

SECTION 34 BOARD OF ADJUSTMENTS

1. Organization

The Board of Adjustment shall consist of at least five (5) members who shall be selected by the Mayor and confirmed by resolution of the City Council. One member of the Board of Adjustment shall be a member of the Rogers Planning Commission and the other members, citizens at large. The members terms of office shall be for three (3) years and shall be staggered. Vacancies on the Board of Adjustment shall be filled by selection of the Mayor and confirmed by resolution of the City Council. Members of the Board of Adjustment may be removed from office for cause after written notice from the Mayor and public hearing by the City Council. The Board shall establish its own rules of procedure covering, but not limited to by-laws, meeting times and dates, elections, public records and findings and decisions.

2. Officers and Duties

The Board of Adjustment shall elect a chairman and secretary annually from among its members. The Chairman shall preside at all meetings and shall decide points of order or procedure as necessary. The Secretary shall preside at meetings in absence of the Chairman, shall be custodian of the minutes and other official records of the Board, shall attend to correspondence and shall cause to be given such notices as are required and in the manner prescribed by law.

3. Meetings, Quorum and Agenda

Regular meetings shall be held (unless there is no business) at the time and place directed in the public hearing notice. Special meetings for any purpose may be held: 1. On call of the Chairman or any two members of the Board provided that written notice is given to all interested parties at least forty-eight (48) hours prior to the meeting, or 2. As may be scheduled by a majority of the Board at any previous meeting. All meetings of the Board shall be public meetings and shall be held in full compliance with the provisions of state law. Any party in interest may appear in their own behalf or may be represented by council or agent. A quorum shall consist of any three members of the Board. An agenda shall be prepared for each meeting of the Board. The agenda shall include matters pending further action and new appeals and matters scheduled for consideration by the Board.

4. Official Records and Vote

The official records shall include these rules and regulations, all matters concerning a case, the minutes of the Boards meetings and all findings and decisions of the Board. All appeal applications, minutes findings and decisions and other matters and materials pertinent to a case shall be retained in City Hall and shall be available for public inspection during customary working hours. The minutes of the Board's proceedings shall show the vote of each member on each decision the Board makes including absent or failing to vote.

5. Appeals – Powers and Duties

The Board of Adjustments shall hear the following appeals as provided by state law: 1. Hear appeals from the decision of the administrative officers in respect to the enforcement and application of the zoning ordinance, and may affirm or reverse, in whole or part, said decision of the administrative officer; 2. Hear requests for variance from the literal provisions of the zoning ordinance in instances where strict enforcement of the zoning ordinance would cause undue hardship due to circumstances unique to the individual property under consideration, and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the zoning ordinance. The Board of Adjustment shall not permit, as a variance, any use in a zone that is not permitted under the ordinance. The Board may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

No appeal shall be taken to the Board until and unless the Administrative Officer has first refused a building permit or has rendered an interpretation of the zoning ordinance. Said refusal on the part of the Administrative Officer shall be on a form provided by the City setting forth the reasons for refusal or interpretation including the pertinent section of the ordinance which apply and signed by the Administrative Officer.

An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrative Officer certifies to the Board after the appeal is filed with him/her, that by reason of facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed other than by a decision of the Board or a restraining order granted by a court of record.

Every appeal shall be filed on an application form provided by the City, shall be accompanied by the prescribed fee and shall bear the signature of the owner of the property under appeal or by accompanied by a letter from the owner authorizing an appeal. An incomplete application shall be considered a notice of intent to file and shall not be taken to the Board until it is complete.

6. Board of Adjustment Procedure

Applications for appeal or variance shall be filed with the Board fifteen (15) days prior to the next regular scheduled meeting of the Board.

When an application for appeal or variance has been filed with the Board, the Board shall publish a notice in the newspaper having general circulation in the City of Rogers. The notice shall be published one time not less than ten (10) days preceding the day of the hearing and shall include the date, time and place of the hearing, the applicant's name, the location of the property (both the legal description and layman's description) under appeal or variance and the nature of the appeal or variance requested. The Board shall also have a sign placed on the property ten (10) days preceding the day of the hearing, which sign shall be at least eighteen (18) inches high and thirty (30) inches wide, also giving notice of appeal or application for variance.

An application may be withdrawn anytime prior to the delivery of the legal notice to the newspaper. After delivery of the legal notice to the newspaper only the Board in regular or special session may allow the application to be withdrawn. The applicant shall be responsible for all legal notice fees

7. Hearing and Decisions

The Chairman shall call the Board to order and cause the members present or absent to be recorded. The Chairman shall advise those members present of the procedure followed in the hearing and disposition of appeals, announce the name of the applicant, the location of the property involved and the nature of the request.

The Chairman shall first call upon the applicant to present his/her case and all evidence supporting the plea. Board members may question the applicant after his/her presentation. The Chairman shall then inquire if there are others who support the appeal and allow them to speak. Board members may question others following their presentation. The Chairman shall next call on those opposed to the appeal to present their arguments. Board members may question those opposed following their presentations. The applicant shall then have the right to rebuttal to arguments presented by the opposition. Following the rebuttal the Chairman shall close the public hearing. The Board shall then discuss and dispose of the appeal. During the public hearing each side shall proceed without interruption and all arguments and pleadings shall be addressed to the Board. No questioning or arguments between individuals will be permitted.

If an applicant fails to appear the Board may continue that appeal to a future time and day certain. If the applicant fails to appear at the second public hearing the application is automatically denied and can only be reheard in keeping with the terms of this ordinance.

The Board may approve, may approve with modifications, or may deny any appeal. The Board may defer to a time and day certain any appeal whenever it concludes that additional information is needed or that alternate solutions need further study. A majority vote of the Board shall be required for any decision.

An appeal, once denied, shall not be heard again within a period of one (1) year unless the applicant can show how the Board erred in its determination or that new information not available at the time of the public hearing has been discovered. A majority vote of the entire Board shall be required to rehear any appeal.

A determination of the Board concerning an interpretation of the zoning ordinance shall be permanent until the ordinance is changed or the Board makes a subsequent decision. A determination of the Board concerning a variance from the zoning ordinance shall be valid for six (6) months from the date of the final decision by the Board. If a building permit is issued on a piece of property which relates to a variance decision of the Board then the building permit expiration date shall apply if it exceeds the six (6) month Board decision date.

All appeals from a decision of the Board shall be to a court of record having jurisdiction.

