

## CHAPTER 20

### PLANNING AND DEVELOPMENT

#### ARTICLE I. IN GENERAL

**Secs. 20-1--20-15. Reserved.**

#### ARTICLE II. PLANNING COMMISSION

**Sec. 20-16. Establishment of a Planning Commission and Definitions.**

- (a) There is hereby established a planning commission in the City of Merriam, Kansas.
- (b) When used in these regulations:
  - (1) "floodplain" means land adjacent to a watercourse subject to inundation from a flood having a chance occurrence in any one year of 1%;
  - (2) "governing body" means the governing body of the city;
  - (3) "manufactured home" means a structure which is subject to the federal manufactured home construction and safety standards established pursuant to 42 U.S.C. subsection 5403;
  - (4) "planning commission" means the Merriam Planning Commission;
  - (5) "residential-design manufactured home" means a manufactured home on permanent foundation which has (a) minimum dimensions of 22 body feet in width, (b) a pitched roof and (c) siding and roofing materials which are customarily used on site-built homes;
  - (6) "subdivision" means the division of a lot, tract, or parcel of land into two or more parts for the purpose, whether immediate or future, of sale or building development, including resubdivision;
  - (7) "subdivision regulations" mean the adopted subdivision ordinances of the City of Merriam;
  - (8) "zoning" means the regulation or restriction of the location and uses of buildings and uses of land;
  - (9) "zoning regulations" mean the lawfully adopted zoning ordinances of the City of Merriam;
  - (10) "City" means the City of Merriam, Kansas.

**Sec. 20-17. Members**

The planning commission shall be composed of nine members of which two members may reside outside of but within three miles of the corporate limits of the city. Members shall be appointed by the mayor with the consent of the governing body. The term of appointment shall be three years with three appointments expiring each year. Vacancies shall be filled by appointment for the unexpired term. Members of the planning commission shall serve without compensation. Members of the planning commission shall serve at the pleasure of the governing body.

#### **Sec. 20-18. Meetings.**

The members of the planning commission shall meet at such time and place as may be fixed in the commission's bylaws. The planning commission shall elect one member as chairperson and one member as vice-chairperson who shall serve one year and until their successors have been elected. A secretary also shall be elected who may or may not be a member of the planning commission. Special meetings may be called at any time by the chairperson or in the chairperson's absence by the vice-chairperson. The planning commission shall adopt bylaws for the transaction of business and hearing procedures. Unless otherwise provided herein, no action by the planning commission shall be taken except by a majority vote of the membership thereof. A record of all proceedings of the planning commission shall be kept. The planning commission, from time to time, may establish subcommittees, advisory committees or technical committees to advise or assist in the activities of the planning commission.

#### **Sec. 20-19. Comprehensive Plan**

- (a) The planning commission is hereby authorized to make or cause to be made a comprehensive plan for the development of the city. The planning commission may adopt and amend a comprehensive plan as a whole by a single resolution, or by successive resolutions, and the planning commission may adopt or amend parts of the plan. Such resolution shall identify specifically any written presentations, maps, plats, charts or other materials made a part of such plan. In the preparation of such plan the planning commission shall make or cause to be made comprehensive surveys and studies of past and present conditions and trends relating to land use, population and building intensity, public facilities, transportation and transportation facilities, economic conditions, natural resources and may include any other element deemed necessary by the planning commission. Such proposed plan shall show the planning commission's recommendations for the development or redevelopment of the territory including: (1) the general location, extent and relationship of the use of land for agriculture, residence, business, industry, recreation, education, public buildings and other community facilities, major utility facilities both public and private and any other use deemed necessary; (2) population and building intensity standards and restrictions and the application of the same; (3) public facilities including transportation facilities of all types whether publicly or privately owned which relate to the transportation of persons or goods; (4) public improvement programming based

- upon a determination of relative urgency; (5) the major sources and expenditure of public revenue including long range financial plans for the financing of public facilities and capital improvements based upon a projection of the economic and fiscal activity of the community, both public and private; (6) utilization and conservation of natural resources; and (7) any other element deemed necessary to the proper development or redevelopment of the area. Before adopting or amending any such plan or part thereof, the planning commission shall hold a public hearing thereon, notice of which shall be published at least once in the official city newspaper. Such notice shall be published at least 20 days prior to the date of the hearing. Upon the adoption or amendment of any such plan or part thereof by adoption of the appropriate resolution by the planning commission, a certified copy of the plan or part thereof, together with a written summary of the hearing thereon, shall be submitted to the governing body.
- (b) No comprehensive plan shall be effective unless approved by the governing body as provided by this section. The governing body either may (1) approve such recommendations by ordinance; (2) override the planning commission's recommendations by a 2/3 majority vote; or (3) may return the same to the planning commission for further consideration, together with a statement specifying the basis for the governing body's failure to approve or disapprove. If the governing body returns the planning commission's recommendations, the planning commission after considering the same, may resubmit its original recommendations giving the reason therefor or submit new and amended recommendations. Upon the receipt of such recommendations, the governing body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendations by the respective ordinance, or it need take no further action thereon. If the planning commission fails to deliver its recommendations to the governing body following the planning commission's next regular meeting after receipt of the governing body's report, the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendations and proceed accordingly. The comprehensive plan and any amendments thereto shall become effective upon publication of the respective adopting ordinance.
- (c) An attested copy of the comprehensive plan and any amendments thereto shall be sent to all other taxing subdivision in the planning area which request a copy of such plan. Such plan or part thereof shall constitute the basis or guide for public action to insure a coordinated and harmonious development or redevelopment which will best promote the health, safety, morals, order, convenience, prosperity and general welfare as well as wise and efficient expenditure of public funds.
- (d) At least once each year, the planning commission shall review or reconsider the plan or any part thereof and may propose amendments, extensions or additions to the same. The procedure for the adoption of any such amendment, extension or addition to any plan or part thereof shall be the same as that required for the adoption of the original plan or part thereof.

**Sec. 20-20. Capital Improvements**

- (a) Except as provided herein, whenever the planning commission has adopted and certified the comprehensive plan for one or more major sections or functional subdivision thereof, no public improvement, public facility, or public utility of a type embraced within the recommendations of the comprehensive plan or portion thereof shall be constructed without first being submitted to and being approved by the planning commission as being in conformity with the plan. If the planning commission does not make a report within 60 days, the project shall be deemed to have been approved by the planning commission. If the planning commission finds that any such proposed public improvement, facility or utility does not conform to the plan, the commission shall submit, in writing to the governing body, the manner in which such proposed improvement, facility or utility does not conform. The governing body may override the plan and the report of the planning commission, and the plan for the area concerned shall be deemed to have been amended.
- (b) Whenever the planning commission has reviewed a capital improvement program and found that a specific public improvement, public facility or public utility of a type embraced within the recommendations of the comprehensive plan or portion thereof is in conformity with such plan, no further approval by the planning commission is necessary under this section.

**Sec. 20-21. Zoning Regulations**

- (a) The governing body, by ordinance, may provide for the adoption or amendment of zoning regulations in the manner provided herein. The governing body may divide the territory subject to its jurisdiction into districts of such number, shape, area and of such different classes, according to the use of land and buildings and the intensity of such use as may be deemed suited to carry out the purposes of these regulations. Such regulations may include, but not be limited to, provisions restricting and regulating the height, number of stories and size of buildings; the percentage of each lot that may be occupied; the size of yards, courts and other open spaces; the density of population; the location, use and appearance of buildings, structures and land for residential, commercial, industrial and other purposes; the conservation of natural resources, including agricultural land; and the use of land located in areas designated as floodplains and other areas, including the distance of any buildings and structures from a street or highway. Such regulations shall define the boundaries of zoning districts by description contained therein or by setting out such boundaries upon a map or maps incorporated and published as part of such regulations or by providing for the incorporation by reference in such regulations of an official map or maps upon which such boundaries shall be fixed. Such map or maps shall be marked "Official copy of zoning district map incorporated into zoning regulations by adoption of an ordinance by the governing body of the City on the \_\_\_\_ day of \_\_\_, 19\_\_" and filed in the office of the city clerk or such other public office as may be designated by the

- governing body. Such regulations and accompanying map or maps shall be public records.
- (b) Zoning regulations may include, but not be limited to, provisions which:
- (1) provide for planned unit developments;
  - (2) permit the transfer of development rights;
  - (3) preserve structures and districts listed on the local, state or national historic register;
  - (4) control the aesthetics of redevelopment or new development;
  - (5) provide for the issuance of special use or conditional use permits; and
  - (6) establish overlay zones.
- (c) Before the City establishes any zone or district or regulates or restricts the use of buildings or land therein, the planning commission shall recommend to the governing body, the nature and number of zones or districts which it deems necessary and the boundaries of the same and appropriate regulations or restrictions to be enforced therein. Except as provided in the zoning regulations, all such regulations shall be uniform for each class or kind of building or land uses throughout each district, but the regulations in one district may differ from those in other districts and special uses may be designated within each district with conditions attached.
- (d) Upon the development of proposed zoning regulations the planning commission shall hold a public hearing thereon. Notice of such public hearing shall be published at least once in the official city newspaper at least 20 days prior to the date of the hearing. Such notice shall fix the time and place for such hearing and shall describe such proposal in general terms. The hearing may be adjourned from time to time and at the conclusion of the same, the planning commission shall prepare its recommendations and by an affirmative vote of a majority of the entire membership of the commission adopt the same in the form of proposed zoning regulations and shall submit the same, together with the written summary of the hearing thereon, to the governing body. The governing body either may: (1) Approve such recommendations by the adoption of the same by ordinance; (2) override the planning commission's recommendations by 2/3 majority vote of the membership of the governing body; or (3) may return the same to the planning commission for further consideration together with a statement specifying the basis for the governing body's failure to approve or disapprove. If the governing body returns the planning commission's recommendations, the planning commission, after considering the same, may resubmit its original recommendations giving the reasons therefor or submit new and amended recommendations. Upon the receipt of such recommendations, the governing body by simple majority thereof, may adopt or may revise or amend and adopt such recommendations by the respective ordinance, or the governing body need take no further action thereon. If the planning commission fails to deliver its recommendations to the governing body following the planning commission's next regular meeting after receipt of the governing body's report, the

governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendations and proceed accordingly. The proposed zoning regulations and any amendments thereto shall become effective upon publication of the respective adopting ordinance.

- (e) The governing body, from time to time, may supplement, change or generally revise the boundaries or regulations contained in zoning regulations by amendment. A proposal for such amendment may be initiated by the governing body or the planning commission. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the amendment may be initiated by application of the owner of property affected. Any such amendment, if in accordance with the land use plan or the land use element of a comprehensive plan, presumed to be reasonable. The governing body shall consider the following matters when approving or disapproving a rezoning request:
- (1) the character of the neighborhood;
  - (2) whether the proposed use will result in increasing the amount of vehicular traffic to the point where the capacity of the street network is exceeded;
  - (3) whether the proposed use is reasonably necessary for the convenience and welfare of the public and will not substantially or permanently injure the appropriate use, visual quality or marketability of adjoining property;
  - (4) whether the noise, vibration, dust or illumination that would normally be associated with such use is of such duration and intensity as to create problems for nearby property;
  - (5) whether the proposed use would pollute the air, land or water;
  - (6) the relative gain to the public health, safety and welfare as compared to the hardship imposed upon landowners;
  - (7) whether the proposed use would result in overcrowding of land or overcrowding population;
  - (8) the zoning uses of properties nearby;
  - (9) the suitability of the subject property for the uses which it has been restricted;
  - (10) the length of time the subject property has remained vacant as zoned;
  - (11) recommendations of professional staff; and
  - (12) conformance of the requested change to the adopted or recognized master plan adopted by the City.

The governing body may establish reasonable fees to be paid in advance by the owner of any property at the time of making application for a zoning amendment.

- (f) All such proposed amendments first shall be submitted to the planning commission for recommendation. The planning commission shall hold a public hearing thereon, shall cause an accurate written summary to be made of the proceedings, and shall give notice in like manner as that required for recommendations on the original proposed zoning regulations. 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 or classification of any zone or district. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the property shall be designated by legal description or a general description sufficient to identify the property under consideration. In addition to such publication notice, written notice of such proposed amendment shall be mailed at least 20 days before the hearing to all owners of record of land located within at least 200 feet of the area proposed to be altered. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the planning commission or the governing body. Such notice is sufficient to permit the planning commission to recommend amendments to zoning regulations which affect only a portion of the land described in the notice or which give all or any part of the land described a zoning classification of lesser change than that set forth in the notice. A recommendation of a zoning classification of lesser change than that set forth in the notice shall not be valid without republication and, where necessary, re mailing, unless the planning commission has previously established a table or publication available to the public which designates what zoning classifications are lesser changes authorized within the published zoning classification. At any public hearing held to consider a proposed rezoning, an opportunity shall be granted to interested parties to be heard.

- (g) Unless otherwise provided herein, the procedure for the consideration and adoption of any such proposed amendment shall be in the same manner as that required for the consideration and adoption of the original zoning regulations. A majority of the members of the planning commission present and voting at the hearing shall be required to recommend approval or denial of the amendment to the governing body. If the planning commission fails to make a recommendation on a rezoning request, the planning commission shall be deemed to have made a recommendation of disapproval. When the planning commission submits a recommendation of approval or disapproval of such amendment and the reasons therefor, the governing body may: (1) adopt such recommendation by ordinance; (2) override the planning commission's recommendation by a 2/3 majority vote of the membership of the governing body; or (3) return such recommendation to the planning commission with a statement specifying the basis for the governing body's failure to approve or disapprove. If the governing body returns the planning commission's recommendation, the planning commission, after considering the same, may resubmit its original recommendation giving the reasons therefor or submit new and amended recommendation. Upon the receipt of such recommendation the governing body, by a simple majority thereof may adopt or may revise or amend and adopt such recommendation by ordinance, or it need take no further action thereon. If the planning commission fails to deliver its recommendation to the governing body following the planning commission's next regular meeting after receipt of the governing body's report, the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendation and proceed accordingly. The proposed rezoning shall become effective upon publication of the adopting ordinance.

- (h) If such amendment affects the boundaries of any zone or district, the ordinance shall describe the boundaries as amended or if provision is made for the fixing of the same upon an official map which has been incorporated by reference, the amending ordinance shall define the change or the boundary as amended, shall order the official map to be changed to reflect such amendment, shall amend the section of the ordinance incorporating the same and shall reincorporate such map as amended.
- (i) Regardless of whether or not the planning commission approves or disapproves a zoning amendment, if a protest petition against such amendment is filed in the office of the city clerk or the county clerk within 14 days after the date of the conclusion of the public hearing pursuant to the publication notice, signed by the owners of record of 20% or more of any real property proposed to be rezoned or by the owners of record of 20% or more of the total area required to be notified of the proposed rezoning of a specific property, excluding streets and public ways, the ordinance adopting such amendment shall not be passed except by at least a 3/4 vote of all of the members of the governing body.
- (j) Zoning regulations may provide additional notice by providing for the posting of signs on land which is the subject of a proposed rezoning, for the purpose of providing notice of such proposed rezoning.
- (k) Regulations adopted shall not apply to the existing use of any building or land, but shall apply to any alteration of building to provide for a change in use or a change in the use of any building or land after the effective date of any regulations adopted. If a building is damaged by more than 50% of its fair market value such building shall not be restored if the use of such building is not in conformance with the regulations adopted
- (l) Except for floodplain regulations in areas designated as a floodplain, regulations adopted by the city pursuant to K.S.A. 12-715B, and amendments thereto, shall not apply to the use of land for agricultural purposes, nor for the erection or maintenance of buildings thereon for such purposes so long as such land and buildings are used for agricultural purposes and not otherwise.

#### **Sec. 20-22. Manufactured Homes**

- (a) The governing body shall not adopt or enforce zoning regulations which have the effect of excluding manufactured homes from the entire zoning jurisdiction of the governing body. In addition, the governing body shall not adopt or enforce zoning regulations which have the effect of excluding residential-design manufactured homes for single-family residential districts solely because they are manufactured homes.

- (b) Nothing in this section shall be construed as precluding the establishment of architectural or aesthetic standards applicable to manufactured homes so as to ensure its compatibility with site-built housing in the same zoning district.
- (c) Nothing in this section shall be construed to preempt or supersede valid restrictive covenants running with the land.

### **Sec. 20-23. Subdivision Regulations**

- (a) The planning commission shall apply subdivision regulations to all land located within the city. Subdivision regulations may include, but not limited to, provisions for the: (1) efficient and orderly location of streets; (2) reduction of vehicular congestion; (3) reservation or dedication of land for open spaces; (4) off-site and on-site public improvements; (5) recreational facilities which may include, but are not limited to the dedication of land area for park purposes; (6) flood protection; (7) building lines; (8) compatibility of design; and (9) any other services, facilities and improvements deemed appropriate.
- (b) Subdivision regulations may provide for administrative changes to land elevations designated on a plat. Such regulations may provide for plat approval conditional upon conformance with the comprehensive plan. Such regulations may provide for the payment of a fee in lieu of dedication of land. Such regulations may provide that in lieu of the completion of any work or improvements prior to the final approval of the plat, the governing body may accept a corporate surety bond, cashier's check, escrow account letter of credit or other like security in an amount to be fixed by the governing body and conditioned upon the actual completion of such work or improvements within a specified period, in accordance with such regulations, and the governing body may enforce such bond by all equitable remedies.
- (c) Before adopting or amending any subdivision regulations, the planning commission shall call and hold a hearing on such regulations or amendments thereto. Notice of such hearing shall be published at least once in the official city newspaper. Such notice shall be published at least 20 days prior to the hearing. Such notice shall fix the time and place for such hearing and shall describe such proposal in general terms. The hearing may be adjourned from time to time and at the conclusion of the same, the planning commission shall prepare its recommendations and by an affirmative vote of a majority of the entire membership of the commission adopt the same in the form of proposed subdivision regulations and shall submit the same, together with the written summary of the hearing thereon, to the governing body. The governing body either may: (1) approve such recommendations by ordinance; (2) override the planning commission's recommendations by a 2/3 majority vote; or (3) may return the same to the planning commission for further consideration, together with a statement specifying the basis for the governing body's failure to approve or disapprove. If the governing body returns the planning commission's recommendations, the planning commission, after considering the same, may resubmit its original recommendations

- giving the reasons therefor or submit new and amended recommendations. Upon the receipt of such recommendations, the governing body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendations by the respective ordinance, or it need take no further action thereon. If the planning commission fails to deliver its recommendations to the governing body following the planning commission's next regular meeting after receipt of the governing body's report, the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendations and proceed accordingly. The proposed subdivision regulations and any amendments thereto shall become effective upon publication of the respective adopting ordinance.
- (d) Compliance with subdivision regulations may be required as the condition of an issuance of a building or zoning permit when so specified in the subdivision regulations.
  - (e) The owner or owners of any land located within an area governed by regulations subdividing the same into lots and blocks or tracts or parcels, for the purpose of laying out any subdivisions, suburban lots, building lots, tracts or parcels or any owner of any land establishing any street, alley, park or other property intended for public use or for the use of purchasers or owners of lots, tracts or parcels of land fronting thereon or adjacent thereto, shall have a plat drawn as may be required by the subdivision regulations. Such plat shall accurately describe the subdivision, lots, tracts or parcels of land giving the location and dimensions thereof and the location and dimensions of all streets, alleys, parks or other properties intended to be dedicated to public use or for the use of purchasers or owners of lots, tracts or parcels of land fronting thereon or adjacent thereto. All plats shall be verified by the owner or owners thereof. All such plats shall be submitted to the planning commission.
  - (f) The planning commission shall determine if the plat conforms to the provisions of the subdivision regulations. If such determination is not made within 60 days after the first meeting of such commission following the date of the submission of the plat to the secretary thereof, such plat shall be deemed to have been approved and a certificate shall be issued by the secretary of the planning commission upon demand. If the planning commission finds that the plat does not conform to the requirements of the subdivision regulations, the planning commission shall notify the owner or owners of such fact. If the plat conforms to the requirements of such regulations, there shall be endorsed thereon the fact that the plat has been submitted to and approved by the planning commission.
  - (g) The governing body shall accept or refuse the dedication of land for public purposes within 30 days after the first meeting of the governing body following the date of the submission of the plat to the clerk thereof. The governing body may defer action for an additional 30 days for the purpose of allowing for modifications to comply with the requirements established by the governing body. No additional filing fees shall be

- assessed during that period. If the governing body defers or refuses such dedication, it shall advise the planning commission of the reasons therefor.
- (h) The governing body may establish a scale of reasonable fees to be paid to the secretary of the planning commission by the applicant for approval for each plat filed with the planning commission.
  - (i) No building or zoning permit shall be issued for the use or construction of any structure upon any lot, tract or parcel of land located within the area governed by the subdivision regulations that has been subdivided, resubdivided or replatted after the date of the adoption of such regulations by the governing body or governing bodies but which has not been approved in the manner provided by this ordinance.
  - (j) Any regulations adopted by the governing body with reference to subdividing lots shall provide for the issuance of building permits on lots divided into no more than two tracts without having to replat the lot, provided that the resulting tracts shall not again be divided without replatting. Such regulations shall provide that lots zoned for industrial purposes may be divided into two or more tracts without replatting such lot. Such regulations shall contain a procedure for issuance of building or zoning permits on divided lots which shall take into account the need for adequate street rights-of-way, easements, improvement of public facilities, and zoning regulations.
  - (k) The regulations shall provide for a procedure which specifies a time limit within which action shall be taken, and shall further provide, where applicable, for the final decision on the issuance of such building permit to be made by the governing body, except as may be provided by law.
  - (l) The register of deeds shall not file any plat until such plat shall bear the endorsement herein before provided and the land dedicated for public purposes has been accepted by the governing body.
  - (m) For the purpose of single-family residential developments, development rights in such land use shall vest upon recording of a plat of such land. If construction is not commenced on such land within five years of recording a plat, the development rights in such shall expire.
  - (n) For all purposes other than single-family developments, the right to use land for a particular purpose shall vest upon the issuance of all permits required for such use and construction has begun and substantial amounts of work have been satisfactorily completed under a valid building permit.

### **ARTICLE III. BOARD OF ZONING APPEALS**

#### **Sec. 20-24. Establishment of a Board of Zoning Appeals.**

There is hereby established a board of zoning appeals in the City of Merriam, Kansas.

**Sec. 20-25. Members**

- (a) The board of zoning appeals shall consist of seven members who shall be appointed by the mayor with the consent of the governing body. Members of the board shall serve at the pleasure of the governing body. All members shall be residents of the City of Merriam. 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 shall be changed to 3 years. 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. The board shall adopt rules in accordance with the provisions of this ordinance creating the board. 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.
- (b) The board of zoning appeals in existence on the effective date of this ordinance shall continue in existence, but shall be governed by these regulations.

**Sec. 20-26. Meetings**

Meetings of the board of zoning appeals shall be held at 7:00 p.m. at city hall on the third Wednesday of each month on an as needed basis and at such other times as the board of zoning appeals may determine. (Ord. No. 1257 §1, 12-18-95)

**Sec. 20-27. Administration**

- (a) 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 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 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 planning commission. Any party having an interest may appear and be heard at the hearing in person, by agent or by attorney. The board of zoning appeals shall require an applicant desiring to be heard to mail a written notice of the public hearing thereon containing the same information as the published notice thereof and provided by the City, to the owner or owners of the property affected and to the owners of all property within 200 feet of the boundaries thereof, at least ten (10) days prior to the date of

- such hearing. The applicant shall provide the board of zoning appeals with a list of all owners of property within 200 feet. The applicant shall provide the board of zoning appeals a receipt from the post office which indicates the persons names to whom notices were mailed. The applicant shall place a sign provided by the City upon the property in question specifying the type of action proposed for such property at least ten (10) days prior to the board of zoning appeals meeting. The sign shall be of a sufficient size and location to be readily viewed from public right-of-way.
- (b) 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. 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. In exercising the foregoing powers, the board, in conformity with the provisions of these regulations 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.
- (c) 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 provision 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 regulation; and (2) to grant exceptions to the provision 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 regulations by the governing body, are not found to be present.

- (d) 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. (Ord. No. 1121, § 2, 12-2-91)