

SECTION 26

BOARD OF ZONING APPEALS

26-010 BOARD OF ZONING APPEALS

- a. Appointment: A Board of Zoning Appeals is hereby created. The Board shall consist of the members of the Planning Commission and may also include Members of the Public at Large. (Amended by Ordinance # 1184 5/9/05). Appointment procedures shall be the same as observed by that body. (See Section 30, Planning Commission.) All requirements regarding quorums and majorities shall be based on the planning commission requirements outlined in Section 30 of this ordinance. (Ordinance #906 8/22/94)
- b. The board shall consist of seven (7) members appointed by the Mayor with approval by the Governing Body for the City of Tonganoxie. Members of the Board shall serve without compensation.(Amended by Ordinance # 1184 5/9/05)
- c. Replacement of Board Members: All replacement of Board members shall be accomplished by the procedure outlined in Section 30 of this ordinance (Ordinance #906 8/22/94).
- d. Officers and Duties: The Board of Zoning Appeals shall annually elect a chairman and a vice-chairman. The chairman, or in his absence the vice-chairman, shall preside at all meetings and shall decide all points of order or procedure.
- e. Rules and Meetings: The Board may adopt rules to govern its proceedings in accordance with the provisions of this ordinance. Meetings of the board shall be held at any time at the call of the Chairman and at such other times as the board may determine. All meetings of the Board shall be held at such place or places within the City as the Board may designate. All meetings shall be open to the public. The board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the board, decision of the board, and the vote upon each question. Records of all official actions of the board shall be filed with the City Clerk at City Hall and shall be a public record.
- f. Staff Support: Staff members for the Board of Zoning Appeals shall consist of the City Planner and a Secretary, which shall be employees of the City.

26-011 POWERS & DUTIES OF THE BOARD

- a. Zoning Ordinance Appeals: The Board of Zoning Appeals shall administer the details of appeals from the provisions of the zoning ordinance, or other matters referred to it regarding the application of the zoning ordinance as hereinafter provided. In exercising these powers the Board, in conformity with the provisions of this ordinance, may reverse or affirm, wholly or partly, or may modify the order,

requirement, decision, or determination. To that end, the Board shall have all the powers of the officer from whom the appeal is made to attach appropriate conditions to, issue or direct the issuance of a permit.

- b. Interpretation Upon appeal from a decision by the building inspector or other administrative official, the Board may decide any question involving the interpretation of any provision of the zoning ordinance, including:
- 1) The determination of the exact location of any district boundary, if there is uncertainty with respect thereto, and
 - 2) The determination of an appropriate use group for a use that is not listed in the ordinance, and that the use is a similar use to the uses already in the use group.
- c. Exceptions: The board may grant exceptions to the provisions of this ordinance in those instances where the board is specifically authorized to grant such exceptions and only under the terms of the zoning ordinance. In no event shall exceptions to the provisions of the zoning ordinance be granted where the use or exception contemplated is not specifically listed as an exception in the zoning ordinance. Further, under no conditions shall the board have the power to grant an exception when conditions of this exception, as established in the zoning ordinance by the city commission, are not found to be present.
- d. Variances: The Board may authorize in specific cases a variance from the specific terms of this ordinance which will not be contrary to public interest and where, owing to special conditions, a literal enforcement of the provisions of this ordinance, in an individual case, result in unnecessary hardship, and provided that the spirit of this ordinance shall be observed, public safety and welfare secured; and substantial justice done. Such variance shall not permit any use not permitted in the zoning ordinance in such district. A request for a variance may be granted in such case, upon finding of the board that all of the following conditions have been met:
- 1) That the variance request arises from such conditions 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 or applicant.
 - 2) That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
 - 3) That the strict application of the provisions of this ordinance of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
 - 4) That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare, and
 - 5) That granting the variance desired will not be opposed to the general spirit and intent of the zoning ordinance.

- e. Appeals: The board may hear and decide appeals where it is alleged that there is an error of law in any order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance. Such appeal shall be taken within ten (10) days after the order of action appealed from has been made by filing written notice of such appeal, specifying the grounds thereof, with the Board of Zoning Appeals.
- f. Powers Specified Elsewhere in the Ordinance: The board shall also have those powers and duties specifically set forth in other parts of this ordinance.

26-012 PROCEDURE FOR APPEALS

- a. Application: Applications to the Board for any type of proceeding may be taken from any person aggrieved, from any officer of the city or from any governmental agency or body affected by any decision of the officer administering the provisions of the zoning ordinance. All applications shall be made to the Board in writing on forms prescribed by the Board within ten (10) days following the decision has been rendered by the building inspector or other administrative officer. Each application shall be accompanied by a current certified list (provided by a licensed abstractor/title company) of the names and mailing addresses of all property owners of record within two hundred (200) feet of the exterior boundaries of the property to be considered in the application.
- b. Public Hearing and Notice: The Board shall fix a reasonable time for the public hearing on each application. The Secretary of the Board of Zoning Appeals, shall cause to be published in the official paper of the City, a notice as to the time, place and date and subject of the hearing for each application. Such notice shall appear at least once in the official city paper no less than twenty (20) days prior to the date of hearing. The Secretary through the City Clerk shall also cause notice to be given by mail no less than twenty (20) days prior to the date of the public hearing to each of the property owners of record within two hundred (200) feet of the exterior boundaries of the property to be considered in the application, as such owners are listed on the current certified list accompanying the application. Mailed notice shall also be given to each party to the appeal.
- c. Effect of Appeal An appeal shall stay all proceedings of the action appealed from, unless the person affected by such appeal certified to the board 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 or a Court of record on application and notice to the person from whom the appeal was taken.

26-013 TIME LIMIT ON PERMITS.

No order of the board permitting the erection or alteration of a building, or the use of a building or premises shall be valid for a period longer than one hundred twenty (120) days, unless a permit for such erection, alteration or use is obtained within

such period and work started in accordance with the building or use permit. The Board may, at their discretion, extend the period for obtaining a permit in increments of ninety (90) days without re-advertising or additional application.

26-014 RECORDS. Every decision or determination by the board of zoning appeals shall be filed in the office of the City Clerk not more than ten (10) working days following the date of hearing and shall become a public record.

26-015 FEE. The fee for an application for appeal to the board shall be the current fee as set by the governing body of Tonganoxie and no part shall be refundable. The City Clerk shall be responsible for the collection of the application fee.