

**ARTICLE 13  
POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT**

**11-1301. BOARD OF ADJUSTMENT**

The Board of Adjustment shall consist of five regular members, plus one 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, each to be appointed for a term of three years and removable for cause by the City Council upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by such member shall also result in his immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment. The Board of Adjustment shall adopt rules in accordance with this Ordinance and Sections 19-901 to 19-914, Laws of Nebraska. Meetings of the Board shall be held at the call of the chairman and at such times as the Board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. 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 examination and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

**11-1302. BOARD OF ADJUSTMENT, POWERS**

The Board of Adjustment shall have only the following powers:

1. to hear and decide appeals where it is alleged there is an 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 or structures;
2. to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map, or for decisions upon other special questions as set out in this Ordinance, and
3. 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 such piece of property, the strict application of 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, variance from such application so as to relieve such difficulties or hardship, if such relief may be granted without substantially impairing the intent and purpose of this Ordinance.

**11-1303. BOARD OF ADJUSTMENT, VARIANCE**

No such variance shall be authorized by the Board unless it finds that:

1. The strict application of the zoning ordinance 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 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
4. The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. 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 recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to these zoning regulations. In exercising the above-mentioned powers such Board may reverse, 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 powers of the officer from whom the appeal is taken. The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

#### 11-1304. BOARD OF ADJUSTMENT, APPEALS PROCEDURE

A notice shall be posted in a conspicuous place on or near the property upon which action is pending. Such notice shall be not less than eighteen inches in height and twenty-four inches in width with a white background and black letters not less than one and one-half inches in height. Such posted notice shall be so placed upon premises that is easily visible from the street and shall be so posted at least ten days before the date of such hearing. It shall be unlawful for any person to remove, mutilate, destroy or change such posted notice prior to such hearing.

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any office, department, or Board of the City of Kimball affected by any decision of the Building Inspector. Such appeal shall be taken within thirty (30) days by filing with the officer from whom the appeal is taken, and with the Board of Adjustment, a notice of appeal in writing 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, after the notice of the appeal shall have been filed with him, that by reason of the 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 Adjustment or by the District Court, on notice to said officer and on due cause shown.

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal and give public notice thereof by publication one time in a local newspaper of general circulation not less than five nor more than fifteen days prior to said hearing. The Board shall also give notice by U.S. Mail to the owners or agents of property abutting or fronting upon the property involved in the appeal.

The Board shall render its decision within thirty days of such hearing. The applicant and the officer appealed from shall be notified in writing the decision of the Board.

Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, or board of the City of Kimball may present to the District Court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the Court within fifteen (15) days after the filing of the decision in the office of the Board, and thereafter proceedings shall be had thereon as provided by Section 19-912, R.R.S. Nebraska, and amendments thereto.