), rounding up to the next higher number.

(c) Prior to the public hearing on an application pursuant to this section, at least one (1) member of the Board of Review shall make a physical inspection of the premises subject to the application and shall report back to the entire Board at the hearing.

(d) All applications for a conditional use permit to operate a bed and breakfast establishment in an R-1 or R-2 zoned area shall contain the certification by the owner of the property at which such establishment shall be operated that said owner shall or resident manager shall occupy said premises at all times.

Section 4: Repeal. All other Ordinances and Resolutions and any part thereof which may be in conflict, in whole or in part, with any of the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 5: Severability. The provisions of this Ordinance are hereby declared to be severable. If any provision shall be held to be invalid or to be inapplicable to any person or circumstances, such invalidity or inapplicability shall not effect the remainder of the provision of this Ordinance.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY  
OF EUREKA SPRINGS, ARKANSAS, THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 1994.

APPROVED:

\_\_\_\_\_  
Louise O. Berry, Mayor

ATTEST:

\_\_\_\_\_  
JUANITA S. BARNER  
City Clerk

**city of eureka  
springs**

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**PLANNING COMMISSION/  
BOARD OF ZONING ADJ.**

June 13, 1994

**TO: Mayor Louise Berry and City Council**

**RE: Amendments to Title 14, Zoning**

The Planning Commission recommends the approval and adoption of the three following amendments to Title 14, Zoning, of the Municipal Code of the City of Eureka Springs:

1. Section 3-9, regarding radio-type towers;
2. Section 5-19, regarding tree cut applications;
3. Section 8-2, defining "unit" as it pertains to conditional use permit applications.

Public hearings were held on each amendment to the Municipal Code during the regular meeting Thursday, June 9, 1994. Individual motions to recommend approval were passed by votes of 4-0-0. One member was absent and there are two vacancies.

Copies of the Municipal Code as it exists are attached to the proposed ordinance.

*Mary Jean*  
Mary Jean Sell,  
Deputy City Clerk

*Copies made  
& distributed  
Friday  
MJ*

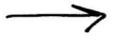
<u>3-9 Permitted Uses</u>	<u>R*</u>	<u>C-3</u>	<u>C-2</u>	<u>C-1</u>	<u>I</u>	<u>1/ 2/</u> <u>Pkg.</u> <u>Group</u>
Junkyards, vehicle and building wrecking establishment and scrap ore waste material handling					x	12
Laundry, self-service			x	x		8
Leather goods fabrication			x	x	x	11
Leather goods or luggage store			x	x		8
Library: private, nonprofit and public	x	x	x	x	x	10
Liquor store			x	x	x	8
Locksmith, key shop		x	x	x	x	10
Monument sales			x		x	10
Motion picture theater			x	x	x	6
Motion picture theater-drive in			x		x	0
Motorized vehicle rental			x			19
Museum		p	x	x		9
Music, musical instruments or photograph records store			x	x		8
Newspaper office, print shop			x	x	x	11
Nursery school, nursery or private school	p	p				8
Office equipment and supplies, incl. service and repair			x	x	x	8
Offices: business and professional		x	x	x		9 11
Optical goods, manufacturing only			x		x	12
Orthopedic or medical supplies			x		x	11
Paint, glass or wallpaper store			x	x	x	8
Pet shop			x	x		8
Photographer's studio (not incl. film processing for others)		x	x	x	x	9 11
Photographer's studio (incl. film processing for others)			x	x	x	8
Plumbing fixtures, sales and service			x	x	x	10
Printing and publishing including engraving and photo-engraving			x	x	x	11
Public off-street parking lots		p	x	x	x	0
Radio transmitting station or tower			x		x	4
Residential care Facility	p	p				12
School, elementary: public	x	x				14
School, secondary: public	x	x				10

1/ Offstreet parking not required in C-1 District

\* Includes R-1 and R-2 Districts and any conditional use permitted by the Planning Commission is subject to all restrictions or requirements set forth in the definition of "Quiet Use" hereinabove

2/ Applicable to C-3 Districts only (if no designation, then the pkg. group designed in 1/ applies)

5/13/94 Existing



## Title 14 Section 5-19

D. The application, in addition to all requested information, shall contain a plan or diagram locating all living trees or woody perennial plants with a base diameter of four (4) inches or more as measured one and one-half (1-1/2) feet above ground level. The plan or diagram shall indicate which trees or plants are proposed for removal or destruction.

E. Upon submission of a completed application with the required plan or diagram, the Building Inspector shall visit and inspect the site.

F. The Building Inspector, after reviewing the application, the plan or diagram, and visiting and inspecting the site, shall approve the application and issue a Certificate providing the following conditions are met:

1. In the commercial and residential zones, all existing healthy trees or plants shall be maintained and preserved within the required set-back lines of the front, side and rear yards, except for ingress and egress drives.

2. No more than thirty percent (30%) of the trees or a maximum of ten (10) trees with a base diameter of four (4) inches or more as measured one and one-half (1-1/2) feet above ground level are to be removed.

3. No antique tree (being a tree fifty(50) years of age or more) or tree of significant historical or aesthetic value is to be removed;

4. No tree with a base diameter of thirty-six (36) inches measured four and one-half (4-1/2) feet above ground level is to be removed. Should any completed application not comply with all conditions stated above, the Building Inspector shall not issue a Certificate, and the application shall be automatically appealed to the Board of Zoning Adjustment for placement on the agenda of the next regularly scheduled meeting along with a written statement by the Building Inspector of the reasons for denial of the issuance of the Certificate; and

5. The foregoing conditions (1-4) may be waived for any tree that is hazardous to any building, sidewalk, driveway or public street if, in the opinion of the Building Inspector or the Chairman of the Board of Zoning Adjustment, an emergency exists.

G. The Board of Zoning Adjustment shall have the authority to prohibit the clearing of any land or to impose conditions or restrictions on any application appealed to it for a Certificate of Approval to Clear Land to insure compliance with this section or to preserve environmental, aesthetic or historic characteristics of the land or to protect adjacent property.

H. In its discretion, the Board of Zoning Adjustment may require that the applicant comply with the notice requirements of Section 8-2 of this Zoning Ordinance, (Amended by Ordinance #1439 dated 6-12-91)

I. Each tree removed or destroyed, without first obtaining a permit authorizing its removal or destruction, will be treated as a separate offense and will be subject to the fines and penalties as set out in Section 8-3. (Amended by Ord. #1439 dated 6-12-91)

6/13/94 Existing →

8.2-3 Decision and Appeal (continued)

Approval or disapproval of the proposed conditional use may be expressed in a writing signed by the person so affected or in person at the public hearing on such proposed use. Any lack of response for said neighbors shall not be interpreted as either an approval or a disapproval of the proposed conditional use. (Amended by Ord. #1548 dated 11/23/93)

Any use previously approved as a "use variance" shall, by the passage of this ordinance, become a conditional use without the necessity of further action by the owner of the property involved. (Amended by Ord. #1290 dated 9/8/87 and Ord. #1491 dated 8/11/92)

→ 8-3 Violations and Penalties. A violation of this Ordinance shall be deemed a misdemeanor and shall be punishable by fine. Any person, firm or corporation who violates or refuses to comply with any of the provisions of this Ordinance, shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) for each offense, provided that when a violation shall be a continuing violation, each day of its existence shall be a separate offense for which the fine shall be not less than fifty dollars (\$50) nor more than two hundred fifty dollars (\$250).

8-4 Amendments. No alteration, amendment, extension, abridgement, or discontinuance of this Ordinance or the Map adopted herewith may be made except in conformance with the following procedure:

6/13/94 Existing  
8-4.1 The Planning Commission shall hold a public hearing on such proposed alteration, amendment, extension, abridgement or discontinuance. Public notice of the public hearing shall be published in a newspaper of general circulation in the City of Eureka Springs, AR, at least one (1) time fifteen (15) days prior to the public hearing. If such proposal is made by any party other than the City Council or one or more of its commissions, boards or officers in behalf of the City of Eureka Springs, AR, the responsibility for publishing the public notice and the costs and expenses thereof shall be borne by the party making such proposal. In any event, the public hearing shall not be held unless the public notice requirement has been met, and the public notice shall not be published until the Planning Commission has scheduled the public hearing. If such proposal is made by any party other than the Planning Commission, the request for a public hearing shall be submitted to the Planning Commission in writing by the party making the proposal, and the Planning Commission shall act, upon a request so submitted, at its next meeting held after such submission, by scheduling the requested public hearing to be held at the next regularly scheduled meeting.

8-4.2 Within thirty (30) days after the public hearing, the Planning Commission shall recommend whether such proposal should be adopted or rejected, either wholly or partly, or modified, and shall certify its recommendation in writing to the City Council. Any recommendation must receive the concurrence of a majority of