

## **Article 15 – Zoning Board of Appeals**

### **15.1 Creation**

The Cherokee County Zoning Board of Appeals(referred to in this Article as the Board) was established by previous version of this ordinance, and remains authorized under this ordinance. Existing Board members shall continue in their current terms unaffected by the adoption of this ordinance.

### **15.2 Membership**

The Board shall consist of five (5) members residing within the County of Cherokee and shall be appointed by the Cherokee County Board of Commissioners. Each member of the Board of Commissioners shall appoint one (1) member to the Board from his or her district, with the Chairman appointing one at large member..

### **15.3 Term of Office**

Each member appointed by a member of the Board of Commissioners shall serve concurrently with and at the pleasure of the appointing Commissioner's term of office and until a successor is appointed.

### **15.4 Vacancy**

Any vacancy in the membership shall be filled by the appointing Commissioner in the same manner as the initial appointment.

### **15.5 Removal of Members**

It shall constitute grounds for removal should any Board member fail, without proper reason, to attend three (3) consecutive Board meetings.

### **15.6 Members Disqualified to Act**

Any member of the Board shall be disqualified to act upon a matter before the Board with respect to property or matters in which the Board member has an interest.

### **15.7 Compensation**

The Board members shall receive compensation for their service as determined by the Cherokee County Board of Commissioners.

### **15.8 Election and Appointment of Officers**

The Board shall elect one of its members as Chairman and another as Vice-Chairman, each serving for one (1) year or until re-elected or a successor is elected. The Vice-Chairman shall have the authority to act as Chairman in the Chairman's absence. The Board shall appoint a Secretary who may be staff of Cherokee County.

### **15.9 Rules and Procedures**

The Board shall have authority to adopt rules of procedure. Meetings of the Board shall be held on the first Thursday of every month, unless an alternative day is determined in advance by a majority vote of the Board or by the Zoning Administrator. Meetings may be added or cancelled with proper notification. The Chairman, or in his or her absence, the Vice-Chairman, the Zoning

Administrator, and/or the County Attorney may administer oaths and compel the attendance of witnesses by subpoena. The Board 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 immediately filed in the office of said Board and shall be a public record.

#### **15.10 Quorum Required to Act**

A quorum of the Board is required for the Board to take official action. A quorum of the Board shall consist of at least three (3) of the five (5) members of the Board. The concurring vote of a majority of a quorum of the Board, upon the motion of any member, shall be necessary to render a decision on any variance application, or to reverse or affirm, in whole or in part, any order, requirement, decision or determination of the Zoning Administrator. In the event that there is a tie vote, the application shall be considered denied.

#### **15.11 Decisions of the Board**

Each decision of the Board shall contain a statement of the subject matter being considered by the Board, the decision of the Board, and the grounds for the decision. The decision shall be reduced to written form and shall be provided to the applicant. No appeal requesting the same relief for the same property shall be received or heard by the Board for a period of twelve (12) months following the date of the Board's decision, except that this limitation shall not affect the right of the Board to grant a rehearing as provided in rules of procedure as may be adopted by the Board.

#### **15.12 Administrative Assistance**

The Zoning Administrator shall provide such technical, administrative, and clerical assistance and office space as is required by the Board to carry out its function under the provisions of these regulations.

#### **15.13 Public Hearing**

- A. Notice of Hearing Shall be Given. Before making its decision on an appeal, request for a variance, or any other matter within the Board's purview, the Board shall hold a public hearing thereon. At least fifteen (15) days but not more than forty-five (45) days before the public hearing, notice of the time and place of such hearing shall be sent to the applicant and/or owner, as well as adjacent property owners, by U.S. Mail to the address contained in the tax assessor's records. Such notice shall contain the name of the applicant or petitioner, the date, time and place set for the hearing, and a brief statement of the nature of the hearing. (See Ord. No. 2008-Z-002, 09-16-08)
- B. Public Notice in Newspaper. The Board shall give public notice of the hearing in a newspaper of general circulation in Cherokee County at least fifteen (15) days, but not more than forty-five (45) days, prior to the date of the public hearing.
- C. Public Notice by Posting. When the Board is considering a request for a variance, the notice of the date, time, place and nature of the Board's hearings shall also be afforded by the erection of a sign in a conspicuous place on the subject property. The sign shall be erected at least fifteen (15) days prior to the date of the Board's hearing.
- D. Who May Appear. Any party may appear at the public hearing in person or by agent or attorney.

- E. Time Limit on Board's Decision. The Board shall reach a decision following a public hearing within thirty-one (31) days, unless postponement of same is agreeable to both the applicant and the Board. The decision of the Board shall be made by public vote and shall not be final until the minutes of the Board meeting have been duly adopted and approved by the Board.

#### 15.14. Powers and Duties

- A. Appeals from Actions of the Zoning Administrator. The Board shall hear and decide upon appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of these regulations. Notwithstanding the foregoing powers, the Board shall not be entitled to review the interpretation by the Zoning Administrator of the provisions related to permissive uses within the zoning districts established by this Ordinance, which interpretations shall be appealed to the Board of Commissioners. (See Ord. No. 2008-Z-002, 09-16-08)

- (1) Who May Appeal. Appeals to the Board may be taken by any person aggrieved or by an officer, department, board, or bureau of the governing authority affected by any decision of the Zoning Administrator. Such appeals shall be filed no later than thirty (30) days after the date of notification of the decision appealed from by filing with the Zoning Administrator and with the Board a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all documentation constituting the record upon which the action being appealed was taken.

Legal Proceedings Stayed. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such a case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board or by a court of record on application, on notice to the Zoning Administrator, and on due cause shown.

- (2) Extent of Board of Appeals Power. The Board may, in conformity with the provisions of these regulations, reverse or affirm, in whole, or in part, the requirement, decision, or determination of the Zoning Administrator. The Board may direct the issuance or revocation of a permit. In addition, whenever the Board shall find, in the case of any permit granted pursuant to the provisions of these regulations, that any of the terms, conditions, or restrictions upon which such permit was granted are not being complied with, the Board may rescind or revoke such permit after giving due notice of same to all parties and an opportunity for such parties to be heard following such action. It shall be the duty of the Zoning Administrator to carry out the decisions of the Board.

- B. Request for a Variance. The Board may authorize upon appeal in 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 will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done provided, however, that a variance shall not be granted for a use of land or

building or structure that is prohibited by this Ordinance in the District in question. A variance may be granted in an individual case upon a finding by the Board that the following exists:

- (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography; and
- (2) The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and
- (3) Such conditions are peculiar to the particular piece of property involved; and
- (4) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land or building or structure that is prohibited by this Ordinance; and
- (5) A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same district are allowed; and
- (6) Provided that the Board may impose or require such additional restrictions and standards as may be necessary to protect the health and safety of workers and residents in the community, and to protect the value and use of property within Cherokee County.

#### **15.15 Compliance with Standards**

Where an application to the Board is initiated due to an existing violation of the Cherokee County Zoning Ordinance and said application is denied, the violation shall be required to be corrected within ten (10) days of such denial, or as specified by the Board if a greater time period is necessary. The maximum extension of the time shall not exceed ninety (90) days.

#### **15.16 Forms**

All appeals and requests for variances shall be made on forms provided by the Zoning Administrator, and all information required on said forms shall be provided by the applicant. No appeal or request for variance shall be accepted by the Zoning Administrator unless all pertinent information is provided on the applicant's form and is accompanied by the required fee.

#### **15.17 Fees**

To defray a portion of the costs occasioned thereby, no appeal from a decision of the Zoning Administrator, and no application for an exception, variance or other matter, shall be heard or ruled upon by the Board until the applicant has paid the appropriate fee in accordance with the Schedule of Fees adopted by the Cherokee County Board of Commissioners and provided in Appendix "A" to this Ordinance, as such fees may be changed from time to time by Resolution of the Cherokee County Board of Commissioners.

#### **15.18 Appeals**

- A. Appeal to Board of Commissioners. An appeal of a decision by the Zoning Board of Appeals shall be to the Cherokee County Board of Commissioners, effected by submission of a letter of appeal to the Board of Commissioners, no later than ten (10) days after the Zoning Board of Appeals' decision has been rendered and provided to the applicant.

- B. **Board of Commissioners' Discretion to Review.** The letter of appeal shall be placed on an agenda at the Board of Commissioners' next regularly scheduled meeting, and the Board of Commissioners shall determine at such meeting whether it will consider the appeal. If the Board of Commissioners decides that it will consider the appeal, the appeal shall then be placed on a future agenda of the Board of Commissioners with sufficient time to provide notice in accordance with State law and the Cherokee County Zoning Ordinance for the conduct of a public hearing. A denial of a review by the Board of Commissioners shall be an affirmation of the decision of the Zoning Board of Appeals, and shall constitute the final decision of the Board of Commissioners of Cherokee County.
- C. **Public Hearing for Appeal.** When hearing an appeal, the Board of Commissioners shall conduct a public hearing to receive oral or written evidence from the appellant, from affected property owners, and from other interested parties as determined by the Board of Commissioners in its discretion. The Board of Commissioners shall confine the evidence to matters set forth in the decision of the Zoning Board of Appeals, the minutes of the Zoning Board of Appeals, and the applicant's notice of appeal. The proceedings shall be recorded and shall be open to the public.
- D. **Decision of Board of Commissioners.** Upon conclusion of the public hearing, the Board of Commissioners shall consider the matters under appeal and its action concerning the decision being reviewed. The Board of Commissioners' decision shall be announced in a public meeting, either following the hearing or at any other scheduled meeting. The decision of the Board of Commissioners shall be in writing and shall: (a) affirm the decision of the Zoning Board of Appeals, or (b) return the matter to the Zoning Board of Appeals for reconsideration, with or without direction, or (c) take such action by way of relief to the applicant as the Board of Commissioners deems appropriate and lawful.
- The decision of the Board of Commissioners shall be included in its meeting minutes and a written report thereof shall be sent to the appellant. Upon conclusion of the case or application, the record and all matters adduced at the Board of Commissioners' hearing shall be transmitted to the Zoning Administrator for retention.
- E. **Appeal to Superior Court.** Appeal of a decision of the Board of Commissioners shall be to the Superior Court of Cherokee County by writ of certiorari within thirty (30) days of the date of the decision.

### **15.19 Administrative Variances**

The Zoning Administrator may grant a variance up to 10 percent (10%) of the minimum required building setbacks outlined in Table 7.1 of Article 7 of the Cherokee County Zoning Ordinance upon presentation of evidence indicating that such variance is necessary and/or a practical solution without significant impact to adjoining properties, provided that the same applicant has not requested an administrative variance or an administrative variance has not been requested for the same property within the preceding six (6) months.

Any and all administrative variances granted pursuant to this Section shall be reported to the Board of Commissioners on a monthly basis and to the Cherokee County Board of Appeals.

(Ord. No. 2009-Z-002, 10-06-09)

**Appendix A -- Schedule of Fees**

The following fees shall be paid to Cherokee County in accordance with Section 15.14(B) of Article 15 of the Cherokee County Zoning Ordinance:

1. Appeal from Action of the Zoning Administrator -- \$200.00; or
2. Application for Variance (Residential) -- \$200.00; or
3. Application for Variance (Commercial, Industrial, Building Contractor) -- \$300.00.

No fee shall be required for an interpretation of the Zoning Ordinance when there is a variance between the street layout on the ground and the street layout as shown on the district zoning map.