ARTICLE XXXVII

BOARD OF ZONING APPEALS

SECTION 1. ORGANIZATION AND PROCEDURE: A Board of Zoning Appeals is hereby established with membership and appointment provided in accordance with K.S.A. 12-759. The Board shall administer the details of the application of these Regulations in accordance with the general rules set forth herein. The Board may adopt rules and regulations as it may deem necessary to effectuate the provisions of these Regulations.

SECTION 2. AUTHORITY: The Board of Zoning Appeals shall have the following authority.

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these Regulations.

2. To hear and decide special exceptions to the terms of these Regulations upon which such Board is required to pass under these Regulations.

3. In accordance with the specific provisions of this ARTICLE, to authorize upon appeal of specific cases such variance from the terms of these Regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these Regulations will result in unnecessary hardship, and so that the spirit of these Regulations shall be observed and substantial justice done.

SECTION 3. VARIANCES: The Board of Zoning Appeals shall have the authority to grant the following variances:

1. A variation in the yard requirements in any district so as to relieve practical difficulties or particular hardships in cases, when and where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property, at the time of the enactment of such regulations or restrictions, or by reason of exceptional topographical conditions or other extraordinary or exceptional situations or conditions of such piece of property, the strict application of each regulations or restriction would result in peculiar and exceptional practical difficulties to, or exceptional hardship upon the owner of such property. Such grant or variance shall comply, as nearly as possible, in every respect with the spirit, intent and purpose of the Zoning Regulations, it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and exceptional hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice. Such variance shall be granted only when public safety and welfare are secured, and substantial justice done.

2. A request for a variance may be granted in such case, upon a finding by the Board that ALL of the following conditions have been met:

    a. The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner (s) or of the applicant.

    b. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.

    c. The strict application of the provisions of the Zoning Regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

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d. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare, and;

e. That granting the variance desired will not be opposed to the general spirit and intent of the Zoning Regulations.

SECTION 4. SPECIAL EXCEPTIONS: In order to provide for adjustment in the relative locations of uses and buildings of the same or different classifications, to promote the usefulness of these Regulations as an instrument for fact finding, interpretation, application, and adjustment, and to supply the necessary elasticity to its efficient operation, special exceptions are hereby permitted by the terms of this ARTICLE. The following buildings and uses are permitted as special exceptions if the Board of Zoning Appeals finds that in its opinion, as a matter of fact, such exceptions will not substantially affect adversely the uses of adjacent and neighboring property permitted by these Regulations.

1. A nonconforming commercial use to extend to the entire lot or a larger portion of the lot where there is now a commercial use on a portion of the lot.

2. A nonconforming commercial use on a lot between two lots which are used for commerce.

3. A nonconforming use now existing in any part of a building to be extended vertically or laterally to other portions of the buildings. In a building now occupied by a nonconforming commercial or industrial use, an additional use of the same classification in the remainder of the buildings.

4. The extension of an existing nonconforming building and the existing use thereof, upon the lot occupied by such building at the time of the passage of these Regulations; or the erection of an additional building upon the lot owned at the time of the passage of these Regulations by a nonconforming commercial or industrial establishment and which additional building is a part of such establishment.

5. Where a use district boundary line crosses a lot, a use of either classification on the whole lot within one hundred (100) feet of said district boundary line.

6. In an “A – R” Agricultural Rural, “R – R” Rural Residential District or “R – C” Rural Center District, a garage for more than four (4) motor vehicles and covering more than nine hundred (900) square feet.

7. In the “R – C” Rural Center District, off-street parking areas, adjacent to or at a reasonable distance from the premises on which parking areas are required by the parking regulations of these Regulations where practical difficulties, including the acquisition of property, or undue hardships are encountered in locating such parking areas on the premises and where the purpose of these Regulations to relieve congestion in the streets would be best served by permitting such parking off the premises.

8. To waive or reduce the parking and off-street loading requirements in any district and for any, use whenever the character or use of the building is such as to make unnecessary the full provision of parking or off-street loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot.

9. To determine, in cases of uncertainty, the classification as to district of any use not specifically named in these Regulations; provided, however, such use shall be in keeping with uses specifically named in the district regulations.

SECTION 5. SPECIAL YARD AND HEIGHT EXCEPTIONS: The following special yard exceptions, limited as to location and especially in locations described below in this section, are permitted by these Regulations if the Board of Zoning Appeals find that in its opinion, as a matter of fact, such exception will not substantially affect adversely the uses of adjacent and neighboring property permitted by these Regulations and provided such exceptions are approved by the Board.

1. An exception in the yard regulations on a lot where, on the adjacent lot, there is a front, side or rear yard that does not conform with the yard regulations.

2. A yard exception on a corner lot, or lots opposite or adjoining permanent open spaces, including parks and playgrounds.

3. An exception in the depth of the rear yard on a lot in a block where there are nonconforming rear yard conditions.

4. An exception where there are irregularities in depths of existing front yards on a street frontage on the side of a street between two intersecting streets, so that any one of the existing depths shall, for a building hereafter constructed or extended, be the required minimum front yard depth.

SECTION 6. GUIDELINES FOR CONDITIONS Where, in these Regulations, special exceptions are permitted, provided they are approved by the Board of Zoning Appeals, where the Board is authorized to decide appeals or approve certain uses, and where the Board is authorized to approve variances, such approval, decision, or authorization shall be limited by such conditions as the case may require, including, if necessary, any of the following specifications:

1. No outside signs or advertising structures except professional or directional signs.

2. Limitations of signs as to size, type, color, location or illumination.

3. Amount, direction, and location of outdoor lighting.

4. Amount and location of off-street parking and loading space.

5. Maintenance requirements including cleaning and painting of buildings, structures or facilities.

6. Type of roof (i.e., gable, flat, etc.).

7. Construction design and type of construction materials to be used.

8. Whether the buildings, if multiple buildings are proposed, can be connected or not.

9. Exit, entrance, door and window locations.

10. The type and amount of paving, landscaping, fencing, screening and other such features.

11. Hours of operation including limitations on nighttime hours.

12. Limitations on structural alterations to existing buildings.

13. Plans for the control of elimination of smoke, dust, gas, noise or vibration caused by the proposed use.

14. Such other conditions and/or limitations that are deemed necessary.

SECTION 7. WRITTEN APPLICATION REQUIRED: Written application for an appeal, a special exception, or a variance referred to in this ARTICLE shall be filed with the Board or its agent, upon forms and in a manner prescribed by the Board. Said application shall be submitted within thirty (30) days of the action requiring said appeal, variance or special exception.

SECTION 8. STAY OF PROCEEDINGS: Upon the application for an appeal of an order, requirement, decision, or determination made by an administrative official in the enforcement of these Regulations, said appeal shall stay all legal proceedings in furtherance of the action appealed from unless the Zoning Official certifies to the Board, after the application for appeal has been filed with him, that by reason of facts stated in the certificate the stay would, in his opinion, cause imminent peril to life or property. In such case the proceedings shall not be stayed except by a restraining order which may be granted by the Board, or by a court of competent jurisdiction on application, on notice to the Zoning Official and on due cause shown.

SECTION 9. PUBLIC HEARINGS REQUIRED: The Board shall hold a public hearing on each application for an appeal, decision, variance or special exception. Applications for a variance or special exception must be accompanied with a Certified Abstractor's List with names and addresses of all owners of record of real property located in the unincorporated County, within at least one thousand (1,000) feet of the property for which the variance or special exception is being sought, and within two hundred (200) feet where the notification area extends within the corporate limits of a City. Notice of the time and place of the public hearing shall be published once in the official County paper not less than twenty (20) days prior to the date of such public hearing. In addition, all owners of record of real property located in the unincorporated County, within at least one thousand (1,000) feet of the property for which the variance or special exception is being sought, and within two hundred (200) feet where the notification area extends within the corporate limits of a City, shall be notified by written notice of such public hearing and be given an opportunity to attend and be heard regarding such application for a variance or special exception.

SECTION 10. FINDINGS AND RECORDS OF PROCEEDINGS: The Board of Zoning Appeals shall hold the public hearing at such prescribed time and place and shall make its findings and determinations in writing within a reasonable time from the date of filing of the application, and shall forthwith transmit a copy thereof to the applicants. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, and shall keep records of its examinations and other official actions, which shall be a public record.

SECTION 11. LAPSE OF SPECIAL EXCEPTIONS OR VARIANCES: After the Board of Zoning Appeals has approved a special exception or granted a variance, the special exception or variance so approved or granted shall lapse after the expiration of one (1) year if no substantial construction or change of use has taken place in accordance with the plans for which such special exception or variance was granted, and the provisions of these Regulations shall thereafter govern.

SECTION 12. DECISIONS OF BOARD: In exercising the foregoing powers, the Board of Zoning Appeals, in conformity with the provisions of this ARTICLE, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions and may issue or direct the issuance of a permit. Any person, official or governmental agency dissatisfied with any order or determination of the Board of Zoning Appeals may bring action in the District Court of Sumner County, Kansas, to determine the reasonableness of any such order or determination.

C12 Case #11PC-09