

### Division 3. Board of Adjustment

#### **Sec. 1.04.061 Definitions**

As used in this division:

Board. The board of adjustment.

(Ordinance 554-13 adopted 6/18/13)

#### **Sec. 1.04.062 Organization and procedures**

(a) Membership. The board shall consist of five (5) citizens as full-time members of the board and two (2) citizens as alternate members of the board who shall serve in the absence of one or more regular members when requested to do so by the mayor. Each board member and alternate board member is to be appointed or reappointed by the mayor and confirmed by the town council for staggered terms of two (2) years, respectively. Each member of the board shall be removable for just cause by the town council upon written charges and after a public hearing. Vacancies shall be filled by the town alternate member whose term becomes vacant. The board shall elect its own chairman, who shall serve for a period of one (1) year or until his successor is elected.

(b) Meetings. Meetings of the board shall be held at the call of the chairman and at such times as the board may determine.

(c) Hearings. The hearings of the board of adjustment shall be public; however, the board may go into executive session for discussion but not for a vote on any case before it. The board shall hear the intervention of any owner of property adjacent to, in the rear of, or across the street from a lot as to which the granting of any building permit is pending, and shall also hear any other parties in interest. All hearings are to be heard by at least four (4) members of the board.

(d) Rules and regulations. 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, and shall keep records 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. The board of adjustment shall act by resolution in which four (4) members must concur. The board shall adopt from time to time such additional rules and regulations as it may deem necessary to carry into effect the provisions of this division, and shall furnish a copy of the same to the building inspector, all of which rules and regulations shall operate uniformly in all cases. All of its resolutions and orders shall be in accordance therewith.

(Ordinance 554-13 adopted 6/18/13)

#### **Sec. 1.04.063 Appeals**

(a) Procedure. Appeals may be taken to and before the board of adjustment by any person aggrieved, or by any officer, department, board, or bureau of the town. Such appeal shall be made by filing with the office of the board a notice of appeal and specifying the grounds thereof. The office or department from which the appeal is taken shall forthwith transmit to the board of

adjustment all of the papers constituting the records upon which the action appealed from was taken.

(b) Stay of proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the building inspector shall certify to the board of adjustment that, by reason of facts in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of equity, after notices to the officer from whom the appeal is taken and on due cause shown.

(c) Notice of hearing on appeal. The board shall fix a reasonable time for the hearing on the appeal or other matter referred to it, and shall mail notices of such hearing to the petitioner and to the owners of property lying within two hundred feet (200') or less of street frontage of any point of the lot or portion thereof on which a variation is desired, and to all other persons deemed by the board to be affected thereby, such owners and persons being determined according to the current rolls of the town. Depositing of such written notices in the mail shall be deemed sufficient compliance therewith.

(d) Decision by board. The board shall decide the appeal within a reasonable time. Upon the hearing, any party may appear in person or by agent or attorney. The board may reverse or affirm wholly or partly or may modify the order, requirements, decision, or determination as in its opinion ought to be made in the premises, and to that end shall have all powers of the officer or department from whom the appeal is taken.

(Ordinance 554-13 adopted 6/18/13)

 **Sec. 1.04.064 Powers and duties**

(a) Power to subpoena witnesses, require production of documents, etc. The board shall have the power to subpoena witnesses, administer oaths, and punish for contempt, and may require the production of documents, under such regulations as it may establish.

(b) Appeals based on error. The board shall have the power to hear and decide appeals where it is alleged there is error of law in any order, requirement, decision, or determination made by the building inspector in the enforcement of this ordinance [the zoning ordinance].

(c) Special exceptions. The board shall have the power to hear and decide special exceptions to the terms of this ordinance [the zoning ordinance] upon which the board is required to pass as follows or elsewhere in the ordinance:

(1) Permit the erection and use of a building or the use of premises for railroads if such uses are in general conformance with any master plan and present no conflict or nuisance to adjacent properties.

(2) Permit a public utility or public service structure or building in any district with a ground area or of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare.

(3) Grant a permit for the extension of a use, height, or area regulation into an adjoining district which divides a lot into [in] a single ownership on the effective date of the ordinance.

(4) Permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God, or the public enemy, to the extent of more than fifty percent (50%) of its fair market value, where the board finds some compelling necessity requiring a continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly.

(5) Waive or reduce the parking and loading requirements in any of the districts, whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.

(6) Determine, in cases of uncertainty, the classification of any use not specifically named in the ordinance.

(d) Variances. The board shall have the power to authorize upon appeal in specific cases such variances from the terms of this ordinance [the zoning ordinance] as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done, including the following:

(1) Permit a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographical or architectural considerations, or other conditions, provided such variance will not seriously affect any adjoining property or the general welfare.

(2) Authorize upon appeal, whenever a property owner can show that a strict application of the terms of the ordinance relating to the construction or alterations of buildings or structures will impose upon him unusual and practical difficulties or particular hardship, such variances from the strict application of the terms of the ordinance as are in harmony with its general purpose and intent, but only when the board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by the ordinance and, at the same time, the surrounding property will be properly protected.

(e) Changes. The board shall have no authority to change any provisions of this ordinance [the zoning ordinance] and its jurisdiction is limited to hardship and borderline cases which may arise from time to time. The board may not change the district designation of any land either to a more restrictive or less restrictive zone.