

SARPY COUNTY BOARD OF ADJUSTMENT RULES AND REGULATIONS

BY THE AUTHORITY CONFERRED UPON THE SARPY COUNTY BOARD OF ADJUSTMENT TO ADOPT AND ENFORCE REASONABLE RULES AND REGULATIONS REGARDING THE CONDUCT OF PERSONS ATTENDING, AND/OR SPEAKING AT A MEETING OF THE BOARD OF ADJUSTMENT, AS SET FORTH BY SECTION 42, SARPY COUNTY ZONING REGULATIONS AND SUBDIVISION REGULATIONS, AND AS THAT SECTION MAY, FROM TIME TO TIME BE AMENDED, IT IS HEREBY RESOLVED THAT THE FOLLOWING RULES AND REGULATIONS REGARDING THE CONDUCT OF MEETINGS OF THE SARPY COUNTY BOARD OF ADJUSTMENT ARE ADOPTED THIS 21ST DAY OF MARCH, 2011, AND THAT THE SAME SHALL BE IN FULL FORCE AND EFFECT AT ALL MEETINGS OF THE SARPY COUNTY BOARD OF ADJUSTMENT, UNLESS OTHERWISE PROVIDED.

Section 1: BOARD OF ADJUSTMENT

- A. The County Board shall appoint a Board of Adjustment which shall consist of five member, 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 to be appointed for a term of three years and be removable for cause by the appointing authority upon written charges and after public hearing. No member of the Board of Adjustment shall be a member of the County Board of Commissioners or County Board of Supervisors. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed by the County Board from the membership of the County Planning Commission, and the loss of his 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 Commissioner to the Board of Adjustment.
- B. Meetings of the Board of Adjustment (Board) shall be held at the call of the Chairman and at such other times as the Board may determine.
- C. An appeal to the Board may be taken by any person or persons aggrieved, or by any officer, department, board or bureau of the county affected by any decision of an administrative officer or planning commission.
- D. The Board shall, subject to such appropriate conditions and safeguards as may be established by the County Board, have only the following powers:
 - 1 To hear and decide appeals when it is alleged by the appellant that there is an error in any order, requirement, decision, or refusal 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. The Board shall have no authority to hear and decide appeals regarding conditional use permits or special exceptions which may be granted pursuant to Neb. Rev. Stat. §23-114.01;
 - 2 To hear and decide, in accordance with the provisions of any regulation, requests for interpretation of any map; and

- 3 When by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the adoption of the zoning 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 sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 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 any zoning regulations, but no such variance shall be authorized unless the Board finds that:
 - i The strict application of the resolution would produce undue hardship;
 - ii such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
 - iii 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
 - iv 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.

Section 2: NOTICE

- A. Legal notice of all matters to come before the County Board of Adjustment (Board) requiring such legal notice shall be given as required by law and published in the legal record of the County. In addition, the Board will endeavor to give written notice to owners of property under appeal at least one (1) week before the date of the public hearing.
- B. At each scheduled meeting the Board will take action on items of business after the necessary public hearings(s) have been held on items currently before the Board.
- C. The Board shall hold its meetings in the Sarpy County Boardroom, 1210 Golden Gate Dr, Papillion, NE 68046.

Section 3: AGENDA

- A. The Sarpy County Planning Department, acting as Recoding Secretary, will maintain the agenda for the Board of Adjustment meetings. An agenda of the matters to come before the Board will be prepared by the Sarpy County Planning Department and mailed to all Board members and known interested parties one week prior to the public hearing. Items not on the agenda will not be heard by the Board, unless, by unanimous vote of the members present, if determined that an emergency exists and that the public interest dictates that the matter be heard.

- B. "Application for a Variance to Zoning Regulation Requirements" shall be accepted by the County Planning Department during posted business hours only. Said application shall be accompanied by a certified copy of the most recent Deed or other instrument affecting title to the subject property on file in the office of the Register of Deeds. Supporting data shall be included and a \$100.00 fee is also required upon application.
- C. The matters shall be heard in the order that items appear on the agenda unless the Board votes to amend the order of the agenda.

Section 4: TESTIMONY – DUTY OF APPELLANT

- A. The role and function of the Board of Adjustment is to hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, decision, or refusal 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. This role continues in the determination in zoning matters in relation to interpreting the zoning laws of Sarpy County and the granting of zoning variances, all to be in accordance with the jurisdictional basis and limitations as provided by Section 42, Sarpy County Zoning Regulations and Subdivision Regulations.
- B. All appeals to this Board shall state the jurisdictional basis upon which the appeal is being made and shall state the name of the real party or parties in interest.
- C. No person shall address the Board, unless and until first recognized by the Chairperson or Vice-Chairperson of the Board. No person shall address the Board, after having been recognized until that person has signed the Register found on the speaker's podium, and placed his or her true name and address on the Register, in order that said information may be truly and accurately reflected in the Minutes of the Board of Adjustment. No person shall address the Board on a topic other than that shown on the Agenda for the meeting. Nothing in this Rule shall prevent the Board, by four affirmative votes, from suspending this rule, to allow the Board to take up the matter, or to allow debate on an item which does not appear on the agenda, if an emergency exists. Testimony before the Board shall be relevant to the jurisdictional basis upon which the appeal is made.
- D. The appellant must state facts sufficient to permit the Board to find in favor of the appellant within the jurisdictional limitations of the Board as provided by Section 42, Zoning Regulations and Subdivision Regulations. The appellant shall clearly indicate the manner in which the asserted facts fit into the jurisdictional framework of the Board.
- E. Material and testimony submitted should be as factual as possible. Persons testifying before this Board must be able to substantiate asserted facts to the satisfaction of the Board. Presentation of drawings, photographs or similar evidence may be made, provided that such evidence shall be substantiated as may be required by the Board.
- F. The Board may ask questions of persons testifying. There shall, however, be no cross-examination or direct questioning in front of the Board between proponents and opponents.

Section 5: PRESENTATION OF TESTIMONY

- A. The appellant must present his or her testimony first. Those seeking information or opposed to the application shall then be called upon to present their testimony. Each person should first state his or her name and address. Such individual should then present the reasons why the appeal should be granted or should not be granted, in relation to the Board's jurisdictional framework as provided in Section 42, Zoning Regulations and Subdivision Regulations.
- B. Any person may testify in his or her own behalf or may be represented by an attorney or may be represented by a close relative or friend or by a neighborhood representative when, in the judgment of the Chairman, said representative is knowledgeable of the factual basis for the appeal and has been authorized in writing to act as a representative.
- C. It is requested that where large neighborhood groups are presenting testimony on an appeal, where possible one or two spokesperson be elected to present the arguments for the group. Such a spokesperson may call upon the entire group to stand or raise their hands so that the Board may have an idea as to the size of the group that does share their views. All parties should, of course, recognize that the Board is primarily interested in the facts with regard to the basis for the Appeal and is not conducting a popularity contest.
- D. The applicant shall then be entitled to a very brief rebuttal if he/she so desires.
- E. All parties presenting testimony are requested to avoid repetition of statements and are requested to present their position as briefly as possible.
- F. The Board may call upon staff assistance or comments from the proper County personnel at any time during the proceedings.

Section 6: DUTIES OF THE BOARD CHAIRPERSON

- A. The Board chairperson or Vice-Chairperson, in the Chairperson's absence, shall be in charge of Board meetings, and shall be responsible for directing the order of the Board meetings, for directing persons testifying before the Board to limit their testimony to matters having relevance to the jurisdictional basis upon which an appeal has been made, and for directing the development of facts in support of any final action taken by the Board.
- B. Should any person or persons disturb, disrupt or otherwise interfere with the proceedings of the Board of Adjustment, at the request of any member of the Board, or on its own motion, the Chair shall warn the person or persons against further interference. Should the person or persons persist in disturbing or otherwise interfering with the proceedings of the Board of Adjustment, the Chair shall direct such person to leave said meeting. The Chair may declare a recess until order has been restored.

Section 7: WITHDRAWAL OR DEFERRAL

- A. Any matter which has been advertised for public hearing may be withdrawn or deferred prior to the preparation of the agenda on Friday before the Board meeting. Once the agenda has been prepared, items may be withdrawn or deferred only for good cause, with approval of

the Chairperson or Vice-Chairperson, if the Chairperson is out of town and not available. All requests for withdrawal or deferral shall be made in writing.

Section 8: FINAL ACTION

- A. The concurring votes of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of an administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any regulation or effect any variation in such regulation.
- B. Procedural votes such as approval of meeting minutes or Board rule amendments may be determined by the majority vote.
- C. Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the adoption of the zoning regulation, 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 resolution under this resolution would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such 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 zoning regulation, may be granted.
 - 1. The Board shall set out findings of fact based on evidence and testimony that the following conditions exist or would result:
 - i. The strict application of the zoning ordinance would produce undue hardship;
 - ii. List why such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
 - iii. Cite evidence that 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
 - iv. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations of the ordinances for the purpose of convenience, profit or caprice.
- D. No variance shall be authorized unless the Board of Adjustment finds that 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 practicable the formulation of a general regulation or ordinance to be adopted as an amendment to the ordinances.
- E. In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with the provisions of said sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as shall be proper and to that end shall have the power of the officer or agency from whom the appeal is taken.

- F. The concurring vote of four members of the Board of Adjustment 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 regulation or to effect any variation in such regulation.
- G. The Board's decision, together with the supportive facts developed by the Board, shall be sent to the County Board of Commissioners within seven (7) days of such action.

Section 9: AMENDMENT OR SUSPENSION OF RULES

- A. These rules may be amended by an affirmative vote of three members after at least 10 days notice to the Board.
- B. Any and all rules may be suspended as to any matter before the Board, as otherwise permitted by law by four affirmative votes of this Board.

Section 10: MINUTES OF MEETING

- A. The Sarpy County Board of Adjustment shall keep minutes of all meetings which must include the following: the time and place of the meeting, members present and absent, substance of all matters discussed, any action must be taken by roll call vote, and the minutes must state how each member voted or if the member did not vote or was absent. The election of the Chairperson and the Vice Chair may be by secret ballot, but the total votes for each candidate must be stated in the minutes. A new Chairperson is elected the first meeting of every year.
- B. All minutes of open meetings, evidence and documentation received or disclosed in open session shall be public record available to the public during normal business hours.
- C. The minutes shall be written and made available to the public within ten (10) working days of the meeting or prior to the next meeting, whichever is earlier

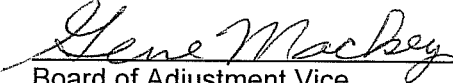
Section 11: ELECTION OF CHAIRPERSON OR VICE CHAIRPERSON

- A. The Chairperson and Vice Chairperson shall be elected for a one year term at the first meeting of the calendar year. In the event of a vacancy by either the Chairperson or the Vice Chairperson, the Board shall elect a replacement to fill the unexpired term at the next scheduled meeting of the Board following the creation of the vacancy. All elections pursuant to this paragraph shall be by majority vote of the Board (three votes).
- B. In the event of a vacancy by the Chairperson, the Vice Chairperson shall have the authority to act as the Chairperson until a replacement is elected. In the event of a temporary absence by the Chairperson, the Vice Chairperson shall have the authority to act as Chairperson during such absence.
- C. In addition to the other powers, duties and responsibilities specifically set out in these Rules, the Chairperson shall preside at all meetings of the Board, and shall be responsible for directing the order of the Board, for making rulings upon the propriety of testimony

presented to the Board, and for directing the development of the findings of fact on any final action taken by the Board.

Approved as to form and legality: ADOPTED ON THE 21ST DAY OF MARCH, 2011.


Board of Adjustment Chairperson


Board of Adjustment Vice
Chairperson