

## ARTICLE 25

### BOARD OF ZONING APPEALS AND ADMINISTRATIVE VARIANCES

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#### SECTION 25-1 BOARD ORGANIZATION AND PROCEDURE

**25-101.** A Board of Zoning Appeals is created in accordance with the provisions of K.S.A. 12-741 et seq. and amendments thereto and in accordance with Chapter 3, Article 5, of the Ordinances of the City of Ottawa. Such board shall consist of five (5) members three (3) of whom must be residents of the City of Ottawa, and two (2) of whom shall reside within the area outside the City over which the City exercises zoning authority, all appointed by the Governing Body. All members shall be appointed for three (3) year terms. Vacancies shall be filled by appointment for the unexpired term of the member vacating. At least one member of the board shall be a member of the Ottawa Planning Commission.

**25-102.** The board shall adopt rules of procedure as may be necessary and proper to govern its own proceedings and to effectuate the provisions of these regulations. Board rules shall not be in conflict with other laws, regulations or ordinances. A majority of the board shall constitute a quorum for the transaction of business. The concurring vote of a majority of the entire membership of the board shall be necessary to reverse any order, requirements, decision or determination of the Zoning Administrator or to decide in favor of the applicant upon any matter which it is required to pass under these regulations or to affect any variation in these regulations. When the board fails to receive a motion for a recommendation on an appeal, or application for a variance or exception, the board shall be deemed to have denied the appeal or application.

The board shall keep minutes of its proceedings, showing the description of evidence presented, the findings of fact by the board, the decision of the board, and the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the board and shall be public record.

**25-103.** The secretary of the Ottawa Planning Commission shall serve as the secretary of the Board of Zoning Appeals.

**25-104.** The Board of Zoning Appeals shall meet as needed to consider the business before it. The board shall select one of its members as chair and one as vice-chair, who shall serve one

year and until their successors have been selected. Special meetings may be called at any time by the chair or in the absence of the chair, by the vice-chair.

## **SECTION 25-2 APPEALS**

**25-201.** The Board of Zoning Appeals shall have the power to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of these regulations.

- a. Appeals to the board may be taken by the person aggrieved, or by any officer, department or bureau of the government affected by any decision of the Zoning Administrator. Such appeal shall be filed with the Zoning Administrator within sixty (60) days after a ruling has been made by the Zoning Administrator. The Zoning Administrator shall transmit to the secretary of the board all papers constituting the record upon which the action appealed from is taken.
- b. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the board, after the notice of appeal has been filed, that a stay would, in the opinion of the Zoning Administrator, cause imminent peril to life or property.

## **SECTION 25-3 VARIANCES**

**25-301.** The board shall have the power to authorize in specific cases a variance from the specific terms of these regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these 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.

- a. The applicant must show that his or her property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the district zoning regulations, or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually prohibit the use of his or her property in the manner similar to that of other property in the zoning district where it is located.
- b. Variances from these regulations may be granted only in the following instances:
  1. To vary from the applicable lot area and width, height and yard regulations.
  2. To vary from the applicable off-street parking and loading requirements.
- c. In accordance with section 25-10 a request for a variance may be granted by the Zoning Administrator for variances of 10% or less of the requirement. Requests for variances of greater than 10% of the requirement of the regulation may be granted, upon a finding of the board that all of the following conditions have been met. The board shall make a determination on each condition, and the finding shall be entered in the record:

1. The variance requested arises from a condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by action of the property owner or applicant.
  2. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
  3. The strict application of the provisions of the zoning regulations of which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
  4. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
  5. The granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.
- d. In granting a variance, the board may impose such conditions, safeguards and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations.
- e. Whenever the board grants a variance the results of such action will be recorded with the Register of Deeds of Franklin County by the secretary, after the passage of the thirty (30) day appeal period.

## **SECTION 25-4 EXCEPTIONS**

**25-401.** The board shall have the power to grant exceptions to the provisions of these zoning regulations, when expressly authorized to do so by these regulations in a particular zoning district or districts.

- a. In no event shall exceptions to the provisions of the zoning regulations be granted where the exception contemplated is not specifically listed in the zoning regulations. The board shall not grant an exception when the conditions established by this section are not found to be present.
- b. The board shall not grant an exception unless it shall, in each specific case, make specific written findings of fact directly based upon the particular evidence presented to it, that support conclusions that:
  1. The proposed exception complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.
  2. The proposed exception at the specified location will contribute to and promote the welfare or convenience of the public.
  3. The proposed exception will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.

4. The location and size of the exception, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the exception will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the exception will so dominate the immediate neighborhood, consideration shall be given to:
  - (a) The location, nature and height of buildings, structures, walls and fences on the site, and
  - (b) The nature and extent of landscaping and screening on the site;
5. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations, and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect;
6. Adequate utility, drainage and other such necessary facilities have been or will be provided; and
7. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.

**25-402. Exceptions Allowed.** The following exceptions are expressly allowed to be granted by the board when such is consistent with Section 25-401.

- a. Where a use district boundary line crosses a lot, a use of either classification on the whole lot within one hundred (100) feet of said district boundary line.
- b. An off-street parking area in a residential district where such facility would relieve traffic congestion on the streets and where said parking lot conforms to the following specification:
  1. The land devoted to parking to be located adjacent to, and within 200 feet of a business or industrial district.
  2. Walls, fences, or planting shall be provided in a manner to afford protection for and be in harmony with surrounding residential property.
  3. The same front yard depth restrictions shall be required as are required in the zoning district in which the parking area is located.
  4. All driveways and the area used for the parking of vehicles shall be surfaced with a hard, durable, rustproof material, and be properly drained.
  5. The area shall be used exclusively for parking of motor vehicles belonging to invitees of the owner or lessee of said lot.

6. The approval of all plans and specifications for the improvement, surfacing, drainage, entrances, and exits, or lights for said parking area shall be obtained from the City Engineer.
  7. The area shall conform to such other requirements as the Board, in the exercise of sound discretion, may require for protection of surrounding property, persons, and neighborhood values.
- c. Off-Street parking areas, adjacent to or at a reasonable distance from the premises on which parking areas are required by the parking regulations of these regulations where practical difficulties, including the acquisition of property, or undue hardships are encountered in locating such parking areas on the premises and where the purpose of these regulations to relieve
- d. Special Yard and Height Exceptions: The following yard exceptions, limited as to location and especially in locations described below may be approved by the Board.
1. An exception in the yard regulations on a lot where, on the adjacent lot there is a front, side, or rear yard that does not conform with such yard regulations.
  2. A yard exception on a corner lot, or lots opposite or adjoining permanent open spaces, including parks and playgrounds.
  3. An exception in the depth of rear yard on a lot in a block where there are nonconforming rear yard conditions.
  4. An exception where there are irregularities in depths of existing front yards on a street frontage on the side of a street between two intersecting streets, so that any one of the existing depths shall, for a building, hereafter constructed or extended, be the required minimum front yard depth.

## **SECTION 25-5 DETERMINATIONS OF BOARD**

**25-501.** In exercising the foregoing powers, the board may reverse or affirm, wholly or partly, or may modify any order, requirements, decision or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a zoning certificate.

## **SECTION 25-6 APPLICATIONS FOR BOARD HEARINGS**

### **25-601.**

- a. The procedure for requesting a hearing before the board shall be as follows:
  1. All applications to the board shall be in writing on forms provided by the Zoning Administrator. Applications shall be completed in their entirety and filed in the office of the Zoning Administrator with all supporting data. The Zoning Administrator may require any legal description submitted as part of an application to be certified by a registered surveyor, and shall determine whether the filed application is complete.

2. The Zoning Administrator may either create the required ownership list or may require an application to be accompanied by an ownership list, certified by a registered abstractor, listing the legal description and the names and addresses of the owners of all property located within two hundred (200) feet of the boundaries of the property included in the application. Whenever any portion of the property that is the subject of the application is within two hundred (200) feet of the city limits the applicant shall provide such an ownership list for the property within one thousand (1,000) feet of the boundaries of the property included in the application.
  3. The board shall fix a reasonable time for the hearing of an application and notice of the time, place and subject of each hearing shall be published in the official city newspaper at least twenty (20) days prior to the date fixed for the public hearing. A copy of the notice of public hearing shall be sent to each party of interest, and each person on the ownership list fifteen (15) days prior to the hearing.
  4. An application shall be accompanied by the filing fee required by the City Commission. A separate filing fee shall be required for each application.
- b. In addition to the above requirements, certain applications must meet additional requirements as follows:
1. Appeals.
    - (a) An application for an appeal shall be filed within sixty (60) days after a ruling has been made by the Zoning Administrator.
    - (b) A copy of the order, requirement, decision or determination of the Zoning Administrator which the applicant believes to be in error shall be submitted.
    - (c) A clear and accurate written description of the proposed use, work or action in which the appeal is involved, and a statement justifying the applicant's position.
    - (d) Where necessary, a plot plan, drawn to scale, in duplicate showing existing and proposed plans for the area in question shall be submitted.
  2. Variances.
    - (a) The applicant shall submit a statement, in writing, justifying the variance requested, indicating specifically the enforcement provisions of the zoning regulations from which the variance is requested, and outlining in detail the manner in which it is believed that this application will meet each of the five (5) conditions as set out in Section 25-301.c.
    - (b) The applicant shall submit a sketch, in duplicate, drawn to scale and showing the lot or lots included in the application; the structures existing thereon; and the structures contemplated necessitating the variance requested. All appropriate dimensions and any other information which would be helpful to the board in consideration of the application should be included.
  3. Exceptions.

- (a) The applicant shall submit a statement in writing justifying the exception applied for, and indicating under which article and section of the zoning regulations the Board of Zoning Appeals is believed to have jurisdiction.
- (b) The applicant shall prepare and submit in duplicate at the time of filing the application a detailed plot plan drawn to scale, showing all existing and proposed structures, property lines with dimensions, parking spaces, points of ingress and egress, driveways and any other information which would be helpful to the board in consideration of the application.

## **SECTION 25-7 PUBLIC HEARING REQUIRED**

**25-701.** The board shall hold a public hearing on each application for an appeal, variance or exception. On all applications, notice of time and place of the public hearing shall be published once in the official city newspaper not less than 20 days prior to the date of such public hearing. In addition, for all applications for a variance or exception all property owners within 200 feet of the subject property (1,000 feet when the subject property is adjacent to the city limits) shall be notified by mail of such public hearing and be given an opportunity to attend and be heard regarding such application for a variance or exception.

## **SECTION 25-8 PERFORMANCE UPON GRANT OF VARIANCE OR EXCEPTION**

### **25-801.**

- a. In making any decision varying or modifying any provisions of the zoning regulations or in granting an exception to the district regulations, the board shall impose such restrictions, terms, time limitations, landscaping, screening and other appropriate safeguards as needed to protect adjoining property.
- b. The board may require a performance bond to guarantee the installation of improvements such as parking lot surfacing, landscaping, etc.

The amount of the bond shall be based on a general estimate of cost for the improvements as determined by the board, and shall be enforceable by or payable to the Governing Body in a sum less than or equal to the cost of constructing the required improvements.

- c. In lieu of the performance bond requirements, the board may specify a time limit for the completion of such required improvements and in the event the improvements are not completed within the specified time, the board may declare the granting of the application null and void after reconsideration
- d. After the board has approved an exception or granted a variance, the exception or variance so approved or granted shall lapse after the expiration of one year if no substantial construction or change of use has taken place in accordance with the plans for which such exception or variance was granted, and the provisions of these regulations shall thereafter govern.

**SECTION 25-9 APPEALS FROM BOARD DECISIONS**

**25-901.** In exercising its powers the board, in conformity with the provisions of this article, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, and to that end shall have all the powers of the officer from whom the appeal is taken; may attach appropriate conditions and may issue or direct the issuance of a permit. Any person, official or governmental agency dissatisfied with any order or determination of the board may bring an action in the District Court of Franklin County, Kansas, to determine the reasonableness of any such order or determination within thirty (30) days of the rendering of the order or determination by the board, in accordance with state law.

**SECTION 25-10 ADMINISTRATIVE VARIANCES**

**25-1001.**

- a. Except where variances are expressly prohibited by the Regulations, any requirement under these Regulations which may be varied from in accordance with the provisions of Section 25-3 may be submitted to the Zoning Administrator with a request for an administrative variance.
- b. No application for an administrative variance may reduce the requirement sought to be varied from by an amount greater than ten (10) percent.
- c. The Zoning Administrator may approve, disapprove, modify and approve, or refer directly to the Board of Zoning Appeals, an application for administrative variance.
- d. Any final decision by the Zoning Administrator on an application for an administrative variance may be appealed to the Board of Zoning Appeals.