

ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE amending and reorganizing Chapter 27.75 of the Lincoln  
2 Municipal Code relating to the Board of Zoning Appeals to simplify and clarify the process for filing  
3 variances by renumbering existing Section 27.75.020 as Section 27.75.040 and amending it to grant  
4 explicit authority to cancel regularly scheduled meetings of the Board of Zoning Appeals; amending  
5 Section 27.75.030 to revise the procedure for appeals and to establish a procedure to obtain Board  
6 of Zoning Appeals review of petitions for variances and exceptions; renumbering existing Section  
7 27.75.040 as 27.75.020 and amending it to distinguish between the Board of Zoning Appeals'  
8 appellate jurisdiction and original jurisdiction; amending Section 27.75.050 to further define the  
9 jurisdiction of the Board of Zoning Appeals; amending Section 27.75.060 to provide that any  
10 decision approving a petition for a variance or an exception shall be by resolution of the Board of  
11 Zoning Appeals; and repealing Sections 27.75.020, 27.75.030, 27.75.040, 27.75.050 and 27.75.060  
12 of the Lincoln Municipal Code as hitherto existing.

13 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

14 Section 1. That Section 27.75.020 of the Lincoln Municipal Code be renumbered as  
15 Section 27.75.040 and amended to read as follows:

16 **27.75.020040 Meetings.**

17 The members of the Board of Zoning Appeals shall meet at least once each month at such  
18 time and place as they may fix by resolution. They shall select one of their number as chair~~man~~  
19 person, who shall serve one year and until a successor has been selected. Special meetings may be  
20 called at any time by the chair~~man~~person. Any regularly scheduled monthly meeting of the Board  
21 may be cancelled by the chairperson for lack of business items for the Board of consider. A majority  
22 of the board shall constitute a quorum for the transaction of business, and three affirmative votes

1 shall be required for final action on any matter acted upon by the board. The board shall cause a  
2 proper record to be kept of its proceedings.

3 Section 2. That Section 27.75.030 of the Lincoln Municipal Code be amended to  
4 read as follows:

5 **27.75.030 Appeals and Petitions Procedures.**

6 (a) Appeals to the Board of Zoning Appeals. ~~Any aggrieved person~~  
7 ~~aggrieved or by any office, department or bureau of the City of Lincoln adversely affected by any~~  
8 ~~decision of the director of building and safety final written order, decision, or determination made~~  
9 ~~by an administrative official in the enforcement of this title, may appeal from such final order,~~  
10 ~~decision, or determination to the Board of Zoning Appeals. The decision of the director of building~~  
11 ~~and safety shall be made in writing and the appeal shall be taken within sixty days from such written~~  
12 ~~decision by filing with the director of building and safety Planning Department, a notice of appeal~~  
13 ~~specifying the grounds thereof therefor. Only those grounds listed in said notice shall be considered~~  
14 ~~by the Board of Zoning Appeals. The notice of appeal shall be filed within 60 days from the date~~  
15 ~~of such final order, decision, or determination. The Director of Building and Safety shall forthwith~~  
16 ~~transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action~~  
17 ~~appealed from is taken.~~

18 (b) Petitions to the Board of Zoning Appeals. The owner of any property may file a  
19 petition requesting the Board of Zoning Appeals to grant a variance or an exception to the Zoning  
20 Code under its jurisdiction without prior application to an administrative official charged with  
21 enforcement of this title. The petition shall be submitted by the owner of the property directly to  
22 the Planning Department. It shall be solely the responsibility of the property owner seeking the  
23 variance to set forth any and all requested variances in his or her petition. Only those variances  
24 requested in said petition may be considered by the Board.

25 (c) Hearing and Notice of Hearing. Upon receipt of ~~the~~ an appeal or petition pursuant  
26 to (a) or (b) above, ~~by the board, the board shall fix a reasonable time for the hearing thereon within~~

1 ~~thirty days~~ the Planning Department shall schedule such appeal or petition upon the Board of Zoning  
2 Appeals' calendar within 45 days from the date the notice of appeal or petition was filed with the  
3 Department. For those hearings where the Board is exercising its appellate jurisdiction, notice shall  
4 be (i) posted conspicuously at the property for at least eight consecutive days immediately prior to  
5 the meeting of the Board, (ii) published in a newspaper of general circulation at least eight days prior  
6 to the meeting of the Board, and (iii) mailed to appellant, appellant's attorney, and to the Director  
7 of the Department whose decision is before the Board on appeal at least eight days prior to the  
8 meeting. In all other matters brought before the Board, Nnotice of the date, time and place of such  
9 hearing shall be given as provided in Chapter 27.81.

10 (ed) If, due to the absence of one or more of the members of the board, any motion,  
11 resolution, or other proposition put to a vote shall fail to receive three or more votes either for or  
12 against, said motion, resolution or proposition shall be deemed to have received neither approval nor  
13 disapproval and shall without further order of the Board of Zoning Appeals be continued from  
14 regular meeting to regular meeting and voted on once at each such meeting until such time as it shall  
15 receive three votes either for or against.

16 (e) Formal rules of evidence shall not be followed at hearings before the Board of Zoning  
17 Appeals, but the chairperson may exercise discretion to exclude evidence where said evidence is  
18 cumulative with other evidence in the record or where said evidence is immaterial to the decision  
19 before the Board of Zoning Appeals in the matter before it.

20 (f) In all matters where the Board of Zoning Appeals exercises its appellate jurisdiction  
21 as described in LMC Section 27.75.020(a), the order or decision of the administrative official being  
22 appealed shall be presumed to be correct unless a preponderance of the evidence introduced before  
23 the Board of Zoning Appeals supports a contrary determination or finding.

24 Section 3. That Section 27.75.040 of the Lincoln Municipal Code be renumbered as  
25 Section 27.75.020 and amended to read as follows:

1 **27.75.040020 Jurisdiction.**

2 The jurisdiction of the Board of Zoning Appeals shall be limited to the following:

3 (a) ~~Powers relative to errors~~ Appellate Jurisdiction. ~~The Board of Zoning Appeals is~~  
4 authorized to hear and decide appeals where it is alleged there is an error in any order, decision, or  
5 determination made by an administrative official in the enforcement of this title;

6 (b) Original Jurisdiction.

7 (1) ~~Powers relative to variances. To hear and decide~~ The Board of Zoning  
8 Appeals is authorized, upon petitions for variances ~~and, subject to such standards, principles, and~~  
9 ~~procedures provided in this title,~~ to vary the strict application of the height, area, parking, density  
10 or sign requirements to the extent necessary to permit the owner a reasonable use of the land in those  
11 specified instances where there are peculiar, exceptional and unusual circumstances in connection  
12 with a specific parcel of land, which circumstances are not generally found within the locality or  
13 neighborhood concerned.

14 (e2) ~~Powers relative to exceptions. The Board of Zoning Appeals is authorized,~~  
15 ~~Upon petition, the board is hereby empowered~~ to make the following zoning exceptions:

16 (1i) ~~To permit the reconstruction of a nonconforming building which has~~  
17 ~~been destroyed, or partially destroyed by fire or act of God where the board shall find some~~  
18 ~~compelling public necessity requiring the continuance of the nonconforming use;~~

19 (2ii) ~~To interpret the provisions of the title where the street layout actually~~  
20 ~~on the ground varies from the street layout as shown on the map fixing the several districts, which~~  
21 ~~map is attached to and made a part of the~~ this title;

22 (3iii) ~~To reduce the parking requirements in the commercial, business or~~  
23 ~~industrial districts whenever the character of the use of building is such as to make unnecessary the~~  
24 ~~full provisions of parking facilities as required. In permitting a reduction, the board may restrict the~~  
25 ~~use of the building to uses requiring a similar reduced number of parking facilities. The board's~~  
26 ~~granting of a reduction in parking requirements shall not serve as a convenience to the petitioner but~~

1 shall recognize the varying demands for off-street parking by different uses that cannot reasonably  
2 be determined in detail in the zoning ordinance.

3 (d) Powers relative to airport zoning. The board shall have the ~~power~~ authority  
4 designated to it by Sections ~~27.59.110 and 27.59.120~~.

5 Section 4. That Section 27.75.050 of the Lincoln Municipal Code be amended to  
6 read as follows:

7 **27.75.050 Decisions of the Board; Scope and Factors Considered.**

8 In exercising ~~the above-mentioned~~ its appellate jurisdiction, the board may in conformity  
9 with the provisions of this title reverse or affirm, wholly or partially, or may modify the order,  
10 requirement, decision, or determination appealed from and may make such decision as ought to be  
11 made. In considering all ~~appeals and petitions~~ for variances and exceptions within its jurisdiction  
12 under this title, the board shall, before making any finding in a specific case, first determine that the  
13 proposed change will not constitute a change in the district map and will not impair an adequate  
14 supply of light and air to adjacent property, or increase the congestion in public streets, or increase  
15 the public danger of fire and safety, or materially diminish or impair established property values  
16 within the surrounding area, or in any other respect impair the public health, safety, comfort, morals,  
17 and welfare of the City of Lincoln. In making a determination, the board may request information  
18 and recommendations from any department of the City of Lincoln. Every decision by the board  
19 shall be accompanied by a written finding of fact based on testimony and other evidence, specifying  
20 the reason for granting or denying the variation. In the event that the proposed variance or exception  
21 is denied by the Board of Zoning Appeals, no new request shall be made for the same or a  
22 substantially similar variance or exception within one year of said denial thereof.

23 Section 5. That Section 27.75.060 of the Lincoln Municipal Code be amended to  
24 read as follows:

25 **27.75.060 Decision of Board Transmitted to City Clerk.**

1           Decisions of the Board of Zoning Appeals, accompanied by the written findings of fact, shall  
2 be transmitted to the City Clerk by the board within one week after such actions have been taken.  
3 Any decision ~~approving~~ granting an appeal or a petition for a variance or an exception shall be by  
4 resolution of the board, a certified copy of which shall be filed with the Register of Deeds by the  
5 petitioner at the expense of the petitioner within sixty days after such approval, or such approval  
6 shall be null and void.

7           Section 6. That Sections 27.75.020, 27.75.030, 27.75.040, 27.75.050 and 27.75.060  
8 of the Lincoln Municipal Code as hitherto existing be and the same are hereby repealed.

9           Section 7. That this ordinance shall take effect and be in force from and after passage  
10 and publication in one issue of a daily or weekly newspaper of general circulation in the City,  
11 according to law.

Introduced by:  
\_\_\_\_\_

Approved as to Form & Legality:  
  
\_\_\_\_\_  
City Attorney

Approved this ____ day of _____, 2013:  _____ Mayor
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