

# **Organization and Bylaws of the Board of Zoning Appeals**

## **Creation of the Board of Zoning Appeals**

**A. Creation.** A Board of Zoning Appeals (BZA) is hereby created to administer all zoning, floodplain, subdivision appeals, variances, and other matters of land regulation as enumerated in the Edgerton Unified Development Code.

**B. Membership Requirements.** All members of the Board of Zoning Appeals must be age 18 years or older at the time of their initial appointment and meet the requirements of appointment to the Edgerton Planning Commission. (Res. BZA2018-01; 2018)

**C. Composition of the Board.** The Board of Zoning Appeals shall be composed of all five (5) current members of the Edgerton Planning Commission. (Res. BZA2018-01; 2018)

### **D. Service of Members.**

1. All members of the Board of Zoning Appeals shall serve without pay or other compensation, except that all members shall be reimbursed for traveling or phone expenses.
2. Members may be removed for just cause, including conflict of interest, bias, and failure to attend scheduled meetings.
3. Appointments to fill unexpired terms shall be made by the Governing Body. (Res. BZA2018-01; 2018).

### **E. Duties of Chairperson.**

1. The Chair of the Board of Zoning Appeals shall call all meetings (and designate the location of the hearing) on request of the Zoning Administrator and/or Governing Body. The Chair shall also conduct all meetings according to (Rev.) Robert's Rule of Order. The Chair shall insure that all final orders or decisions of the Board of Zoning Appeals are rendered within 60 days of the original hearing date: all such orders or decisions must be in writing.
2. In the absence of the chairperson, the vice-chair or secretary of the Planning Commission shall serve as the chair.

### **F. Meetings and Votes of the Board.**

1. The Chair shall conduct all meetings and take all votes. Meetings shall be held at a time and place designated by the Chair of the Board of Zoning Appeals.
2. All votes shall be "yes" or "no" by voice, with a taped record and written minutes kept of each session. Abstentions shall not be allowed, but members may disqualify themselves for cause, in accordance with the Guidelines for Conflict of Interest listed above in Section 8.1 E-4 of this Article. Records of all official actions of the board shall be filed in the office of the City Clerk.
3. All hearings before the Board of Zoning Appeals shall be open to the public. The Board may, however, adjourn a hearing from time to time, and may meet in closed session to debate the record created at the public hearing. The Board shall issue its findings to applicants in writing within 60 days after the first hearing, unless the applicant requests an extension of time.

4. The Chair of the Board of Zoning Appeals may establish, from time to time, reasonable limitations on the length of testimony, and shall have the power to rule on objections and other points of order raised by a board member, an applicant, or member of the public hearing. The Chair shall have the authority to Rule Out Of Order testimony that is not factual, based upon supposition or hearsay.

## **Powers and Responsibilities**

### **A. Appeals.**

1. The Board of Zoning Appeals (BZA) is hereby authorized to hear appeals from any person or official affected by any decision of the Zoning Administrator. In exercising the power of appeals, the BZA may reverse, amend, modify or affirm any discretionary act, requirement, decision or determination of the Zoning Administrator. To this end, the BZA shall have all of 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.

### **B. Procedures for Appeals.**

1. The appeal must be brought within thirty (30) days of the final decision or action of the Zoning Administrator.
2. An Appeal Fee, established by the Fee Schedule for the Unified Development Code, shall be submitted with each appeal application.
3. The appellant must file the proper forms provided by the Zoning Administrator.
4. Notice of the appeal must be published once in the official city newspaper, at least twenty (20) days prior to the hearing.
5. The applicant shall mail a copy of said publication notice by U.S. Mail, certified, return receipt requested and prepaid, to each owner of record of land within a distance of two hundred (200) feet of the perimeter of such proposed change, at least ten (10) days prior to said hearing; sufficient copies of said notice for such purpose to be provided by the City Clerk. Proof of compliance herewith shall be filed under oath by the appellant with the City Clerk prior to such hearing. At least ten (10) days prior to the date set for hearing, the appellant shall file with the City Clerk a (Johnson County AIMS property ownership map) of the land in question, drawn to scale, showing all tracts within a distance of two hundred (200) feet of the perimeter and the ownerships of each such tract; also, the location of all present buildings and proposed development. Such plans or drawings shall be verified by the Building Official or applicable City Staff member for accuracy, and their signature shall be affixed to same.
6. The appellant or agent must appear before the Board of Zoning Appeals on the appointed time and day for the hearing. Failure to appear, unless waived by the Board of Zoning Appeals for cause, shall result in a dismissal of the appeal, and shall require re-application.
7. When an appeal is filed, the action of the Zoning Administrator shall be stayed pending a final decision of the Board of Zoning Appeals.
8. Actions of the Board of Zoning Appeals are final orders and are not sent to the Governing Body for review or approval.

### **C. Variances.**

1. The Board of Zoning Appeals is hereby authorized to issue variances from the specific terms of these regulations. A variance shall not permit any use not permitted by this chapter in such district. The variance shall 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, and shall not result in an unnecessary hardship, and provided that:
  - a. The variance arises from a condition unique to the property in question, and is not a general condition found in the neighborhood.
  - b. That granting the variance will not adversely affect the rights of adjacent property owners or residents.
  - c. That strict adherence to the regulations in the specific case will constitute unnecessary hardship upon the property owner requesting the variance. The board must determine that the hardship is greater than an economic disadvantage, and in fact extends to a means of livelihood, a matter of protecting title to property, or if left uncorrected, would result in a severe and irrevocable change in the applicant's ability to transfer property. A hardship may also be construed to be "honest error" imposed upon a property owner by a ministerial official, or licensed professional, or through eminent domain or zoning resulting in a substantial {a near taking} loss of property rights.
  - d. The variance desired will not adversely affect the public health, safety, morals or welfare, convenience, prosperity or general order.
  - e. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the Zoning Ordinance provisions that are in question.
- B.** Notice of a hearing for a variance shall be published once, at least twenty (20) days in advance of the hearing, in the official city newspaper. The applicant shall mail a copy of said publication notice by U.S. Mail, certified, return receipt requested and prepaid, to each owner of record of land within a distance of two hundred (200) feet of the perimeter of such proposed change, at least ten (10) days prior to said hearing; sufficient copies of said notice for such purpose to be provided by the City Clerk. Proof of compliance herewith shall be filed under oath by the appellant with the City Clerk prior to such hearing. At least ten (10) days prior to the date set for hearing, the appellant shall file with the City Clerk a (Johnson County AIMS property ownership map) of the land in question, drawn to scale, showing all tracts within a distance of two hundred (200) feet of the perimeter and the ownerships of each such tract; also, the location of all present buildings and proposed development. Such plans or drawings shall be verified by the Building Official or applicable City Staff member for accuracy, and their signature shall be affixed to same.

### **Requirements for Applicants**

- A.** Obtain an Accurate Legal Description of the Property.
- B.** Make a scale drawing of your property; usually you may use the recorded subdivision plat or your survey for this purpose.
- C.** A Variance Fee, established by the Fee Schedule for the Unified Development Code, shall be submitted with each variance application.

- D.** Complete the necessary applications on forms provided by the Zoning Administrator.
- E.** Obtain a certified list of names and addresses of property owners within two hundred (200) feet. The Zoning Administrator will supply a sketch of the distance requirement.
- C.** Make an appointment with the Zoning Administrator to review your scale drawing. If possible, bring photos that clarify the need for your variance or exception.
- D.** Write a Statement of Purpose that explains the need for your variance or exception. Explain or clarify any extenuating circumstances that would help the Board of Zoning Appeals to understand the request.

### **Right of Appeal**

- A.** Any person, official or governmental agency dissatisfied with any order, determination or action of the Board of Zoning Appeals may bring an action in the district court of the county to determine the reasonableness of any action or order. Such appeals shall be filed within thirty (30) days of the final decision of the Board.

### **Representatives and Agents**

- A.** Nothing contained in this ordinance shall be construed as prohibiting the right of any applicant or a member of a public hearing to retain an agent to represent them before the Planning Commission, BZA, or Governing Body. Likewise, legal counsel may be used to represent any person having business pertaining to this ordinance. All persons, and their agents or counsels, have a right to speak at the designated time, submit written comments for the record, make objections, note exceptions, or request points of clarification {for the record} during public hearings.