

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

COUNTY CHANGE OF ZONE NO. 12034:)
TEXT AMENDMENT TO THE LANCASTER)
COUNTY ZONING RESOLUTION, TO AMEND) RESOLUTION NO. R-13-0033
ARTICLE 19, BOARD OF ZONING APPEALS,)
TO REORGANIZE AND CLARIFY COUNTY)
PROCEDURES, AS PROVIDED IN)
ATTACHMENT A)

WHEREAS, pursuant to Neb. Rev. Stat. § 23-114 (Reissue 2012), the Lancaster County Board of Commissioners is authorized to make amendments to the 1979 Zoning Resolution of Lancaster County, which are consistent with the County’s Comprehensive Plan and after receipt of specific recommendations from the Lincoln/Lancaster County Planning Commission (“Planning Commission”); and

WHEREAS, the Director of Planning has requested a text amendment to Article 19, Board of Zoning Appeals, to amend, reorganize and clarify the process for filing variances; to revise the procedure of appeals, to distinguish between the County Board of Zoning Appeals’ appellate and original jurisdiction; and, to provide that decisions of the County Board of Zoning Appeals approving variances and exceptions shall be by resolution of the County Board of Zoning Appeals, as provided in Attachment “A,” attached hereto and incorporated by this reference; and

WHEREAS, the Lincoln-Lancaster County Planning Department has recommended approval of this amendment concluding that the changes will clarify the County Board of Zoning Appeals authority to hear appeals and variances, and will allow applicants to submit directly to the Planning Department without requiring a prior denial of the Director of Building and Safety, whereby reducing the time and money for applicants and better reflecting the Nebraska Revised

Statutes; and

WHEREAS, on May 15, 2013, after public hearing, the Lincoln-Lancaster County Planning Commission agreed with the staff recommendation and voted 6 to 0 to recommend approval of said text amendments; and

WHEREAS, on June 4, 2013 and June 11, 2013, the Board of Commissioners of Lancaster County conducted a public hearing regarding said text amendment and voted to approve said amendments.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of Lancaster County, Nebraska that the amendments to Article 19, Board of Zoning Appeals, of the Lancaster County Zoning Resolution, to remove references to application fees, as provided in Attachment "A," are hereby adopted and approved, and shall take effect on July 1, 2013.

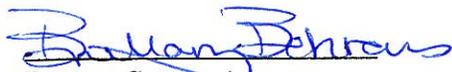
BE, IT FURTHER RESOLVED, that any other references in said Resolution which may be affected by the above specified amendments be, and they hereby are, amended to conform to such specific amendments.

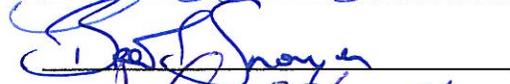
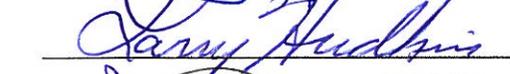
DATED this 11 day of June, 2013, in the County-City Building, Lincoln,

Lancaster County, Nebraska.

BY THE BOARD OF COUNTY
COMMISSIONERS OF
LANCASTER COUNTY, NEBRASKA

APPROVED AS TO FORM
this 11 day of
June, 2013.


Deputy County Attorney
for JOE KELLY
Lancaster County Attorney



ARTICLE 19
BOARD OF ZONING APPEALS

19.001. A Board of Zoning Appeals is hereby created. Such Board shall consist of five (5) members, all of whom shall be residents and electors of the County of Lancaster. They shall be appointed by the County Board.

Upon the passage of this resolution, one member shall be appointed for a term of one year, one member for a term of two years, one member for a term of three years, one member for a term of four years and one member for a term of five years; and upon expiration of said terms, appointments shall be made for a term of five years. Vacancies shall be filled by appointment for the unexpired term only. Members of the Board shall serve without compensation, but may be allowed their reasonable expenses, in an amount to be fixed by the County Board. A member of the Board may be removed by the affirmative vote of two (2) members of the County Board after being given a written statement of the charges against him and a hearing, which shall be a public hearing if he so requests. (Resolution No. 3545, November 18, 1980)

19.007a. The members of the Board of Zoning Appeals shall meet at least once each year or as may be required after a one month notice, at such time and place as they may fix by resolution. They shall select one of their number as chairperson, who shall serve one (1) year and until a successor has been selected. Special meetings may be called at any time by the chairperson. Any regularly scheduled meeting of the Board may be cancelled by the chairman for lack of business items for the Board to consider. A majority of the Board shall constitute a quorum for the transaction of business and three (3) affirmative votes shall be required for final action on any matter acted upon by the Board. The Board shall cause a proper record to be kept of its proceedings.

19.005.

a) Appeals to the Board of Zoning Appeals, ~~may be taken by a~~Any aggrieved person aggrieved or by any office, department or bureau of Lancaster County adversely affected by any decision of the Director of Building and Safety final written order, decision, or determination made by an administrative official in the enforcement of this title, may appeal from such final order, decision, or determination to the Board of Zoning Appeals. Such appeal shall be taken within a reasonable time by filing with the Planning Department, a notice of appeal specifying the grounds therefore. Only those grounds listed in said notice shall be considered by the Board of Zoning Appeals. The notice of appeal shall be filed within 60 days from the date of such final order, decision, or determination. ~~the Director of Building and Safety a notice of appeal specifying the grounds thereof. The Director of Building and Safety shall forthwith transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from is taken~~

b) Petitions to the Board of Zoning Appeals. The owner of any property may file a petition requesting the Board of Zoning Appeals to grant a variance or an exception to the Zoning Resolution under its jurisdiction without prior application to an administrative official charged with enforcement of this title. The petition shall be submitted by the owner of the property directly to the Planning Department. It shall be solely the responsibility of the property owner seeking the variance to set forth any and all requested variances in his or her petition. Only those variances requested in said petition may be considered by the Board.

ac) Hearing and Notice of Hearing. Upon the receipt of the an appeal or petition pursuant to a) or b) above, by the Board, ~~the Board~~ the Planning Department shall schedule such appeal or petition upon the Board of Zoning Appeals' calendar fix a reasonable time for the

~~hearing thereon within thirty (30) forty-five (45) days from the date the notice of appeal or petition was filed with the Department. For those hearings where the Board is exercising its appellate jurisdiction, notice shall be (i) posted conspicuously at the property for at least eight consecutive days immediately prior to the meeting of the Board (ii) published in a newspaper of general circulation at least eight days prior to the meeting of the Board, and (iii) mailed to appellant, appellant's attorney, and to the Director of the Department whose decision is before the Board on appeal at least eight days prior to the meeting. In all other matters brought before the Board, notice of the date, time and place of such hearing shall be given as provided in Article 22 hereafter.~~

~~ed) If, due to the absence of one or more of the members of the Board, any motion, resolution or other proposition put to a vote shall fail to receive three or more votes either for or against, said motion, resolution or proposition shall be deemed to have received neither approval nor disapproval and shall without further order of the Board of Zoning Appeals be continued from regular meeting to regular meeting and voted on once at each such meeting until such time as it shall receive three votes either for or against. Thereafter, the Board of Zoning Appeals shall schedule a subsequent hearing to reconsider and decide upon said proposition.—(Resolution No. R-11-0023, March 29, 2011)~~

~~e) Formal rules of evidence shall not be followed at hearings before the Board of Zoning Appeals, but the chairman may exercise discretion to exclude evidence where said evidence is cumulative with other evidence in the record or where said evidence is immaterial to the decision before the Board of Zoning Appeals in the matter before it.~~

19.0037. The jurisdiction of the Board of Zoning Appeals shall be limited to the following:

~~4a) Appellate Jurisdiction Powers Relative to Errors. The Board of Zoning Appeals is authorized to hear and decide appeals where it is alleged there is an error in any order, decision, or determination made by an administrative official in the enforcement of this resolution.~~

~~2b) Original Jurisdiction.~~

~~(1) Powers Relative to Variances. The Board of Zoning Appeals is authorized, upon petitions for variances, to hear and decide upon petitions for variances, and subject to such standards, principles and procedures provided in this resolution, to vary the strict application of the height, area, parking or density requirements to the extent necessary to permit the owners a reasonable use of their land in those specified instances where there are peculiar, exceptional and unusual circumstances in connection with a specific parcel of land; which circumstances are not generally found within the locality or neighborhood concerned.~~

~~3) (2) Powers relative to Exceptions. The Board of Zoning Appeals is authorized, upon appeal/petition, the Board is empowered to recommend to make the following exceptions:~~

~~a) (i) To permit the reconstruction of a non-conforming building which has been destroyed by fire or Act of God, where the Board shall find some compelling public necessity requiring the continuance of the non-conforming use;~~

~~b) (ii) To permit the erection and use of a building or the use of premises in any location for a public service corporation for public utility purposes which the Board deems reasonably necessary for the public convenience or welfare. Such uses lawfully~~

existing on the effective date of this resolution shall be deemed to have received such a permit, and shall be provided with such a permit by the Building Inspector upon request and shall not be non-conforming uses; provided, however, that a permit shall be required for enlargement, extension or relocation of any of these existing uses;

e) (iii) -To interpret the provisions of this resolution where the street layout actually on the ground varies from the street layout as shown on the map fixing the several districts, which map is attached to and made a part of this resolution.
(Resolution No. 3781, February 2, 1983)

19.009. In exercising the above mentioned its appellate jurisdiction, such Board may, in conformity with the provisions of this resolution, reverse or affirm, wholly or partially, or may modify the order, requirement, decision, or determination appealed from and may make such decisions as ought to be made. In considering all appeals-petitions for variances or exceptions under this resolution, the Board shall, before making any finding in a specific case, first determine that the proposed change will not constitute a change in the District Map and will not impair an adequate supply of light and air to adjacent property, or increase the congestion in public streets, or increase the public danger of fire and safety, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals and welfare of Lancaster County. In making a determination, the board may request information and recommendations from any department of Lancaster County. Every decision of the Board of Zoning Appeals shall be accompanied ~~Decisions of the Board of Zoning Appeals accompanied by a written finding of fact based on testimony and other evidence, specifying the reason for granting or denying the variation. In the event that the proposed variance or exception is denied by the Board of Zoning Appeals, no new request shall be made for the same or substantially similar variance or exception within one year of said denial thereof. Every decision of the Board of Zoning Appeals, accompanied by the written findings of fact, shall be transmitted to the County Clerk by the Board within one week after such actions have been taken. Any decision granting an appeal or a petition for a variance or an exception shall be by resolution of the Board, a certified copy of which shall be filed with the Register of Deeds by the petitioner at the expense of the petitioner within sixty days after such approval, or such approval shall be null and void. Every change decided upon by the Board shall be accompanied by a written finding of fact based on sworn testimony and evidence, specifying the reason for granting or denying the variation.~~ Decisions of the Board of Zoning Appeals shall be final unless appealed to the County Board pursuant to Section 19.011.
(Resolution No. R-11-0023, March 29, 2011)

19.011.

(a) Any aggrieved person, or any person or group officially designated to participate in the administrative of this title may appeal any action of the Board of Zoning Appeals to the County Board by filing notice of appeal with the County Clerk within fourteen (14) days following the action of the Board of Zoning Appeals.

(b) Upon receipt of the appeal by the County Board, the board shall hold a public hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be given as provided in Article 22 hereafter.

(c) In exercising its appellate jurisdiction, the action ~~appealed~~ from shall be deemed advisory and the County Board may, after public hearing, in conformity with the provision of this title, make such decision as ought to be made. (Resolution No. R-11-0023, March 29, 2011)