

zoning shall be subject to the penalties and remedies provided for herein.

ARTICLE 6 BOARD OF ZONING APPEALS

12-601. BOARD OF ZONING APPEALS. The Board of Zoning Appeals shall consist of five (5) members, all of whom shall be residents of the City, and who shall be appointed by the Mayor, by and with the consent of the Council. None of the members shall hold any other public office of the City, EXCEPT that one member may be a member of the Plan Commission.

12-602. TERM. Each member shall serve for a term of three years and shall be appointed at the organizational meeting of the Governing Body held the first Monday in May of each year. Appointments shall be so staggered that no more than two members' terms shall expire in one year. Vacancies shall be filled by appointment of the mayor, by and with the consent of the Council, as said vacancies occur. The appointment shall be for the balance of the unexpired term.

12-603. COMPENSATION. Members of the Board of Zoning Appeals shall serve without compensation.

12-604. OFFICERS. The Board of Zoning Appeals shall annually elect one (1) of its members as Chairman, and shall appoint a secretary, who may be an officer or an employee of the City.

12-605. RULES. The Board shall from time to time adopt rules of procedure to regulate the conduct of its business. Such rules shall be submitted by recommendation of the Board of Zoning Appeals to the Governing Body in resolution form for approval.

12-606. MEETINGS. Meetings of the Board shall be held on the third Wednesday of each month and at such other times as the Board may determine to be required for the conduct of its meetings or upon call of the chairman. Meetings shall be held at the City Hall, unless circumstances make that location impracticable for a particular session, in which case, said meeting shall be held at any convenient place within the City.

12-607. RECORDS. The Board of Zoning Appeals shall keep minutes of its proceedings, showing evidence presented, findings of fact by the Board, decision of the Board and the vote upon each question. Records of all official actions of the Board shall be filed in its office which shall be in the office of the City Clerk and shall be a public record.

12-608. POWERS AND DUTIES. 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:

- a) Shall hear and decide appeals by any person, officer of the city,

government agency or body effected by any decision of the officer administering the provisions of the zoning ordinance.

- b) Shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an officer administering the enforcement of the zoning ordinance.
- c) May, when it shall deem the same necessary, grant variances to the zoning ordinance to authorize, in specific cases, a variance from the specific terms of the ordinance which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the ordinance will, in an individual case, result in unnecessary hardship, and provided that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

Such variance shall not permit any use not permitted by the zoning ordinance in the use district within which the particular property be located.

A request for a variance may be granted in such cases, upon a finding of the Board that all of the following conditions have been met:

1. 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 applicant;
 2. That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owner or residents;
 3. That the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
 4. That the variance desired will not adversely affect the public safety, health, morals, order, convenience, prosperity or general welfare; and
 5. That granting the variance desired will not be opposed to the general spirit and intent of the zoning ordinance.
- d) May, when it shall deem the same necessary, grant exceptions to the provisions of the zoning ordinance in those instances where the Board is specifically authorized to grant such exceptions and only under the terms of the zoning ordinance.

In no event shall exceptions to the provisions of the zoning ordinance be

granted where the use or exception contemplated is not specifically listed as an exception in the zoning ordinance. Further, under no conditions shall the Board of Zoning Appeals have the power to grant an exception when conditions of the exception as established by the Governing Body are not found to be present.

- e) Shall have the power, in specific cases, to modify or vary building or setback lines on streets for which a building or setback line has been adopted by the governing body as part of its comprehensive plan in order that unwarranted hardship, which constitutes complete deprivation of use as distinguished from merely granting a privilege, may be avoided, yet the intended purpose of the regulations shall be strictly observed and the public and public safety protected.

In exercising the foregoing powers, the Board, in conformity with the provisions of this Article, 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 issuance of a permit.

- f) May, in its discretion, when deemed advisable, authorize exceptions to the zoning requirements and restrictions of technical nature by (1) a special temporary permit for specific period not exceeding two (2) years, or (2) by special permit for a specific purpose, after conducting a public hearing thereon with due notice thereof by publication prior thereto.

12-609. PROCEDURE ON APPLICATION TO THE BOARD OF ZONING APPEALS.

- a) Appeals to the Board of Zoning Appeals shall be initiated by the applicant within a reasonable time after the decision appealed from has been made. Applicant shall file with the City Clerk a notice of appeal setting forth the specific grounds therefor and paying a fee of twenty-five (\$25.00) dollars to the City of Mission Woods.
- b) The officer from whom the appeal is taken when notified by the Board or its agent, shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- c) The Board shall fix a reasonable time for the hearing of an appeal or any other matter referred to it.
- d) Notice of the time, place, and subject of the hearing shall be published once in the official city newspaper at least twenty (20) days prior to the date fixed for hearing. A copy of said notice shall be mailed to each party to the appeal and to the City Plan Commission.

12-610. APPEAL FROM ORDER OF BOARD. Any person, official, or governmental agency dissatisfied with any order or determination of the Board of Zoning Appeals may bring action in the district court of Johnson County to determine the reasonableness of any such order or determination.

ARTICLE 7 VALIDITY OF CHAPTER

12-701. VALIDITY OF ORDINANCE. Should any section, clause or provision of this model code be invalid or unconstitutional, the same shall not affect the validity of the code as a whole, or any part thereof, other than the part so invalid or unconstitutional.

12-702. REPEAL. All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this ordinance excepting 12-103 NON-CONFORMING USES and 12-202 TERMS, which shall constitute merely a republication.