

ARTICLE 11.

BOARD OF ADJUSTMENT

SECTION 1101. MEMBERSHIP, TERMS OF OFFICE, VACANCIES

The Board of Adjustment created by the City of Douglas Ordinance 350, as amended, is hereby continued under the following provisions.

Section 1101.1 Membership

The Board of Adjustment shall consist of seven (7) members, who shall be appointed by the City Council of the City of Douglas and shall serve without pay. No more than one (1) member may be a member of the City Council, nor shall more than one (1) member of the Planning and Zoning Commission serve on the Board of Adjustment.

Section 1101.2 Terms of Office (amended by Ord. 702, § 2, 1997)

In order to create a system of staggered terms, one member will be appointed to serve a term expiring June 30, 1998, two members will be appointed to serve a term expiring June 30, 1999, and three members will be appointed to serve a term expiring June 30, 2000. After these initial appointments, members will be appointed to serve three year terms. In the event of a death or resignation of a member, the vacancy may be filled by appointment by the Mayor with approval of the Council for the un-expired term of the member replaced.

Section 1101.3 Vacancies and Removal for Cause

Vacancies on Board of Adjustment shall be filled by resolution of the City Council for the un-expired term of the member affected. Members of the Board of Adjustment may be removed from office by the City Council for cause upon written charges and public hearing. Vacancies thus created shall be filled for the un-expired term of the member whose office has become vacant.

SECTION 1102. PROCEDURE

The Board of Adjustment shall conduct its affairs according to the following procedures.

Section 1102.1 Officers

The Board of Adjustment shall annually elect its own Chairman, Vice-Chairman. The Chairman, or in his absence, the Vice-Chairman may administer oaths and compel the attendance of witnesses.

Section 1102.2 Rules

The Board of Adjustment shall adopt rules as necessary to the conduct of its affairs, and in keeping with the provisions of this Ordinance.

Section 1102.3 Meetings

Meetings of the Board of Adjustment shall be held at the call of the Chairman and at such other times as the Board of Adjustment may determine. All meetings shall be open to the public. Four (4) members of the Board of Adjustment shall constitute a quorum for the transaction of all business, but a smaller number may adjourn from time to time until a quorum can be assembled. (amended by Ord. 04-862, § 1, 2004)

Section 1102.4 Records

The Board of Adjustment 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 actions, all of which shall be of public record and be filed in the office of the Board of Adjustment.

Section 1102.5 Attendance

Attendance at meeting of the Board of Adjustment shall be taken. If a member of the Board does not attend three (3) consecutive meetings, the Board may direct the Building Inspector or the Director of Community Development to determine why the member in question was unable to attend and to make recommendation as to a course of action. Acting on that recommendation, the Board any then vote to ask the Council to replace the member of the Board in question as outlined above in SECTION 1103.3.

SECTION 1103. POWER AND DUTIES

It shall be the duty of the Board of Adjustment to interpret the provisions of this Ordinance, and shall have the power to grant conditional uses to, and variances from, the provisions of this Ordinance herewith specified.

Section 1103.1 Interpretation

The Board of Adjustment shall:

- (a) Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in enforcement of the Zoning Ordinance.
- (b) Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surrounding, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance

granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of a special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

- (c) Reverse or affirm, wholly or partly, or modify the order, requirement or decision of the zoning administrator appealed from, and make such order, requirement, decision or determination as necessary.

The Board of Adjustment may not:

- (a) Make changes in the uses permitted in any zoning classification or zoning district or make any changes in the terms of the zoning ordinance provided the restriction in the paragraph shall not affect the authority to grant variances pursuant to this article.
- (b) Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

Section 1103.2 Condition Use Review Procedure

(a) Consideration by the Board of Adjustment

1. All applications for conditional use permits shall be considered by the Board at a public hearing, advertised and conducted in accordance with the provisions of Section 1102. Notice of the proposed conditional use shall be mailed to the following persons:
 - (a) All owners of land lying within three hundred (300) feet of the boundaries of the land subject to the application. For purposes of the calculation of this notice area, (1) public rights-of-way shall be excluded in determining the extent of the notice area, and (2) adjoining land under that same ownership as the land subject to the application shall be included in determining the boundaries from which the notice area is measured;
 - (b) Any person or organization who files with the Community Development Director a request to receive such notice upon payment of a reasonable fee;
 - (c) Applicable adjoining political subdivisions where the property, which is the subject of the application, is within five hundred (500) feet of the City boundary; and
 - (a) Such other persons as the Director determines are likely to be affected by the proposed use.

2. The notice shall contain:
 - (a) A description of the proposed conditional use and its location; and
 - (b) The place and time of the public hearing at which comments on the proposed use must be filed.

2. The Board shall review each application for compliance with the criteria and requirements set forth in this article. The Board may approve, approve with conditions, or deny the application for a conditional use provided that the applicant provides evidence substantiating that all the requirements of this Code relative to the proposed use are satisfied, and further provided that the applicant demonstrates that the proposed use also satisfies the following criteria:
 - (a) The characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements and natural features.
 - (b) The proposed development is timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use.
 - (c) The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses listed in the district.
 - (d) The proposed satisfied those goals, objectives, and policies of the General Plan that are applicable to the proposed use.

4. Written notice of the Board's decision shall be provided by the Community Development Director to:
 - (a) The applicant;
 - (b) Any person notified of the application for a conditional use pursuant to Section 1103.2(a)1.; and
 - (c) The Building Inspector.

Section 1103.21 Revocation of Conditional Use Permit

- (a) Any previously granted conditional use permit may be revoked by the Board, after a hearing conducted in the manner required for approval of a conditional use permit initially, upon the following grounds:
1. Failure to comply with the conditions of approval.
 2. Discontinuance of the use for a period in excess of one (1) year.
 3. Failure to comply with other applicable provisions of the General Plan regarding design, dimensional or use requirements.
 4. A change in the General Plan or Standards of the district within which the use is located that have the effect of no longer allowing a new conditional use permit application to be considered district.
- (b) Revocations initiated under Section 1103.21 above shall not be initiated for at least six (6) months after approval of the conditional use permit. Revocations initiated under above, shall have the effect of making the previously granted conditional use permit void until a new application is submitted and granted. Revocations initiated under Section above, shall have the effect of making the previously granted conditional use a nonconforming use.

Section 1103.22 Automatic Termination of Conditional Use

- (a) Unless otherwise provided by the Board in the resolution granting approval of the conditional use permit, a conditional use permit shall automatically become null and void one (1) after the effective date upon which it was granted unless one of the following event occur:
1. The applicant or his successor in interest has secured a building permit within said one (1) year period, if a building permit is required, and has actually commenced construction of the building or structure authorized by the permit within said one (1) year period.
 1. The applicant or his successor in interest has commenced the activity or installation of the facility or structure authorized by the conditional use permit within said one (1) year period.
 2. The applicant may submit a request to the Board for an extension of time on the conditional use permit to avoid the permit becoming null and void. The requirements for extension must be filed with the City Clerk prior to the expiration of the times established by the Subsection (a) above. The Board may, in the resolution granting such conditional use permit, provide for an extension of time beyond one (1) year.

Section 1103.30 Variances

Upon appeal in specific cases, the Board of Adjustment shall authorize such variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

Section 1103.31 Conditions for Granting a Variance

A variance shall not be granted by the Board of Adjustment unless and until the following conditions are met:

- (a) The Board of Adjustment finds that:
 - 1. Because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of this Ordinance will deprive such property of privileges enjoyed by other property of the same district; and
 - 2. The special circumstances applicable to the property are not self-imposed by the property owner and involve something more than personal inconvenience or inadequate financial return on the use of the property; and
 - 3. Granting the variance does not constitute a grant of special privileges inconsistent with the limitation upon other properties in the vicinity and district in which the property is located; and
 - 4. Granting the variance will not injure or interfere with the rights and privileges of the other properties in the same district.
- (b) Notice of Public Hearing has been given in accordance with requirements set forth above and in Section 1103.33.
- (c) A public hearing has been held;
- (d) The Board finds that the reasons set forth in the application justify the granting of the variance, and that the variance that will make possible the reasonable use of land, building, or structure;
- (e) The Board of Adjustment finds that 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.

Section 1103.32 Other Requirements

- (a) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Failure to fulfill such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this Ordinance and punishable under Article 13.
- (b) No non-conforming use of neighboring lands, structures, or buildings, in the same district, and no permitted use of lands, structures or buildings in other districts, shall be considered grounds for issuance of a variance.
- (c) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the term of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance.

Section 1103.33 NOTIFICATION

- (a) Notice of public hearing must be given in accordance to the requirements set forth above.
- (b) Notice of the proposed variance shall be mailed to all owners of land lying with one hundred fifty (150) feet of the boundaries of the land subject to the application for variance.

SECTION 1104. APPEALS

Appeals to the Board of Adjustment concerning interpretation or administration of the Ordinance may be taken by any person aggrieved, by any officer or department of the City of Douglas or by a federal, state or county agency, or school board, affected by any decision of the Building Inspector. Such appeals shall be filed within thirty (30) days of occurrence with the Board of Adjustment including all papers constituting the record upon which the action appealed was taken.

Section 1104.1 Appeal Hearing

The Board of Adjustment shall fix a reasonable time for the hearings of and appeal, give public notice thereof as well as due notice to the parties in interest, and its decision within a reasonable time. At the hearing, any party may appear in person or by agent or attorney. Parties to an appeal shall have the right to present their case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination of witnesses as may be required for a full and true disclosure of the facts; provided that:

- (a) The submission of documentary evidence shall not, by reason of its written form, prejudice the interest of any party;

- (b) The Board of Adjustment shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence, and, in furtherance of this policy, may limit cross-examination.

Section 1104.2 Stay of Proceedings

An appeal stays all proceedings in furtherance of the action appealed from, unless the Building Inspector certifies to the Board of Adjustment after the notice of appeal is filed with him, that by reason of facts stated in his certificate, a stay would, in his 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 Building Inspector, and on due cause shown.

Section 1104.3 Decisions

In exercising its powers and duties, the Board of Adjustment may, so long as such action is in conformity with the terms of this Ordinance, reverse, affirm, or modify order, requirement, decision, or determination; and to the end shall have powers of the Building Inspector from whom an appeal is made. The concurring vote of a majority of members of the Board of Adjustment in attendance shall be required to reverse an order, requirement, decision, or determination of the Building Inspector, or to grant a variance or a special exception.

SECTION 1105. FINDING OF FACT

Every decision of the Board of Adjustment shall be based upon finding of fact, and every finding of fact shall be supported in the record of its proceedings. The enumerated conditions required to exist on any matter upon which the Board of Adjustment is authorized to pass under the Ordinance shall be construed as limitations on the power of the Board of Adjustment to act. A mere finding or recitation of the enumerated conditions, unaccompanied by the finding of specific fact shall not be deemed in compliance with this Ordinance.

SECTION 1106. LIMITATIONS

Nothing herein contained shall be construed to empower the Board of Adjustment to change the terms of this Ordinance, to affect changes in the Official Zoning Map or to add to the uses permitted in any district.

SECTION 1107. APPEAL FROM THE BOARD OF ADJUSTMENT

Any person aggrieved by a decision of the Board of Adjustment, any taxpayer, or a municipal officer may, at any time within thirty (30) days after the filing of the decision by the Board of Adjustment, file a complaint for special action in the superior court to review the Board decision. Filing of the petition shall not stay proceedings upon the

decision appealed from, but the court may, on application, on notice to the Board of Adjustment, and for good cause shown, grant a restraining order, and on final hearing may reverse, affirm, or modify the decision reviewed.

SECTION 1108. FEES

Upon filing an application or appeal, the applicant shall pay a filing fee to the City Clerk in accordance with a schedule contained in Article 13 of this Ordinance, and posted in the office of the Building Inspector. No part of any such fee shall be returnable after an application is filed and such fee paid. In the case of an application for a variance or special exception to more than one provision of this Code, the filing fee shall be the total for all provisions as prescribed by the fee schedule. Payment of the filing shall be waived when the applicant is the Building Inspector or any other officer or agency of the City, or the County, the State, or the Federal Government.