

CHAPTER XXIV. THE BOARD OF ZONING APPEALS

ARTICLE 1. General Provisions

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24-101. ORGANIZATION AND PROCEDURE. The Board of Zoning Appeals (the Board) shall be composed of five members, each of whom shall be a resident of the city, appointed by the Mayor, with the advice and consent of the Governing Body, for a term of three years. Members appointed to the Board of Zoning Appeals pursuant to other regulations which these Regulations replace shall fulfill their terms under those other regulations. All appointments thereafter shall be for a term of three years. Not more than one member shall be appointed from the membership of the Planning Commission. The Board shall elect a chairperson from its membership. If any board member shall be absent without cause, as determined by the Governing Body, for three consecutive meetings, he or she shall thereupon cease to be a board member. Vacancies on the board shall be filled by appointment by the Mayor and approved by the Governing Body for the unexpired term. Members of the Board shall serve without compensation for their service.

24-102. POWERS. The Board shall have the following powers:

1. In accordance with the specific provisions of this Article, to authorize upon appeal of specific cases such variance from the terms of these Regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these Regulations would result in unnecessary hardship, and so that the spirit of these Regulations shall be observed and substantial justice done.
2. To hear and decide those special exceptions to the terms of these Regulations upon which such Board is required to pass under these Regulations.
3. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these Regulations.

24-103. VARIANCES. The Board shall have the power to grant the following variances:

1. Variation in the bulk requirements in any district so as to relieve practical difficulties or particular hardships in cases, when and where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property, or by reason of exceptional topographical conditions, or other extraordinary or exceptional situations or conditions of such piece of property, the strict application of each regulation or restriction would result in peculiar and exceptional practical difficulties to, or exceptional hardship upon the owner of

such property. Such variances shall comply, as nearly as possible, in every respect with the spirit, intent, and purpose of these Regulations; it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and exceptional hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice. Such variance shall be granted only when public safety and welfare are secured, and substantial justice done.

2. A request for a variance may be granted in such case, upon a finding by the Board that ALL of the following conditions have been met:
 - a. The variance requested arises from such 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 an action or actions of the property owner(s) or the applicant;
 - b. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
 - c. The strict application of the provision of these Regulations from which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
 - d. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and;
 - e. That granting the variance desired will not be opposed to the general spirit and intent of these Regulations.

24-104. **SPECIAL EXCEPTIONS.** In order to provide for adjustment in the relative locations of uses and buildings of the same or different classifications, to promote the usefulness of these Regulations as an instrument of fact finding, interpretation, application, and adjustment, and to supply the necessary elasticity to its efficient operations, Special Exceptions are hereby permitted by the terms of this Article. The following building uses are permitted as Special Exceptions if the Board of Zoning Appeals finds that, in its opinion and as a matter of fact, such exceptions will not adversely affect the uses of adjacent and neighboring property permitted by these Regulations:

1. Replacing a nonconforming mobile home or manufactured home with a new and/or larger manufactured home on the same lot, provided, said reestablished manufactured home, if approved, shall be set up in accordance with these Regulations and be properly skirted within 60 days of the placement of said manufactured home

2. A manufactured home on an individual lot, on an emergency basis, on any lot where the permanent dwelling unit has been destroyed by fire, storm, or other such calamity and the dwelling unit has been rendered uninhabitable, and where the placement of the manufactured home will remain for a period not to exceed six (6) months. The placement of the manufactured home for a period not greater than six (6) months is allowed under the conditions by the issuance of an administrative permit by the Zoning Administrator under Section 25-111 of these Regulations
3. Placing a manufactured home as a second home on a lot under instances of extreme hardship or necessity as determined by the Board, provided:
 - a. The applicant shall clearly state the hardship or reason of necessity for requesting the Special Exception.
 - b. The Special Exception may be permitted for a period of up to three (3) years and may be renewed for successive three (3) year periods, provided however, that at such time as the hardship or reason of necessity shall cease to exist, the Special Exception shall become null and void and said manufactured home shall be forthwith removed.
 - c. Such manufactured home shall be maintained in a safe and sanitary condition and shall comply with all applicable adopted codes and procedures of the City of McLouth.
4. In the “R-1” Single –Family Residential District, a private garage(s) and/or storage building(s) as an accessory building(s) for more than four motor vehicles and/or covering more than 900 square feet.

24-105. GUIDELINES FOR CONDITIONS. Where, in these Regulations, Special Exceptions are permitted, provided they are approved by the Board where the Board is authorized to decide appeals or approve certain uses, and where the Board is authorized to approve variances, such approval, decision, or authorizations shall be limited by such conditions as the case may require, including, if necessary, any of the following specifications:

1. No outside signs or advertising structures except professional or directional signs.
2. Limitations of signs as to size, type, color, location or illumination.
3. Amount, direction, and location of outdoor lighting.
4. Amount and location of off-street parking and loading space.

5. Maintenance requirements including cleaning and painting of buildings, structures, or facilities.
6. Type of roof (i.e., gable, flat, etc.).
7. Construction design and type of construction materials to be used.
8. Whether the buildings, if multiple buildings are proposed, can be connected or not.
9. Exit, entrance, door, and window locations.
10. The type and amount of paving, landscaping, fencing, screening, and other such features.
11. Hours of operation, including limitations on nighttime hours.
12. Limitation on structural alterations to existing buildings.
13. Plans for the control or elimination of smoke, dust, gas, noise, or vibration caused by the proposed use.
14. Such other conditions and/or limitations that are deemed necessary.

24-106. **APPLICATION FOR VARIANCE.** Written application for a variance, a Special Exception, or an appeal referred to in this Article shall be filed with the Board, or its agent, upon forms and in a manner prescribed by the Board. Said application shall be submitted within 30 days of the action requiring said variance, Special Exception, or appeal.

24-107. **STAY OF PROCEEDINGS.** Upon the application for an appeal of an order, requirement, decision, or determination made by an administrative official in the enforcement of these Regulations, said application shall stay all legal proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board, after the application for appeal has been filed with him, that by reason of facts stated in the certificate the stay would, in his opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed except by a restraining order which may be granted by the Board, or by a court of competent jurisdiction on application, on notice to the Zoning Administrator, and on due case shown.

24-108. **PUBLIC HEARING.** The Board shall hold a public hearing on each application for an appeal, decision, variance, or special exception. Applications for a variance or special exception must be accompanied with a certified list of property owners, and their addresses, within 1,000 feet of the property for which the variance or special exception is being sought. For all applications, notice of the time and place of the

public hearing shall be published once in the official City paper not less than 20 days prior to the date of such public hearing. In addition, for all applications for a variance or special exception all property owners within 1,000 feet shall be notified by registered mail of such public hearing and be given an opportunity to attend and be heard regarding such application for a variance or special exception.

24-109. FINDINGS AND RECORDS OF PROCEEDINGS. The Board shall hold the public hearing at such prescribed time and place and shall make its findings and determinations in writing within a reasonable time from the date of the filing of the application, and shall forthwith transmit a copy thereof to the applicant. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, and shall keep records of its examinations and other official actions, which shall be a public record.

24-110. DECISIONS OF THE BOARD. In exercising the foregoing 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 Jefferson 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 said Board of Zoning Appeals.