

MCCOOK CITY COUNCIL

REGULAR MEETING

**Monday, November 23, 2020
5:30 PM - City Council Chambers**

Call to Order and Roll Call.

Open Meetings Act Announcement.

Items

1. Approve the minutes of the November 9, 2020 regular Board of Zoning Adjustment meeting.
2. Public Hearings and Regular Agenda.
 - A. Consider request for a variance of the side yard setback requirements from 10'0" (ie. corner lot) to 0'0" in a Residential Medium Density (RM) District; applicant: Robert Portz and Penelope Cooper - 1702 West 2nd Street, McCook, NE; and that the applicants have satisfactorily demonstrated that the variance criteria have been met.
 - B. Public Hearing - request for a variance of the side yard setback requirement in a Residential Medium Density (RM) District (807 East "G" Street, McCook, NE), from 5'0" to 0'0"; applicants: Randy and Kim Bauer (owners) and Kristi Korell (renter).
 1. Close Public Hearing.
 - C. Consider request for a variance of the side yard setback requirement from 5'0" to 0'0" in a Residential Medium Density (RM) District (807 East "G" Street, McCook, NE); applicants: Randy and Kim Bauer (owners) and Kristi Korell (renter); and that the applicants have satisfactorily demonstrated that the variance criteria have been met.

Adjournment.

**CITY MANAGER'S REPORT
NOVEMBER 23, 2020 BOARD OF ZONING ADJUSTMENT MEETING**

ITEM: 1

Approve the minutes of the November 9, 2020 special Board of Zoning Adjustment meeting.

BACKGROUND:

Receive and approve the minutes.

**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk

November 18, 2020

McCook Board of Zoning Adjustment
November 9, 2020
12:00 PM Central

A MEETING OF THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF MCCOOK, NEBRASKA convened in open, regular, and public session at 12:00 o'clock P.M. in the City Council Chambers.

Present: Chair Reitz; Vice Chair Hilker; Board members Larson, Moore, Chipman.

Absent: Board member Haney.

City Officials present: City Manager Schneider, City Clerk Doak.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on November 5, 2020, the designated method of giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to all members of the Board of Zoning Adjustment. Availability of the agenda was communicated in the advance notice. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

Chair Reitz announced that a copy of the Open Meetings Act was posted by the entrance to the Council Chambers and available for public review.

1. Approve the minutes of the June 22, 2020 regular Board of Zoning Adjustment meeting.

Motion to approve the minutes of the June 22, 2020 regular Board of Zoning Adjustment meeting. This motion, made by Hilker and seconded by Moore, passed.

Reitz: YEA, Hilker, YEA, Chipman: YEA, Haney: ABSENT, Larson: YEA, Moore: YEA
YEA: 5, NAY: 0, ABSENT: 1

2. Public Hearings and Regular Agenda.

- 2.A. Public Hearing - request for a variance of the side yard setback requirements in a Residential Medium Density (RM) District (1702 West 2nd Street, McCook, NE), from 10'0" (ie. corner lot) to 0'0"; applicant: Robert Portz and Penelope Cooper.

Motion to recess as a Board of Zoning Adjustment and convene a public hearing for the purpose of receiving public comment on a request for a variance of the side yard setback requirements in a Residential Medium Density (RM) District (1702 West 2nd Street, McCook, NE), from 10'0" (a corner lot) to 0'0"; applicant: Robert Portz and Penelope Cooper, with the City Manager to act as hearing officer. This motion, made by Moore and seconded by Larson, passed.

Reitz: YEA, Hilker, YEA, Chipman: YEA, Haney: ABSENT, Larson: YEA, Moore: YEA
YEA: 5, NAY: 0, ABSENT: 1

The City Manager offered and received into evidence Exhibit #1 - City Manager's Report prepared for the October 26, 2020 moved to November 9, 2020 Board of Zoning Adjustment meeting (2 pages); Exhibit #2 - Notice of Public Hearing (1 page); Exhibit #3 - Variance Application and attachments (7 pages); Exhibit #4 - Findings and Determinations of the Board of Zoning Adjustment (4 pages); and Exhibit #5 - copy of Article 25 - Board of Zoning Adjustment of the McCook Zoning Ordinance (3 pages).

City Manager Schneider reviewed the information presented in Exhibit #1: "A variance application has been submitted by Robert Portz and Penelope Cooper. The property at issue is located at 1702 West 2nd Street. The property is located in the RM District and the house sits on a corner lot. The applicants request a reduction of the side yard setback for corner lots from 10'0" to 0'0". The reason for the request is to allow for the construction of a carport off of their existing garage."

"The applicant's property has some unique features. The most notable feature with respect to this request is that the front of the house faces West 2nd Street, while the garage faces West "S" Street. The entrance for the garage is off of West "S" Street. The proposed carport would stretch from the front of the garage to the property line. When City of McCook staff reviewed the property, it was noted that there are a number of trees that already extend into the City's right of way. The proposed carport would not extend beyond the existing trees. Additionally, the applicants informed City staff that sinkholes have been located on the western portion of the lot making it imprudent to build on the unimproved portion of their lot located off of the alley. Staff also noted that the property to the west contains an accessory structure that sits within the City's right of way. The neighboring structure poses no site impediment or any other additional problem to traffic or adjacent property owners."

"Due to the uniqueness of the property, as well as the existing placement of neighboring structures, City staff does not believe the application will pose any undue hardship for members of the public."

Robert Portz and Penelope Cooper, applicants were present to address questions from the Board.

Discussion was held by the board.

Chair Reitz asked if the applicants had picked out a carport, noting that typically the Board gives a variance for the amount needed; He said the standard size of a carport is 21' and he expressed concerns being able to place a carport of that size in the amount of area available.

Motion to adjourn the public hearing and to reconvene as the Board of Zoning Adjustment. This motion, made by Chipman and seconded by Moore, passed.

Reitz: YEA, Hilker, YEA, Chipman: YEA, Haney: ABSENT, Larson: YEA, Moore: YEA

YEA: 5, NAY: 0, ABSENT: 1

2.B. Consider request for a variance of the side yard setback requirements from 10'0" (ie. corner lot) to 0'0" in a Residential Medium Density (RM) District; applicant: Robert Portz and Penelope Cooper - 1702 West 2nd Street, McCook, NE; and that the applicants have satisfactorily demonstrated that the variance criteria have been met.

Motion to postpone consideration of this item until the November 23, 2020 Board meeting, held at 5:30 P.M., to allow the applicants to determine if their desired carport could be installed within the area available and if so, what would the necessary variance of setback requirement be. This motion, made by Moore and seconded by Hilker, passed.

Reitz: YEA, Hilker, YEA, Chipman: YEA, Haney: ABSENT, Larson: YEA, Moore: YEA
YEA: 5, NAY: 0, ABSENT: 1

Chair Reitz reminded the applicants that there is a fifteen day period in which any decision of the Board of Adjustment may be appealed to the District Court. Building permits will not be issued before the end of the fifteen day period.

Adjournment.

There being no further business to come before the Board, Chair Reitz declared the meeting adjourned at 12:27 P.M.

Lea Ann Doak, City Clerk-Treasurer
Recording Secretary

CITY MANAGER'S REPORT
NOVEMBER 23, 2020 BOARD OF ZONING ADJUSTMENT MEETING

- Item A Consider request for a variance of the side yard setback requirements from 10'0" (ie. corner lot) to 0'0" in a Residential Medium Density (RM) District; applicant: Robert Portz and Penelope Cooper - 1702 West 2nd Street, McCook, NE; and that the applicants have satisfactorily demonstrated that the variance criteria have been met.
- 2.A.**

BACKGROUND:

At our last Board of Zoning Adjustment Meeting held on November 9, 2020, the Board voted to postpone the meeting to November 23, 2020 to allow the applicant time to determine if their carport would fit on their property if the requested variance was granted. Robert Portz spoke with Building Inspector, Barry Mooney and informed him the proposed carport can be custom built. Specifically, the proposed carport will be 15 feet in length which would assure the structure does not extend into the City's right-of-way.

APPROVALS:



Lea Ann Doak, City Clerk

November 19, 2020



Nathan A. Schneider, City Manager

November 19, 2020



Barry Mooney, Building Inspector

November 19, 2020

**CITY MANAGER'S REPORT
OCTOBER 26, 2020 BOARD OF ZONING ADJUSTMENT MEETING**

Item A Public Hearing - request for a variance of the side yard setback requirements in a Residential Medium Density (RM) District (1702 West 2nd Street , McCook, NE), from 10'0" (ie. corner lot) to 0'0"; applicant: Robert Portz and Penelope Cooper.

2

Item B Consider request for a variance of the side yard setback requirements from 10'0" (ie. corner lot) to 0'0" in a Residential Medium Density (RM) District; applicant: Robert Portz and Penelope Cooper - 1702 West 2nd Street, McCook, NE; and that the applicants have satisfactorily demonstrated that the variance criteria have been met.

BACKGROUND:

A variance application has been submitted by Robert Portz and Penelope Cooper. The property at issue is located at 1702 West 2nd Street. The property is located in the RM District and the house sits on a corner lot. The applicants request a reduction of the side yard setback for corner lots from 10'0" to 0'0". The reason for the request is to allow for the construction of a carport off of their existing garage.

The applicant's property has some unique features. The most notable feature with respect to this request is that the front of the house faces West 2nd Street, while the garage faces West S Street. The entrance for the garage is off of West S Street. The proposed carport would stretch from the front of the garage to the property line. When City of McCook staff reviewed the property, it was noted that there are a number of trees that already extend into the City's right of way. The proposed carport would not extend beyond the existing trees. Additionally, the applicants informed City staff that sinkholes have been located on the western portion of the lot making it imprudent to build on the unimproved portion of their lot located off of the alley. Staff also noted that the property to the west contains an accessory structure that sits within the City's right of way. The neighboring structure poses no site impediment or any other additional problem to traffic or adjacent property owners.

Due to the uniqueness of the property, as well as the existing placement of neighboring structures, City staff does not believe the application will pose any undue hardship for members of the public.

RECOMMENDATION:

Item A Public Hearing - request for a variance of the side yard setback requirements in a Residential Medium Density (RM) District (1702 West 2nd Street , McCook, NE), from 10'0" (ie. corner lot) to 0'0"; applicant: Robert Portz and Penelope Cooper.

EXHIBIT #1

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Item B Consider request for a variance of the side yard setback requirements from 10'0" (ie. corner lot) to 0'0" in a Residential Medium Density (RM) District; applicant: Robert Portz and Penelope Cooper - 1702 West 2nd Street, McCook, NE; and that the applicants have satisfactorily demonstrated that the variance criteria have been met.

APPROVALS:



Lea Ann Doak, City Clerk

October 20, 2020



Nathan A. Schneider, City Manager

October 20, 2020



Barry Mooney, Building Inspector

October 20, 2020

NOTICE OF HEARING

**REQUEST FOR
VARIANCE**

NOTICE IS HEREBY GIVEN that a public hearing will be held on a request for a variance of the side yard setback requirement from 10'0" to 0'0" in a Residential Medium Density (RM) District.

LEGAL: Lot Twelve (12), Block Two (2), North McCook Addition to the City of McCook, all in Red Willow County, Nebraska.

APPLICANT: Robert Portz, Penelope Cooper

ADDRESS: 1702 W 2nd Street, McCook

A Public Hearing will be held on the Date, Time, and at the Place listed below:

October 26, 2020 - 5:30 P.M.
Board of Zoning Adjustment
City Council Chambers
505 West "C" Street

ANY AND ALL PERSONS desiring to comment on the above-described request will be given an opportunity to be heard. Please direct all inquiries to Nate Schneider, McCook City Manager at 308-345-2022 ext. 225.

-s- Lea Ann Doak
City Clerk

Publish: October 22, 2020.

EXHIBIT #2

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VARIANCE APPLICATION

APPLICATION NO. _____ DATE: 9/21/2020

FEE ATTACHED: \$75.00

APPLICATION COMPLETE: _____ SIGNED: Penelope Cooper
Applicant

1. Applicant's Name: Robert Portz, Penelope Cooper

2. Applicant's Address: 1702 W 2nd Phone: 340-0479
Email Address: rportz@gpc.com.net

3. Address of Property Affected: 1702 W 2nd

4. Legal Description of Property: North McCook Add, B1K 2, lot 12

5. Zoning residential Corner Lot? Yes No _____

6. Applicant's interest in the Property (i.e. owner, tenant), attached proof of ownership:
owner

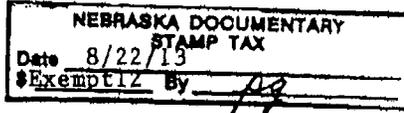
7. Description of variance requested: (Example: Variance of side lot set back requirement from 5 feet to 3 feet). begin carport at 35' from center of street instead of 40'

8. Sections of Zoning Ordinance No. 2016-2929 which are affected (to be completed by staff)
ARTICLE: _____
SECTION: _____

Recorded August 22, 2013, 8:45 A.M.
Instrument No. 2013-01680

Recording Fees: \$10.00 Pages: 1

Pauletta Server
Register of Deeds Red Willow County, NE



Return to:
Robert Portz
1702 W 2nd Street
McCook NE 69001

QUITCLAIM DEED

Penelope Cooper, fka Penelope Portz, herein called GRANTOR, in consideration of a Property Settlement in dissolution of marriage agreement, hereby quitclaims all right, title and interest unto Robert J. Portz, GRANTEE, the following described real estate (as defined in Neb. Rev. Stat. § 76-201):

Lot 12, Block 2, North McCook Addition to McCook, Red Willow County, Nebraska.

subject to easements and restrictions of record.

August 22, 2013.

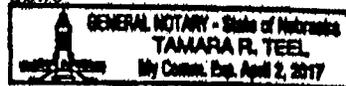
Penelope Cooper
Penelope Cooper

STATE OF NEBRASKA)
)
RED WILLOW COUNTY)

The foregoing instrument was acknowledged before me on August 22, 2013, by Penelope Cooper.

Tamara R. Teel
Notary Public

My Commission Expires: 4/2/2017



9. Draw the general area of your property and structure (existing and proposed) and adjacent properties and structures. (Not to scale).

N
W E
S

see original application

The Applicant must provide proof that the following criteria are met regarding the parcel of property for which the variance is being requested:

1. Referring to the specific parcel of property,
 - a) the parcel of property is exceptionally narrow;
 - b) the parcel of property is exceptionally shallow; or
 - c) the shape of the parcel of property is exceptional.

OR

 - d) the parcel of property has exceptional topographic conditions; or
 - e) the parcel of property has other exceptional or extraordinary conditions.
2. Strict application of the zoning ordinance would result in:
 - a. peculiar and exceptional practicable difficulties to the owner; OR
 - b. exceptional and undue hardships on the owner of such property.
3. Such relief may be granted without:
 - a. substantial detriment to the public good; AND
 - b. without substantially impairing the intent and purpose of the ordinance.
4. No variance shall be authorized unless the Board finds:
 - a. strict application of the zoning ordinance would produce undue hardship;
 - b. such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
 - c. authorization of such variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by granting the variance;
 - d. granting the variance is based upon reason of demonstrable and exceptional hardship as distinguished from variation for purposes of convenience, profit, or caprice.
5. No variance shall be authorized if request is:
 - a. of a general and recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

Please provide documentation of the above, such as maps, photographs, or other evidence to substantiate your application.

THE BOARD MUST FIND THAT ALL OF THE ABOVE REQUIREMENTS ARE MET BY THE APPLICANT BY A CONCURRING VOTE OF FOUR MEMBERS OF THE BOARD.

APPLICANT DECLARATIONS

1. The following special conditions or circumstances exist on the land which pose an undue hardship on the applicant: (Describe conditions and circumstances.)

the west side of the property is prone
to sink holes

2. Please state the minimum variance necessary to permit the proposed construction

5'

3. Without the granting of this variance the applicant would suffer a hardship not suffered by other properties located in the same zoning district and same vicinity.

Yes

No

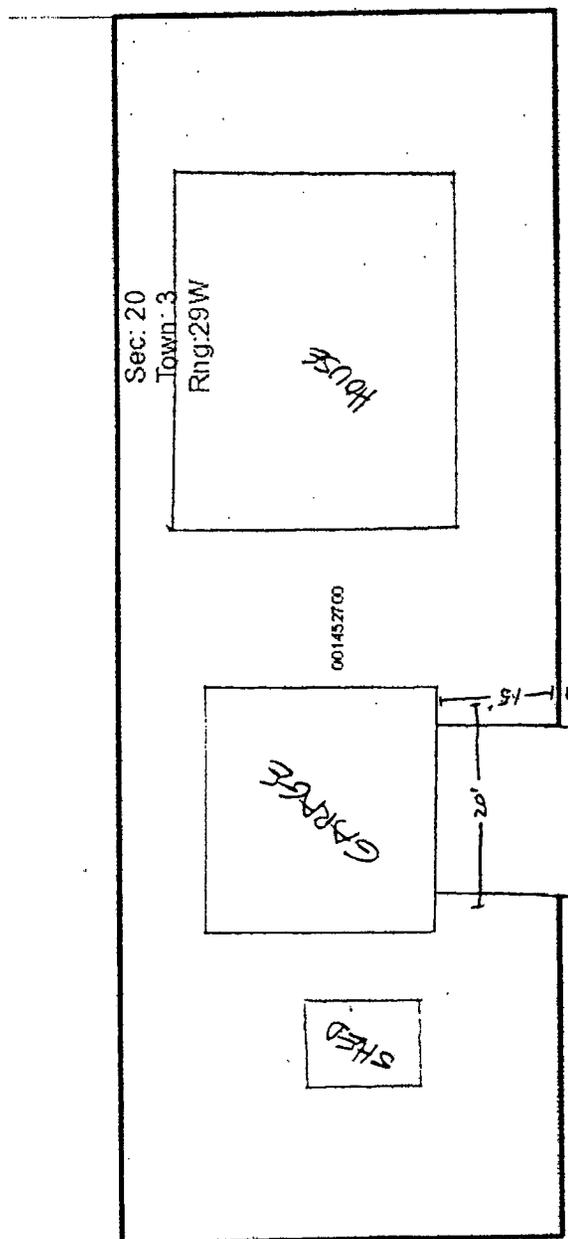
4. The granting of the variance will not adversely affect the rights of the adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by the Zoning Ordinance. Yes No

(Attach approval certifications from adjacent property owners.)

5. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare. Yes No

W 2nd St

N



301

S St

S

N

Barry Mooney

From: noreply@civicplus.com
Sent: Monday, September 14, 2020 8:21 AM
To: bldginsp@cityofmccook.com
Subject: Online Form Submittal: BUILDING PERMIT APPLICATION

If you are having problems viewing this HTML email, click to view a [Text version](#).

BUILDING PERMIT APPLICATION

Job Address:* 1702 W 2nd St

PROPERTY OWNER INFORMATION

Name:* Robert Portz
Address:* 1702 W 2nd St
City/State/Zip:* McCook NE 69001
Phone:* 3083408871
Email Address: pportz@gpcom.net
Date:* 9/14/2020

Do you have a contractor doing the work?* Yes No

*If Yes, please complete the following section.

CONTRACTOR INFORMATION

Name:
Address:
City/State/Zip:
Phone:
Email Address:
Date:

Is the Contractor licensed?* Yes No

Type of Work:* New Construction Replacement
 Addition Other
 Alteration

Category of Construction:* 1 & 2 Family Dwelling Commercial/Industrial
 Multifamily Other
 Accessory Building

Type of Occupancy:* Carport

Zoning District:

Flood Zone: Yes No

Description of Work (Include size/square footage)* 20 x 15 carport over driveway. 300 sq ft. Not able to build on west side of lot due to sink holes.

Total Project Cost* 2500

* Include a Site Plan depicting the locations of the existing construction setbacks and the proposed construction setbacks.

* Include a detailed set of plans showing all details necessary to construct the structure to meet all applicable code requirements.

*Check the Red Willow County Register of Deeds office for any restrictions or covenants in our construction area.

NOTE: If project is commercial/industrial construction, the State Fire Marshall's office will need to be contacted for any plan review fees and specifications for building plans, if required:
Address: 246 South 14th St., Lincoln, NE 68508
Phone: 402-471-2027

**FINDINGS AND DETERMINATIONS OF
MCCOOK BOARD OF ZONING ADJUSTMENT**

DATE: _____

SIGNED: _____
Chairman

VARIANCE CRITERIA

JUSTIFIES VARIANCE

YES NO

1. Referring to the specific parcel of property,

- a) the parcel of property is exceptionally narrow;
- b) the parcel of property is exceptionally shallow; or
- c) the shape of the parcel of property is exceptional.

OR

- d) the parcel of property has exceptional topographic conditions; or
- 3) the parcel of property has other exceptional or extraordinary conditions.

2. Strict application of the zoning ordinance would result in:

- a) peculiar and exceptional practicable difficulties to the owner; OR
- b) exceptional and undue hardships on the owner of such property.

3. Such relief may be granted without:

- a) substantial detriment to the public good; AND
- b) without substantially impairing the intent and purpose of the ordinance.

4. No variance shall be authorized unless the Board finds:

- a) The strict application of the provisions of the Zoning Ordinance would produce an undue hardship on the applicant.

EXHIBIT #4

- b) Such hardship is not generally shared by other properties in the same zoning district and in the same vicinity. _____
 - c) The granting of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed. _____
 - d) The variance request is based upon reasons of demonstrable and exceptional hardship as distinguished from convenience, profit or caprice. _____
5. The variance requested is not so general or of re-occurring nature that it might more reasonably be addressed through a change in the Zoning Regulations. _____
6. The applicant has filed a proper and complete application. _____
7. Application for a variance submitted must demonstrate the following:
- A. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not found in the same zoning district and which were not created by an action of the property owner or the applicant; _____
 - B. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction; _____
 - C. The literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance; _____
 - D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by this Ordinance to other land or structures in the same district; _____
 - E. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare; _____
 - F. The variance requested is the minimum variance that will make possible the reasonable use of the land or structure; _____
 - G. Granting the variance requested will not be opposed to the general spirit and intent of this Ordinance. _____
8. The notice of meeting appeared in the paper and applicants and other parties of interest have been sent written notice of the meeting at which a hearing on the variance request is being considered. _____

8. The variance requested does not allow a use not permissible under the Zoning Ordinance in the district in which it is presently located.

BOARD OF ZONING ADJUSTMENT DECISION

The McCook Board of Zoning Adjustment hereby determines that the variance should _____ be granted, _____ not be granted, _____ be granted with conditions. Conditions, modifications or safeguards prescribed as a part of the variance approval are as follows: _____

Variance criteria not met are as follows: _____

Dated this _____ day of _____, 20 _____.

ARTICLE 25

BOARD OF ZONING ADJUSTMENT

Article 25 - Board of Zoning Adjustment

Section 2501. Creation, Members, Meetings, Rules.¹ There is hereby established a Board of Zoning Adjustment. The word BOARD, when used in this Zoning Ordinance, shall be construed to mean the Board of Zoning Adjustment. The Board of Zoning Adjustment is appointed by the City Council and shall consist of five (5) regular members, plus one (1) 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.

One (1) member only of the City Board of Zoning Adjustment shall be appointed by the City Council from membership of the Planning Commission and the loss of membership on the Planning Commission by such member shall also result in the immediate loss of membership on the Board of Zoning Adjustment and the appointment of another Planning Commissioner to the Board of Zoning Adjustment. One (1) member of the board of adjustment shall reside outside of the corporate boundaries of the City but within its extraterritorial zoning jurisdiction.

The members appointed shall serve for terms of three (3) years and be removable for cause by the City Council upon written charges and after public hearing. Vacancies shall be filled by appointment for the unexpired term.

The Board of Zoning Adjustment shall annually in October elect one of its members as Chairperson, another as Vice-Chairperson, who shall act as Chairperson in the Chairperson's absence, and appoint a Secretary, who may be an officer or an employee of the City. Each shall serve until his or her successor has been selected. The presence of four (4) members of the Board shall be necessary to constitute a quorum.

All meetings of the Board shall be open to the public. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, if absent or failing to vote, indicating the 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 shall adopt from time to time any rules and regulations as it may deem necessary, to carry the appropriate provisions of this Zoning Ordinance into effect and all of its resolutions and order shall be in accordance therewith.

Section 2502. Appeals to Board, Record of Appeal, Hearing and Stays. Appeals to the Board of Zoning Adjustment 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. 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 Zoning 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 Zoning 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 Zoning Adjustment or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

¹Revised September 18, 2017 - Ordinance No. 2017-2951

The Board of Zoning 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.

Section 2503. Powers and Jurisdiction Relating to Administrative Review. The Board of Zoning Adjustment shall have the power to hear and decide appeals where 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 or to interpret any map, except that the authority to hear and decide appeals shall not apply to decisions made under Article 24 of this Ordinance.

Section 2504. Powers and Jurisdiction Relating to Variances. The Board of Zoning Adjustment shall have the power, where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, 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 regulation under this Ordinance 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 this Ordinance.

1. No such variance shall be authorized by the Board unless it finds that the strict application of the Ordinance would product undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; 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 the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice;
2. 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 nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.
3. A variance from the terms of this Ordinance shall not be granted by the Board of Zoning Adjustment unless and until a written application for a variance is submitted demonstrating the following:
 - A. Special conditlons and circumstances exist which are peculiar to the land, structure, or building involved and which are not found in the same zoning district and which were not created by an action of the property owner or the applicant;
 - B. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction;
 - C. The literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
 - D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by this Ordinance to other land or structures in the same district;
 - E. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare;

- F. The variance requested is the minimum variance that will make possible the reasonable use of the land or structure;
 - G. Granting the variance requested will not be opposed to the general spirit and intent of this Ordinance.
4. No non-conforming use of neighboring lands, structures or buildings in the same district, and no permitted structures or buildings in other districts shall be considered grounds for the issuance of variance;
 5. Notice of public hearing shall be given as in Section 2502 above; the public hearing shall be held; any party may appear in person, or by agent or by attorney; the Board of Zoning Adjustment shall make findings that the requirements of this section have been met by the applicant for a variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance; and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; the Board shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare;
 6. In granting any variance, the Board of Zoning Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 2702 of this Ordinance;
 7. Under no circumstance shall the Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

Section 2505. Board has Powers of Administrative Officer on Appeals; Reversing Decision of Administrative Officer. In exercising the above-mentioned powers, the Board of Zoning Adjustment may 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 (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to affect any variation in this Ordinance.

Section 2506. Appeals to District Court. Any person or person, jointly or severally, aggrieved by any decision of the Board of Zoning Adjustment, may appeal as provided by Section 19-912 Neb. Rev. Stat., 1943.

CITY MANAGER'S REPORT
NOVEMBER 23, 2020 BOARD OF ZONING ADJUSTMENT MEETING

- Item 2.B.** Public Hearing - request for a variance of the side yard setback requirement in a Residential Medium Density (RM) District (807 East G Street, McCook, NE), from 5'0" to 0'0"; applicants: Randy and Kim Bauer (owners) and Kristi Korell (renter).
- Item 2.C.** Consider a request for a variance of the side yard setback requirement in a Residential Medium Density (RM) District (807 East G Street, McCook, NE), from 5'0" to 0'0"; applicants: Randy and Kim Bauer (owners) and Kristi Korell (renter); and that the applicants have satisfactorily demonstrated that the variance criteria have been met.

BACKGROUND:

A variance application has been submitted by Randy and Kim Bauer and Kristi Korell. The property at issue is located at 807 East G Street. The property is located in the RM District and the house sits on an interior lot. The applicants request a reduction of the side yard setback for interior lots from 5'0" to 0'0". The variance request is for the west side of the property. The reason for the request is to allow for the construction of a carport that would straddle the existing driveway.

The applicant's property has some unique features. The most notable feature with respect to this request is that the useable lot is less than 50 feet in width (which is contrary to the plat map). The Building Inspector measured the property from the fence located on the west side of the lot to the fence located on the east side of the lot. The property pin matched up with the western fence. We were unable to locate the eastern property pin, so we measured from the property pin to the eastern fence. The width of the useable lot was less than 47 feet (a normal size lot is 50 feet wide). The lack of the 3+ feet makes the lot tight.

Staff reviewed the backyard to see if a carport could be located off the existing alley. In the back yard, there is a gas meter on the eastern side of the lot. The existence of the gas meter forces a potential carport to be constructed on the west side of the backyard. Between the gas meter and the west property pin, there is approximately 25 feet of space. However, a chain link fence spans the backyard which does serve as an impediment. Further, there is no walkway to the western side of the backyard. These latter two points may or may not fall into the category of "demonstrable and exceptional hardship as distinguished from variation for purposes of convenience, profit, or caprice".

For City Staff, the main characteristic that would warrant the variance request is the fact that the lot is narrow by 3+ feet. If the fences are aligned with the property pins, the lot is narrower than what the plats portray. One more important note is the general layout of the houses on this portion of G Street. When you observe the houses on the 800 block of East G Street, it is apparent how tight the houses and ancillary structures fit on their respective lots. To that effect, there are a number of houses that have garages or

EXHIBIT #1

PAGE(S) - 2

carports on G Street that do not appear to comply with the City's side yard setback requirements. It appears some of the structures pre-date the current zoning code. Other non-conforming structures appear to be newer and lack variances.

Staff does not believe the request presents a safety concern. The carport will be an open ended, metal structure. Staff has informed Ms. Korell that she should have a conversation with the property owner at 805 East G Street to get the property owner's blessing. Ms. Korell assured staff that she will contact the property owner to the west to discuss the matter.

RECOMMENDATION:

Item A Public Hearing - request for a variance of the side yard setback requirement in a Residential Medium Density (RM) District (807 East G Street, McCook, NE), from 5'0" to 0'0"; applicants: Randy and Kim Bauer (owners) and Kristi Korell (renter).

Item B Consider a request for a variance of the side yard setback requirement in a Residential Medium Density (RM) District (807 East G Street, McCook, NE), from 5'0" to 0'0"; applicants: Randy and Kim Bauer (owners) and Kristi Korell (renter); and that the applicants have satisfactorily demonstrated that the variance criteria have been met.

APPROVALS:



Lea Ann Doak, City Clerk

November 18, 2020



Nathan A. Schneider, City Manager

November 18, 2020



Barry Mooney, Building Inspector

November 18, 2020

NOTICE OF HEARING

**REQUEST FOR
VARIANCE**

NOTICE IS HEREBY GIVEN that a public hearing will be held on a request for a variance of the west side yard setback requirement from 5'0" to 0'0" in a Residential Medium Density (RM) District.

LEGAL: Lot Ten (10), Block Five (5), John E. Kelley Memorial Addition to the City of McCook, all in Red Willow County, Nebraska.

APPLICANT: Randy & Kim Bauer (Land Owners)
Kristi Korell (Renter)

ADDRESS: 807 East "G" Street, McCook

A Public Hearing will be held on the Date, Time, and at the Place listed below:

November 23, 2020 - 5:30 P.M.
Board of Zoning Adjustment
City Council Chambers
505 West "C" Street

ANY AND ALL PERSONS desiring to comment on the above-described request will be given an opportunity to be heard. Please direct all inquiries to Nate Schneider, McCook City Manager at 308-345-2022 ext. 225.

-s- Lea Ann Doak
City Clerk

Publish: November 19, 2020.

EXHIBIT #2

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VARIANCE APPLICATION

APPLICATION NO. _____ DATE: _____

FEE ATTACHED: _____

APPLICATION COMPLETE: _____ SIGNED: _____

Applicant

Owner: Randy + Kim Bauer

1. Applicant's Name: Renter: Kristi Korell

2. Applicant's Address: 807 East G St. Phone: 308-340-7264

Email Address: K.Korell60@gmail.com

3. Address of Property Affected: 807 East G St.

4. Legal Description of Property: John E. Kelley Memorial Add.
BIK 5, Lot 10

5. Zoning _____ Corner Lot? Yes _____ No

6. Applicant's interest in the Property (i.e. owner, tenant), attached proof of ownership:

Renter

7. Description of variance requested: (Example: Variance of side lot set back requirement from 5 feet to 3 feet). Variance of ~~side~~ west side set back to construct a carport. The carport will not extend past the property line.

8. Sections of Zoning Ordinance No. 2016-2929 which are affected (to be completed by staff)

ARTICLE: _____

SECTION: _____

* *The Building Inspector has been out to look at the location for the carport.*

EXHIBIT #3

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9. Draw the general area of your property and structure (existing and proposed) and adjacent properties and structures. (Not to scale).

N
W E
S



The Applicant must provide proof that the following criteria are met regarding the parcel of property for which the variance is being requested:

1. Referring to the specific parcel of property,
 - a) the parcel of property is exceptionally narrow;
 - b) the parcel of property is exceptionally shallow; or
 - c) the shape of the parcel of property is exceptional.

OR

 - d) the parcel of property has exceptional topographic conditions; or
 - e) the parcel of property has other exceptional or extraordinary conditions.
2. Strict application of the zoning ordinance would result in:
 - a. peculiar and exceptional practicable difficulties to the owner; OR
 - b. exceptional and undue hardships on the owner of such property.
3. Such relief may be granted without:
 - a. substantial detriment to the public good; AND
 - b. without substantially impairing the intent and purpose of the ordinance.
4. No variance shall be authorized unless the Board finds:
 - a. strict application of the zoning ordinance would produce undue hardship;
 - b. such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
 - c. authorization of such variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by granting the variance;
 - d. granting the variance is based upon reason of demonstrable and exceptional hardship as distinguished from variation for purposes of convenience, profit, or caprice.
5. No variance shall be authorized if request is:
 - a. of a general and recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

Please provide documentation of the above, such as maps, photographs, or other evidence to substantiate your application.

THE BOARD MUST FIND THAT ALL OF THE ABOVE REQUIREMENTS ARE MET BY THE APPLICANT BY A CONCURRING VOTE OF FOUR MEMBERS OF THE BOARD.

APPLICANT DECLARATIONS

1. The following special conditions or circumstances exist on the land which pose an undue hardship on the applicant: (Describe conditions and circumstances.)

Without the variance I would not be able to
construct a carport at this location. The driveway
by the side of the house is the only logical
place that the carport could be located.

2. Please state the minimum variance necessary to permit the proposed construction

3. Without the granting of this variance the applicant would suffer a hardship not suffered by other properties located in the same zoning district and same vicinity.

Yes No

4. The granting of the variance will not adversely affect the rights of the adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by the Zoning Ordinance. Yes No
(Attach approval certifications from adjacent property owners.)

5. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare. Yes No

ADJACENT PROPERTY OWNER CERTIFICATION

I, _____, own the property adjacent to that for which this variance is requested. I hereby certify that I do not have any objection to or reservations about the granting of the variance requested.

SIGNED: _____

ADDRESS: _____

ADJACENT PROPERTY OWNER CERTIFICATION

I, _____, own the property adjacent to that for which this variance is requested. I hereby certify that I do not have any objection to or reservations about the granting of the variance requested.

SIGNED: _____

ADDRESS: _____

ADJACENT PROPERTY OWNER CERTIFICATION

I, _____, own the property adjacent to that for which this variance is requested. I hereby certify that I do not have any objection to or reservations about the granting of the variance requested.

SIGNED: _____

ADDRESS: _____

**FINDINGS AND DETERMINATIONS OF
MCCOOK BOARD OF ZONING ADJUSTMENT**

DATE: _____

SIGNED: _____
Chairman

VARIANCE CRITERIA

JUSTIFIES VARIANCE

	<u>YES</u>	<u>NO</u>
1. Referring to the specific parcel of property,		
a) the parcel of property is exceptionally narrow;	_____	_____
b) the parcel of property is exceptionally shallow; or	_____	_____
c) the shape of the parcel of property is exceptional.	_____	_____
OR		
d) the parcel of property has exceptional topographic conditions; or	_____	_____
3) the parcel of property has other exceptional or extraordinary conditions.	_____	_____
2. Strict application of the zoning ordinance would result in:		
a) peculiar and exceptional practicable difficulties to the owner; OR	_____	_____
b) exceptional and undue hardships on the owner of such property.	_____	_____
3. Such relief may be granted without:		
a) substantial detriment to the public good; AND	_____	_____
b) without substantially impairing the intent and purpose of the ordinance.	_____	_____
4. No variance shall be authorized unless the Board finds:		
a) The strict application of the provisions of the Zoning Ordinance would produce an undue hardship on the applicant.	_____	_____

EXHIBIT #4

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- b) Such hardship is not generally shared by other properties in the same zoning district and in the same vicinity. _____
 - c) The granting of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed. _____
 - d) The variance request is based upon reasons of demonstrable and exceptional hardship as distinguished from convenience, profit or caprice. _____
5. The variance requested is not so general or of re-occurring nature that it might more reasonably be addressed through a change in the Zoning Regulations. _____
6. The applicant has filed a proper and complete application. _____
7. Application for a variance submitted must demonstrate the following:
- A. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not found in the same zoning district and which were not created by an action of the property owner or the applicant; _____
 - B. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction; _____
 - C. The literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance; _____
 - D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by this Ordinance to other land or structures in the same district; _____
 - E. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare; _____
 - F. The variance requested is the minimum variance that will make possible the reasonable use of the land or structure; _____
 - G. Granting the variance requested will not be opposed to the general spirit and intent of this Ordinance. _____
8. The notice of meeting appeared in the paper and applicants and other parties of interest have been sent written notice of the meeting at which a hearing on the variance request is being considered. _____

8. The variance requested does not allow a use not permissible under the Zoning Ordinance in the district in which it is presently located.

BOARD OF ZONING ADJUSTMENT DECISION

The McCook Board of Zoning Adjustment hereby determines that the variance should _____ be granted, _____ not be granted, _____ be granted with conditions. Conditions, modifications or safeguards prescribed as a part of the variance approval are as follows: _____

Variance criteria not met are as follows: _____

Dated this _____ day of, _____, 20 _____.

ARTICLE 25

BOARD OF ZONING ADJUSTMENT

Article 25 - Board of Zoning Adjustment

Section 2501. Creation, Members, Meetings, Rules.¹ There is hereby established a Board of Zoning Adjustment. The word BOARD, when used in this Zoning Ordinance, shall be construed to mean the Board of Zoning Adjustment. The Board of Zoning Adjustment is appointed by the City Council and shall consist of five (5) regular members, plus one (1) 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.

One (1) member only of the City Board of Zoning Adjustment shall be appointed by the City Council from membership of the Planning Commission and the loss of membership on the Planning Commission by such member shall also result in the immediate loss of membership on the Board of Zoning Adjustment and the appointment of another Planning Commissioner to the Board of Zoning Adjustment. One (1) member of the board of adjustment shall reside outside of the corporate boundaries of the City but within its extraterritorial zoning jurisdiction.

The members appointed shall serve for terms of three (3) years and be removable for cause by the City Council upon written charges and after public hearing. Vacancies shall be filled by appointment for the unexpired term.

The Board of Zoning Adjustment shall annually in October elect one of its members as Chairperson, another as Vice-Chairperson, who shall act as Chairperson in the Chairperson's absence, and appoint a Secretary, who may be an officer or an employee of the City. Each shall serve until his or her successor has been selected. The presence of four (4) members of the Board shall be necessary to constitute a quorum.

All meetings of the Board shall be open to the public. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, if absent or failing to vote, indicating the 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 shall adopt from time to time any rules and regulations as it may deem necessary, to carry the appropriate provisions of this Zoning Ordinance into effect and all of its resolutions and order shall be in accordance therewith.

Section 2502. Appeals to Board, Record of Appeal, Hearing and Stays. Appeals to the Board of Zoning Adjustment 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. 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 Zoning 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 Zoning 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 Zoning Adjustment or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

EXHIBIT #5

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¹Revised September 18, 2017 - Ordinance No. 2017-2951

The Board of Zoning 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.

Section 2503. Powers and Jurisdiction Relating to Administrative Review. The Board of Zoning Adjustment shall have the power to hear and decide appeals where 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 or to interpret any map, except that the authority to hear and decide appeals shall not apply to decisions made under Article 24 of this Ordinance.

Section 2504. Powers and Jurisdiction Relating to Variances. The Board of Zoning Adjustment shall have the power, where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, 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 regulation under this Ordinance 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 this Ordinance.

1. No such variance shall be authorized by the Board unless it finds that the strict application of the Ordinance would product undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; 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 the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice;
2. 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 nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.
3. A variance from the terms of this Ordinance shall not be granted by the Board of Zoning Adjustment unless and until a written application for a variance is submitted demonstrating the following:
 - A. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not found in the same zoning district and which were not created by an action of the property owner or the applicant;
 - B. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction;
 - C. The literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
 - D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by this Ordinance to other land or structures in the same district;
 - E. The varlance will not adversely affect the public health, safety, morals, order, convenience or welfare;

- F. The variance requested is the minimum variance that will make possible the reasonable use of the land or structure;
 - G. Granting the variance requested will not be opposed to the general spirit and intent of this Ordinance.
4. No non-conforming use of neighboring lands, structures or buildings in the same district, and no permitted structures or buildings in other districts shall be considered grounds for the issuance of variance;
 5. Notice of public hearing shall be given as in Section 2502 above; the public hearing shall be held; any party may appear in person, or by agent or by attorney; the Board of Zoning Adjustment shall make findings that the requirements of this section have been met by the applicant for a variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance; and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; the Board shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare;
 6. In granting any variance, the Board of Zoning Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 2702 of this Ordinance;
 7. Under no circumstance shall the Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

Section 2505. Board has Powers of Administrative Officer on Appeals; Reversing Decision of Administrative Officer. In exercising the above-mentioned powers, the Board of Zoning Adjustment may 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 (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to affect any variation in this Ordinance.

Section 2506. Appeals to District Court. Any person or person, jointly or severally, aggrieved by any decision of the Board of Zoning Adjustment, may appeal as provided by Section 19-912 Neb. Rev. Stat., 1943.