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17-101 Organization and Procedure: The Metropolitan Planning Commission for Junction City and Geary County shall serve as the Board of Zoning Appeals and shall administer the details of the application of these Regulations in accordance with the general rules set forth herein. The Board of Zoning Appeals may adopt rules and regulations as it may deem necessary to effectuate the provisions of these Regulations.

17-102 Powers and Duties:

1. The Board of Zoning Appeals shall have the following powers:

   A. In accordance with the specific provisions of this Article, to authorize upon appeal of specific cases such variance from the terms of these Regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these Regulations would result in unnecessary hardship, and so that the spirit of these Regulations shall be observed and substantial justice done.

   B. To hear and decide those special exceptions to the terms of these Regulations upon which such Board is required to pass under these Regulations.

   C. The Board may conduct an initial review of cases, prior to a full hearing on the merits, to determine the issue of the Board's jurisdiction.

   D. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these Regulations. However, no hearing on the merits shall be required in cases in which the Board determines from an initial review that it lacks jurisdiction. Such cases shall include the following:

      (1) Cases in which appeals are not timely filed;

      (2) Cases in which an administrative official is implementing rulings previously issued by the Board of Zoning Appeals or the Planning Commission; and,

      (3) Cases in which an administrative official makes a decision unrelated to the administration of the planning and zoning regulations.

2. The Zoning Administrator shall have the following powers and duties:

   A. To act as the agent of the Board.

   B. To receive all documents and materials incident to variance appeals, special exceptions and appeals of an administrative official enforcing these Regulations.

   C. To transmit complete appeals to the Board.

   D. To refuse to submit to the Board any appeals which are incomplete or defective. "Incomplete or defective" appeals shall include, but not be limited to: incomplete appeals forms, failure to utilize the required appeal form and failure to pay the docket fee.

   E. To advise the Board in which the Board's jurisdiction may be an issue.

17-103 <u>Variances</u>: The Board of Zoning Appeals shall have the power to grant the following variances:

1. A variation in the bulk requirements in any district so as to relieve practical difficulties or particular hardships in cases, when and where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographical conditions or other extraordinary or exceptional situations or conditions of such piece of property, the strict application of each regulation or restriction would result in peculiar and exceptional practical difficulties to, or exceptional hardship upon the owner of such property. Such variance shall comply, as nearly as possible, in every respect with the spirit, intent and purpose of these Regulations; it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and exceptional hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice. Such variance shall be granted only when public safety and welfare are secured, and substantial justice done.

2. A request for a variance may be granted in such case, upon a finding by the board that **ALL** of the following conditions have been met:

   A. 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(s) or of the applicant;

   B. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;

   C. The strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

   D. The variance desired will not adversely affect the public health, safety, order, convenience, prosperity, or general welfare, and;

   E. That granting the variance desired will not be opposed to the general spirit and intent of these Regulations.

17-104 Special Exceptions: In order to provide for adjustment in the relative locations of uses and buildings of the same or different classifications, to promote the usefulness of these Regulations as an instrument for fact finding, interpretation, application, and adjustment, and to supply the necessary elasticity to its efficient operation; special exceptions are hereby permitted by the terms of this Article. The following buildings and uses are permitted as special exceptions if the Board of Zoning Appeals finds that in its opinion, as a matter of fact, such exceptions will not adversely affect the uses of adjacent and neighboring property permitted by these Regulations:

1. Replacing a nonconforming mobile home or manufactured home with a newer and/or larger manufactured home on the same lot; provided, said reestablished manufactured home, if approved, shall be set up in accordance with these Regulations and be properly skirted within 60 days of the placement of said manufactured home.

2. A manufactured home or recreational vehicle on an individual lot on an emergency basis on any lot where the permanent dwelling unit has been destroyed by fire, storm or other such calamity and the dwelling unit has been rendered uninhabitable, and where the placement of the manufactured home or recreational vehicle will be for a period longer than one (1) year. The placement of the manufactured home or recreational vehicle for a period not greater than one (1) year is allowed under these conditions by the issuance of an administrative permit by the Zoning Administrator under Section 18-111 of these Regulations.

3. Placing a manufactured home as a second home on a lot under instances of extreme hardship or necessity as determined by the Board, provided:

   A. The applicant shall clearly state the hardship or reason of necessity for requesting the Special Exception.

   B. The Special Exception may be permitted for a period of up to three (3) years and may be renewed for successive three (3) year periods; provided, however, that at such time as the hardship or reason of necessity shall cease to exist, the Special Exception shall become null and void and said manufactured home shall be forthwith removed.

   C. Such manufactured home shall be maintained in a safe and sanitary condition and shall comply with the Geary County Sanitary Code and all other applicable adopted codes and procedures of Geary County.

4. In the “SR” Suburban Residential or the "R-1" Single-Family Residential District, a private garage(s) and/or storage building(s) as an accessory building(s) for more than four motor vehicles and/or covering more than 900 square feet.

5. A nonconforming commercial use to extend to the entire lot or a larger portion of the lot where there is now a commercial use on a portion of the lot.

6. A nonconforming commercial use on a lot between two lots which are used commercially.

7. A nonconforming use now existing in any part of a building to be extended vertically or laterally to other portions of the building. In a building now occupied by a nonconforming commercial or industrial use, an additional use of the same classification in the remainder of the building.

8. The extension of an existing nonconforming building and the existing use thereof, upon the lot occupied by such building at the time of the passage of these Regulations; or the erection of an additional building upon the lot owned at the time of the passage of these Regulations by a nonconforming commercial or industrial establishment and which additional building is a part of such establishment.

9. Where a use district boundary line crosses a lot, a use of either classification on the whole lot within 100 feet of said district boundary line.

10. Off-street parking areas, adjacent to or at a reasonable distance from the premises on which parking areas are required by the parking regulations of these Regulations where practical difficulties, including the acquisition of property, or undue hardships are encountered in locating such parking areas on the premises and where the purpose of these Regulations to relieve congestion in the streets would be best served by permitting such parking off the premises.

11. The placement of a manufactured home or a mobile home on any property for use as an office, storage unit or other use different from its original design as a residence. This does not apply to the placement of "prefabricated structures" which are designed as portable offices, portable classrooms and the like; nor does it apply to the placement of a manufactured home or mobile home on agricultural land for use as storage or housing of animals, which is prohibited by Article 15.

17-105 Special Yard and Height Exceptions: The following special yard exceptions, limited as to location and especially in locations described below in this section, are permitted by these Regulations if the Board of Zoning Appeals finds that in its opinion, as a matter of fact, such exception will not substantially affect adversely the uses of adjacent and neighboring property permitted by these Regulations and provided such exceptions are approved by the Board:

1. An exception in the yard regulations on a lot where, on the adjacent lot, there is a front, side or rear yard that does not conform to the yard regulations.

2. A yard exception on a corner lot, or lots opposite or adjoining permanent open spaces, including parks and playgrounds.

3. An exception in the depth of the rear yard on a platted lot in a block where there are nonconforming rear yard conditions.

4. An exception where there are irregularities in depths of existing front yards on a street frontage on the side of a street between two intersecting streets, so that any one of the existing depths shall, for a building hereafter constructed or extended, be the required minimum front yard depth.

17-106 Guidelines for Conditions: Where, in these Regulations, special exceptions are permitted, provided they are approved by the Board of Zoning Appeals where the Board is authorized to decide appeals or approve certain uses, and where the Board is authorized to approve variances; such approval, decision, or authorization shall be limited by such conditions as the case may require, including, if necessary, any of the following specifications:

1. No outside signs or advertising structures except professional or directional signs.

2. Limitations of signs as to size, type, color, location or illumination.

3. Amount, direction, and location of outdoor lighting.

4. Amount and location of off-street parking and loading space.

5. Maintenance requirements including cleaning and painting of buildings, structures or facilities.

6. Type of roof (i.e., gable, flat, etc.).

7. Construction design and type of construction materials to be used.

8. Whether the buildings, if multiple buildings are proposed, can be connected or not.

9. Exit, entrance, door and window locations.

10. The type and amount of paving, landscaping, fencing, screening and other such features.

11. Hours of operation, including limitations on nighttime hours.

12. Limitations on structural alterations to existing buildings.

13. Plans for the control or elimination of smoke, dust, gas, noise or vibration caused by the proposed use.

14. Such other conditions and/or limitations that are deemed necessary.

17-107 Application: Written application for a variance, a special exception, or an appeal referred to in this Article shall be filed with the Board or its agent, upon forms and in a manner prescribed by the Board. Said application shall be submitted within 30 days of the action requiring said variance, special exception or appeal.

17-108 Stay of Proceedings: Upon the application for an appeal of an order, requirement, decision, or determination made by an administrative official in the enforcement of these Regulations, said application shall stay all legal proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board, after the application for appeal has been filed with him, that by reason of facts stated in the certificate the stay would, in his opinion, cause imminent peril to life or property. In such case the proceedings shall not be stayed except by a restraining order which may be granted by the Board, or by a court of competent jurisdiction on application, on notice to the Zoning Administrator and on due cause shown.

17-109 Public Hearing:

1. The Board may conduct an initial review in cases on the limited issue of jurisdiction. If the Board determines it does not have jurisdiction, no hearing on the merits is necessary. Cases in which no jurisdiction exists include the instances in Section 17-102(1)(d)(1) through (3). The Board's ruling of no jurisdiction is appealable to a court of competent jurisdiction. In the event the Board rules that is has jurisdiction, a hearing on the merits shall proceed.

2. The Board shall hold a public hearing on each complete application for an appeal, decision, variance or special exception for which it has jurisdiction. Applications for a variance or special exception must be accompanied with a list of property owners, and their addresses, within 1,000 feet of the property for which the variance or special exception is being sought, except the notification area need only extend 200 feet into an incorporated city when said property is near or abuts said incorporated city. Upon special direction, the applicant shall provide a certified list of the owners of

record of said lands at the time of the filing of the application, otherwise the Zoning Administrator shall compile said list from the records of Geary County, Kansas. On all applications, notice of the time and place of the public hearing shall be published once in the official County paper not less than 20 days prior to the date of such public hearing. In addition, for all applications for a variance or special exception all property owners in the notification area shall be notified by first class U.S. mail, postage prepaid, of such public hearing and be given an opportunity to attend and be heard regarding such application for a variance or special exception.

17-110 Findings and Records of Proceedings: The Board of Zoning Appeals shall hold the public hearing at such prescribed time and place and shall make its findings and determinations in writing within a reasonable time from the date of filing of the application, and shall forthwith transmit a copy thereof to the applicant. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, and shall keep records of its examinations and other official actions, which shall be a public record.

17-111 Lapse of Special Exceptions or Variances: After the Board of Zoning Appeals has approved a special exception or granted a variance, the special exception or variance so approved or granted shall lapse after the expiration of one (1) year if no substantial construction or change of use has taken place in accordance with the plans for which such special exception or variance was granted, and the provisions of these Regulations shall thereafter govern.

17-112 Decisions of the Board: In exercising the foregoing powers, the Board of Zoning Appeals, 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 issue or direct the issuance of a permit. Any person, official or governmental agency dissatisfied with any order or determination of the Board of Zoning Appeals may bring an action in the District Court of Geary County, Kansas, to determine the reasonableness of any such order or determination within thirty (30) days of the rendering of the order or determination by said Board of Zoning Appeals.