

CHAPTER 19

BOARDS OF ADJUSTMENT

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SECTION 1900. ESTABLISHMENT OF THE BOARDS OF ADJUSTMENT

- A. There is hereby established in the County, a County Board of Adjustment with the powers and duties hereinafter set forth. Such Board shall be composed of five (5) members, residents of the County, of whom at least two (2) shall reside outside the corporate limits of the City of Claremore. The Board of County Commissioners shall appoint the members of the Board of Adjustment for a term of three (3) years, provided, however, that when the first appointment is made hereunder, the term of office of two (2) of said members shall be one (1) year, the term of office of two (2) of said members shall be two (2) years, and the term of office of one (1) said members shall be three (3) years. All members of the Board shall serve as such without compensation.
- B. There is also hereby established in the City of Claremore, a City Board of Adjustment with the powers and duties hereinafter set forth. Such Board shall be composed of five (5) members. The Mayor shall appoint the members of the Board for a term of three (3) years, subject to confirmation by the City Council, provided, however, that when the first appointment is made hereunder, the term of office of two (2) of said members shall be two (2) years, and the term of office of one (1) of said members shall be three (3) years. At least one (1) of said members may also be a member of the Planning Commission. All members of the Board shall serve without compensation.
- C. Any member of either Board, once qualified, shall thereafter be removed only for cause and after hearing held before the respective governing body. In the event of the death, resignation or removal of any such member before the expiration of said term, a successor shall be appointed in the manner described above for the unexpired portion of this term.

- D. The City and County Board of Adjustment shall organize and elect its own Chairperson, appoint a Secretary and shall adopt rules of procedures consistent with this Ordinance and pertinent statutes. Meetings of both Boards shall be held at the call of the Chairperson and at such other times as the Board of Adjustment may determine. The Chairperson, or in the absence of the Chairperson, the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of both Boards shall be open to the public. The Boards shall keep minutes of their 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 Clerk of the City or County and shall be a public record. The concurring vote of three (3) members of the County or City Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such Ordinance.
- E. Any member of either Board who shall have an interest in any property or in the decision relating to such property, which shall be the subject matter of, or affected by a decision of the Board, shall be disqualified from participating in the discussion, decision, or proceeding of the Board in connection therewith.

SECTION 1901. POWERS OF THE BOARDS

The Board has the power to hear appeals from the determinations of an administrative official in enforcing this Ordinance, to grant Variances and Special Exceptions, and to make interpretations of the Zoning Map and text, in accordance with the substantive and procedural standards established herein.

A. Appeals from an Administrative Official

The Board of Adjustment has the power to hear and decide an appeal where it is alleged there is an error in any order, requirement, decision or determination made by any administrative official in the enforcement of this Ordinance.

1. Notice of Appeal

An appeal shall be taken within ten (10) days from the determination which resulted in the complaint. Notice of appeal, specifying the grounds, shall be filed in writing with the administrative official. Upon receiving a notice of appeal, the administrative official shall transmit to the Board of Adjustment copies of all papers constituting the record of said matter. Upon receipt of the record, the appeal will be set for public hearing in accordance with the rules established by the Board. (See Section 1902, Proceedings of the Boards and Section 1903, Notice of Public Hearing.)

2. Board of Adjustment Action

- a. The Board shall hold the public hearing.
- b. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed.
- c. The Board may make such order, requirement, decision, or determination as necessary. To that end the Board has all the powers of the Building Inspector from whom the appeal is taken.
- d. The required concurring vote of three (3) members of the Board is necessary to reverse any order, requirement, decision or determination of the administrative official enforcing this Ordinance as specified in herein.

3. Stay of Proceedings

Notice of an appeal given to the Board stays all proceedings on the action appealed unless the administrative official from whom the appeal is taken certifies to the Board that by reason of facts stated, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order granted by the Board on due and sufficient cause shown.

B. Interpretation

1. The Board shall interpret the text of this Ordinance or the Official Zoning Map upon an appeal from a determination of the Building Inspector. Upon receipt of the request, a public hearing will be set in accordance with the rules established by the Board. (See Section 1902, Proceedings of the Boards and Section 1903, Notice of Public Hearing)
2. Where a question arises as to the Zoning District classification for a particular use or Zoning District boundary, the Board of Adjustment, upon written request of the Building Inspector, may find and determine the classification of the use in question. Upon receipt of the request, a public hearing shall be set in accordance with the rules established by the Board. (See Section 1902, Proceedings of the Boards and Section 1903, Notice of Public Hearing)

C. Variances

1. The Board of Adjustment upon application and after public hearing, and subject to the procedural and substantive standards established in this Chapter may grant a Variance from the terms of this Ordinance as follows:

- a. A Variance shall only be granted if it is determined it shall not cause substantial detriment to the public good or impair the spirit, purposes and intent of this Ordinance, or the Comprehensive Plan;
 - b. Variances shall be considered when by reason of exceptional narrowness, shallowness, shape, topography, or other extraordinary or exceptional situation, condition, or circumstance peculiar to a particular property, the literal enforcement of the Ordinance will result in unnecessary hardship;
 - c. The Board shall not vary any jurisdictional requirement such as notice; and
 - d. In the incorporated area, the Board shall not permit by Variance a principal use not otherwise permitted in the applicable Zoning District. (See also Section 1902, Proceedings of the Boards and Section 1903, Notice of Public Hearing.)
2. Application

- a. A request for a Variance is initiated by filing an application with the Building Inspector. The application shall be in such form and contain such information as established by the Board. The request will then be set for public hearing in accordance with the rules established by the Board.
- b. Each applicant shall submit with the application a list certified by a Licensed Bonded Abstractor of the names and addresses of all property owners of record within 300 feet of the affected property as well as the legal description of each property to receive notice. (For additional applicant responsibilities as to notice see Section 1903, Notice of Public Hearing.)

3. Board of Adjustment Action

- a. The Board shall hold the public hearing and upon the required concurring vote of three (3) members may grant a Variance after finding:
 - 1) That by reason of extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Ordinance would result in unnecessary hardship;
 - 2) That such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same Zoning District;

- 3) That the Variance to be granted shall not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this Ordinance, or the Comprehensive Plan; or
 - 4) That the Variance to be granted shall be the minimum necessary to grant relief.
- b. The Board in granting a Variance shall prescribe appropriate conditions and safeguards, and may require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions of approval.
 - c. No nonconforming use of neighboring lands, structures or buildings in the same Zoning District and no permitted or nonconforming use of land, structures or building in other Districts shall be considered grounds for the issuance of a Variance.

4. Time Limitation on Variances

A Variance which has not been utilized within one (1) year from date of the order granting the Variance shall thereafter be void, provided that the Board has not extended the time for utilization. For the purpose of this Section, utilization shall mean actual use or the issuance of a Building Permit, when applicable, provided construction is diligently carried to completion.

D. Special Exceptions

1. The Board of Adjustment upon application and after hearing subject to the procedural and substantive standards established in this Chapter, may grant the following Special Exceptions:
 - a. Special Exception uses as designated and regulated within the permitted principal use provisions, accessory use provisions or Use Unit provisions of the Zoning District;
 - b. Modification of height restrictions as provided within Section 209;
 - c. The change of a nonconforming use as provided in Section 1702;
 - d. The restoration of a partially destroyed structure containing a nonconforming use as provided in Section 1702;
 - e. The restoration of a partially destroyed nonconforming structure as provided in Section 1705;

- f. The modification of a screening requirement, as provided in Section 216;
 - g. The modification of the parking and loading requirements as provided in Section 1707;
 - h. Antennas and Antenna Supporting Structures as provided in Section 1504;
 - i. The modification of permitted yard obstructions as provided in Section 211;
 - j. Permit residential accessory uses and structures on abutting residentially zoned lots which are under common ownership;
 - k. The modification of the requirements in Sections 1511.E, 1512.E, 1514.E, 1515.E, and 1523.E;
 - l. Reduction of the number of required off-street parking spaces on a lot or may allow the required off-street parking on a lot other than the lot which contains the Adult Entertainment Establishment or Dance Hall as provided in Sections 1708 and 1709; and
 - m. The modification of front yard requirements as provided in Section 403.
2. Application for Special Exception

A request for a Special Exception shall be initiated by the filing of an application with the Building Inspector. The application shall be in such form and contain such information as required by the Board. The request shall then be set for public hearing in accordance with the rules established by the Board.

3. Board of Adjustment Action on Special Exceptions

- a. The Board shall hold the public hearing and upon the required concurring vote of three (3) members may grant a Special Exception after finding:
 - 1) That the Special Exception will be in harmony with the spirit and intent of this Ordinance and the Comprehensive Plan, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

2) That the relief granted shall be the minimum relief necessary.

- b. The Board in granting a Special Exception shall prescribe appropriate conditions and safeguards. The Board may limit the grant of the Special Exception to a specified period of time, and may require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions of approval.

4. Time Limitation on Special Exceptions

A Special Exception which has not been utilized within one (1) year from date of the approval by the Board shall thereafter be void, unless the Board has extended the time for utilization. For the purposes of this provision, utilization means actual use or the issuance of a Building Permit, when applicable, provided construction is diligently carried to completion.

E. Miscellaneous Powers of the Board

In addition to the powers set forth elsewhere in this Section, the Board shall have the following miscellaneous powers:

1. To establish standards governing coverage in F1 Districts;
2. To determine parking demand of certain uses not otherwise provided by this Ordinance;
3. To permit reduction of the area or width of a lot for certain utility purposes;
4. To make findings as to start of construction for purposes of determining nonconformity with this Ordinance; and
5. To make findings and interpretations of uses and zoning classifications for all uses not clearly set out in this Ordinance and assign Zoning Districts to all such uses in question.

SECTION 1902. PROCEEDINGS OF THE BOARDS

- A. Meetings shall be held at the call of the Chairperson and at such other times as the Board may determine.
- B. The Chairperson, or in the absence of the Chairperson, the Acting Chairperson, may administer oaths and compel attendance of witnesses.
- C. All meetings, deliberations, and voting of the Board shall be open to the public.

- D. The Board shall keep minutes of its proceedings. The minutes shall show the vote of each member upon each question, or if absent or failing to vote, indication of such fact, and include records of its examinations and other official actions and findings (see Section 1901.C.3 and Section 1901.D.3) which shall be immediately filed in the office of the Clerk of the City or County and be a public record.
- E. The quorum, notice, filing and substantive requirements concerning the Board's exercise of a particular power shall be as established herein.

SECTION 1903. NOTICE OF PUBLIC HEARING

- A. The Board of Adjustment shall give notice and conduct a public hearing before acting on any Appeal from the decision of any administrative official enforcing this Ordinance, or before granting any Special Exception or Variance.

- B. Responsibility for Giving Notice

It shall be the responsibility of the applicant for giving notice and for the payment of all fees and costs.

- C. For a Special Exception, Variance or an Appeal from a determination of an administrative official enforcing this Ordinance, ten (10) days notice of public hearing shall be required.

- D. Type of Notice Required

1. Publication in a newspaper of general circulation as provided in Section 1903.E;
2. Mailing written notice to all owners of property within a 300 foot radius of the exterior boundary of the subject property as provided in Section 1903.E; and
3. Posting of a sign on the property as provided in Section 1903.E.

- E. Specifics of Notice

1. Notice shall be given by publication in a newspaper of general circulation in the City and/or County and shall include:
 - a. Notice of the date, time and place of the hearing;
 - b. A map of the area to be affected which indicates street names or numbers, streams, or other significant landmarks in the area;
 - c. Street address and legal description; and

- d. The present zoning classification and the type relief requested by the applicant.
2. Required Posting of the Affected Property by a Sign.
 - a. A sign shall be posted on the subject property which states:
 - 1) The date, time and place of public hearing;
 - 2) Who will conduct the public hearing;
 - 3) The present zoning classification, and the type relief requested by the applicant; and
 - 4) Other information which may be necessary to provide adequate and timely public notice.
 - b. The dimensions of this sign, design, content and location shall conform to the specifications established by the Board of Adjustment.
3. In Unincorporated Areas, Notice is Required as Follows:
 - a. Notice. Notice of such hearing shall be published in a newspaper of general circulation in the locality on (1) time fifteen (15) days prior to the public hearing. Notice shall also be given by the posting on the property a sign whose dimension, design, content and location shall conform to specifications established by the Board of Adjustment. Sign must be posted on the property by 8:00 A.M., seven (7) days in advance of the public hearing. Sign must be legible from a public thoroughfare. If property is inaccessible or remote from a public thoroughfare, two (2) signs must be posted, one (1) on the subject property and one (1) at the public thoroughfare and the access to the subject property.
 - b. Affidavit of Mailing. Within ten (10) days of the date the application is filed with the Planning Commission, the applicant will file with the Planning Commission a completed "Affidavit of Mailing" prepared by a licensed Abstractor. Mailings of Notice of Property Owners will be mailed to all owners of record, at their last know mailing address, of property within three hundred (300) feet of the subject property.

4. Written Notice

At least ten (10) days prior to the hearing, written notice shall be sent to all owners of real property included in the application and all owners of real property within a 300 foot radius of the exterior boundary of the property included in the proposed change. Written notice shall include:

- a. The legal description or the property address or the approximate location in the City or County;
- b. The present zoning of the property and the type of relief sought by the applicant; and
- c. The date, time and place of the public hearing.
- d. Each applicant shall submit with the application a list certified by a licensed or bonded abstractor of the names and addresses of all property owners of record within 300 feet of the affected property.

F. Affidavit Attesting Public Notice Has Been Given

Prior to the Board of Adjustment public hearing an affidavit shall be submitted by the applicant to the Building Inspector which states that all public notice requirements have been achieved.

SECTION 1904. FEES

An application for an Appeal from the decision of any administrative official enforcing this Ordinance, or any Variance or Special Exception shall be accompanied by the payment of a fee in accordance with the adopted Schedule of Fees. (See Appendix F)

SECTION 1905. APPEAL TO THE DISTRICT COURT

A. Procedure

1. An appeal from any action, decision, ruling, judgment, or order of the Board of Adjustment may be taken by any person or persons aggrieved, or any taxpayer or any officer, department, board or bureau of the City or County to the District Court.
2. Notice of appeal which shall specify the grounds of such appeal must be filed within ten (10) days from the date of the action appealed. An appeal shall be filed with the Clerk of the City or County. No bond or deposit for costs shall be required for such appeal.

3. Upon filing of the notice of appeal, the Board shall forthwith transmit to the Court Clerk of the County the original or certified copies of all the papers constituting the record in the case, together with the order, decision or ruling of the Board.

B. Stay of Proceedings

An appeal to the District Court stays all proceedings in furtherance of the action appealed from unless the Chairperson of the Board certifies to the Court Clerk, after notice of appeal shall have been filed, that by reason of facts stated in the certificate a stay would cause imminent peril of life or property. In such case, proceedings shall not be stayed other than by a restraining order granted by the District Court.