

## **§ 32.002 BOARD OF ADJUSTMENT.**

(A) The Mayor shall appoint, with the consent of the City Council, a Board of Adjustment which shall consist of 5 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 member shall be appointed for a term of 3 years and shall be removable for cause by the Mayor and City Council 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 that 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. If the Board does not include a member who resides in the extraterritorial zoning jurisdiction of the City, the first vacancy occurring on the Board of Adjustment after the effective date of this section shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the City at such time as more than 200 persons reside within that area. Thereafter, at all times, at least one member of the Board of Adjustment shall reside outside the corporate boundaries of the City but within its extraterritorial zoning jurisdiction. Neither the Mayor nor any member of the City Council shall serve as a member of the Board of Adjustment. (Neb. RS 19-908)

(B) The members of the Board shall serve without compensation and may be required, in the discretion of the City Council, to give a bond in a sum set by resolution of the City Council and conditioned upon the faithful performance of their duties. The Board shall organize at its first meeting each year after the City Council meeting when appointments are regularly made and elect from its membership a chairperson and secretary. No member of the Board of Adjustment shall serve in the capacity of both chairperson and secretary of the Board.

(C) The Board shall adopt rules in accordance with the provisions of Neb. RS 19-901 through 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. Special meetings may be also held upon the call of any 3 members of the Board. A majority of the Board shall constitute a quorum for the purpose of doing business. The 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. It shall be the duty of the secretary to keep complete and accurate minutes of all Board meetings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact, and to keep records of the Board's examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be public record. The Board shall be responsible for making those reports and performing those other duties as the Mayor and City Council may designate. (Neb. RS 19-908)

(D) Appeals to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the City affected by any decision of the administrative officer. This 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 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, after the notice of appeal shall have been filed with him or her, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board 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 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. (Neb. RS 19-909)

(E) The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the City Council, have only the following powers: (1) 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 Neb. Rev. Stat. 19-929; (2) to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; and (3) 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 Neb. Rev. Stat. 19-910 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.

(F) No such variance shall be authorized by the board unless it finds that: (1) The strict application of the zoning regulation would produce undue hardship; (2) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (3) 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 (4) 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.

(G) In exercising the powers granted in this section, the board may, in conformity with Neb. Rev. Stat. 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 affect any variation in such regulation.

Appeals from a decision by the Board may be taken as provided in Neb. RS 19-912.  
(Neb. RS 19-910)