

## CHAPTER 8: BOARD OF ADJUSTMENT

### ARTICLE 1: BOARD OF ADJUSTMENT

#### **8-1.1. CREATION**

A Board of Adjustment is hereby established to provide relief in situations of hardship or to hear appeals. 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 member is appointed, by the Chairperson and governing body, for a term of three years and removable for cause by the appointing authority upon written charges and after public hearings.

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.

#### **8-1.2. MEETING AND VOTING**

Meetings of the Board of Adjustment shall be held at the call of 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. 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.

Any resident or property owner in the Village shall have the right to appear before the Board in regard to which they have a reasonable interest in the matter to be determined. A majority of the Board shall constitute a quorum for the transaction of business.

The concurring vote of two-thirds (2/3) of the members of the Board is necessary to decide any questions upon which the Board is required to pass. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, or decision in favor of the applicant on any matter upon which the Board is required to pass.

#### **8-1.3. DUTIES**

The Board of Adjustment is hereby authorized to:

- A. Hear appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by the officer charged with the administration of this ordinance, in the enforcement of these regulations.
- B. To hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of the Zoning Map.
- C. To authorize, upon appeal, variances from the strict application of these regulations where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of 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, such strict application would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property.
  1. **Requirements for Granting of a Variance.** No such variance should be authorized by the Board unless it finds that:
    - a. Strict application of the zoning regulations will produce undue hardship.
    - b. Such hardship is not shared generally by other properties in the same zoning district and in 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.

- 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.
  - e. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to these Zoning Regulations.
  - f. The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any ordinance or resolution.
2. **Findings by the Board.** The Board of Adjustment shall make findings that the requirements for granting a variance have been met by the applicant for a variance. A written finding of fact should be accompanied by every decision made by the Board specifying the reason of denying to accepting the request.
3. **Conditions for Granting of a Variance.**
- a. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with these regulations. 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 these regulations.
  - b. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of these regulations in the district involved, or any use expressly or by implication prohibited by the terms of these regulations in said district.
  - c. No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
  - d. The applicant shall submit a statement in writing, justifying the variance requested; indicating specifically the enforcement provisions of the zoning regulations from which the variance is requested, and outlining in detail the manner in which it is believed that this application will meet each of the six (6) requirements for granting a variance as outlined in this article.
  - e. The applicant shall submit a sketch, in duplicate drawn to scale and showing the lot or lots included in the application; the structures existing thereon; and the structures contemplated necessitating the variance requested. All appropriate dimensions and any other information which would be helpful to the Board in consideration of the application should be included.
  - f. The Board may require a performance bond to guarantee the Installation of improvements such as parking lot surfacing, landscaping, etc. The amount of the bond shall be based on a general estimate of cost for the improvements as determined by the Board, and shall be enforceable by or payable to the Governing body in the sum equal to the cost of constructing the required improvements.
  - g. In lieu of the performance bond requirement, the Board may specify a time limit for the completion of such required improvements and in the event the improvements are not completed within the specified time, the Board may declare the granting of the application null and void after reconsideration.

#### **8-1.4. APPLICATIONS**

- A. Procedure. The procedure for requesting a hearing before the Board shall be as follows:
1. All applications to the Board shall be in writing on forms provided by the Board and filed with the Zoning Administrator.
  2. The Board shall fix a reasonable time for the hearing of an application and notice of the time, place, and subject of each hearing shall be published in a newspaper of general circulation at least ten (10) days prior to the date fixed for the public hearing.
  3. An application shall be accompanied by a filing fee determined by the Village. A separate filing fee determined by the Village shall be required for each request.
- B. Additional Requirements. In addition to the above requirements, certain applications require additional information as follows:
1. **Appeals and interpretations:**
    - a. An application for an appeal or interpretation shall be filed within sixty (60) days after a ruling has been made by the Zoning Administrator.
    - b. A copy of the order, requirement, decision or determination of the Zoning Administrator which the applicant believes to be in error shall be submitted.
    - c. A clear and accurate, written description of the proposed use, work or action in which the appeal or interpretation is involved and a statement justifying the appellant's position.
    - d. Where necessary, a plot plan, drawn to scale, in duplicate showing existing and proposed plans for the area in question shall be submitted.

#### **8-1.5. APPEALS FROM THE BOARD OF ADJUSTMENT**

Any person or persons aggrieved by any decision of the Board of Adjustment, or any officer, department or board of the Village of Clearwater may present to the District Court a petition setting forth that any decision of the Board of Adjustment is illegal, in whole or in part, and specifying the grounds of the illegality. Such petitions must be presented to the Court within fifteen (15) days after the filing of the decision in the office of the Village Clerk and shall follow the provisions of the Nebraska State Statutes.

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