



The City of Roeland Park, Kansas

4600 West Fifty-First Street

Roeland Park, Kansas 66205

City Hall (913) 722-2600 – Fax (913) 722-3713

AGENDA

City of Roeland Park, Kansas

Board of Zoning Appeals

6:00 PM

January 18, 2017

I. Call the meeting to order

Introductions

New BZA Member Courtney Craig

New City Attorney

City Staff

Assistant City Administrator Jennifer Jones Lacy

Building Official John Jacobson

II. Ethics Policy and Signature Forms

III. Consideration of By-Laws

A. Responsibilities of BZA

B. BZA Procedures

C. Examples of By-Laws

D. Board Questions

IV. Adjourn Meeting

SIGNATURE

PRINT NAME

DATE

BZA _____ COMMITTEE(S)

CITY OF ROELAND PARK, KANSAS

CHARTER ORDINANCE NO. 29

A CHARTER ORDINANCE AMENDING AND REPEALING SECTIONS 3 THROUGH 11, INCLUSIVE, OF CHARTER ORDINANCE NO. 12; ALSO AMENDING AND REPEALING SECTION 1-318 OF THE CODE OF THE CITY OF ROELAND PARK, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ROELAND PARK, KANSAS:

SECTION 1. Sections 3 through 11, inclusive, of Charter Ordinance No. 12, codified as Section 1-318 of the Code of the City of Roeland Park, Kansas, and Section 1-318 of the Code of the City of Roeland Park, Kansas, are hereby amended to read as follows:

1-318. CODE OF ETHICS

- (a) Code of Ethics for Elective and Appointive Offices; Declaration of Policy. The proper operation of democratic government requires that public officials be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for certain City officials is hereby established. The purpose of this code is to establish guidelines for ethical standards of conduct for such officials by setting forth those acts or actions that are incompatible with the best interests of the City and directing disclosure by such officials of private financial or other interests in matters affecting the City.
- (b) Definitions.
 - (1) Interest means direct or indirect pecuniary or material benefit accruing to a public officer as a result of a contract or transaction which is or may be the subject of any official act or action by or with the City, except for such contracts or transactions which by their terms and by the substance of their provisions confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated.

For the purposes of this code, a public officer shall be deemed to have an interest in the affairs of:

- A. Any person related to him/her by blood or marriage in a degree closer than the fourth degree of consanguinity or affinity (determined by the civil law method), and a divorce or separation between spouses shall not be deemed to terminate any such relationship;
- B. Any person or business entity with whom a contractual relationship exists with the public officer that would be positively or negatively impacted by that individual's relationship with the City;
- C. Any business entity in which the public officer is an officer, director, or member having a financial interest in, or by which the public officer is employed;
- D. Any business entity in which the stock of; or legal or beneficial ownership of, in excess of five percent of the total stock or total legal and beneficial ownership, is controlled or owned by the public officer.

(2) Official Act or Action means any legislative, administrative, appointive or discretionary act of any officer of the City or any agency, board, committee or commission thereof.

(3) Business Entity means any business, proprietorship, firm, partnership, person in a representative or fiduciary capacity, association, venture, trust, corporation, limited liability company, or similar business organization.

(4) Public Officer means any person, officer holding a position by public election or Governing Body appointment in the service of the City of Roeland Park, whether paid or unpaid, including members of any board, committee or commission thereof.

(5) Transaction shall be defined as any activity that engages the authorization, approval, involvement in an official capacity of a public officer that did or could result in the expenditure of City funds.

(6) Ethics Attorney shall be defined as that individual who is licensed to practice law in the State of Kansas who does not currently serve the City that is selected by the Governing Body.

(c) Standards of Conduct.

(1) The requirements herein set forth shall constitute reasonable standards and guidelines for the ethical conduct of public officers of the City.

(2) Interest in Contract or Transaction. No public officer having the power or duty to perform an official act or action related to a contract or transaction which is or may be the subject of an official act or action of the City, shall:

- A. Have or hereafter acquire an interest in such contract or transaction;

- B. Have an interest in any business entity representing, advising or appearing on behalf of any person involved in such contract or transaction, whether paid or unpaid;
 - C. Have solicited or accepted present or future employment with a person or business entity involved in such contract or transaction;
 - D. Have solicited, accepted or granted a present or future gift, service or thing of value from or to a person involved in such contract or transaction.
- (3) Exceptions. The prohibition against gifts, services or things of value in Subsection 1-318(c)(2)(D) shall not apply to:
- (A) An occasional non-pecuniary gift, service or thing of value, insignificant in value (\$50.00 or less);
 - (B) An award publicly presented in recognition of public services.
- (4) Pre-acquisition of Interest. No public officer, with respect to any contract or transaction which is under consideration as an official act or action of the City, shall acquire an interest in or be affected by such contract or transaction at a time when the public officer believes or has reason to believe that it will directly or indirectly be affected by an official act or action of the City.
- (5) Disclosure of Information Prohibited. No public officer, with respect to any contract or transaction which is or is under consideration of an authorization, shall disclose information specifically intended to be confidential concerning the property, government or affairs of the City, or use such information to advance the financial interest of himself, herself or others.
- (6) Incompatible Service. No public officer shall engage in or accept private employment or render service, for private interest, when such employment or service is incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence of judgment or action in the performance of his official duties, unless otherwise permitted by law and unless disclosure is made as provided in this code.
- (7) Appearances. No public officer shall appear on behalf of any private person, other than himself, herself, his or her spouse or minor children, before any City agency or the Municipal Court. However, a member of the Governing Body may appear before City agencies on behalf of his or her constituents in the course of his or her duties as a representative of the electorate or in the performance of public or civic obligations.
- (8) Public Contracts. No public officer who in his or her capacity as such officer participates in the making of a contract in which he or she has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on his or her part, shall enter into any contract with the City unless:

- A. The contract is awarded through a process of public notice and competitive bidding, or
 - B. The contract for property or services is one for which the price is fixed by law.
- (9) Public Property. No public officer shall engage in, request or permit the unauthorized use of City-owned vehicles, equipment, materials or property for the operation of a private business or for personal use.
- (10) Later Case Interest. No public officer shall, after the termination of service with the City, appear for pay before any board, commission, committee or agency of the City in relation to any case, proceeding or application in which he or she personally participated during the period of his or her service, or which was under his or her active consideration. No elected official shall apply for or be considered for any employment with the City following his or her departure from elected office for the length of his or her tenure or four years, whichever is the longest.
- (11) Use of Computers by Elected Officials. Any computer ("computer" being defined to include desktop as well as portable computers, computer functions such as internet access, electronic mail and broadband broadcast; computer databases; servers; hardware; and software) provided by the City for use by elected officials shall be restricted to use for official City business. No elected official shall use any such computer for personal use or cause, permit or allow any other person to use or access any such computer for other than official City business. Use of any such computer for political purposes, including campaigns for City offices, shall be considered to be personal use. Unless approved by the Governing Body, use of any such computer for fund raising activities shall be considered to be personal use.
- (d) Exceptions to Code of Ethics.
- (1) It shall not be deemed a violation of the standards of the code if the interest of a public officer in a person or business entity is a contractual obligation of less than \$500.00 which has not been preceded by any other obligation, discharged or existing, between the parties, and which is not the first in a series of two or more loans or debts which either of the parties is under an obligation to make or incur.
 - (2) A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of this state to engage in the making of such loans shall not be deemed to create an interest in violation of this code. A contract for a commercial retail sale, even though over the value of \$500.00, shall not be deemed to create an interest in violation of this code.
 - (3) A public officer does not make or participate in the making of a contract or perform an official act or action related to a contract or transaction if the public officer abstains or recuses himself or herself from any official act or

action in regard to the contract or transaction, and does not vote on such item.

(e) Disclosure of Interest in Legislative Action.

- (1) Any member of the Governing Body who has a financial interest or personal interest in any proposed legislation before the Governing Body shall disclose on the record the nature and extent of such interest.
- (2) Any other public officer who has a financial or personal interest in any proposed legislative action of the Governing Body and who participates in discussion with or gives an official opinion or recommendation to the Governing Body, shall disclose on the record of the nature and extent of such interest.

(f) Enforcement. Any alleged violation by a public officer shall be brought to the attention of the Governing Body by a written complaint duly signed by a complaining party. The Governing Body shall consider the complaint, and/or direct that the City Ethics Attorney consider or investigate the complaint, and consideration shall be given to open meetings requirements and standards, including but not limited to those related to consultation with the City's attorneys and personnel matters of non-elected personnel. The Governing Body may take such action, or direct that such action be taken, as the Governing Body deems appropriate, including but not limited to those set forth in Subsection 1-318(h) (Violations; Penalties) below.

(g) Advisory Opinions.

- (1) When any public officer has a question as to the applicability of any provision of this code to a particular situation, or as to the definition of terms used herein, such public officer should bring the question to the attention of the City Administrator or the Mayor, as may be appropriate. If any such questions are not resolved through such channels, he or she may apply in writing to the Governing Body for a formal advisory opinion from the Ethics Attorney. The officer shall have the opportunity to present his or her interpretation of the facts at issue and of the applicability of provisions of the code before such advisory opinion is made. As appropriate, an opinion from the Kansas Governmental Ethics Commission may also be requested.
- (2) Such opinion until amended or revoked shall be binding on the City, the City Council, and the Ethics Attorney in any subsequent actions concerning the public officer who sought the opinion and acted on it in good faith, unless material facts were omitted or misstated in the request for the advisory opinion. Such opinion shall not be binding in any action initiated by any private citizen. Any ethics opinion shall not be considered attorney-client privilege as between the Ethics Attorney and the public officer.
- (3) Whenever, at any meeting of the City Council, any person states or alleges that the participation of any member of the Governing Body with respect to any matter on the agenda for action by the Governing Body at that meeting would or may result in a violation of this code, the Governing Body member

affected may request to have the matter tabled until the next regular meeting of the City Council in order to afford said Governing Body member an opportunity to obtain an advisory opinion from the Ethics Attorney.

(h) Violations; Penalties.

- (1) Action, if any, for violation of this Code may include, but not be limited to, an informal reprimand, formal resolution of public censure, or forfeiture or ouster in accordance with the applicable statutes of the State of Kansas. In addition, in the case of employees, action may be based upon established employment policies of the City, including suspension or dismissal where appropriate.
 - (2) In addition, any public officer who willfully and knowingly violates any of the provisions of Sections 1-318(c) (Standards of Conduct) or 1-318(e) (Disclosure of Interest in Legislative Action) of this Code may be deemed guilty of a public offense and the Ethics Attorney and/or the City Prosecutor, with the approval of the Governing Body, shall have the power to initiate any suit, and to prosecute any criminal or civil action on behalf of the City where such action is appropriate. Any public officer so found guilty of violating any provision contained in such Sections shall be punished in accordance with the penalties set forth in Section 1-117 of the City Code. Public officers in violation of the provisions of this Code shall also be subject to submission to the Kansas Governmental Ethics Commission, the Attorney General of Kansas, or the Johnson County, Kansas, District Attorney for review, investigation, and appropriate action pursuant to State law.
 - (3) In addition, where the violation by the public officer has resulted in financial harm to the City or financial profit or gain to the public officer, the City is authorized to seek damages in an amount not to exceed twice the financial harm suffered by the City or twice the profit or gain realized by the public officer, whichever is greater.
 - (4) Violations of any provision of this Code may further constitute cause to cancel any contract, cease negotiations on any contract, and/or rescind or modify any previous action based upon any such violation.
- (i) Distribution of Code of Ethics. The City Clerk shall cause a copy of the Code of Ethics to be distributed to every public officer of the City within 30 days after enactment and amendment of the same. Each public officer elected or appointed thereafter shall be furnished a copy and file a signed version with the City before entering upon the duties of his or her office.

SECTION 2. Sections 3 through 11, inclusive, of Charter Ordinance No. 12 and existing Section 1-318 of the Code of the City of Roeland Park, Kansas, are hereby repealed.

SECTION 3. This Charter Ordinance shall be published once each week for two consecutive weeks in the official City newspaper.

SECTION 6. This Charter Ordinance shall take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the ordinance as provided in Article 12, Section 5 of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective upon approval by a majority of the electors voting thereon.

PASSED by the Governing Body, not less than two-thirds of the members-elect voting in favor thereof, this 30th day of March, 2015.

ARTICLE 15. - BOARD OF ZONING APPEALS

Sec. 16-1501. - Board of Zoning Appeals Created.

There is hereby created a Board of Zoning Appeals for the City of Roeland Park in accordance with the provisions of the Kansas Statutes Annotated. The word "board" when used in this article shall be construed to mean the Board of Zoning Appeals.

Sec. 16-1502. - Composition of Board.

The board shall consist of five residents of the City to be appointed by the Mayor by and with the consent of the City Council. The term of office of the members of the board shall be for three years excepting that the five members first appointed shall serve respectively for terms of one for one year; two for two years; and two for three years. The presence of three members of the board shall constitute a quorum for the transaction of business, provided, however, that the concurring vote of three members of the board shall be necessary to effect a ruling in favor of an appellant or applicant.

Sec. 16-1503. - Chairperson; Removal or Members.

The board shall elect the chairperson who shall serve or until a successor is elected. The board may adopt reasonable regulations for the conduct of its affairs. Board members may be removed for cause by a majority vote of the Governing Body.

Sec. 16-1504. - Powers and Duties.

The board shall operate and have those powers and duties as set forth herein or in applicable provisions of the Kansas Statutes Annotated.

Sec. 16-1505. - Fees.

When an application is filed with the board pursuant to its rules there shall accompany each application a fee in an amount established by resolution of the Governing Body.

Sec. 16-1506. - Appeals to The Board of Zoning Appeals.

- (a) Appeals may be taken by any person aggrieved, or by any officer of the City or any government body or agency affected by any order, requirement, decision, or determination made by any administrative official of the City in the enforcement of Chapter XVI, or of any ordinance adopted pursuant thereto.
- (b) No appeal, pursuant to this section, shall be heard by the board until the individual appealing the order, requirement, decision or determination has met with the administrative official who made the determination to receive a full explanation of the zoning requirements in question as currently interpreted. No notice of appeal shall be processed until it has been deemed complete by the Building Inspector, the fee paid, and all required additional information submitted.
- (c) The appeal shall be taken within a reasonable time as provided by the rules of the board. An appeal shall be initiated by filing with the person whose decision is being appealed and with the board a notice of appeal specifying the decision being appealed from and a statement as to the reason of the appeal. The notice must be accompanied by the fee set by the Governing Body, pursuant to section 16-1505. The Building Inspector or the board may require that drawings or photos of the property in question and a list of all surrounding property owners be submitted to the board prior to consideration of the appeal by the board.
- (d) When all requirements established in subsections (b) and (c) have been complied with, the Building Inspector shall notify the chairman and the chairman shall schedule a meeting of the board and shall send copies of the notice to the board members. At least twenty days prior to the board meeting, an

official notice to the public shall be published in the official City newspaper explaining the appeal and the time and place of the scheduled hearing. A copy of the notice shall be mailed to each party to the appeal and to the Planning Commission. At the hearing, any party may appear in person or by an agent or by an attorney.

- (e) An appeal stays all proceedings and furtherance of action appealed from unless the Building Inspector certifies to the board, after the notice of appeal has been filed, that, by reason of facts stated in the notice, a stay would cause imminent peril to life or property.
- (f) At its next meeting, the board shall hear all facts and testimony from all parties wishing to be heard concerning the appeal. The appeal shall be heard by the board at the next meeting following compliance with the requirements established in subsections (b), (c) and (d).
- (g) In its deliberations, the board must only consider whether or not the interpretation in question conformed to the specific language of the ordinance being enforced. The board may not declare the zoning regulations unfair or attempt to act contrary to their purpose. The board may clarify ambiguities or resolve conflicts between opposing sections. Since the board's decisions will affect future application of the regulation in question, the specific hardship of the applicant should not be considered when reaching a determination on an appeal filed pursuant to this section.
- (h) The board may either affirm, reverse, or modify the order, requirement or interpretation at issue. If the decision of the board is not made at the meeting where the hearing was held, a written decision, shall be mailed to affected parties.

Sec. 16-1507. - Variances.

- (a) When an applicant feels that the strict application of the requirements of the zoning regulations have created an undue hardship, the applicant may request a variance from the board.
- (b) A variance should be issued only to the specific restrictions on physical construction; not to permissible land uses within a given district, and only if it reasonably constitutes the minimum variance necessary and the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.
- (c) To initiate a request for a variance the applicant or his authorized agent shall submit a completed application on the form provided by the City to the building inspector and pay the appropriate fee as set forth in section 16-1505. The application shall be accompanied by a sketch map showing proposed and existing structures and uses of the property for which the variance is being requested and of immediately adjacent properties. The Building Inspector may require applicant to submit photos of the subject property. No application shall be processed until it has been deemed completed by the Building Inspector, the fee paid and all additional information submitted.
- (d) When all requirements established in subsections (b) and (c) have been complied with, the Building Inspector shall notify the chairman, and the chairman shall schedule a regular meeting of the board and send to the board members copies of the application and all additional information submitted. At least 20 days prior to the board meeting, an official notice to the public shall be published in the official City newspaper explaining the variance request and the time and place of the scheduled hearing, and a copy of the notice shall be mailed to the applicant, the Planning Commission, and to all owners of record of lands located within 100 feet of the property which is the subject of the application for variance. The form of the notice and the procedure for providing the notice shall be in accordance with subsection (a).
- (e) At the scheduled meeting of the board, it shall hear all facts and testimony from all parties wishing to be heard concerning the requested variance. In each case, the board shall not grant a variance unless by a vote of three members of the board finds, based upon the evidence presented, facts which conclusively support all the following findings.
 - (1) *Uniqueness*. The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by the action of the property owners or applicant. These conditions include the particular physical

surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.

- (2) *Adjacent property.* The granting of the variance will not be materially detrimental or adversely affect the rights of adjacent property owners or residents
 - (3) *Hardship.* The strict application of the provisions of the zoning regulations from which a variance is requested will constitute unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be a sufficient reason by itself to justify the variance.
 - (4) *Public interest.* The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.
 - (5) *Spirit and intent.* Granting the request for variance should not be opposed to the general spirit and intent of the zoning regulations.
- (f) The board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the board, decisions of the board and the vote upon each question. Records of all official actions of the board shall be filed in City hall and shall be public record.
 - (g) The board may either grant, grant conditionally, or deny the application for a variance. If the decision of the board is not made at the meeting at which the hearing was held, a written decision shall be sent to affected parties and the Planning Commission.

Sec. 16-1508. - Appeals From Board of Zoning Appeals.

Any person or an official of a government agency dissatisfied with any order or determination of the board may bring an action to determine the reasonableness of any order or determination within thirty days after the making of the order or determination, in the District Court of Johnson County, Kansas.

2012 Kansas Statutes

12-759. Same; board of zoning appeals; membership; vacancies; powers; fees; variances; exceptions. (a) Any governing body which has enacted a zoning ordinance or resolution shall create a board of zoning appeals by adoption of the appropriate ordinance or resolution. Such board shall consist of not less than three nor more than seven members. If a city enacts zoning regulations which affect land outside the corporate limits of such city, at least one member of the board shall be a resident of the area outside the city's limits. The members first appointed shall serve respectively for terms of one, two and three years, divided equally or as nearly equally as possible among the members. Thereafter the terms of the members may be changed to either three or four years, whichever is deemed to be in the best interest of the city or county. Vacancies shall be filled by appointment for the unexpired terms. The members of such board shall serve without compensation. The board annually shall elect one of its members as chairperson, and shall appoint a secretary who may be an officer or an employee of the city or county. The board shall adopt rules in accordance with the provisions of the ordinance or resolution creating the board. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the board, decisions of the board and the vote upon each question. Records of all official actions of the board shall be filed in its office and shall be a public record. The governing body, in the ordinance or resolution creating such board, may establish a scale of reasonable fees to be paid in advance by the party appealing. Any two or more cities or counties which have established a joint planning commission may establish a joint board of zoning appeals.

(b) Any board of zoning appeals in existence on the effective date of this act shall continue in existence, but shall be governed by the provisions of this act.

(c) The board of zoning appeals shall administer the details of appeals from or other matters referred to it regarding the application of the zoning ordinance or resolution as hereinafter provided. The board shall fix a reasonable time for the hearing of an appeal or any other matter referred to it. Notice of the time, place and subject of such hearing shall be published once in the official city newspaper in the case of a city and in the official county newspaper in the case of a county at least 20 days prior to the date fixed for hearing. A copy of the notice shall be mailed to each party to the appeal and to the appropriate planning commission.

(d) Appeals to the board of zoning appeals may be taken by any person aggrieved, or by any officer of the city, county or any governmental agency or body affected by any decision of the officer administering the provisions of the zoning ordinance or resolution. Such appeal shall be taken within a reasonable time as provided by the rules of the board, by filing a notice of appeal specifying the grounds thereof and the payment of the fee required therefor. The officer from whom the appeal is taken, when notified by the board or its agent, shall transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board shall have power 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 the zoning ordinance or resolution. In exercising the foregoing powers, the board, in conformity with the provisions of this act, 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.

(e) When deemed necessary by the board of zoning appeals, the board may grant variances and exceptions from the zoning regulations on the basis and in the manner hereinafter provided: (1) To authorize in specific cases a variance from the specific terms of the regulations which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning regulations in such district. 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) That 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 or the applicant; (B) that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents; (C) that 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; (D) that 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; and (2) to grant exceptions to the provisions of the zoning regulation in those instances where the board is specifically authorized to grant such exceptions and only under the terms of the zoning regulation. In no event shall exceptions to the provisions of the zoning regulation be granted where the use or exception contemplated is not specifically listed as an exception in the zoning regulation. Further, under no conditions shall the board of zoning appeals have the power to grant an exception when conditions of this exception, as established in the zoning regulation by the governing body, are not found to be present.

(f) Any person, official or governmental agency dissatisfied with any order or determination of the board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the board.

(g) A planning commission also may be designated as a board of zoning appeals under this section.

(h) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 20; July 1.

BZA Procedures Overview

1. "Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine." - *(Kansas Statutes, Chapter 12: Cities And Municipalities, Article 7: Planning And Zoning)*
2. "The board shall appoint a secretary who may be an officer or an employee of the city." - *(Kansas Statutes, Chapter 12: Cities And Municipalities, Article 7: Planning And Zoning)*
3. "The Board shall elect the chairperson who shall serve or until a successor is elected. The Board may adopt reasonable regulations for the conduct of its affairs. Board members may be removed for cause by a majority vote of the Governing Body." - *(Chapter XVI, Article 15. – Sec. 16-1504)*

"The board **annually** shall elect one of its members as chairperson, and shall appoint a secretary who *may* be an officer or an employee of the city or county. The board **shall** adopt rules in accordance with the provisions of the ordinance or resolution creating the board"

KSA 12-759.

Does the BZA currently have any bylaws that govern its process?

4. "No notice of appeal shall be processed until the fee paid, and all required additional information submitted." - *(Chapter XV, Article 15. – Sec. 16-1506)*
5. "The application shall be accompanied by a sketch map showing proposed and existing structures and uses of the property for which the variance is being requested and of immediately adjacent properties and a list of all surrounding property owners be submitted to the board, by the applicant, prior to consideration of the appeal by the board." *(Chapter XVI, Article 15. – Sec. 16-1507)*

"Vicinity Maps", "Site Plans" and County Certified lists of ownership are typical inclusions in a full application. My recommendation is going to be to have a site plan with CL on every application.

6. "When all requirements established in subsections (b) and (c) have been complied with, the Building Inspector shall notify the chairman, and the chairman shall schedule a regular meeting of the Board and send to the Board members copies of the application and all additional information submitted." – *(Chapter XVI, Article 15. – Sec. 16-1507)*

This will be accomplished in a timely manner. Extensive information may take a bit longer to get out BUT we will make every effort to get it out quickly.

7. "At least 20 days prior to the Board meeting, an official notice to the public shall be published in the official City newspaper explaining the variance request and the time and place of the scheduled hearing, and a copy of the notice shall be mailed to the applicant, the Planning Commission, and to all owners of record of lands located within 100 feet of the property which is the subject of the application for variance." - (*Chapter XVI, Article 15. – Sec. 16-1507*)
8. "The Board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the Board, decisions of the Board and the vote upon each question. Records of all official actions of the Board shall be filed in City Hall and shall be public record." - (*Chapter XVI, Article 15. – Sec. 16-1507*)

Are decisions forwarded to the Planning Commission as well?

PRIMARILY BZA AUTHORITY IS TAKEN FROM K.S.A. 12-759

When deemed necessary by the board of zoning appeals, the board may **grant variances and exceptions from the zoning regulations** on the basis and in the manner hereinafter provided KSA 12-759(e)

(c) The board of zoning appeals shall administer the details of appeals from or other matters referred to it regarding the application of the zoning ordinance or resolution as hereinafter provided. The board shall fix a reasonable time for the hearing of an appeal or any other matter referred to it. Notice of the time, place and subject of such hearing shall be published once in the official city newspaper in the case of a city and in the official county newspaper in the case of a county at least **20 days prior** to the date fixed for hearing. A copy of the notice shall be mailed to each party to the appeal and to the *appropriate planning commission*.

(d) Appeals to the board of zoning appeals may be taken by any person aggrieved, or *by any officer of the city, county or any governmental agency or body affected by any decision of the officer administering the provisions of the zoning ordinance or resolution*. Such appeal shall be taken within a reasonable time as provided by the rules of the board, by filing a notice of appeal specifying the grounds thereof and the payment of the fee required therefor. The officer from whom the appeal is taken, when notified by the board or its agent, shall transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board shall have power 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 the zoning ordinance or resolution. In exercising the foregoing powers, the board, in conformity with the provisions of this act, **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.**

****Taken from KSA 12-759 sub section (e) Such variance shall not permit any use not permitted by the zoning regulations in such district.**

BZA Duties from the City Code:

4-110 Requires the BZA to sit as the “Code Appeal Board” for construction matters.

16-1601 Allows the formation of Bylaws to set a structure for actions, electing chairman etc.

16-314 BZA Public Hearings allowing continuances by written request.
16-313(a) & 315(b)
Requires a 200’ boundary notification for anything requiring a public hearing

16-1317 BZA is named as the appellate board for Flood Plain Management requests and variances

16-1506 BZA Appellate to any Officer, Body or Agency of the city

Organization and Bylaws of the Board of Zoning Appeals

Creation of the Board of Zoning Appeals

A. Creation. A Board of Zoning Appeals (BZA) is hereby created to administer all zoning, floodplain, subdivision appeals, variances, and other matters of land regulation as enumerated in the Edgerton Unified Development Code.

B. Membership Requirements. All members of the Board of Zoning Appeals must be age 18 years or older at the time of their initial appointment.

C. Composition of the Board.

1. The Board of Zoning Appeals shall be composed of all nine current members of the Edgerton Planning Commission.
1. Members shall be appointed by the Governing Body for terms of three (3) years and may be re-appointed for subsequent terms.

D. Service of Members.

1. All members of the Board of Zoning Appeals shall serve without pay or other compensation, except that all members shall be reimbursed for traveling or phone expenses.
2. Members may be removed for just cause, including conflict of interest, bias, and failure to attend scheduled meetings.
3. Appointments to fill unexpired terms shall be made by the Governing Body by using Alternates, or by selecting new members from the Edgerton Planning Commission.

E. Duties of Chairperson.

1. The Chair of the Board of Zoning Appeals shall call all meetings (and designate the location of the hearing) on request of the Zoning Administrator and/or Governing Body. The Chair shall also conduct all meetings according to (Rev.) Robert's Rule of Order. The Chair shall insure that all final orders or decisions of the Board of Zoning Appeals are rendered within 60 days of the original hearing date: all such orders or decisions must be in writing.
2. In the absence of the chairperson, the vice-chair or secretary of the Planning Commission shall serve as the chair.

F. Meetings and Votes of the Board.

1. The Chair shall conduct all meetings and take all votes. Meetings shall be held at a time and place designated by the Chair of the Board of Zoning Appeals.
2. All votes shall be "yes" or "no" by voice, with a taped record and written minutes kept of each session. Abstentions shall not be allowed, but members may disqualify themselves for cause, in accordance with the Guidelines for Conflict of Interest listed above in Section 8.1 E-4 of this Article. Records of all official actions of the board shall be filed in the office of the City Clerk.
3. All hearings before the Board of Zoning Appeals shall be open to the public. The Board may, however, adjourn a hearing from time to time, and may meet in closed session to debate the record created at the public hearing. The Board shall issue its

findings to applicants in writing within 60 days after the first hearing, unless the applicant requests an extension of time.

4. The Chair of the Board of Zoning Appeals may establish, from time to time, reasonable limitations on the length of testimony, and shall have the power to rule on objections and other points of order raised by a board member, an applicant, or member of the public hearing. The Chair shall have the authority to Rule Out Of Order testimony that is not factual, based upon supposition or hearsay.

Powers and Responsibilities

A. Appeals.

1. The Board of Zoning Appeals (BZA) is hereby authorized to hear appeals from any person or official affected by any decision of the Zoning Administrator. In exercising the power of appeals, the BZA may reverse, amend, modify or affirm any discretionary act, requirement, decision or determination of the Zoning Administrator. To this end, the BZA shall have all of 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.

B. Procedures for Appeals.

1. The appeal must be brought within thirty (30) days of the final decision or action of the Zoning Administrator.
2. An Appeal Fee, established by the Fee Schedule for the Unified Development Code, shall be submitted with each appeal application.
3. The appellant must file the proper forms provided by the Zoning Administrator.
4. Notice of the appeal must be published once in the official city newspaper, at least twenty (20) days prior to the hearing.
5. The applicant shall mail a copy of said publication notice by U.S. Mail, certified, return receipt requested and prepaid, to each owner of record of land within a distance of two hundred (200) feet of the perimeter of such proposed change, at least ten (10) days prior to said hearing; sufficient copies of said notice for such purpose to be provided by the City Clerk. Proof of compliance herewith shall be filed under oath by the appellant with the City Clerk prior to such hearing. At least ten (10) days prior to the date set for hearing, the appellant shall file with the City Clerk a (Johnson County AIMS property ownership map) of the land in question, drawn to scale, showing all tracts within a distance of two hundred (200) feet of the perimeter and the ownerships of each such tract; also, the location of all present buildings and proposed development. Such plans or drawings shall be verified by the Building Official or applicable City Staff member for accuracy, and their signature shall be affixed to same.
6. The appellant or agent must appear before the Board of Zoning Appeals on the appointed time and day for the hearing. Failure to appear, unless waived by the Board of Zoning Appeals for cause, shall result in a dismissal of the appeal, and shall require re-application.
7. When an appeal is filed, the action of the Zoning Administrator shall be stayed pending a final decision of the Board of Zoning Appeals.

8. Actions of the Board of Zoning Appeals are final orders and are not sent to the Governing Body for review or approval.

C. Variances.

1. The Board of Zoning Appeals is hereby authorized to issue variances from the specific terms of these regulations. A variance shall not permit any use not permitted by this chapter in such district. The variance shall not be contrary to the public interest, and where, due to special conditions, a literal enforcement of the provisions of the regulations, in an individual case, and shall not result in an unnecessary hardship, and provided that:
 - a. The variance arises from a condition unique to the property in question, and is not a general condition found in the neighborhood.
 - b. That granting the variance will not adversely affect the rights of adjacent property owners or residents.
 - c. That strict adherence to the regulations in the specific case will constitute unnecessary hardship upon the property owner requesting the variance. The board must determine that the hardship is greater than an economic disadvantage, and in fact extends to a means of livelihood, a matter of protecting title to property, or if left uncorrected, would result in a severe and irrevocable change in the applicant's ability to transfer property. A hardship may also be construed to be "honest error" imposed upon a property owner by a ministerial official, or licensed professional, or through eminent domain or zoning resulting in a substantial {a near taking} loss of property rights.
 - d. The variance desired will not adversely affect the public health, safety, morals or welfare, convenience, prosperity or general order.
 - e. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the Zoning Ordinance provisions that are in question.
- B.** Notice of a hearing for a variance shall be published once, at least twenty (20) days in advance of the hearing, in the official city newspaper. The applicant shall mail a copy of said publication notice by U.S. Mail, certified, return receipt requested and prepaid, to each owner of record of land within a distance of two hundred (200) feet of the perimeter of such proposed change, at least ten (10) days prior to said hearing; sufficient copies of said notice for such purpose to be provided by the City Clerk. Proof of compliance herewith shall be filed under oath by the appellant with the City Clerk prior to such hearing. At least ten (10) days prior to the date set for hearing, the appellant shall file with the City Clerk a (Johnson County AIMS property ownership map) of the land in question, drawn to scale, showing all tracts within a distance of two hundred (200) feet of the perimeter and the ownerships of each such tract; also, the location of all present buildings and proposed development. Such plans or drawings shall be verified by the Building Official or applicable City Staff member for accuracy, and their signature shall be affixed to same.

Requirements for Applicants

- A.** Obtain an Accurate Legal Description of the Property.
- B.** Make a scale drawing of your property; usually you may use the recorded subdivision plat or your survey for this purpose.

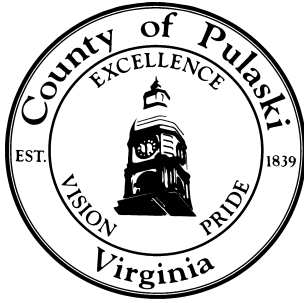
- C.** A Variance Fee, established by the Fee Schedule for the Unified Development Code, shall be submitted with each variance application.
- D.** Complete the necessary applications on forms provided by the Zoning Administrator.
- E.** Obtain a certified list of names and addresses of property owners within two hundred (200) feet. The Zoning Administrator will supply a sketch of the distance requirement.
- C.** Make an appointment with the Zoning Administrator to review your scale drawing. If possible, bring photos that clarify the need for your variance or exception.
- D.** Write a Statement of Purpose that explains the need for your variance or exception. Explain or clarify any extenuating circumstances that would help the Board of Zoning Appeals to understand the request.

Right of Appeal

- A.** Any person, official or governmental agency dissatisfied with any order, determination or action of the Board of Zoning Appeals may bring an action in the district court of the county to determine the reasonableness of any action or order. Such appeals shall be filed within thirty (30) days of the final decision of the Board.

Representatives and Agents

- A.** Nothing contained in this ordinance shall be construed as prohibiting the right of any applicant or a member of a public hearing to retain an agent to represent them before the Planning Commission, BZA, or Governing Body. Likewise, legal counsel may be used to represent any person having business pertaining to this ordinance. All persons, and their agents or counsels, have a right to speak at the designated time, submit written comments for the record, make objections, note exceptions, or request points of clarification {for the record} during public hearings.



Bylaws Pulaski County Board of Zoning Appeals

ARTICLE 1 – OBJECTIVES:

- 1-1.** This Board of Zoning Appeals (“BZA” or “Board”), established pursuant to Article 19 of the Pulaski County Zoning Ordinance and pursuant to § 15.2-2308, Code of Virginia, has revised and adopted these Bylaws in order to facilitate its powers and duties in accordance with the provisions of Title 15.2, Chapter 22, Article 7, Code of Virginia.

ARTICLE 2 – OFFICERS

- 2-1.** The BZA shall consist of five (5) residents of the County. The Board shall elect a Chair and a Vice-Chair in December of each year. Nomination of officers shall be made from the floor. Election of officers shall follow immediately. A candidate receiving a majority vote of the membership of the Board present and voting shall be declared elected.
- 2-2.** The Board shall have three (3) alternate members whose qualifications, terms and compensation shall be same as those of regular members.
- 2-3.** A regular member when he knows he will be absent from a meeting shall notify the Secretary at least twenty-four (24) hours prior to the meeting. The Secretary will call an alternate to serve in the absence of a member and the records of the Board shall so note.
- 2-4.** Vacancies in office shall be filled immediately either by alternates or recommendations from staff, Board members, Planning Commissioners and/or Board of Supervisors.
- 2-5.** The Chair shall:
- 2-5.1. Preside at all meetings and hearings of the BZA.
 - 2-5.2. Appoint committees as necessary.
 - 2-5.3. Administer oaths and compel the attendance of witnesses.
 - 2-5.4. Decide all point of order or procedure.
- 2-6.** The Vice-Chair shall:
- 2-6.1. Act in the absence or inability of the Chair to act.

2-7. The Secretary shall:

2-7.1. Keep the minutes and records of the BZA's proceedings.

2-7.1.1 The date, time and location of the meeting.

2-7.1.2 The members of Board recorded as present or absent.

2-7.1.3 A summary of the discussion on matters proposed, deliberated or decided.

2-7.1.4 A record of all votes taken.

2-7.2. Maintain other BZA records.

2-7.3. Keep a file of all cases which come before the BZA.

2-7.4. Prepare and be responsible for the publishing of advertisements relating to meetings and public hearings in accordance with State law.

2-7.5. Send out notices required by these By-laws, the Pulaski County Zoning Ordinance, and the Code of Virginia.

2-8. The Zoning Administrator shall:

2-8.1. Prepare staff analysis and all official correspondence on behalf of the BZA.

2-8.2. Notify the Board of Supervisors of any vacancy on the BZA.

ARTICLE 3 – MEETINGS:

3-1. A regular meeting of the Board of Zoning Appeals for the hearing of cases shall be held on the third Tuesday at a time specified by the Chair. If no cases are pending no meeting shall be held. If a meeting date should fall on a legal holiday, the meeting shall be held the day following unless otherwise designated by the BZA or the Chair acting in the absence of a meeting.

3-2. The BZA will hold an organizational meeting in December to review By-laws; calendar related to deadline submittal for the following year; and other related zoning issues. During the organizational meeting no business will be conducted.

3-3. Special meetings of the BZA may be held at the call of the Chair and at such other times as a quorum of the BZA may determine, provided that notice of such meeting is given each member pursuant to the Virginia Freedom of Information Act (FOIA), § 2.2-3707 *et seq.* Code of Virginia.

3-4. A quorum in attendance shall be at least three (3) members.

3-5. The conduct of business at all regular meetings of the Board shall follow Robert's Rules of Order; Simplified Procedures.

3-6. The Board may adjourn a regular meeting of all applications or appeals that cannot be disposed of on the day set, and no further public notice shall be necessary for such a continuation or reconvened meeting.

- 3-7. The Chair, or the Vice-Chair in the absence of the Chair, may call an adjournment in the event of bad weather, in the opinion of such officer calling the adjournment. The Secretary shall attempt to notify each member of the Board and the press of a bad-weather adjournment.
- 3-8. Members shall be responsible to determine whether they have a conflict of interest and otherwise act in accordance with the State and Local Government Conflict of Interests Act § 2.2-3100 *et seq.* Code of Virginia. The Notice of Conflict form should be completed prior to the meeting and reported to the Chair during the meeting.

ARTICLE 4 – POWERS AND DUTIES:

- 4-1. The BZA shall have the powers and duties set forth in § 15.2-2309 Code of Virginia and Article 19 of the Pulaski County Zoning Ordinance.

ARTICLE 5 - PROCEDURE FOR HEARING CASES:

- 5-1. Appeals to the Board of Zoning Appeals may be taken by any person affected by any decision of the Zoning Administrator and by applicants for a variance to the zoning ordinance. Such appeal shall be filed with the Zoning Administrator. The Zoning Administrator will transmit the application to the Board along with all papers constituting the record upon which the action was taken.
- 5-2. All applications shall include all of the information required by the Zoning Ordinance, and all fees required by the Zoning Ordinance shall be paid before the matter will be scheduled for public hearing.
- 5-3. The applicant may appear in his own behalf at the public hearing, or be represented by counsel or an agent.
- 5-4. The Chair of the BZA may establish time limits on presentations at public hearings.
- 5-5. No cross-examination of speakers testifying shall be permitted, except by members of the BZA, without the permission of the Chair.
- 5-6. The Zoning Administrator or his/her designee shall make a staff report followed by the applicant or agent's statement. The Chair shall then hear from any citizen in favor of the application, followed by any citizen opposed to the application. The Chair shall also accept written statements and other documentation pertinent to the matter. The applicant shall be given an opportunity for final rebuttal.

ARTICLE 6 – AMENDMENTS:

- 6-1. These by-laws may be amended from time to time as deemed necessary by an affirmative vote of a majority of those present at any meeting at which a quorum is present.

ARTICLE 7 – FUNDING:

7-1. The BZA may employ or contract for, within the limits of funds appropriated by the Board of Supervisors, legal counsel and/or consultants.

ARTICLE 8 – VALIDITY:

8-1. If any word, clause, sentence, article, section, subsection or other part or parts of these By-laws shall be held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect any of the remaining parts of these By-laws, nor shall it affect any application of these By-laws that may be given effect without the unconstitutional or invalid parts, and to this end, all provisions of these By-laws are hereby declared to be severable.

8-2. The BZA shall be governed by the requirements of Title 15.2, Chapter 22, Article 7, Code of Virginia, and the Pulaski County Zoning Ordinance Article 19. Should any provision of these By-laws be found to be in conflict with said requirements, the Code of Virginia and Pulaski County Zoning Ordinance shall take precedence.