

CHAPTER 21

BOARD OF ADJUSTMENT

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SECTION 2100 ESTABLISHMENT OF THE BOARD OF ADJUSTMENT

There is hereby established a Board of Adjustment of the City of Coweta with the powers and duties hereinafter set forth. The Board of Adjustment shall consist of five members, who shall be nominated by the Mayor and confirmed by the City Council and shall serve without pay for a term of three years. Vacancies shall be filled for an unexpired term of any member in the manner set forth for appointments to a full term. A Board member may be removed for cause, by the appointing authority after notice, written charges and public hearing. The Board shall organize, elect its chairman, and appoint a secretary and adopt rules necessary to the conduct of its affairs.

SECTION 2110 POWERS OF THE BOARD

The Board shall have the power to hear appeals from the determinations of the City Manager or his designee in enforcing this Code, to grant special exceptions, to grant variances, and to make interpretations of the zoning map and text, in accordance with the substantive and procedural standards hereinafter set forth.

SECTION 2120 PROCEEDINGS OF THE BOARD

Meetings shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his absence, the acting Chairman, may administer oaths and compel attendance of witnesses. All meetings, deliberations, and voting of the Board shall be open to the public. 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 Board and shall be a public record. In all matters, the Board shall decide within 90 days after the filing of an application for relief. The quorum, notice, filing and substantive requirements of the Board shall be set forth in the following sections concerning the Board's exercise of a particular power.

SECTION 2130 NOTICE OF PUBLIC HEARINGS

The Board of Adjustment shall give notice and conduct a public hearing before acting on any appeal from a determination of the City Manager or his designee, or before granting any Special Exception, or Variance, or Minor Variance, or Exception. The Board shall set forth in an adopted statement of policy a list of Variances and Exceptions which constitute Minor Variances or Exceptions and such statement of policy shall be approved by the City Council of the City of Coweta.

Ten (10) days notice of public hearing shall be given as follows:

- (a) For Special Exception, Variance or Appeal from a determination of the City Manager or his designee:
 - 1. By publication in a newspaper of general circulation; and
 - 2. By mailing written notice to all owners of property within a three hundred (300) foot radius of the exterior boundary of the subject property, (where applicable).
- (b) For Minor Variance or Exception by mailing written notice to all owners of abutting property of the subject property. Nothing herein shall preclude the Board of Adjustment from requiring the giving of public notice of hearings to all owners of property within a 300 foot radius of the exterior boundary of the subject property for consideration of a Minor Variance or Exception.

The notice shall contain:

- (a) The legal description of the property and the street address or approximate location of the property.
- (b) The present zoning classification of the property and the nature of the relief sought.
- (c) The date, time and place of the hearing.

The applicant shall furnish the names and mailing addresses of all owners of property within a three hundred (300) foot radius of the exterior boundary of the subject property, or in the case of a Minor Variance or Exception, the owners of abutting property of the subject property: Costs of publication shall be billed to the applicant.

SECTION 2140 FEES

An application for an appeal from the Building Inspector, City Manager or his designee, or any variance or special exception shall be accompanied by the payment of a fee in accordance with the schedule of fees adopted by resolution of the City Council of the City of Coweta.

SECTION 2150 APPEALS FROM THE CITY MANAGER OR HIS DESIGNEE

2150.1 General

An appeal to the Board of Adjustment may be filed by any person aggrieved or by any officer, department, board or bureau of the city affected, where it is alleged there is error in any order, requirement, decision or determination of the City Manager or his designee in the enforcement of this Code.

2150.2 Notice of Appeal

An appeal shall be filed within ten (10) days from the determination by filing with the City Clerk, a notice of appeal, specifying the grounds thereof. The City Manager or his designee, upon receipt of notice from the City Clerk, shall forthwith transmit to the Secretary of the Board, copies of all the papers constituting the record of said matter. Upon receipt of the record the Secretary shall set the matter for public hearing.

2150.3 Board of Adjustment Action

The Board shall hold the public hearing. The Board may 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 ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the City Manager or his designee.

2150.4 Stay of Proceedings

An appeal stays all proceedings in furtherance of the action appealed from, unless the City Manager or his designee, from whom the appeal is taken certifies to the Board of Adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, 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.

SECTION 2160 INTERPRETATION

- (a) The Board shall interpret the text of this Code or the Official Zoning Map upon an appeal from a determination of the City Manager or his designee after compliance with the procedural standards of Section 2150.
- (b) Where a question arises as to the zoning district classification of a particular use, the Board of Adjustment, upon written request of the City Manager or his designee may find and determine the classification of the use in question and may, prior to such determination, order the giving of notice and hold a public hearing.

SECTION 2170 VARIANCES

2170.1 General

The Board of Adjustment upon application, and after hearing, and subject to the procedural and substantive standards hereinafter set forth, may grant such variance from the terms of this Code as will not cause substantial detriment to the public good or impair the spirit, purposes and intent of this Code, or the Comprehensive Plan, where 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 Code will result in unnecessary hardship. The Board shall not vary any jurisdictional requirement, such as notice.

2170.2 Application

A request for a variance shall be initiated by the filing of an application with the City Manager or his designee and shall be set for public hearing in accordance with the rules established by the Board. The application for a principal use variance shall include information necessary to evaluate such request as the Board of Adjustment may adopt as rules of procedure for granting principal use variances.

2170.3 Board of Adjustment Action

The Board shall hold the hearing and upon the concurring vote of three members may grant a variance after finding:

- (a) 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 Code would result in unnecessary hardship.
- (b) That such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district,
- (c) That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan.

Provided that 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 attached.

2170.4 Time Limitation on Variances

A variance which has not been utilized within one 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 provision, utilization shall mean actual use or the issuance of a building permit, when applicable, provided construction is diligently carried to completion.

SECTION 2180 SPECIAL EXCEPTION

2180.1 General

The Board of Adjustment upon application and after hearing subject to the procedural and substantive standards hereinafter set forth, may grant the following special exceptions:

- (a) Special Exception Uses as designated and regulated within the zoning district's "USES PERMITTED BY SPECIAL EXCEPTION" Section.
- (b) The change of a nonconforming use as provided in Section 1920 (f), Chapter 19, Nonconformities.
- (c) The restoration of a partially destroyed structure, containing a nonconforming use as provided in Section 1920 (g), Chapter 19, Nonconformities.
- (d) The restoration of a partially destroyed nonconforming structure as provided in Section 1950, Chapter 19, Nonconformities.
- (e) The modification of a screening requirement, as provided in Section 240.2 and Section 250, Chapter 2, General Provisions.
- (f) The modification of the parking and loading requirements as provided in Section 1970 (c), Chapter 19, Nonconformities.
- (g) Satellite antennas which do not meet all of the standards as set forth in Section 291 of this Code.

2180.2 Application

A request for a Special Exception shall be initiated by the filing of an application with the City Manager or his designee and shall be set for public hearing in accordance with the rules established by the Board.

2180.3 Board of Adjustment Action

The Board of Adjustment shall hold the hearing, and upon the concurring vote of three members may grant the Special Exception after finding that the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Provided that the Board in granting Special Exception 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 attached.

2180.4 Time Limitation on Special Exceptions

A Special Exception which has not been utilized within one year from date of the order granting same shall thereafter be void, provided that the Board has not extended the time for utilization. For the purposes of this provision, utilization shall mean actual use or the issuance of a building permit, when applicable, provided construction is diligently carried to completion.

SECTION 2190 APPEALS TO THE DISTRICT COURT

2190.1 Procedure

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 to the District Court by filing with the City Clerk within ten (10) days from the date of such action, a notice of appeal, which notice shall specify the grounds of such appeal. No bond or deposit for costs shall be required for such appeal. Upon filing of the notice of appeal, the City Clerk 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. Said case shall be heard and tried de novo in the District Court of Wagoner County, Oklahoma. An appeal shall lie from the action of the District Court as in all other civil actions. All issues in any proceedings under this Section shall have preference over all other civil actions and proceedings. Costs shall not be allowed against the Board unless it shall appear to the Court that it acted with gross negligence or in bad faith, or with malice in making the decision being appealed.

2190.2 Stay of Proceedings

An appeal to the District Court stays all proceedings in furtherance of the action appealed from unless the Chairman 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.