

VARIANCE APPLICATION CITY OF HESSTON

BOARD OF ZONING APPEALS

Application Date: _____

Fee: \$35.00

Case Number: _____

Date Published: _____

Hearing Date: _____

1. Name of Applicant: _____

Address: _____ Phone: _____

2. Name of Authorized Agent: _____

Address: _____ Phone: _____

3. Relationship of applicant to property is that of _____

(owner, tenant, lessee, other)

4. The variance request is for _____

_____ and legally described as _____

_____ and which is presently zoned _____

5. The applicant herein, or his authorized agent, acknowledges:

A. That he has received an instruction sheet concerning the filing and hearing of this matter.

B. That he has been advised of the fee requirements established; and that the appropriate fee is herewith tendered.

C. That he has been advised of his right to appeal to the decision of the Board of the District Court.

Applicant

Authorized Agent

6. Action by the Hesston Board of Zoning Appeals.

The Hesston Board of Zoning Appeals found the following condition(s):

- A. The condition (is, is not) unique to the property and (is, is not) ordinarily found in the same district and (was, was not) created by the owner.
- B. Granting of the variance (would, would not) affect the rights of adjacent property owners.
- C. The strict application of the zoning regulations (will, will not) constitute an unnecessary hardship upon the owner.
- D. The variance (will, will not) adversely affect the health, safety, morals, order, convenience, prosperity or general welfare.
- E. The variance (will, will not) be opposed to the general spirit and intent of the zoning regulations.

7. Action by the Hesston Board of Zoning Appeals: _____ Approved
_____ Disapproved

8. Restriction imposed: _____



Date

Chairman

Secretary

Certified to the Zoning Administration the _____ day of _____, 20 _____.

Date: _____

Case #: _____

Name: _____

To assist applications for variances, the Hesston Board of Zoning Appeals is providing information on the process. In order for a variance to be approved, the Board must find in the applicant's favor on the following points:

- A. The condition from which relief is sought *is* unique to the property and *is not* ordinarily found in the same district and *was not* created by the owner.
- B. Granting of the variance *would not* affect rights of adjacent property owners.
- C. The strict application of the zoning regulations *will* constitute an unnecessary hardship upon the owner.
- D. The variance *will not* adversely affect the health, safety, morals, order, convenience, prosperity or general welfare.
- E. The variance *will not* be opposed to the general spirit and intent of the zoning regulations.

You must be present at the meeting.

PROCEDURES FOR
AGGRIEVENCES, VARIANCES, EXCEPTIONS TO
BOARD OF ZONING APPEALS

PURPOSE: An appellant may request an appearance before the Zoning Appeals Board to appeal on Aggrievence, to request a Variance or to grant an Exception to the Zoning Regulations. A detailed explanation of each is contained in the zoning regulations.

TIME: An appeal to the Zoning Appeals Board will normally take from 30-60 days. The amount of time will depend upon the time when the application is submitted to the zoning administrator, the publication of Notice of Public Hearing and the date the Appeals Board meets.

PROCEDURE: To file a request for a hearing with the Appeals Board, the following steps should be observed.

Step 1. The applicant shall first meet with the Zoning Administrator and obtain the proper application form along with an explanation on any special requirements which will need to be met.

The application form shall be completely filled out and returned to the office of the Zoning Administrator with the appropriate filing fee, ownership list and any plans or drawings required to process the application.

All applications shall be accompanied by a current abstractor's certificate listing the names, and addresses of the owners of all property located within 1,000 feet of the boundaries of the property to be affected.

Step 2. Upon proper filing of the application and the payment of the filing fee, the Zoning Administrator shall prepare a Notice of Public Hearing establishing the time, place and date and nature of said hearing and submit the Notice of Public Hearing (Exhibit AB-1) to the official newspaper for publication. Notice shall also be mailed to the applicant, to each party in interest, each person on the ownership list and each member of the Planning Commission.

Step 3. The Board shall hold the public hearing and receive comments from proponents and opponents on the proposed appeals.

Step 4. The Board shall study and review the proposed appeal and make their determination.

The Board shall instruct the Zoning Administrator to modify, approve or reverse an order or determination (Exhibit AB-2), to allow a variance (Exhibit AB-3) or issue a permit for an exception (Exhibit AB-4). The Board may attach any conditions it determines necessary for the approval.

Step 5. 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. Every decision of determination by the Board shall be filed in the office of the Clerk not more than ten (10) working days following the date of hearing and shall be open to public inspection during business hours.

The Zoning Administrator shall notify in writing the appellant of the Board's decision.

Step 6. Any person or government agency dissatisfied with the determination of the Board may bring action in District Court.

- b. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, 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 otherwise than by a restraining order which may be granted by the Board, or by a court of record on application or notice to the Zoning Administrator on good cause shown.
 - c. An appeal shall be sustained only if the Board finds that the administrative official's action was based on an erroneous finding of a material fact, or that he acted in an arbitrary or capricious manner or manifestly abused his discretion.
2. Variances. To authorize in specific cases a variance from the specific terms of these regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these 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. The applicant must show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the District Zoning Regulations, or where by reason of exceptional topographical conditions or other extra-ordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually prohibit the use of his property in the manner similar to that of other property in the zoning district where it is located.
 - b. A request for a variance may be granted, upon a finding of the Board that all of the following conditions have been met. The Board shall make a determination on each condition, and the finding shall be entered in the record.
 - (1) 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 applicant.
 - (2) The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
 - (3) The strict application of the provisions of the zoning regulations of

which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

- (4) The variance desired will not adversely affect the public health, safety, morals, order, convenience, property, or general welfare.
 - (5) The granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.
- c. In granting a variance, the Board may impose such conditions, safeguards and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations.
3. Exceptions. To grant as an exception to the provisions of these zoning regulations, the establishment of special use permits that are expressly authorized to be permitted in a particular zoning district or districts. In no event shall exceptions to the provisions of the zoning regulations be granted where the exception contemplated is not specifically listed in the zoning regulations. Further, under no conditions shall the Board have the power to grant an exception when the conditions of this exception, as established by these regulations, are not found to be present.
- a. The Board shall not grant an exception unless it shall, in each specific case, make specific written findings of fact directly based upon the particular evidence presented to it, that support conclusions that:
 - (1) The proposed exception complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.
 - (2) The proposed exception at the specified location will contribute to and promote the welfare or convenience of the public.
 - (3) The proposed exception will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.
 - (4) The location and size of the exception, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the exception will not dominate the immediate

neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the exception will so dominate the immediate neighborhood, consideration shall be given to:

- (a) The location, nature and height of buildings, structures, walls, and fences on the site, and
 - (b) The nature and extent of landscaping and screening on the site.
- (5) Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations, and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.
- (6) Adequate utility, drainage, and other such necessary facilities have been or will be provided.
- (7) Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
- b. In granting an exception, the Board may impose such conditions, safeguards and restrictions upon the premises benefited by the exception as may be necessary to reduce or minimize any potentially injurious effect of such exception upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations.
4. Conditions of Determination. In exercising the foregoing powers, the Board, in conformity with the provisions of this act, may reverse or affirm, wholly or partly, or may modify' any 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 zoning certificate.

A majority of the Board shall constitute a quorum for the transaction of business, and a concurring vote of a majority of the entire Board shall be necessary to reverse any order, requirements, decision or determination of the Zoning Administrator, or to decide in favor of the applicant upon any matter which it is required to pass under these Regulations, or to affect any variation in such Regulation.

SECTION 6. APPLICATIONS.

The procedure for requesting a hearing before the Board shall be as follows:

- a. All applications to the Board shall be in writing on forms provided by the Zoning Administrator. Said application shall be completed in its entirety and filed in the office of the Zoning Administrator with all supporting data.
 - b. All applications shall be accompanied by an ownership list, certified by a registered abstractor, listing the legal description and the name and address of the owners of all property located within two hundred (200) feet of the boundaries of the property included in the application, for property inside the City, and one thousand (1,000) feet of the boundaries for property outside the City limits.
 - c. The Board shall fix a reasonable time for the hearing of an application and notice of the time, place and subject of each hearing shall be published in the official newspaper (designated by the governing body) at least twenty (20) days prior to the date fixed for the public hearing. A copy of the notice of public hearing shall be sent to each party of interest, and each person on the ownership list fifteen (15) days prior to the hearing.
 - d. An application shall be accompanied by a filing fee in accordance with a schedule of fees adopted and maintained by the Governing Body. A separate filing fee shall be required for each request.
2. In addition to the above requirements, certain applications require additional information as follows:
- a. Appeals:
 - (1) An application for an appeal shall be filed within sixty (60) days after a ruling has been made by the Zoning Administrator.
 - (2) A copy of the order, requirement, decision or determination of the Zoning Administrator which the applicant believes to be in error shall be submitted.
 - (3) A clear and accurate, written description of the proposed use, work or action in which the appeal is involved and a statement justifying the appellant's position shall be submitted with the application.
 - (4) Where necessary, a plot plan, drawn to scale, in duplicate showing existing and proposed plans for the area in question shall be submitted.

b. Variances:

- (1) The applicant shall submit a statement, in writing, justifying the variance requested, indicating specifically the enforcement provisions of the zoning regulations from which the variance is requested, and outlining in detail the manner in which it is believed that this application will meet each of the five (5) conditions set out in Section 5.2.b of this Article.
- (2) The applicant shall submit a sketch, in duplicate, drawn to scale and showing the lot or lots existing in the application; the structures existing thereon; and the structures contemplated necessitating the variance requested. All appropriate dimensions and any other information which would be helpful to the Board in consideration of the applications should be included.

c. Exceptions:

- (1) The applicant shall submit a statement in writing justifying the exception applied for, and indicating under which Article and Section of the Zoning Regulations the Board of Zoning Appeals is believed to have jurisdiction.
- (2) The applicant shall prepare and submit in duplicate at the time of filing the application, a detailed plot plan drawn to scale, showing all existing and proposed structures, property lines with dimensions, parking spaces, points of ingress and egress, driveways, and any other information which would be helpful to the Board in consideration of the application.

SECTION 7. PERFORMANCE. In making any decision varying or modifying any provisions of the zoning regulations or in granting an exception to the district regulations, the Board shall impose such restrictions, terms, time limitations, landscaping, screening and other appropriate safeguards as needed to protect adjoining property.

The Board may require a performance bond to guarantee the installation of improvements such as parking lot surfacing, landscaping, etc. The amount of the bond shall be based on a general estimate of cost for the improvements and determined by the Board, and shall be enforceable by or payable to the City of Hesston in the sum equal to the cost of constructing the required improvements.

In lieu of the performance bond requirements, the Board may specify a time limit for the completion of such required improvements and in the event the improvements are not

completed within the specified time, the Board may declare the granting of the application null and void after reconsideration.

SECTION 8. WHO MAY APPEAL FROM THE BOARD DECISION. Any person, persons, department or departments of the government, jointly or separately aggrieved by any decision of the Board may present to the District Court having jurisdiction, a petition, duly verified, stating that such decision is illegal in whole or in part, specifying the grounds of the illegality and asking for relief therefrom. Such petition shall be presented to the Court within thirty (30) days after the date of the decision of the Board.

SECTION 9. RECORDING. Whenever the Board of Zoning Appeals grants a variance or special use permit which affects real property, the results of such action will be recorded with the Register of Deeds of Harvey County by the Secretary, after the passage of the thirty (30) day appeal period.