

§ 205-283. Board of Adjustment.

A. Establishment.

- (1) A Board of Adjustment is hereby established to provide relief in situations of hardship or to hear appeals as provided by this article. The Board shall consist of five regular members, plus one additional alternate member who shall attend and vote only when one member is unable to attend for any reason.
- (2) Each member shall be appointed by the Mayor with the approval of the City Council for a three-year term and is removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member of the Board shall be appointed from the Planning Commission, and the loss of membership on the Commission by such member shall also result in his/her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board.
- (3) The Board of Adjustment shall adopt rules and regulations in accordance with this chapter and the laws of the State of Nebraska pursuant to Neb. R.R.S. §§ 19-901 through 19-914. Meetings shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman or, in his absence, the Acting Chairman may administer oaths and compel the attendance of witnesses. All meetings and records shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact. The Board shall keep a record of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. A majority of the Board shall constitute a quorum for the transaction of business.

B. Procedure for appeals.

- (1) Appeals shall be made to the Board of Adjustment through the office of the Planning Director in written form as determined by the Planning Director. The Board shall fix a reasonable time for the hearing of the appeal and shall decide the appeal within 30 days of the date of the public hearing. An appeal stays all proceedings in furtherance of the action, unless the Planning Director certifies to the Board that by reason of the facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property.
- (2) The Board shall provide a minimum of 10 days notice of a public hearing on any question before it. Notice of the hearing shall be posted in a conspicuous place on or near the property on which the application has been made; by publication in a newspaper of general circulation in the City of Papillion; and by written notice to the appealing party.
- (3) Upon the public hearing, any party may appear in person or by agent or attorney. The concurring vote of four out of five members of such Board as so composed shall be necessary to reverse any order, requirement, decision or determination of any

administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning ordinance, or to effect any variation in such ordinance.

§ 205-284. Powers and duties of Board of Adjustment.

The Board of Adjustment shall have only the following powers and duties:

- A. Administrative review. To hear and decide appeals where it is alleged there is error in any order, requirement, decisions or determination made by the Planning Director or his/her designee in the enforcement of this chapter or any regulation relating to the location or soundness of structures.
- B. Interpretation of Zoning Map. To hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map.
- C. Variances to relieve hardships relating to profit. To authorize, upon appeal, variances from the strict application of this chapter where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, such strict application would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property.
 - (1) Requirements for grant of a variance. No such variance shall be authorized by the Board unless it finds that:
 - (a) Strict application of this chapter will produce undue hardship.
 - (b) Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity.
 - (c) The authorization of such variance will not be of substantial detriment to adjacent property, and the character of the district will not be changed by the granting of the variance.
 - (d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.
 - (e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to this chapter.

- (f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any ordinance or resolution.
- (2) Findings by Board. The Board of Adjustment shall make findings that the requirements of Subsection C(1) have been met by the applicant for a variance.
- (3) Conditions for grant of variance.
 - (a) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under § 205-288 of this chapter.
 - (b) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.
 - (c) No nonconforming use of neighboring lands, structures or buildings in the same district and no permitted or nonconforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

D. Board has powers of Planning Director on appeals: reversing decisions of Planning Director.

- (1) In exercising the above-mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decisions or determination as ought to be made, and to that end shall have the powers of the Planning Director from whom the appeal is taken.
- (2) The concurring vote of four members of the Board shall be necessary to reverse any order, requirements, decision or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in the application of this chapter.

§ 205-285. Appeals from Board of Adjustment.

Any person or persons, or any board, taxpayer, officer, department, board or bureau of the city aggrieved by any decision of the Board of Adjustment may seek review of such decision by the District Court for the county in the manner provided by the laws of the state and particularly by Neb. R.R.S. § 19-912 (Reissue 1991), and amendments thereto.

§ 205-286. Duties of Planning Director, Board of Adjustment, City Council and courts on matters of appeal.

- A. It is the intent of this chapter that all questions of interpretation and enforcement shall be first presented to the Planning Director, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Planning Director, and that recourse from the decisions of the Board of Adjustment shall be to the courts as provided by law.

- B. Under this chapter, the City Council shall have only the duties of considering and adopting or rejecting proposed amendments, or the repeal of this chapter as provided by law, of establishing a schedule of fees and charges as stated in this Ordinance and of directing a city officer to appeal a decision of the Board of Adjustment.