

Article XI. Board of Zoning Appeals

Sec. 27-1101 Board of Zoning Appeals Established.

The Board of Zoning Appeals is hereby established. In accordance with the provisions of K.S.A. 12-759, the Hutchinson City Planning Commission has been designated to serve as the Board of Zoning Appeals.

Sec. 27-1102 Rules of Procedure.

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

Sec. 27-1103 Meetings.

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

Sec. 27-1104 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.

Sec. 27-1105 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 Planning and Development Department a fee in an amount as determined by a Master Fee Schedule. Promptly upon filing the appeal and required filing fee, the Zoning Administrator shall refer said appeal to the secretary of the Board of Zoning Appeals.

Sec. 27-1106 Public Hearing and Notice.

The Board of Zoning Appeals shall fix a reasonable time for hearing of an appeal or other matters referred to it. Notice of the time, place, date, and subject of such hearing shall be published once in the official newspaper at least 20 calendar 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, and to all property owners within 200 feet of the subject property and 1,000 feet if the subject property is adjacent to or outside the corporate boundary of the City. Any party in interest may appear and be heard at the hearing in person or by agent or attorney.

Sec. 27-1107 Powers and Jurisdiction.

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

- A. To hear and decide on appeals where it is alleged that there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of the zoning regulations;
- B. To interpret the provisions of the zoning regulations in such a way as to carry out the intent and purposes of the adopted comprehensive plan;
- C. 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. The Board must find 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; and
- D. To grant exceptions to the provisions of the zoning regulations in those instances where the Board is specifically authorized to grant such exceptions by special use permit or by exception and only under the terms of the zoning regulations. In no event shall exceptions to the provisions of the zoning regulations be granted where the use or exception contemplated is not specifically listed as an exception, as established in the zoning regulations by the Governing Body, is not found to be present.

Sec. 27-1108 Authority.

The Planning Commission has been authorized to act as the Board of Zoning Appeals pursuant to K.S.A. 12-759.

Sec. 27-1109 Appeals.

- A. 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 the zoning regulations.
- B. 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.
- C. Appeals and requests to the Board for variances and exceptions to the zoning regulations shall be prepared and submitted on forms approved by the Board.
- D. 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 Sec. 27-1106 above.
- E. Notice of the decision of the Board of Zoning Appeals shall be in writing and transmitted to the appellant. The Board of Zoning Appeals shall render a written decision on the appeal without unreasonable delay after the close of a hearing, and in all cases, within 14 calendar days after the close of the hearing. A copy of such decision shall also be transmitted to the City Building Official for filing of a building permit, if action is required.
- F. Any person, official or governing agency dissatisfied with any order or determination of said Board may bring an action in the District Court of the County,

to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 calendar days of the final decision of the Board.

- G. The application cannot be re-filed during a period less than 365 days following a decision by the Board of Zoning Appeals.

Sec. 27-1110 Variances.

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

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

1. 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;
 2. The granting of a variance shall not adversely affect the rights of adjacent property owners or residents;
 3. The strict application of these regulations will cause unnecessary hardship upon the property owner represented in the application;
 4. The granting of a variance shall not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and
 5. The granting of a variance will be opposed to the spirit and intent of the zoning regulations.
- B. 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 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 Zoning Administrator from whom the appeal is taken. If the Board approves the variance, they shall notify the 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.
 - C. Every variance 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 Planning and Development Department to be available for public inspection.
 - D. No variance granted by the Board of Zoning Appeals shall be valid for a period longer than 180 days from the date on which the Board of Zoning Appeals grants the variance, unless within such 180 day period: (1) a building permit is obtained and the construction, moving or remodeling of a structure is started, or (2) a use is commenced or conducted pursuant to the variance. The Board of Zoning Appeals may grant additional extensions not exceeding 180 days each, upon written application, without notice or hearing.
 - E. Variance applications shall be processed in accordance with the provisions of Sec. 27-1106.

Sec. 27-1111 Exceptions.

- A. Exceptions to the zoning regulations, as authorized by the district regulations as specified in Sec. 27-406, 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 requirements of Sec. 27-502.
- B. Exceptions to the standards of zoning regulations, as authorized by Sec. 27-503, shall be submitted in accordance with the following requirements.
- C. Prior to review of the request of an exception by the Board of Zoning Appeals, the applicant shall:
 - 1. File an application on forms provided;
 - 2. File a statement certifying that the applicant is the lawful owner of the real estate upon which the exception is proposed or that he has the lawful right to receive a conveyance thereof if the application is granted; and
- D. A site plan shall be filed with the application showing:
 - 1. Legal dimension of the lot or tract to be used;
 - 2. Location of all proposed improvements including curb cut access, off-street parking, and other such facilities as the applicant proposes to install;
 - 3. Grade elevations;
 - 4. Building setback from all property lines;
 - 5. Front, side, and rear elevations of all improvements to be erected;
 - 6. Perspective drawings of the proposed improvements, in such detail as will clearly show the finished appearance of the improvements proposed;
 - 7. Location and type of planting, screening, or walls; and
 - 8. Such other items as the Board or Zoning Administrator shall deem necessary to process the application properly.
- E. 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:
 - 1. The stability and integrity of the underlying zoning districts;
 - 2. Conservation of property values;
 - 3. Protection against fire and casualties;
 - 4. Observation of general police regulations;
 - 5. Prevention of traffic congestion;
 - 6. Promotion of traffic safety and the orderly parking of motor vehicles;
 - 7. Promotion of the safety of individuals and property;
 - 8. Provision for adequate light and air;
 - 9. Prevention of overcrowding and excessive intensity of land uses;
 - 10. Provision for public utilities and schools;
 - 11. Compatibility with surrounding uses;
 - 12. Value, type and character of existing or authorized improvements and land uses;
 - 13. Encouragement of improvements and land uses in keeping with overall planning; and
 - 14. Provision for orderly and proper urban renewal, development and growth.

- F. Applications for Exceptions shall follow the same notification and processing requirements as those found in Sec. 27-1106.
- G. When an Exception has been denied by the Board of Zoning Appeals, said action shall be final. Reapplication for the same exception shall not be made within one calendar year of the date of determination.

Sec. 27-1112 Performance.

- 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 of Zoning Appeals shall impose such restrictions, terms, time limitations, and other requirements regarding landscaping, screening, improvement of off-street parking areas, drainage and/or traffic studies, and other appropriate safeguards as required to protect adjoining property.
- B. 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, 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.