

**ORDINANCE NO. 2003**

**AN ORDINANCE AMENDING ARTICLE XXVI OF THE CITY CODE**

**BE IT ORDAINED** by the City Council of the City of Mountain Brook, Alabama, that Article XXVI (Board of Zoning Adjustment) of the City Code is hereby amended to as follows:

**1. Section 1.**

**Section 129-457 Expiration of Variance**

A variance shall expire if it is not implemented within ~~six months~~ one year of the day it is granted. The board may, for good cause presented to it, extend the time for implementation of the variance for a period of six months, provided the request for an extension is presented to the board prior to the expiration of the initial ~~six-month~~ one year period."

**2. Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

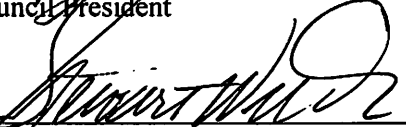
**3. Severability.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

**4. Effective Date.** This ordinance shall become effective immediately upon adoption and publication as provided by law.

**ADOPTED:** The 11th day of December, 2017.

  
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Council President

**APPROVED:** The 11th day of December, 2017.

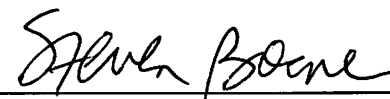
  
\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on December 11, 2017, as same appears in the minutes of record of said meeting, and published by posting copies thereof on December 12, 2017, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street  
Gilchrist Pharmacy, 2850 Cahaba Road

Overton Park, 3020 Overton Road  
Cahaba River Walk, 3503 Overton Road

  
\_\_\_\_\_  
City Clerk



**CITY OF MOUNTAIN BROOK**

**Dana O. Hazen, AICP**  
**Director of Planning, Building & Sustainability**  
56 Church Street  
Mountain Brook, Alabama 35213  
Telephone: 205/802-3821  
Fax: 205.879.6913  
hazend@mtnbrook.org  
www.mtnbrook.org

DATE: December 11, 2017

TO: Mayor, City Council & City Manager

FROM: Dana Hazen, City Planner

RE: Zoning Code Amendment to change Variance Expiration from 6 Months to 1 Year

The current code (6-months expiration) has proven to be too limited a time frame to finalize construction drawings and begin work. Therefore, 25% of approved variance cases end up having to return to the BZA for the granting of a 6-month extension. The proposal is to change the time frame for variance implementation to one year.

BZA has indicated support for the proposed change.

On November 6, 2017, the Planning Commission recommended approval of the proposed zoning amendment.

Attached is an email from staff to local architects and design professionals asking for input on the proposed change; their answers are also attached.

**CITY OF MOUNTAIN BROOK  
NOTICE OF PROPOSED AMENDMENT TO THE ZONING  
ORDINANCE AND OF PUBLIC HEARING THEREUPON**

Notice is hereby given that at a regular meeting of the Planning Commission of the City of Mountain Brook, Alabama, to be held on November 6, 2017 at 5:30 p.m. in Council Chambers at Mountain Brook City Hall, 56 Church Street, Mountain Brook, Alabama, said Planning Commission will hold a public hearing to consider a proposed amendment to Chapter 129 of the Code of the City of Mountain Brook, as it pertains to Article XXVI as follows:

**“Section 129-457 Expiration of Variance**

A variance shall expire if it is not implemented within ~~six months~~ one year of the day it is granted. The board may, for good cause presented to it, extend the time for implementation of the variance for a period of six months, provided the request for an extension is presented to the board prior to the expiration of the initial ~~six month~~ one year period.”

At the aforesaid time and place, all persons who desire shall have an opportunity to be heard in opposition to or in favor of adoption of the proposed amendment.

**For questions concerning the proposed zoning amendment, please contact:**

Dana Hazen, AICP, MPA  
Director of Planning, Building & Sustainability  
205/802-3821  
hazend@mtnbrook.org

**CERTIFICATION**

I, Tammy Reid, Administrative Assistant for the City of Mountain Brook, Alabama, do hereby certify that I have caused notice of the proposed amendment to the zoning ordinance and of public meeting thereupon set forth above to be published and provided in the manner specified by Article XXV, Sec. 129-431, of the Mountain Brook City Code. I further certify that I have posted said notice in four conspicuous places within the City of Mountain Brook, in the manner and within the time permitted by law, said places being:

Mountain Brook City Hall, 56 Church Street  
Gilchrist Pharmacy, 2850 Cahaba Road  
Cahaba River Walk, 3503 Overton Road  
Overton Park, 3020 Overton Road

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Tammy Reid, Administrative Assistant

## **Email from Dana Hazen to Local Architects and Design Professionals**

"Hi!

As you know (from experience!) variances expire 6 months from the date of approval, unless BZA grants a 6-month extension prior to the expiration. The first extension is typically granted without fanfare.

This week, as we were adding yet another 2 extensions to the October BZA agenda I asked myself whether or not there is a compelling reason for a 6-month expiration as opposed to maybe one year?

Over the past 10 BZA meetings ( in 2017) the Board has heard 40 new variance cases and approved 9 extensions. That's almost 25%!

While I do believe that it is a good practice to have an expiration date for a BZA approval, I think perhaps one year would be better than 6 months. It would probably be a more realistic time frame for the process of final plan design and submittal to the city, as well as permit issuance and getting started in the field!

I spoke to a few architects at yesterday's BZA meeting, and they indicated that beginning construction within 6 months of a variance approval is very tight... and that if the expiration was amended to allow a one year start date then it would be a more realistic time frame and we would see far fewer extensions being requested.

Also, I brought the subject up to the BZA members in pre-meeting yesterday and all seemed agreeable to the idea of a one-year expiration, but wanted me to poll some local design folks and get some additional feedback. Our Building Official is also on-board.

Please let me know if you think a one-year expiration would be a more practical course of action (or if not, reasons why we should leave it at 6-months).

If I get the green light from all of you then I will prepare a zoning amendment and take to the PC and the city council!

Thanks for all you do to make our city a wonderful place!"

**In response to the email sent out by Dana Hazen to local architects and design professionals regarding changing the expiration of variances from 6 months to 1 year:**

"I am in favor of the 1-year period. Most often owner's do not invest a whole lot into the project (i.e. complete set of construction drawings, etc.) until they know they have the Variance granted. So most of the Project does not get underway until after the Variance. Also, this allows adequate time for financing of the project to be finalized. Depending on the complexity of the project, that could take time to evolve."

-thanks

Rob Walker, AIA – LEED AP

"I agree with changing to a 12-month rule. The initial 6-month extension is an established precedent and making all involved go through the extension process seems unnecessary."

Regards,

David Camp

"I have to agree with David Camp and Rob Walker."

James Carter

"I agree that the scope & feasibility of many projects depends on whether or not variances are granted, which creates a time crunch having to be started within a 6 month window. I don't see that extending the variance to a 12 months would hurt the process in any way & it would certainly help the Owner/Architect."

Wayne Hester

"Thank You Dana!!!!!! I have had several instances where perhaps a hasty decision was made in awarding a job when up against the variance expiring. 12 months would also allow for more rebidding if needed."

Carey Hollingsworth

"Great idea!"

Hank Long

"This sounds like a wonderful idea to me- there are so many things that can delay the project. Thank you for your work in updating city policies." Eric Dale

"Thank you for reaching out and letting us weigh in on this. I would say the 6 month is certainly tight for most of my projects. A year would definitely make the process smoother."

Thanks,

Carrie Taylor

"I agree with the previous comments. A one-year expiration would be a more realistic timeframe and would be very helpful change."

Thanks again,

Joe Ellis

"I agree that 12 months makes more sense."  
Brian Barrett, AIA

"I agree to the 12 months...  
Thanks!"  
John Bryant  
Francis Bryant Construction

"A 12 mo. time frame seems much more reasonable."  
Laura Bartlett

"We do a year."  
CONRAD GARRISON  
City Planner, City of Vestavia

"We have a 6 month limit also but have put in that they can get another 6 months with a letter of request an extension to the secretary of the BZA. "  
Vanessa McGrath  
City of Homewood