# Article XXXIII. Board of Zoning Appeals

## SECTION 1. BOARD OF ZONING APPEALS ESTABLISHED

A Board of Zoning Appeals is hereby established. Such Board shall consist of not less than three (3) nor more than seven (7) members who shall be appointed by the Mayor, by and with the consent of the City Governing Body. All members of the Board so appointed shall be residents of the City; provided, however, that if the City shall administer zoning regulations outside the City limits, one member of the board shall be a resident of the zoning jurisdiction outside the city limits. The members first appointed shall serve respectively for terms of one (1), two (2), and three (3) years, divided equally or as nearly equal as possible, among the members. Thereafter, members shall be appointed for terms of three (3) years each. Vacancies shall be filled by appointment for the unexpired term. All members of said Board shall serve without compensation. One member may be a member of the Planning Commission. As provided by K.S.A. 12-759, the City Planning Commission may be authorized to act as the Board of Zoning Appeals.

## SECTION 2. ELECTION OF OFFICERS

The Board shall annually elect one (1) of its members as chairman and shall appoint a secretary who may be an officer or an employee of the City.

## SECTION 3. RULES OF PROCEDURE

The Board shall adopt bylaws and rules of procedure for the conduct of business.

## SECTION 4. MEETINGS

Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine.

## SECTION 5. RECORDS

The Board shall keep minutes of its proceedings showing evidence presented, findings of fact by the Board, decisions of the Board, and voting upon each question. Records of all official actions of the Board shall be filed in its office and shall be a public record.

## SECTION 6. FILING FEE

For the purpose of wholly or partially defraying the cost of the proceedings prescribed herein, including publication costs, the applicant, upon filing an appeal, shall pay to the City Clerk a fee in the amount as determined by a schedule of fees maintained by the Governing Body. Promptly upon filing the appeal and required filing fee, the City Clerk shall refer said appeal to the secretary of the Board of Zoning Appeals.

## SECTION 7. PUBLIC HEARING AND NOTICE

The Board of Zoning Appeals shall fix a reasonable time for hearing of an appeal or other matter referred to it. Notice of the time, place, and subject of such hearing shall be published once in the official newspaper at least twenty (20) days prior to the date fixed for hearing. A copy of said notice shall be mailed to each party to the appeal and to the Board of Zoning Appeals.

## SECTION 8. POWERS AND JURISDICTIONS

The Board of Zoning Appeals shall administer the details of appeals or other matters referred to it regarding the application of the Zoning Ordinance. The Board shall have the following specific powers:

1. To hear and decide on appeals where it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the Zoning Ordinance.
2. To interpret the provisions of the Zoning Ordinance in such a way as to carry out the intent and purposes of the adopted comprehensive plan, and to correct the several

districts accompanying and made a part of this Ordinance where the actual street layout varies from the street layout as shown on the zoning district map.

3. To authorize, in specific cases, a variance from the specific terms of the regulations which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning regulations in such district.

   The Board must find that the granting of such variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable or unusual hardship or difficulty.

4. To grant exceptions through special use permit authorization to the provisions of the zoning regulations in those instances where the board is specifically authorized to grant such special user permits and only under the terms of the zoning regulations. In no event shall exceptions to the provisions of the zoning regulation be granted where the special use permit contemplated is not specifically listed in the zoning regulations. Further, under no conditions shall the Board of Zoning Appeals have the power to grant a special use permit when specific conditions, as established in the zoning regulations by the Governing Body, are not found to be present.

## SECTION 9. PROCEDURE

1. Appeals to the Board of Zoning Appeals may be taken by any person aggrieved, or by any officer of the City or County, or any governmental agency or body affected by any decision of the official administering the provisions of this Zoning Ordinance.
2. Appeals shall be taken within a reasonable time, as provided by the rules of the Board, by filing a notice of appeal specifying the grounds thereof and payment of the required filing fee.
3. Appeals and requests to the Board for variances and exceptions to this Zoning Ordinance shall be prepared and submitted on forms approved by the Board.

4. After filing the required appeal or request and payment of the required fee, the Board of Zoning Appeals shall advertise and hold a public hearing as provided in SECTION 7 above.
5. Notice of the decision of the Board of Zoning Appeals shall be in writing and transmitted to the appellant. A copy of such decision shall also be transmitted to the City Zoning Administrator for filing and action, if action is required.
6. Any person, official or governing agency dissatisfied with any order or determination of said Board may bring an action within thirty (30) days in the District Court of the County, to determine the reasonableness of any such order or determination.

## SECTION 10. VARIANCES TO THIS ZONING ORDINANCE

1. The Board may authorize, in specific cases, a variance from the specific terms of this Zoning Ordinance which will not be contrary to the public interest and where, because of special conditions, a literal enforcement of the provisions of the Zoning Ordinance will, in an individual case, result in unnecessary hardship, providing that the spirit of the Zoning Ordinance is observed, public safety and welfare are secured, and substantial justice is done. Such variance shall not permit any use not permitted by this Zoning Ordinance.

   The following requirements must be met before the Board may grant a variance:

   a. The applicant must show that his property was acquired in good faith.
   b. The request for a variance must arise from a condition which is unique to the property in question, is not ordinarily found in the same zone or district, and is not created by an action or actions of the property owner or applicant.
   c. The granting of a variance shall not adversely affect the rights of adjacent property owners or residents.
   d. The strict application of this Zoning Ordinance will cause unnecessary hardship upon the property owner represented in the application.
   e. The granting of a variance shall not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.
   f. The granting of a variance will not violate the spirit and intent of this Zoning Ordinance.

2. In exercising the above powers, the Board may reverse or affirm wholly or partly, or may modify, the order, requirement, decision, or determination appealed from the City Zoning Administrator. The Board may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the same powers as the City Zoning Administrator from whom the appeal is taken. If the Board approves the variance, they shall notify the City Zoning Administrator of their decision and shall instruct him to issue a permit. A time limit may be specified as a condition for granting the appeal.
3. Every variation granted or denied by the Board shall be accompanied by the written finding of fact, based on testimony and evidence, and specifying the reason for granting or denying the variance, a copy of which shall be filed in the office of the Zoning Administrator to be available for public inspection.

## SECTION 11. EXCEPTIONS TO THIS ZONING ORDINANCE

1. Exceptions to this Zoning Ordinance, as authorized by the district regulations, shall be made by special use permit after the request has been duly advertised and a public hearing held as required by law. All special use permits shall be subject to the following requirements.
2. Prior to review of the request of an exception by the Board of Zoning Appeals, the applicant shall:
    a. File an application on forms provided.
    b. File with the application a statement certifying that the applicant is the lawful owner of the real estate upon which the excepted use is proposed or that he has the lawful right to receive a conveyance thereof if the application is granted.
    c. File a form of declaration of restrictions indicating use which is to be made by the legal owner if the application is granted. Said restrictions must show that use of the land will be solely that which was applied for as an excepted use. The restriction must provide that, if such use is abandoned or is proposed to be changed, the subsequent use shall be in conformity with the zoning restrictions in effect as to the land prior to authorization of the exception, unless a new application for an excepted use is made and granted.
3. A site plan shall be filed with the application showing:

a. Legal dimension of the tract to be used.

b. Location of all proposed improvements including curb-cut access, off-street parking, and other such facilities as the applicant proposes to install.

c. Grade elevations.

a. Building setback from all property lines.

e. Front, side, and rear elevations of all improvements to be erected.

f. Perspective drawings of the proposed improvements, in such detail as will clearly show the finished appearance of the improvements proposed.

g. Location and type of planting, screening, or walls.

h. Such other items as the Board shall deem necessary to process the application properly.

4. In considering any application for an exception hereunder, the Board of Zoning Appeals shall give consideration to the comprehensive plan, and the health, safety, morals, comfort, and general welfare of the public, including, but not limited to, the following factors:
    a. The stability and integrity of the various zoning districts.
    b. Conservation of property values.
    c. Protection against fire and casualties.
    d. Observation of general police regulations.
    e. Prevention of traffic congestion.
    f. Promotion of traffic safety and the orderly parking of motor vehicles.
    g. Promotion of the safety of individuals and property.
    h. Provision for adequate light and air.
    i. Prevention of overcrowding and excessive intensity of land uses.
    j. Provision for public utilities and schools.
    k. Invasion by inappropriate uses.
    l. Value, type, and character of existing or authorized improvements and land uses.
    m. Encouragement of improvements and land uses in keeping with overall planning.
    n. Provision for orderly and proper urban renewal, development, and growth.

## SECTION 12. PERFORMANCE

1. In making any decision varying or modifying any provisions of this Zoning Ordinance or in granting an exception to the district regulations, the Board of Zoning Appeals shall impose such restrictions, terms, time limitations, landscaping, improvement of off-street parking lots, and other appropriate safeguards as required to protect adjoining property.
2. In lieu of actual construction of an approved off-street parking lot, the Board of Zoning Appeals may accept, in the name of the City, a corporate surety bond, cashier's check, escrow account, or other like security in an amount to be fixed by the City and conditioned upon actual completion of such improvement within a specified time, and the City may enforce such bond by all equitable means. Bonds or other security shall be filed with the City Clerk.

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