

Nebraska State Statutes – Board of Adjustment

19-907. Board of adjustment; appointment; restriction on powers.

Except as provided in section [19-912.01](#), the local legislative body shall provide for the appointment of a board of adjustment. Any actions taken by the board of adjustment shall not exceed the powers granted by section [19-910](#).

Source

Laws 1927, c. 43, § 7, p. 184;
C.S.1929, § 19-907;
R.S.1943, § 19-907;

Laws 1975, LB 410, § 16;
Laws 1978, LB 186, § 5;
Laws 1998, LB 901, § 1.

19-908. Board of adjustment; members; term; vacancy; adopt rules; meetings; records; open to public.

The board of adjustment shall consist of five regular members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the board of adjustment shall be appointed from the membership of the planning commission, and the loss of membership on the planning commission by such member shall also result in his or her immediate loss of membership on the board of adjustment and the appointment of another planning commissioner to the board of adjustment. After September 9, 1995, the first vacancy occurring on the board of adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city or village at such time as more than two hundred persons reside within such area. Thereafter, at all times, at least one member of the board of adjustment shall reside outside of the corporate boundaries of the city or village but within its extraterritorial zoning jurisdiction. The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to sections [19-901](#) to [19-914](#). Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. 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.

Source

Laws 1927, c. 43, § 7, p. 184;
C.S.1929, § 19-907;
R.S.1943, § 19-908;

Laws 1967, c. 92, § 5, p. 285;
Laws 1975, LB 410, § 17;
Laws 1995, LB 805, § 1.

Annotations

Procedural rules detailed in statutes and city zoning ordinance need not be further adopted by a board of adjustment. *South Maple Street Assn. v. Board of Adjustment of City of Chadron*, 194 Neb. 118, 230 N.W.2d 471 (1975).

19-909. Board of adjustment; appeals to board; record on appeal; hearing; stays.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, 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 of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

Source

Laws 1927, c. 43, § 7, p. 185;
C.S.1929, § 19-907;

R.S.1943, § 19-909.

Annotations

Procedural rules detailed in statutes and city zoning ordinance need not be further adopted by a board of adjustment. *South Maple Street Assn. v. Board of Adjustment of City of Chadron*, 194 Neb. 118, 230 N.W.2d 471 (1975).

19-910. Board of adjustment; powers; jurisdiction on appeal; variance; when permitted.

(1) The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the legislative body, have only the following powers: (a) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under subsection (3) of section [19-929](#); (b) to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; and (c) when by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this section and sections [19-901](#), [19-903](#) to [19-904.01](#), and [19-908](#) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution.

(2) No such variance shall be authorized by the board unless it finds that: (a) The strict application of the zoning regulation would produce undue hardship; (b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (c) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (d) the granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice. No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

(3) In exercising the powers granted in this section, the board may, in conformity with sections [19-901](#) to [19-915](#), reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

Source

Laws 1927, c. 43, § 7, p. 185;
C.S.1929, § 19-907;
R.S.1943, § 19-910;
Laws 1967, c. 92, § 6, p. 286;

Laws 1969, c. 114, § 1, p. 526;
Laws 1975, LB 410, § 18;
Laws 1978, LB 186, § 6;
Laws 2004, LB 973, § 1.

Cross References

For other zoning boards acting as a zoning board of adjustment for a municipality, see section [19-912.01](#).

Annotations

Due to the similarity between section 14-411 and this section when *Frank v. Russell*, 160 Neb. 354, 70 N.W.2d 306 (1955), was decided, Frank is applicable to decisions rendered under both statutes. *Eastroads, L.L.C. v. Omaha Zoning Bd. of Appeals*, 261 Neb. 969, 628 N.W.2d 677 (2001).

The district court's granting of a zoning variance was not erroneous where the strict application of the subject zoning regulation would, because of the higher elevation of the movant's property, result in undue hardship, which is not of the type generally shared by other properties in the same zoning district and vicinity. Furthermore, the variance sought would not create a substantial detriment to the adjacent property, the character of the district would not be changed, and the variance would not produce a substantial detriment to the public good or substantially impair the intent of the zoning regulation. *Barrett v. City of Bellevue*, 242 Neb. 548, 495 N.W.2d 646 (1993).

Procedural rules detailed in statutes and city zoning ordinance need not be further adopted by a board of adjustment. *South Maple Street Assn. v. Board of Adjustment of City of Chadron*, 194 Neb. 118, 230 N.W.2d 471 (1975).

Variance from zoning ordinance requires concurring vote of four members of board of zoning adjustment. *City of Imperial v. Raile*, 187 Neb. 404, 191 N.W.2d 442 (1971).

Request for rezoning may be presented to board of adjustment. *Weber v. City of Grand Island*, 165 Neb. 827, 87 N.W.2d 575 (1958).

A variance should be granted only if strict application of the regulation, due to the unusual characteristics of the property existing at the time of the enactment of the regulation, would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner. Any grant of a variance must be supported by evidence relating to each of the four factors enumerated in this section. *City of Battle Creek v. Madison Cty. Bd. of Adjust.*, 9 Neb. App. 223, 609 N.W.2d 706 (2000).

19-911. Board of adjustment; legislative body of village may act; exception; powers and duties.

Notwithstanding the provisions of sections [19-907](#) and [19-908](#), the legislative body of a village may, except as set forth in section [19-912.01](#), provide by ordinance that it shall constitute a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of sections [19-901](#) to [19-905](#) may provide that as such board of adjustment it may exercise only the powers granted to boards of adjustment by section [19-910](#). As such board of adjustment it shall adopt rules and procedures that are in harmony with sections [19-907](#) to [19-910](#), and shall have the powers and duties therein provided for the board of adjustment, and other parties shall have all the rights and privileges therein provided for. The concurring vote of two-thirds of the members of the legislative body acting as a board of adjustment shall decide any question upon which it is required to pass as such board.

Source

Laws 1927, c. 43, § 8, p. 186;
C.S.1929, § 19-908;
R.S.1943, § 19-911;

Laws 1975, LB 410, § 19;
Laws 1978, LB 186, § 7;
Laws 1998, LB 901, § 2.

Annotations

The city council of a first-class city is not authorized by this section to sit as a board of adjustment. *Staley v. City of Blair*, 206 Neb. 292, 292 N.W.2d 570 (1980).

City council may sit as a board of adjustment. *Weber v. City of Grand Island*, 165 Neb. 827, 87 N.W.2d 575 (1958).

19-912. Board of adjustment; appeal; procedure.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to the district court a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of such illegality. Such petition must be presented to the court within fifteen days after the filing of the decision in the office of the board. Upon the filing of such petition a summons shall be issued and be served upon the board of adjustment, together with a copy of the petition. Return of service shall be made within four days after the issuance of the summons. Within ten days after the return day of such summons, the board of adjustment shall file an answer to said petition which shall admit or deny the substantial averments of the petition, and shall state the contentions of the board with reference to the matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing answer, the court shall proceed to hear and determine the cause without delay and shall render judgment thereon according to the forms of law. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Said appeal to the district court shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the state regulating appeals in actions at law.

Source

Laws 1927, c. 43, § 9, p. 186;
C.S.1929, § 19-909;

R.S.1943, § 19-912;
Laws 1963, c. 89, § 3, p. 301.

Annotations

There is nothing in this section which requires one to either seek and obtain a restraining order or forgo any challenge to a variance. On the contrary, this section merely provides that a challenger who wishes to incur the cost of obtaining a restraining order may do so in order to temporarily protect himself from the consequences of the variance during the pendency of the appeal. *Bowman v. City of York*, 240 Neb. 201, 482 N.W.2d 537 (1992).

Appeal allows a full review of both law and facts. *City of Imperial v. Raile*, 187 Neb. 404, 191 N.W.2d 442 (1971).

Appeal may be taken from order of board of adjustment permitting rezoning. *Weber v. City of Grand Island*, 165 Neb. 827, 87 N.W.2d 575 (1958).

An appeal to the courts from decision of city council is authorized. *Kelley v. John*, 162 Neb. 319, 75 N.W.2d 713 (1956).

Provision for appeal contemplates a review of facts as well as law. *Frank v. Russell*, 160 Neb. 354, 70 N.W.2d 306 (1955).

A city council, under a zoning ordinance, cannot restrict the use of property in an unreasonable or arbitrary manner. *Coulthard v. Board of Adjustment of City of Neligh*, 130 Neb. 543, 265 N.W. 530 (1936).