

**CITY OF OGALLALA**  
**APPLICATION TO APPEAR BEFORE THE**  
**OGALLALA ZONING BOARD OF**  
**ADJUSTMENT**

*(Please type or print legibly)*

Application date\_\_\_\_\_

Name and address of applicant\_\_\_\_\_

Name and address of property owner\_\_\_\_\_

Address of property\_\_\_\_\_

Legal description of property\_\_\_\_\_

Type of variance requested:

\_\_\_ Administrative review

\_\_\_ Interpretation

\_\_\_ Setback variance

Reason for which variance is requested

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Applicant signature**\_\_\_\_\_

***For department use only***

**Fee Paid**\_\_\_\_\_

**Application accepted by**\_\_\_\_\_ **Date**\_\_\_\_\_

***Excerpt from Municipal Code***

**BOARD OF ADJUSTMENT**

**§ 153.260 GENERAL PROCEDURE.**

It is the intent of this chapter that all questions of interpretation and enforcement shall be first presented to the administrative official, and that such question shall be presented to the Board of Adjustment only on appeal. Appeal from the decisions of the Board of Adjustment shall be to the courts as provided by law and particularly by Neb. RS 19-912. ('85 Code, § 11-504) **Cross-reference:** *Board of Adjustment, see § 35.016*

**§ 153.261 PROCEEDINGS OF BOARD.**

- (A) The Board of Adjustments shall adopt rules necessary to the conduct of its affairs, and in keeping with the provisions of this chapter. Meetings shall be held at the call of the Chairperson and at such other times as the Board may determine. The Chairperson, or in his or her absence the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.
- (B) The Board of Adjustments 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 a public record and be immediately filed in the office of the Board. ('85 Code, § 11-501(a))

**§ 153.262 POWERS AND DUTIES.**

- (A) The Board of Adjustment shall have only the following powers and duties:
  - (1) *Administrative review.* To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any Zoning Administrator or agency based on or made in the enforcement of this chapter or any regulation relating to the location or soundness of structures.
  - (2) *Interpretation; special questions.* To hear and decide, in accordance with the provisions of this chapter, requests for interpretation of any map, requirement, or provision of the Zoning Ordinance.
  - (3) *Variances; conditions governing applications; procedures.* Where by reason of exceptional narrowness, shallowness, or

shape of a specific piece of property at the time of the enactment of this chapter, or by reason of exceptional topographical conditions or other extraordinary and exceptional situations or conditions of such piece of property, or exceptional and undue hardships upon the owner of such property, the Board of Adjustment may, upon an appeal of a decision relating to the property, authorize a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter.

- (B) In exercising the above-mentioned powers, the Board may, in conformity with the provisions of this chapter, 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.
- (C) The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any such Zoning Administrator, to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in the application of this chapter. ('85 Code, § 11-502) **Cross-reference:** *Board of Adjustment, see § 35.016*

### **§ 153.263 VARIANCES.**

- (A) No variance shall be authorized by the Board unless it finds that:
  - (1) The strict application of this chapter would produce undue hardship.
  - (2) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  - (3) The authorization of the variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
  - (4) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variation for purposes of convenience, profit, or caprice.
  - (5) Such hardship does not result from the actions of the owner

of such property.

- (6) The granting of such variance will not confer on the owner of such property any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district.
- (B) No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this ordinance.
  - (C) No nonconforming use of neighboring land, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance.
  - (D) A variance from the terms of this chapter shall not be granted by the Board of Adjustment unless and until:
    - (1) A written application for a variance is submitted indicating the terms of this chapter under which the variance is sought, stating the ground on which it is requested, and the specific variance requested.
    - (2) Notice shall be given at least ten days in advance of public hearing. The owner of the property for which variance is sought or his or her agent shall be notified by mail. Notice of such hearing shall be posted on the property for which variance is sought, at the City Hall, and in one other public place, at least ten days prior to the public hearing.
    - (3) The public hearing shall be held. Any party may appear in person, or by agent or attorney.
    - (4) The Board of Adjustment shall make a finding that the reasons set forth in the application justify the granting of the variance under the terms of this chapter, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
    - (5) The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- (E) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards when made a part of the terms under which the variance is granted shall be deemed a violation of this chapter and punishable under § 153.999.
- (F) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved or any use expressly or by implication prohibited by the terms of this chapter in said district. ('85 Code, § 11-502)

### **§ 153.264 APPEALS TO BOARD.**

#### (A) *Generally.*

- (1) Appeals to the Board of Adjustment concerning the interpretation or administration of this chapter may be taken by any person aggrieved or by any officer or bureau of the governing body of the city affected by any decision of the administrative official. Such appeal shall be taken within a reasonable time, not to exceed 60 days, or such lesser period as provided by the rules of the Board, by filing a notice of appeal with the administrative official and with the Board of Adjustment specifying the grounds for the appeal. The administrative official shall immediately transmit to the Board all papers constituting the record upon which the action appealed from was taken.
- (2) The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice and notice to the parties in interest of the appeal hearing, and decide the same within a reasonable time. At an appeal hearing, any party may appear in person or by agent or attorney. ('85 Code, § 11-501(b))

- (B) *Stay of proceedings.* An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with him or her that, by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on

due cause shown. ('85 Code, § 11-501(c))

**§ 153.265 APPEALS FROM BOARD.**

Any person, board, taxpayer, department, or board of the city aggrieved by a decision of the Board of Adjustment may seek review of such decision by the district court for the county in the manner provided by the laws of the state. ('85 Code, § 11-503)