

**ARTICLE XXIX
LIBERAL METROPOLITAN AREA
BOARD OF ZONING APPEALS**

Section 1. Board of Zoning Appeals Established: Pursuant to KSA 12-759, there is hereby created a Board of Zoning Appeals for the City of Liberal, Kansas and the Extraterritorial Area. Said board shall consist of seven (7) members with two (2) members serving three (3) year terms, one (1) member serving a two (2) year term and two (2) members serving a one (1) year term, all of whom shall be residents of the City of Liberal, Kansas and one (1) member from the Extraterritorial Area serving a three (3) year term and one (1) serving a two (2) year term. All terms after the initial appointment will be for a period of three (3) years. Members are appointed by the Mayor with the consent of the City Commission at their first regular meeting in January of each year and take office at the next regular meeting of the Commission. Vacancies are filled by appointment for the unexpired term.

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 Fees: For the purpose of wholly or partially defraying the cost of the proceedings prescribed herein, including publication costs, the applicant for a variance/exception, upon filing an appeal, shall pay to the Secretary of the Board of Zoning Appeals a fee in the amount of two hundred seventy-five dollars, (\$275).

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 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 Planning Commission.

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:

- A. 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.
- B. To interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the adopted Comprehensive Plan, and as shown upon the Zoning District Map fixing the several districts and accompanying and made a part of this Ordinance, where the street layout actually on the ground varies from the street layout as shown on the Zoning District Map.
- C. To permit a variation in the yard requirements of any district where there are practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, or topographical or other conditions; provided, that such variation will not seriously affect any adjoining property or the general welfare or where variations may be permitted which allow unusual arrangement on the lot and still clearly and unmistakably accomplish the intent of this Ordinance. 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.
- D. To hear and grant exceptions to district zoning regulation subject to Section 11 below.

Section 9. Procedure:

- A. Appeals to the Board of Zoning Appeals may be taken by any person aggrieved, or by any officer of the City or any governmental agency or body affected by any decision of the official administering the provision of the Zoning Ordinance.
- 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 this Zoning Ordinance shall be prepared and submitted on forms approved and furnished by the Planning Commission.

- 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 Section 7 above.
- E. Notice of the decision of the Board of Zoning Appeals shall be in writing and transmitted to applicant. A copy of such decision shall also be transmitted to the Building Official for action, if action is required.
- F. Any person, official or governing agency dissatisfied with any order or determination of said Board may bring action in the District Court of Seward County, Kansas, to determine the reasonableness of any such order or determination.

Section 10. Variances to this Ordinance:

- A. The applicant must show that his property was acquired in good faith and, where by reason of exceptional narrowness, shallowness or shape of his specific piece of property at the time of the effective date of this Zoning Ordinance or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances, that the strict application of the terms of this Zoning Ordinance actually prohibit the use of his property in the matter similar to that of other property in the zoning district where it is located.
- B. Variances are limited to yard regulations may not be more than one-half ($\frac{1}{2}$) the required yard and shall not encroach upon the required setback for adjacent buildings.
- C. In granting a variance, the Board of Zoning Appeals must satisfy itself, from the evidence heard before it, that the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the owner. The Board shall also find that the variance, if granted, is in harmony with the intended spirit and purpose of this Zoning Ordinance and does not constitute a direct and obvious amendment to the district regulations or district boundaries.
- D. 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 Building Official. 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 Building Official from whom the appeal is taken. If the Board approves the variance, they shall notify the Building Official of their decision and shall instruct him to issue a permit. A time limit may be specified as a condition for granting the appeal.

- E. Every variation granted or devised 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 City and/or County Clerk, to be available for public inspection.

Section 11. Exceptions to this Zoning Ordinance:

- A. Exceptions to this Zoning Ordinance shall be made by special use permit after the request has been duly advertised and a public hearing held as required by law.
- B. 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 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.
 - 3. 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.
 - 4. File a plot plan 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.
 - (d) Building setback from all property lines.
 - (e) Front, side and rear elevations of all improvements to be erected.
 - (f) Such perspective drawings of the proposed improvements, in such detail as the Board may require, 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 reasonably necessary to properly process the application.

C. 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 inhabitants of the City and County, including but not limited to the following factors:

1. The stability and integrity of the various zoning district.
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 of public utilities and schools.
11. Invasion by inappropriate 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.
14. Provision for orderly and proper urban renewal, development and growth.

D. Exceptions which may be authorized by the Board of Zoning Appeals are as follows:

1. In District "A-L":

- (a) Drive-in theaters.
- (b) Isolation homes, penal institutions, sanitariums or asylums for the insane or feeble minded.
- (c) Mineral extraction.
- (d) Seasonable or temporary uses such as recreational camps or similar enterprises.

2. In Districts "A-L", "R-1", "R-2" and "R- 3":

- (a) Any public building erected or land used by any department of the City, County, State or Federal Government.
- (b) Airports and heliports.
- (c) Cemetery and crematory.
- (d) Telephone exchanges, electric substations and regulator stations or other public utilities.
- (e) Nursing homes and care homes for the aged on a tract of land three (3) acres or larger.

3. In Districts "A-L", "R-1", "R-2", "R-3", "M-P", "M-H", "I-P", "C-1" and "C-2"
 - (a) Exceptions for Home Occupations, Day Care Homes, Group Day Care Homes, Pre-Schools and Child Care Centers are authorized in accordance with the District Use Regulations.
4. In District "R-3":
 - (a) Public and private parking lots on land adjoining a commercial zone or a public or semi-public use, providing all of such land lies within three hundred feet (300') of the boundary of the commercial zone, public use or semi-public use and further providing:
 - (1) The parking area is paved with concrete, asphalt or similar dust free surface.
 - (2) The parking area is enclosed with a fence, wall or landscaped buffer area, determined by the Board of Zoning Appeals, having a height of not less than four feet (4') nor more than five feet (5'). Such fence, wall or other enclosure shall be maintained in good condition by the owners and shall observe the front and side yard regulations of the district in which it is located.
 - (3) Any lights used to illuminate said parking area shall be so arranged as to reflect light away from adjoining residential district or districts.
 - (4) A bond as specified in Section 12 shall be filed with the City to guarantee to the City that all improvements will be installed. The bond shall be enforceable by or payable to the City in a sum equal to the cost of constructing the off-street parking area, as estimated by the City.
5. In District "I-2":
 - (a) Automobile wrecking yards, junk yards, and scrap processing yards subject to the following:
 - (1) Located on a tract of land at least three hundred feet (300') from a residential district zone.
 - (2) The operation shall be conducted wholly within a noncombustible building or within an area completely surrounded on all sides by a fence, wall or hedge. The fence, wall or hedge shall be so maintained by the proprietor as to insure maximum safety to the public and preserve the general welfare of the neighborhood. The fence, wall or hedge shall be installed in such a manner as to retain all scrap, junk or other material within the yard.
 - (3) No junk shall be loaded, unloaded or otherwise placed, either temporarily or permanently outside the enclosing building, hedge, fence or wall, or within the public right-of-way.

(4) Burning of paper trash, junk or other waste materials shall be permitted only after approval of the Fire Department. Said burning, when permitted, shall be done during daylight hours only.

- (b) Petroleum refining.
- (c) Ready-mix concrete and asphalt mix plants.
- (d) Manufacturing or storage of bulk oil, gas and explosives.
- (e) Other uses which may be noxious or offensive by reason of the emission of odor, dust, smoke, gas, noise or vibration.

Section 12. Performance:

- A. In making any decision varying or modifying any provision of this Zoning Ordinance or in granting an exception to the district regulations, the Board of Zoning Appeals shall impose such restrictions, terms, time limitation, landscaping, improvement of off-street parking lots 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, 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 Governing Body may enforce such bond by all equitable means. Bonds or other security shall be filed with the City Clerk.

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