

CHAPTER 2
COMMISSIONS AND BOARDS
Article 4. Board of Adjustment

§2-401 BOARD OF ADJUSTMENT.

A. ESTABLISHMENT. A Board of Adjustment 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, each to be appointed by the Mayor, with the approval of the Council, for a term of three (3) years, and removable for cause by the appointing authority upon written charges and after public hearings. The members of the board shall serve without compensation and may be required, in the discretion of the Governing Body, to give a bond in a sum set by resolution of the Governing Body, and conditioned upon the faithful performance of their duties. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One (1) 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 immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commission member to the Board of Adjustment.

B. RULES. The Board of Adjustment shall elect a chairperson and vice-chairperson, who shall act in the absence of the chairperson. The Board shall meet at the call of the chairperson and such other times as the Board may determine. All meetings of the Board shall be open to the public. Minutes of the Board's proceedings shall be kept showing the vote of each member upon each question, or if absent or if failing to vote, indicating such fact; and records of the Board's examinations and other official actions shall be kept and immediately filed in the office of the City Clerk and shall be a public record. Such chairperson, or in the absence of the chairperson, the acting chairperson, may administer oaths and compel the statement of witnesses. Other rules governing the functions of the Board shall be adopted by the Board.

C. APPLICATION, FEE FOR APPEAL OR RELIEF. The owner of a building, structure, or land or any other person may appeal from a decision, notice, order, or interpretation of the administrative official, or such person may request relief from the strict application of these regulations. Appeal shall be made to the Board through the office of the City Clerk, in written form as prescribed by the City Clerk. Application for appeal may be made when it is claimed that the true intent or the strict provisions of

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these regulations have been incorrectly interpreted by the administrative official or the provisions have been incorrectly interpreted by the administrative official or the provisions of these regulations do not fully apply. The section number of the regulation appealed from shall be cited. Application for relief may be made when it is claimed:

1. The strict application of these regulations 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 relief will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of relief.

4. The request for relief is based upon reasons of demonstrable and exceptional hardship as distinguished from relief for purposes of convenience, profit or caprice.

Applications submitted in accordance with this Section shall be accompanied by a fee payment as listed in §9-201(A). Upon application for appeal or relief, all proceedings in furtherance of the action appealed from shall stop.

PROCEDURE. The City Clerk shall immediately transmit applications for appeal or relief to the Board and notice of the applications to the administrative official shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. Within thirty (30) days from receipt of the application, the Board, shall, after giving public notice thereof, as well as written notice to the persons in interest, conduct a hearing of the appeal and decide the same. At the hearing any person may voice his appeal or request for relief or by agent or attorney. Lack of information or testimony necessary to decide on an appeal is just cause for the Board to delay decision for an additional thirty (30) days.

POWERS AND DUTIES. The board shall have the following powers and duties and none other than those herein expressly stated:

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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 regulations relating to the location or soundness of structures.

2. To hear and decide, in accordance with the provisions of these regulations, request for interpretation of any map.

3. Where by reasons of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of these 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 action would result in peculiar and exceptional practical difficulties to or exceptional and under hardship 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.

No variance shall be authorized unless the Board finds 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 impracticable the formulation of a general regulation to be adopted as an amendment to these regulations.

In exercising the above powers such Board may, in conformity with the provisions of these regulations, reverse or affirm, wholly or partly, or may modify the order, requirement, decision of determination appealed from, and may make such other requirement, decision or determination as ought to be made, and 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 administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation to effect any variation in such regulation.

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APPEALS FROM BOARD. Any person or persons, or any Board, taxpayer, department, board or bureau aggrieved by any decision of the Board may seek review of such decision by the district Court for the County, in the manner provided by the laws of the State of Nebraska, particularly by Chapter 19, RS, Nebraska.

DUTIES ON MATTER OF APPEAL. It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the administrative official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the administrative official, and that recourse from the decision of the Board of Adjustment shall be to the courts, as provided by law.