

# **MCCOOK CITY COUNCIL**

## **REGULAR MEETING**

**Monday, March 22, 2021  
5:30 PM - City Council Chambers**

Call to Order and Roll Call.

Open Meetings Act Announcement.

Items

1. Approve the minutes of the January 7, 2021 special Board of Zoning Adjustment meeting.
2. Public Hearings and Regular Agenda.
  - A. Public Hearing - request for a variance of the side yard setback requirement for a corner lot from 10'0" to 3'8" in a Residential Medium Density (RM) District, property located at 612 West 2nd Street, McCook, NE; applicant: Shane and Tracy Burkey.
    1. Close Public Hearing.
  - B. Consider request for a variance of the side yard setback requirement for a corner lot from 10'0" to 3'8" in a Residential Medium Density (RM) District, property located at 612 West 2nd Street, McCook, NE; applicants: Shane and Tracy Burkey; and that the applicants have satisfactorily demonstrated that the variance criteria have been met.

Adjournment.

**CITY MANAGER'S REPORT**  
**MARCH 22, 2021 BOARD OF ZONING ADJUSTMENT MEETING**

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ITEM: 1

Approve the minutes of the January 7, 2021 Board of Zoning Adjustment meeting.

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**BACKGROUND:**

Receive and approve the minutes.

**FISCAL  
IMPACT:** None.

**APPROVALS:**

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Lea Ann Doak, City Clerk

March 18, 2021

McCook Board of Zoning Adjustment  
January 7, 2021  
12:00 PM Central

A MEETING OF THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF MCCOOK, NEBRASKA convened in open, regular, and public session at 12:00 o'clock P.M. in the City Council Chambers.

Present: Chair Reitz; Vice Chair Hilker; Board members Larson, Moore.

Absent: Board members Haney, Chipman.

City Officials present: City Manager Schneider, City Attorney Mustion, City Clerk Doak, Building Inspector Mooney.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on December 31, 2020, the designated method of giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to all members of the Board of Zoning Adjustment. Availability of the agenda was communicated in the advance notice. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

Chair Reitz announced that a copy of the Open Meetings Act was posted by the entrance to the Council Chambers and available for public review.

1. Approve the minutes of the November 23, 2020 regular Board of Zoning Adjustment meeting.

Motion to approve the minutes of the November 23, 2020 regular Board of Zoning Adjustment meeting. This motion, made by Moore and seconded by Hilker, passed.

Reitz: YEA, Hilker: YEA, Haney: ABSENT, Chipman: ABSENT, Larson: YEA, Moore: YEA.  
YEA: 4, NAY: 0, ABSENT: 2

2. Public Hearings and Regular Agenda.

- 2.A. Public Hearing - request for a variance of the side yard setback requirement for accessory buildings in a Residential Medium Density (RM) District (806 East 5th Street, McCook, NE), from 6'0" to 3'0"; applicant: Mike Stevens.

Motion to recess as a Board of Zoning Adjustment and convene a public hearing for the purpose of receiving public comment on a request for a variance of the side yard setback requirement for accessory buildings in a Residential Medium Density (RM) District (806 East 5th Street, McCook, NE), from 6'0" to 3'0"; applicant: Mike Stevens, with the City Attorney to act as hearing officer. This motion by Reitz and seconded by Moore, passed.

Reitz: YEA, Hilker: YEA, Haney: ABSENT, Chipman: ABSENT, Larson: YEA, Moore: YEA.  
YEA: 4, NAY: 0, ABSENT: 2

The City Attorney offered and received into evidence Exhibit #1 - City Manager's Report prepared for the January 7, 2021 Board of Zoning Adjustment meeting (1 page); Exhibit #2 - Notice of Public Hearing (1 page); Exhibit #3 - Variance Application and attachments (6 pages); Exhibit #4 - Building Permit Application (1 page); Exhibit #5 - Findings and Determinations of the Board of Zoning Adjustment (4 pages); and Exhibit #6 - copy of Article 25 - Board of Zoning Adjustment of the McCook Zoning Ordinance (3 pages). The City Attorney took comments from City Staff before taking comments from the public.

City Manager Schneider noted that prior to the update of the City's zoning ordinance in 2014, a side yard setback of 3'0" was acceptable. Mr. Schneider reviewed the following information presented in Exhibit #1: "Mike Stevens has submitted a variance application for his residential property located at 806 East 5th Street. Mr. Stevens' application requests the granting of a side yard variance for an accessory structure. Section 2103 of the City of McCook's Zoning Ordinance states that an accessory building shall have a minimum setback of six feet on an interior lot. Mr. Stevens' lot currently has a stand-alone garage located in the backyard. Mr. Stevens would like to build a carport directly south of the stand-alone garage. The proposed carport would be attached to the garage. It would extend south of the garage to a point that is 3 feet from the southern side yard property line. There is a sidewalk on Mr. Stevens' property that extends from the house to the proposed endpoint of the carport. The sidewalk would remain as is."

"City staff has had an opportunity to review the property in conjunction with the city's variance criteria. An argument could potentially be made that the lot has an exceptional topographic condition that makes it difficult for the applicant to build farther to the east. On the east side of the garage, there is an elevation change that would require substantial dirt work if the applicant were to build a carport in another location in the backyard. That is probably the most unique feature on the lot. Fire Chief Harpham did not believe a variance would serve as a detriment to the public good. The proposed carport would be closed on the south side and would be made of noncombustible material. There are other examples of side yard setback nonconforming structures in the alleyway."

"The property owner to the south does not object to the grant of a variance, as evidenced by the application."

Applicants Mike and Lori Stevens were present to answer questions from the Board.

Discussion was held by the board.

Chair Reitz informed the applicants that approval of their request requires a super majority. With only four members present, all would have to vote in favor for it to be approved.. He also noted that he had confirmed with Mr. Stevens that the roof line of the proposed carport will conform with the west roof line of his garage.

Motion to adjourn the public hearing and to reconvene as the Board of Zoning Adjustment. This

motion, made by Reitz and seconded by Hilker, passed.

Reitz: YEA, Hilker: YEA, Haney: ABSENT, Chipman: ABSENT, Larson: YEA, Moore: YEA.  
YEA: 4, NAY: 0, ABSENT: 2

- 2.B. Consider request for a variance of the side yard setback requirement for accessory buildings from 6'0" to 3'0" in a Residential Medium Density (RM) District (806 East 5th Street, McCook, NE); applicant: Mike Stevens; and that the applicants have satisfactorily demonstrated that the variance criteria have been met.

The Board reviewed the following variance criteria to determine if the requested variance meets the requirements:

1. Referring to the specific parcel of property,
  - a) the parcel of property is exceptionally narrow;
  - b) the parcel of property is exceptionally shallow; or
  - c) the shape of the parcel of property is exceptional.OR
  - d) the parcel of property has exceptional topographic conditions; or
  - e) the parcel of property has other exceptional or extraordinary conditions.

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

2. Strict application of the zoning ordinance would result in:
  - a) peculiar and exceptional practicable difficulties to the owner; OR
  - b) exceptional and undue hardships on the owner of such property.

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

3. Such relief may be granted without:
  - a) substantial detriment to the public good; AND
  - b) without substantially impairing the intent and purpose of the ordinance.

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

4. No variance shall be authorized unless the Board finds:
  - a) The strict application of the provisions of the Zoning Ordinance would produce an undue hardship on the applicant.
  - b) Such hardship is not generally shared by other properties in the same zoning district and in the same vicinity.
  - c) The granting of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed.

- d) The variance request is based upon reasons of demonstrable and exceptional hardship as distinguished from convenience, profit or caprice.

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

5. The variance requested is not so general or of re-occurring nature that it might more reasonably be addressed through a change in the Zoning Regulations.

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

6. The applicant has filed a proper and complete application.

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

7. Application for a variance submitted must demonstrate the following:

- A. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not found in the same zoning district and which were not created by an action of the property owner or the applicant;

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

- B. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction;

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

- C. The literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

- D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by this Ordinance to other land or structures in the same district;

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

- E. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare;

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

F. The variance requested is the minimum variance that will make possible the reasonable use of the land or structure;

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

G. Granting the variance requested will not be opposed to the general spirit and intent of this Ordinance.

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

8. The notice of meeting appeared in the paper and applicants and other parties of interest have been sent written notice of the meeting at which a hearing on the variance request is being considered.

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

9. The variance requested does not allow a use not permissible under the Zoning Ordinance in the district in which it is presently located.

Reitz, Yes; Hilker, Yes; Larson, Yes; Moore, Yes

The Board determined that all criteria were met.

Motion to approve the request for a variance of the side yard setback requirement for accessory buildings from 6'0" to 3'0" in a Residential Medium Density (RM) District (806 East 5th Street, McCook, NE); applicant: Mike Stevens; and that the applicants have satisfactorily demonstrated that the variance criteria have been met. This motion, made by Reitz and seconded by Moore, passed. Reitz: YEA, Hilker: YEA, Haney: ABSENT, Chipman: ABSENT, Larson: YEA, Moore: YEA. YEA: 4, NAY: 0, ABSENT: 2

Chair Reitz informed the applicant that there is a fifteen day period in which any decision of the Board of Adjustment may be appealed to the District Court. Building permits will not be issued before the end of the fifteen day period.

Adjournment.

There being no further business to come before the Board, Chair Reitz declared the meeting adjourned at 12:17 P.M.

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Lea Ann Doak, City Clerk-Treasurer  
Recording Secretary

**CITY MANAGER'S REPORT**  
**MARCH 22, 2021 BOARD OF ZONING ADJUSTMENT MEETING**

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Item A Consider a request for a variance of the side yard setback requirement for a corner lot from 10'0" to 3'8" in a Residential Medium Density (RM) District, property located at 612 West 2<sup>nd</sup> Street.

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**BACKGROUND:**

Shane and Tracy Burkey have submitted a variance application for their residential property located at 612 West 2<sup>nd</sup> Street. The Burkey's have requested the grant of a side yard variance for an attached garage. Section 906 of the McCook Zoning Ordinance states that side yards for corner lots facing the street shall be one-half of the front yard setback minimum requirements (ie. 20 feet), or 10 feet. The applicants have requested a variance of the side yard setback requirement from 10'0" to 3'8".

The property at issue currently has an accessory building that sits in the rear yard. The accessory building is non-conforming and sits inside of the 10'0" side yard setback (approximately 4'0" from the property line located to the north). Additionally, the house is non-conforming as it sits 7'5" from the property line. The applicants are proposing to remove the existing accessory building to construct the proposed garage. For reference, the existing accessory structure sits approximately 3 feet off of the alleyway. The proposed garage would sit 10'0" feet off of the alleyway. The proposed garage's entrance would come off of West G Street as opposed to the alley. The attached garage would be 40'0" by 50'0" in area. The proposed garage would be located 7'0" from the south property line, which conforms to the City of McCook's zoning code.

City staff has had an opportunity to review the property. City staff noted that there is a grade variation with the property sloping north to south. The applicants have explained to staff that the sloped grade is a significant reason for the variance request. Additionally, staff has noted that the proposed project would actually improve visibility around the alley due to the fact that the accessory building that currently sits in the rear yard of the property will be removed, with the proposed building situated 7'0" further to the east of the alley.

The applicants have indicated that the property owner to the south of their lot is comfortable with the request. Documentation of the neighbor's consent will be provided.

**APPROVALS:**

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

March 17, 2021

  
\_\_\_\_\_  
Nathan A. Schneider, City Manager

March 17, 2021

  
\_\_\_\_\_  
Barry Mooney, Building Inspector

March 17, 2021

**EXHIBIT #1**

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**NOTICE OF HEARING**

**REQUEST FOR  
VARIANCE**

NOTICE IS HEREBY GIVEN that a public hearing will be held on a request for a variance of the side yard setback requirement for a corner lot from 10'0" to 3'8" in a Residential Medium Density (RM) District.

LEGAL: Lot One (1), Block Twenty-one (21), First Addition to the City of McCook, all in Red Willow County, Nebraska.

APPLICANT: Shane and Tracy Burkey

ADDRESS: 612 West 2<sup>nd</sup> Street, McCook

A Public Hearing will be held on the Date, Time, and at the Place listed below:

March 22, 2021 - 5:30 P.M.  
Board of Zoning Adjustment  
City Council Chambers  
505 West "C" Street

ANY AND ALL PERSONS desiring to comment on the above-described request will be given an opportunity to be heard. Please direct all inquiries to Nate Schneider, McCook City Manager at 308-345-2022 ext. 225.

-s- Lea Ann Doak  
City Clerk

Publish: March 18, 2021.

**EXHIBIT #2**

**PAGE(S) - 1**

# VARIANCE APPLICATION

APPLICATION NO. \_\_\_\_\_ DATE: \_\_\_\_\_

FEE ATTACHED: \_\_\_\_\_

APPLICATION COMPLETE: \_\_\_\_\_

SIGNED: \_\_\_\_\_

*Tracy Burkey*  
Applicant

1. Applicant's Name: Shane & Tracy Burkey

2. Applicant's Address: 612 West 2<sup>nd</sup> Phone: (308) 340-6157  
Email Address: burkey7071@gmail.com

3. Address of Property Affected: 612 West 2<sup>nd</sup>

4. Legal Description of Property: First Addition to McCook, Blk 21, Lot 1

5. Zoning \_\_\_\_\_ Corner Lot? Yes X No \_\_\_\_\_

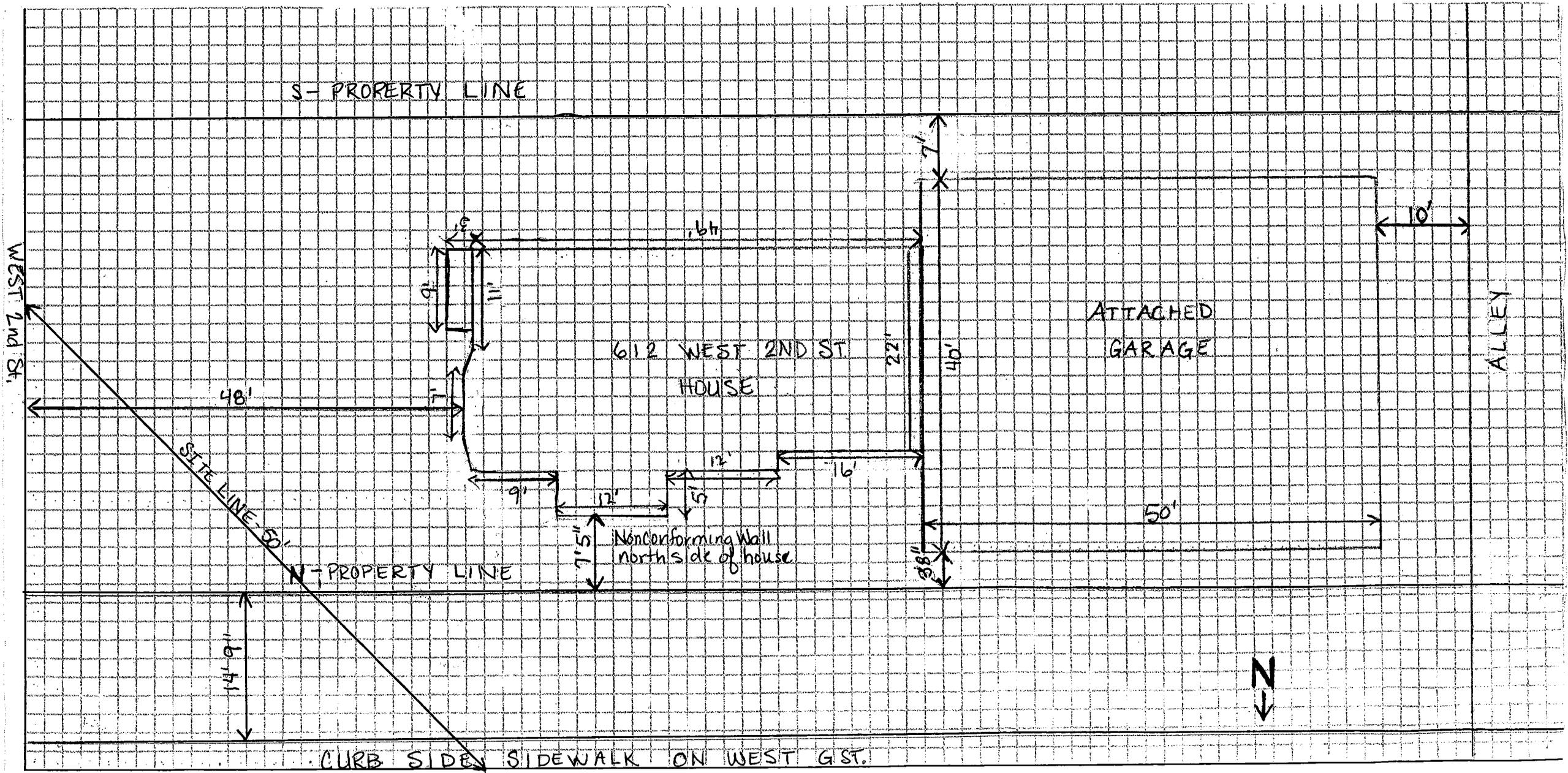
6. Applicant's interest in the Property (i.e. owner, tenant), attached proof of ownership:  
Homeowner

7. Description of variance requested: (Example: Variance of side lot set back requirement from 5 feet to 3 feet). Requesting a variance on the side yard setback from 7'5" to 3'8" to construct an attached garage.

8. Sections of Zoning Ordinance No. 2016-2929 which are affected (to be completed by staff)  
ARTICLE: \_\_\_\_\_  
SECTION: \_\_\_\_\_

9. Draw the general area of your property and structure (existing and proposed) and adjacent properties and structures. (Not to scale).

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W      E  
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The Applicant must provide proof that the following criteria are met regarding the parcel of property for which the variance is being requested:

1. Referring to the specific parcel of property,
  - a) the parcel of property is exceptionally narrow;
  - b) the parcel of property is exceptionally shallow; or
  - c) the shape of the parcel of property is exceptional.

OR

- d) the parcel of property has exceptional topographic conditions; or
  - e) the parcel of property has other exceptional or extraordinary conditions.
2. Strict application of the zoning ordinance would result in: *site triangle. If it was an interior lot it would not have these restrictions.*
  - a) peculiar and exceptional practicable difficulties to the owner; OR
  - b) exceptional and undue hardships on the owner of such property. *Building will be set so it will not affect anyone else.*
3. Such relief may be granted without:
  - a) substantial detriment to the public good; AND
  - b) without substantially impairing the intent and purpose of the ordinance.
4. No variance shall be authorized unless the Board finds:
  - a) strict application of the zoning ordinance would produce undue hardship;
  - b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
  - c) authorization of such variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by granting the variance;
  - d) granting the variance is based upon reason of demonstrable and exceptional hardship as distinguished from variation for purposes of convenience, profit, or caprice.
5. No variance shall be authorized if request is:
  - a) of a general and recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

Please provide documentation of the above, such as maps, photographs, or other evidence to substantiate your application.

*The following properties have corner lots with fences encroaching the property lines & site lines on some: 611 E 2<sup>nd</sup>, 611 Norris, 108 WG, 604 E S, 702 W4, #1 Georgia Ct.*

THE BOARD MUST FIND THAT ALL OF THE ABOVE REQUIREMENTS ARE MET BY THE APPLICANT BY A CONCURRING VOTE OF FOUR MEMBERS OF THE BOARD.

## APPLICANT DECLARATIONS

1. The following special conditions or circumstances exist on the land which pose an undue hardship on the applicant: (Describe conditions and circumstances.)

We are requesting this variance for the purpose of parking our 2019 5<sup>th</sup> Wheel 35' camper in door. Husband is also a mechanic and works on cars for hobby at our property.

Various locations within the 1 mile radius have fences that are not built on the set back, or are even built right along or over the property line. Per our drawing you will see that the 50' site line will not be affected by this variance.

2. Please state the minimum variance necessary to permit the proposed construction

Requesting sideyard setback be moved from 7'5" to 3'8"

3. Without the granting of this variance the applicant would suffer a hardship not suffered by other properties located in the same zoning district and same vicinity.

Yes  No

4. The granting of the variance will not adversely affect the rights of the adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by the Zoning Ordinance.  Yes  No

(Attach approval certifications from adjacent property owners.)

5. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare.  Yes  No

**ADJACENT PROPERTY OWNER CERTIFICATION**

I, \_\_\_\_\_, own the property adjacent to that for which this variance is requested. I hereby certify that I do not have any objection to or reservations about the granting of the variance requested.

SIGNED: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

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**ADJACENT PROPERTY OWNER CERTIFICATION**

I, \_\_\_\_\_, own the property adjacent to that for which this variance is requested. I hereby certify that I do not have any objection to or reservations about the granting of the variance requested.

SIGNED: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

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**ADJACENT PROPERTY OWNER CERTIFICATION**

I, \_\_\_\_\_, own the property adjacent to that for which this variance is requested. I hereby certify that I do not have any objection to or reservations about the granting of the variance requested.

SIGNED: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

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**FINDINGS AND DETERMINATIONS OF  
MCCOOK BOARD OF ZONING ADJUSTMENT**

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_  
Chairman

**VARIANCE CRITERIA**

**JUSTIFIES VARIANCE**

	<u>YES</u>	<u>NO</u>
1. Referring to the specific parcel of property,		
a) the parcel of property is exceptionally narrow;	_____	_____
b) the parcel of property is exceptionally shallow; <u>or</u>	_____	_____
c) the shape of the parcel of property is exceptional.	_____	_____
OR		
d) the parcel of property has exceptional topographic conditions; <u>or</u>	_____	_____
3) the parcel of property has other exceptional or extraordinary conditions.	_____	_____
2. Strict application of the zoning ordinance would result in:		
a) peculiar and exceptional practicable difficulties to the owner; OR	_____	_____
b) exceptional and undue hardships on the owner of such property.	_____	_____
3. Such relief may be granted without:		
a) substantial detriment to the public good; AND	_____	_____
b) without substantially impairing the intent and purpose of the ordinance.	_____	_____
4. No variance shall be authorized unless the Board finds:		
a) The strict application of the provisions of the Zoning Ordinance would produce an undue hardship on the applicant.	_____	_____

- b) Such hardship is not generally shared by other properties in the same zoning district and in the same vicinity. \_\_\_\_\_
  - c) The granting of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed. \_\_\_\_\_
  - d) The variance request is based upon reasons of demonstrable and exceptional hardship as distinguished from convenience, profit or caprice. \_\_\_\_\_
5. The variance requested is not so general or of re-occurring nature that it might more reasonably be addressed through a change in the Zoning Regulations. \_\_\_\_\_
6. The applicant has filed a proper and complete application. \_\_\_\_\_
7. Application for a variance submitted must demonstrate the following:
- A. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not found in the same zoning district and which were not created by an action of the property owner or the applicant; \_\_\_\_\_
  - B. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction; \_\_\_\_\_
  - C. The literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance; \_\_\_\_\_
  - D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by this Ordinance to other land or structures in the same district; \_\_\_\_\_
  - E. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare; \_\_\_\_\_
  - F. The variance requested is the minimum variance that will make possible the reasonable use of the land or structure; \_\_\_\_\_
  - G. Granting the variance requested will not be opposed to the general spirit and intent of this Ordinance. \_\_\_\_\_
8. The notice of meeting appeared in the paper and applicants and other parties of interest have been sent written notice of the meeting at which a hearing on the variance request is being considered. \_\_\_\_\_

9. The variance requested does not allow a use not permissible under the Zoning Ordinance in the district in which it is presently located.

\_\_\_\_\_

## BOARD OF ZONING ADJUSTMENT DECISION

The McCook Board of Zoning Adjustment hereby determines that the variance should \_\_\_\_\_ be granted, \_\_\_\_\_ not be granted, \_\_\_\_\_ be granted with conditions. Conditions, modifications or safeguards prescribed as a part of the variance approval are as follows: \_\_\_\_\_

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Variance criteria not met are as follows: \_\_\_\_\_

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Dated this \_\_\_\_\_ day of, \_\_\_\_\_, 20 \_\_\_\_.

## ARTICLE 25

### BOARD OF ZONING ADJUSTMENT

#### Article 25 - Board of Zoning Adjustment

**Section 2501. Creation, Members, Meetings, Rules.**<sup>1</sup> There is hereby established a Board of Zoning Adjustment. The word BOARD, when used in this Zoning Ordinance, shall be construed to mean the Board of Zoning Adjustment. The Board of Zoning Adjustment is appointed by the City Council and shall consist of five (5) regular members, plus one (1) additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason.

One (1) member only of the City Board of Zoning Adjustment shall be appointed by the City Council from membership of the Planning Commission and the loss of membership on the Planning Commission by such member shall also result in the immediate loss of membership on the Board of Zoning Adjustment and the appointment of another Planning Commissioner to the Board of Zoning Adjustment. One (1) member of the board of adjustment shall reside outside of the corporate boundaries of the City but within its extraterritorial zoning jurisdiction.

The members appointed shall serve for terms of three (3) years and be removable for cause by the City Council upon written charges and after public hearing. Vacancies shall be filled by appointment for the unexpired term.

The Board of Zoning Adjustment shall annually in October elect one of its members as Chairperson, another as Vice-Chairperson, who shall act as Chairperson in the Chairperson's absence, and appoint a Secretary, who may be an officer or an employee of the City. Each shall serve until his or her successor has been selected. The presence of four (4) members of the Board shall be necessary to constitute a quorum.

All meetings of the Board shall be open to the public. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, if absent or failing to vote, indicating the fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. The Board shall adopt from time to time any rules and regulations as it may deem necessary, to carry the appropriate provisions of this Zoning Ordinance into effect and all of its resolutions and order shall be in accordance therewith.

**Section 2502. Appeals to Board, Record of Appeal, Hearing and Stays.** Appeals to the Board of Zoning Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the City affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board of Zoning Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Zoning Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Zoning Adjustment or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

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<sup>1</sup>Revised September 18, 2017 - Ordinance No. 2017-2951

The Board of Zoning Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

**Section 2503. Powers and Jurisdiction Relating to Administrative Review.** The Board of Zoning Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures or to interpret any map, except that the authority to hear and decide appeals shall not apply to decisions made under Article 24 of this Ordinance.

**Section 2504. Powers and Jurisdiction Relating to Variances.** The Board of Zoning Adjustment shall have the power, where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize upon an appeal relating to the property, 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 Ordinance.

1. No such variance shall be authorized by the Board unless it finds that the strict application of the Ordinance would product undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such 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; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice;
2. 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 of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.
3. A variance from the terms of this Ordinance shall not be granted by the Board of Zoning Adjustment unless and until a written application for a variance is submitted demonstrating the following:
  - A. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not found in the same zoning district and which were not created by an action of the property owner or the applicant;
  - B. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction;
  - C. The literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
  - D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by this Ordinance to other land or structures in the same district;
  - E. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare;

- F. The variance requested is the minimum variance that will make possible the reasonable use of the land or structure;
  - G. Granting the variance requested will not be opposed to the general spirit and intent of this Ordinance.
4. No non-conforming use of neighboring lands, structures or buildings in the same district, and no permitted structures or buildings in other districts shall be considered grounds for the issuance of variance;
  5. Notice of public hearing shall be given as in Section 2502 above; the public hearing shall be held; any party may appear in person, or by agent or by attorney; the Board of Zoning Adjustment shall make findings that the requirements of this section have been met by the applicant for a variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance; and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; the Board shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare;
  6. In granting any variance, the Board of Zoning Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. 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 Ordinance and punishable under Section 2702 of this Ordinance;
  7. Under no circumstance shall the Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

**Section 2505. Board has Powers of Administrative Officer on Appeals; Reversing Decision of Administrative Officer.** In exercising the above-mentioned powers, the Board of Zoning Adjustment may 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.

The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to affect any variation in this Ordinance.

**Section 2506. Appeals to District Court.** Any person or person, jointly or severally, aggrieved by any decision of the Board of Zoning Adjustment, may appeal as provided by Section 19-912 Neb. Rev. Stat., 1943.