

ARTICLE 25

BOARD OF ZONING APPEALS

Sections:

- Board Organization and Procedure**
- Appeals**
- Variances**
- Exceptions**
- Determinations of Board**
- Application for Board Hearings**
- Public Hearing Required**
- Performance Upon Grant of Variance or Exception**
- Appeals from Board Decisions**

SECTION 25-1 BOARD ORGANIZATION AND PROCEDURE

25-101. An Emporia-Lyon County Joint Board of Zoning Appeals is created in accordance with the provisions of K.S.A. 12-741 et seq. and amendments thereto. Such board shall consist of seven (7) members all of whom must be residents of the City of Emporia or the Metropolitan Planning Area. Five (5) members shall be appointed by the Governing Body of the City of Emporia, and two (2) members shall be appointed by the County Board of County Commissioners. All members shall be appointed for three (3) year terms. Vacancies shall be filled by appointment for the unexpired term by the Governing Body that originally appointed the member vacating. One member of the board shall be a member of the Emporia-Lyon County Metropolitan Area Planning Commission.

25-102. The board shall adopt rules of procedure as may be necessary and proper to govern its own proceedings, including the establishment of a quorum and voting requirements; such rules shall not be in conflict with other laws, regulations or resolutions. A majority of the board shall constitute a quorum for the transaction of business and a 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 such 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 Emporia-Lyon County Metropolitan Area Planning Commission shall serve as the secretary of the Board of Zoning Appeals.

25-104. Meetings: The members of the Board of Zoning Appeals shall meet at least once each month at such time and place as they may fix by resolution. They shall select one of their 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. A majority of the board shall constitute a quorum for the transaction of business. The board shall cause a proper record to be kept of its proceedings.

SECTION 25-2 APPEALS

25-201. The board 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 forthwith 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 shall have been filed by reason of facts stated in the certificate, a stay would, in the opinion of the Zoning Administrator, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board, or by a court of record on application or notice to the Zoning Administrator on good cause shown.

c. An appeal shall be sustained only if the board finds that the administrative official's action was based on an erroneous finding of a material fact, or that the official acted in an arbitrary or capricious manner or manifestly abused his or her discretion.

25-202. Sidewalk Enhancement Policy

No sidewalk enhancements as permitted by the City's Sidewalk Enhancement Policy adopted by Resolution 3528 shall be installed or erected without the written approval of the City Manager or his designee. In the event of a denial, the applicant may appeal the denial to the Board of Zoning Appeals within thirty (30) days of the date of denial. The Board shall hear the appeal at the next regularly scheduled or special meeting. The board may table the request upon the request of the petitioner. The applicant shall submit all information as may be required by the Board of Zoning Appeals. Applicants may submit a letter of recommendation from the Great Plains ADA Center containing a recommendation whether the project meets ADA guidelines. The decision of the Board of Zoning Appeals shall be final.

a. The procedure for requesting a hearing before the Board shall be as follows:

1. 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 newspaper (designated by the Governing Body) at least twenty (20) days prior to the date fixed for the public hearing.
2. An application for an appeal shall be filed within thirty (30) days after a ruling has been made by the City Manager. Applications shall be assigned to the next available agenda and within compliance of Item 1 in the preceding section.
3. A copy of the order, requirement, decision or determination of the City Manager which the applicant believes to be in error shall be submitted.
4. A clear and accurate written description of the proposed use, work or action in which the appeal is involved and a statement justifying the appellant's position.
5. Where necessary, a plot plan, drawn to scale, in duplicate showing existing and proposed plans for the area in question shall be submitted.
6. No fee shall be required to file an appeal of the determination of the City Manager.
7. The Board shall have the powers described in Section 25-201.

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. A request for a variance 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.
8. 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.
9. Whenever the board grants a variance the results of such action will be recorded with the Register of Deeds of Lyon 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 as exceptions to the provisions of these zoning regulations, when expressly authorized in a particular zoning district or districts. 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.

a. 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 to 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
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.

b. In granting an exception, the board may impose such conditions, safeguards and restrictions upon the premises benefited by the exception as may be necessary to reduce or minimize any potentially injurious effect of such exception upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations.

SECTION 25-5 DETERMINATIONS OF BOARD

25-502. 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. Said application shall be completed in its 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 require the applications shall be accompanied by an ownership list, certified by a licensed abstractor or licensed title insurance agency, 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. When the property that is the subject of the application is adjacent to or outside 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 newspaper (designated by the Governing Body) 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 fee ordinance. A separate filing fee shall be required for each application.

b. In addition to the above requirements, certain applications require additional information 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 appellant'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 25-3.
- (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 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 lies outside the City's limits) but within the Metropolitan Planning Area 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 the sum 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 Lyon 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.