

## **ARTICLE 9**

### **COUNTY BOARD OF ZONING ADJUSTMENT**

#### **9.1 CREATION, MEMBERSHIP**

The County Board of Zoning Adjustment is hereby created and shall be known as the County Board of Zoning Adjustment. The members of said board shall be appointed by the County Board.

One (1) member only of said board shall be appointed from membership of the Planning Commission and the loss of membership on the Planning Commission by such member shall also result in the immediate loss of membership on the County Board of Zoning Adjustment.

Said board shall consist of five (5) regular members, 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 (3) years and removable for cause by the County Board upon written charges and after public hearings. Vacancies shall be filled for the unexpired terms of any member whose terms becomes vacant. (Ref. 23-168.01 RS. Neb)

#### **9.2 MEETINGS**

Meetings of the Board of Zoning Adjustment shall be held at the call of the chairperson and at such times as the Board may determine. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the County Clerk and shall be a public record.

#### **9.3 INTERPRETATIONS AND VARIANCES**

9.31 The Board of Adjustment shall, subject to appropriate conditions and safeguards as specified in these Regulations, have the following powers (Ref. 23-168.03 R.S. Neb.):

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 or Planning Commission based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures;
2. To hear and decide, in accordance with the provisions of any Regulation, requests for interpretation of any maps, or for decisions upon other special questions upon which the Board is authorized by any such regulation to pass; and

3. Whereby reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of 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 this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardships, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of these Zoning Regulations, but no such variance shall be authorized unless the Board finds that:
  - a) The strict application of the Regulation would produce undue hardship;
  - b) Such hardship is not shared generally by other properties in the same Zoning District and the same vicinity;
  - c) 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
  - d) 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.

9.32 No variance shall be authorized unless the Board 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 reasonable practicable the formulation of a general regulation to be adopted as an amendment to the Zoning Regulations.

9.33 In exercising the above-mentioned powers such Board may, in conformity with the provisions of said sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as shall be proper, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such Regulation or to effect any variation in such Regulation.

#### **9.4 PROCEDURES FOR REQUESTING A VARIANCE**

The procedures to be followed by the Board of Zoning Adjustment shall be as follows.

9.41 Appeals to the Board may be taken by any person aggrieved or by any officer, department, governmental agency affected by any decision of the Zoning Administrator. Such appeal shall be made within ten (10) days from the date of decision by any county officer or department. The appeal filed in writing shall define the appeal being requested and the grounds therefor. The officer from whom the appeal is taken shall forthwith transmit to the Zoning Board of Adjustment all the paper constituting the record upon which the action appealed from was taken.

9.42 The chairperson of the Board shall set a hearing within thirty (30) days of receipt of the appeal. The time, date, place of the hearing, and description of the request shall be published in a local newspaper of general circulation ten (10) days prior to the actual hearing. The Board shall also notify the interested parties in the case of the hearing date, time and place.

#### **9.5 APPEALS FROM THE BOARD OF ZONING ADJUSTMENT**

Any person or persons, jointly or separately, aggrieved by any decision of the Board of Zoning Adjustment, or any officer, departments, board or bureau of the County, may seek review of such decision by the District Court for the County in the manner provided by the laws of the State and particularly by Section 23-168.04.

## **ARTICLE 10**

### **ADMINISTRATIVE PROVISIONS, ENFORCEMENT AND FEES**

#### **10.1 ENFORCEMENT**

10.11 ZONING ADMINISTRATOR. This Regulation shall be enforced and administered by a Zoning Administrator who shall be appointed by the County Board and who may be provided with the assistance of such other persons as the County Board may direct in order to carry out the following duties and responsibilities:

1. Approve and issue all zoning/development permits when compliance is made with this Regulation.
2. Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this Regulation.
3. Receive, file and forward, to the County Board of Zoning Adjustment, the records in all appeals for variances.
4. Maintain permanent and current records of the Zoning Regulation including, but not limited to, all zoning maps, amendments, special use permits, variances, appeals and applications thereof and records of hearings thereon.
5. Prepare and have available in book, and map for each year;
  - a) The compiled text of the Zoning Regulation and amendments thereto, including all amendments adopted through the preceding twelve (12) months; and
  - b) A zoning map or maps, showing the zoning districts, divisions and classifications in effect on the preceding twelve (12) months.
6. Whenever the Zoning Administrator shall find that any of the provisions of this Regulation have been or are being violated, he/she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He/she may order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings, structures or additions or alterations thereto; discontinuance of any illegal work being done; or take any other appropriate action authorized by this Regulation to insure compliance with, or to prevent violation of, its provisions.

## 10.2 ZONING PERMITS

10.21 GENERAL. No building or other structure shall be erected, moved, added to, or structurally altered without a zoning permit first having been issued by the Zoning Administrator. No zoning permit shall be issued unless the proposed construction or use is in conformance with all of the provisions of this resolution and with all other applicable codes, regulations and laws of Gage County and with all orders, and variances lawfully issued by the Board of Adjustment.

10.22 APPLICATION FOR ZONING PERMIT. All applications for a zoning permit shall be accompanied by a plot plan showing the location, ground area, height and bulk of all present and proposed structures, additions, parking areas and site improvements; the actual dimensions and shape of the lot lines; the uses to be built upon; the building lines in proposed structures or additions; and any other reasonable and pertinent information as may be required by the Zoning Administrator or the proper enforcement of this Regulation.

10.23 APPROVAL OR DISAPPROVAL OF PERMIT. The Zoning Administrator shall examine all applications for zoning permits, including plans, specifications and documents filed therewith and shall either approve or disapprove such application within thirty (30) days of receipt of same. Upon approval and receipt of required fees, the Zoning Administrator shall promptly issue the zoning permit and shall affix his/her signature to the permit and the plans and mark the plans "Approved." Upon disapproval of the application, the Zoning Administrator shall refuse to issue the permit and shall state in writing on the plans the reasons for disapproval, affix his/her signature and mark the plans "Disapproved."

10.24 APPEAL FROM APPROVAL OR DISAPPROVAL. An appeal from approval or disapproval of any Application shall be made to the Board of Adjustment in writing within ten (10) days after the determination of the Zoning Administrator has been filed.

10.25 CERTIFICATE OF ZONING COMPLIANCE FOR NEW, ALTERED, NON-ALTERED OR NON-CONFORMING USES:

- A. It shall be unlawful to use or occupy or permit the use of occupancy of any building or premises, or both or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use of structure until a Certificate of Zoning Compliance shall have been issued therefore by the Zoning Administrator stating that the proposed use of the building or land conforms to the requirements of the Regulation.
- B. No Certification of Zoning Compliance shall be issued by the Zoning Administrator except in conformity with all applicable provisions of this Regulation unless the Administrator shall receive a written authorization from the Board of Zoning Adjustment in the form of an administrative appeal review or approved variance or a written authorization from the Board of Commissioners in the form of an approved special exception, as provided by law.

- C. Development permit issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement and construction set forth in such approved plans and applications and no other use, arrangement or construction. If the Zoning Administrator determines that the construction of development under any permit is not proceeding according to the applicable regulations of this Regulation, plans filed with said permit application or additional requirements or conditions upon which such permit was issued, or is otherwise proceeding in violation of law, the permit shall be revoked.
- D. Failure to obtain a development permit and failure to comply with the plans and applications under which such permit was issued shall be a violation of this Regulation and punishable as provided in Article 12 of this Regulation.

### **10.3 FORM OF PETITIONS, APPLICATIONS AND APPEALS**

10.31 A verbal decision by the Zoning Administrator except in the cases of building, occupancy shall be the primary instrument for administering compliance with this Regulation.

### **10.4 DEVELOPMENT PERMITS**

No building or other structure shall be erected, moved, added to or structurally altered in the Gage County planning jurisdiction without a development permit therefore, issued by the Zoning Administrator. No development permit shall be issued by the Zoning Administrator except in conformity with all provisions of this Regulation unless the Administrator shall receive written authorization from the Board of Zoning Adjustment in the form of an administrative appeal review or approved variance or a written authorization from the Board of Supervisors in the form of an approved special exception, as provided in this Regulation.

#### **10.41 APPLICATION FOR A DEVELOPMENT PERMIT:**

- A. All applications for a development permit shall be accompanied by plans in triplicate drawn to scale, showing the actual dimensions and shape of the lot to be built upon, the sizes and locations on the lot of all existing buildings and other structures, if any, and the location and dimensions of the proposed building(s) and/or structure(s) or alteration thereof.
- B. The application shall include such other information as lawfully may be required by the Zoning Administrator, including existing or proposed uses of the building and land, existing or proposed buildings or alterations, the number of families, housekeeping units, or rental units the building is designed to accommodate, conditions existing on the lot, soil conditions, the proposed number of animal units and such other matters as may be necessary to determine conformance with and provide for the enforcement of this Regulation.

- C. One copy of the plans shall be returned to the applicant by the Zoning Administrator after he/she shall have marked the copy of the plans as approved or disapproved and attested to same by his/her signature on such copy. If a development permit is refused, the Zoning Administrator shall state the reason(s) for such refusal in writing and attach same to the applicant's copy of the plans. The original set of plans and one copy similarly marked shall be retained by the Zoning Administrator.
- D. When a development permit is issued for the erection, alteration of any building within the County's jurisdiction, the Zoning Administrator shall, if the cost of the improvement is one thousand dollars (\$1,000.00) or more, issued a duplicate of such permit to the County Assessor.

#### 10.42 EXPIRATION OF DEVELOPMENT PERMIT:

If the work described in any approved development permit has not begun within ninety (90) calendar days from the date of issuance thereof, said permit shall expire and be canceled by the Zoning Administrator and written notice of such cancellation shall be given to the person(s) affected.

If work described in any approved development permit has not been substantially completed within two (2) years of the date of issuance thereof, said permit shall expire and be canceled by the Zoning Administrator and written notice of such cancellation shall be given to the person(s) affected together with written notice that further work, as described in the canceled permit, shall not proceed unless and until a new development permit has been obtained.

### **10.5 SCHEDULE OF FEES - ZONING AND DEVELOPMENT PERMITS**

The schedule of fees to cover the costs of administration of this Zoning Regulation (zoning and development permits) shall be established by the County Board. The schedule of fees shall be posted in the office of the Zoning Administrator and may be altered or amended only by the County Board. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

**ARTICLE 11  
AMENDMENT**

**11.1 GENERAL**

The County Board may from time to time supplement, change or generally revise the Zoning Boundaries or Regulations contained in these Regulations. A proposal for such amendment may be initiated by the County Board, Planning Commission or upon application of the owner of the property affected. A filing fee established by the County Board is required for each application to be considered by the Planning Commission.

**11.2 SUBMISSION TO PLANNING COMMISSION**

All such proposed amendments shall first be submitted to the Planning Commission for recommendation and report. Upon the development of tentative recommendations, the Planning Commission shall hold a public hearing thereon and shall cause an accurate written summary to be made of proceedings, and shall give notice in like manner as that required for the original zoning recommendations. Such notice shall fix the time and place for such hearing and contain a statement regarding the proposed changes in Regulations or restrictions or in the boundary of any district.

If such proposed amendment is not a general revision of an existing provision of this Regulation, and will affect specific property, it shall be designated by legal description and general street location and notice shall be published in a paper of general circulation in the County and in addition to such publication notice, posting a sign upon the property identifying the pending zoning action. Written notice of such proposed amendment shall be mailed to all owners of lands located within three hundred (300) feet of the area proposed to be altered in incorporated areas and one (1) mile in unincorporated areas and an opportunity granted to interested parties to be heard.

**11.3 AMENDMENT CONSIDERATION AND ADOPTION**

The procedure for the consideration and adoption of any such proposed amendments shall be in like manner as that required for the consideration and adoption of the Regulations except herein before or herein after modified. For action on zoning amendments, a quorum of the Planning Commission is more than one-half (1/2) of all the members. A vote either for or against an amendment by a majority of all the Planning Commission members present constitutes a recommendation of the Commission; whereas a vote either for or against an amendment by less than a majority of the Planning Commission present constitutes a failure to recommend.

When the Planning Commission submits a recommendation of approval or disapproval of such amendment, the County Board, if it approves such recommendation, may either adopt such amendment by resolution or take no further action thereon as appropriate. In the event the Planning Commission submits a failure to recommend, the County Board may take such action as it deems appropriate. Upon receipt of a recommendation of the Planning Commission which the County Board disapproves, the said governing body

shall return such recommendation to the Planning Commission with a statement specifying the basis for disapproval, and such recommendation shall be considered in like manner as that required for the original recommendation returned to the Planning Commission. If such amendment shall affect the boundaries of any Zoning District, the resolution shall define the change or the boundary as amended, shall order the Official Zoning Map(s) to be changed to reflect such amendment, and shall amend the section of the Regulation incorporating the same and reincorporate such Map as amended.

#### **11.4 PROTEST**

Regardless of whether or not the Planning Commission approves or disapproves a proposed zoning amendment to the Regulations or fails to recommend, if a protest against such amendment be filed in the office of the County Clerk prior to the date of final action thereon by the Gage County Board of Supervisors, duly signed and acknowledged by the owners of twenty (20) percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred (100) feet therefrom, or of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, such amendments shall not become effective except by the favorable vote of two-thirds ( $2/3$  or five (5) members) of the total seven (7) members of the County Board (Section 23-165 Nebraska Revised Statutes, as amended).

## **ARTICLE 12**

### **COMPLAINTS, PENALTIES, REMEDIES**

#### **12.1 COMPLAINTS REGARDING VIOLATIONS**

Whenever a violation of this Regulation occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. He/she shall record properly such complaint, immediately investigate, and take action thereon as provided by this Regulation.

#### **12.2 PENALTIES**

The owner or agent of a building or premises in or upon which a violation of any provisions of this Regulation has been committed or shall exist or lessee or tenant of an entire building or entire premises in or upon which such violation shall exist, shall be guilty of a Class III misdemeanor. Each and every day that such violation continues after notification shall constitute a separate offense.

Nothing herein contained shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation.

#### **12.3 REMEDIES**

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure or land is used in violation of this resolution the appropriate authorities of Gage County may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

## **ARTICLE 13**

### **LEGAL STATUS PROVISIONS**

#### **13.1 SEPARABILITY**

Should any article, section or provisions of this Regulation be declared by the courts to be unconstitutional or invalid, such decisions shall not affect the validity of this Regulation as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

#### **13.2 PURPOSE OF CATCH HEADS**

The catch heads appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of any index and they shall be wholly disregarded by any person, officer, court or other tribunal in construing the terms and provisions of this Regulation.

#### **13.3 REPEAL OF CONFLICTING RESOLUTIONS**

All other Regulations in conflict with this Regulation are hereby repealed to the extent necessary to give this Regulation full force and effect.

#### **13.4 EFFECT DATE**

This Regulation shall take effect and be in force from and after its passage and publication according to law.

## ARTICLE 14

### NONCONFORMITIES

NONCONFORMITIES, INTENT: Nonconformities are of three types: nonconforming lots of record, nonconforming structures, and nonconforming uses.

14.1 **NONCONFORMING LOTS OF RECORD:** The Zoning Administrator may issue a Zoning Permit for any nonconforming lot of record provided that:

Said lot is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited, and

Said lot has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of such lot has been prohibited by the Zoning Regulations, and

Said use must meet all yard, height and parking regulations for the district in which it is located.

### 14.2 NONCONFORMING STRUCTURES

Authority to Continue: Any structure which is devoted to a use which is permitted in the Zoning District in which it is located, but which is located on a lot which does not comply with the use regulations and/or the applicable yard, height and parking regulations may be continued, so long as it remains otherwise lawful.

Enlargement, Repair, Alterations: Any nonconforming structure may be enlarged, maintained, repaired, remodeled or rebuilt; provided, however, that no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure.

Damage or Destruction: In the event any nonconforming structure is damaged or destroyed, by any means, to the extent of more than sixty (60) percent of its structural value, such structure shall not be restored unless it shall thereafter conform to the regulations for the Zoning District in which it is located. When a structure is damaged to the extent of sixty (60) percent or less, no repairs or restoration shall be made unless a zoning permit is obtained within six (6) months, and restoration is actually begun one (1) year after the date of such partial destruction and is diligently pursued to completion.

Moving: No nonconforming structure shall be moved in whole or in part of any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the Zoning District in which it is located after being moved.

### 14.3 NONCONFORMING USES

Authority to Continue: Nonconforming use of land or part or all of a structure may be continued, so long as otherwise lawful.

Ordinary Repair and Maintenance:

1. Normal maintenance and incidental repair, or replacement, installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing, water and/or waste disposal systems, may be performed on any structure or system that is devoted in whole or in part to a nonconforming use.
2. Nothing in these Regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety who declares such structure to be unsafe and orders its restorations to a safe condition.

Extension: A nonconforming use shall not be extended, enlarged, or increased in intensity. Any nonconforming use may be extended throughout any portions of a building which was manifestly arranged or designed for such use at the time of adoption or amendment of these Regulations, but no use shall be extended to occupy any land outside such building. Any nonconforming use of land may not be increased in size beyond the area occupied by such nonconforming use on the effective date of these Regulations (or on the effective date of subsequent amendments hereto that cause such use to become nonconforming).

Enlargement: No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the District in which it is located.

Damage or Destruction: In the event that the structures that are devoted in whole or in part to a nonconforming use are damaged to the extent of more than sixty (60) percent of their reasonable replacement value, the property shall conform to the Zoning District in which it is located.

Moving: No structure that is devoted in whole or in part to a nonconforming use shall be moved in whole or in part for any distance whatsoever, to any location on the same or any other lot, unless the entire structure and the use thereof or the use of land shall thereafter conform to all regulations of the Zoning District in which it is located after being so moved.

Change in use: If no external structural alterations are made which will expand the area or change the dimensions of the existing structure, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided that the governing body after receiving a recommendation from the Planning Commission, by making findings in the specific case, shall find that the proposed use is more appropriate to the Zoning District than the existing nonconforming use. More appropriate shall mean creating less traffic, noise, glare, odor or other characteristics of the proposed use. In permitting such change, the governing body may require appropriate conditions and safeguards to protect surrounding areas and properties. Once such use has changed, it may no longer be returned to the original use or any other less appropriate use.

Abandonment or Discontinuance: When a nonconforming use is discontinued or abandoned, for a period of twelve (12) consecutive months, such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such land shall comply with the regulations of the Zoning District in which such land is located.

Nonconforming Accessory Uses: No use which is accessory to a principal nonconforming use shall continue after such principal use shall cease or terminate.