

**BOARD OF ZONING APPEALS**  
**11-1104 & 11-1105 & 11-1106**

**11-1104**

- (1) Creation, membership, and appointments. In accordance with section 13-7-205, TCA, a board of zoning appeals is hereby established which may be referred to herein as the “board” or “board of appeals”. All members of such board shall be appointed by the mayor of the town and confirmed by majority vote of the board of mayor and aldermen.
- (2) Term of office of board members; removal and vacancies. The members of the board shall serve for 3-year terms, or until their respective successors are appointed and qualified, except that the board first appointed shall serve respectively for the following terms: one for (1) year, one for (2) years, and one for (3) years. All members of the board shall serve with such compensation as may be fixed by the town and may be removed from membership on the board for continued absence or just cause. Any member being so removed shall be provided, upon his request, a public hearing upon the removal decision. Vacancies of said board shall be filled for the unexpired term of those members whose position has become vacant in the manner provided herein for the appointment of such member.
- (3) Powers. The board is hereby vested with the powers to:
  - (a) Hear and decide appeals from any order, requirement, decision, or determination made by the building inspector in carrying out the enforcement of chapters 3 through 11 of this title, whereby it is alleged in writing that the building inspector is in error or has acted in an arbitrary manner;
  - (b) Hear and act upon application for variances in accordance with section 11-1105 of this chapter to alleviate hardships by virtue of the inability of the landowner to comply strictly with the provisions of chapters 3 through 11 of this title by reasons of unique shape, topography, or physical features of the zone lot;
  - (c) Hear and act upon application for special exceptions in the manner and subject to the standards set out in section 11-1106 in this chapter;
  - (d) Hear and decide all matters referred to it on which it is required to act under chapters 3 through 11 of this title;
  - (e) Within its budget appropriation and other funds at its disposal, enter into contracts for such services as it may require.
- (4) Election of officers. The board shall elect from its members its own chairman and vice-chairman, and secretary who shall serve for 1 year and may upon election serve succeeding terms.
- (5) Conflict of interest. Any member of the board who shall have direct or an indirect interest in any property which is the subject matter of or affected by, a decision of the board shall be disqualified from participating in the discussion, decision, and proceedings of the board in connection therewith. The burden for revealing any such conflict rests with individual members of the board. Failure to reveal any

such conflict shall constitute grounds for immediate removal from the board for cause.

- (6) Meetings of the board. Meetings shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public and proper public notice of such meetings shall be given.
- (7) Rules and proceedings of the board. The board shall adopt rules for the conduct of its meetings. Such rules shall at the minimum require that:
  - (a) The presence of two members shall constitute a quorum and the concurring vote of at least two members of the board shall be necessary to deny or grant any application before the board;
  - (b) No action shall be taken by the board on any case until after a public hearing and notice thereof. Said notice of public hearing shall be a legal notice published in a newspaper of general circulation in Bell Buckle at least 10 days before the date set for a public hearing and a written notice of the hearing of an appeal be sent by mail to the appellant and all directly affected property owners at least 10 days before the hearing of an appeal. The notice to the appellant shall be sent by registered mail. No appeal shall be considered and heard by the board unless such appeal shall have been filed at least 15 days prior to the meeting at which it is to be heard;
  - (c) The board may call upon any other office or agency of the city government for information in the performance of its duties and it shall be the duty of such other agencies to render such information to the board as may be reasonably required;
  - (d) The Bell Buckle Planning Commission shall be permitted to submit an advisory opinion on any matter before the board and such opinion shall be made part of the record of such public hearing;
  - (e) Any officer, agency, or department of the Town of Bell Buckle or other aggrieved party may appeal any decision of the board to a court of competent jurisdiction as provided for by state law;
  - (f) In any decision made by the board on a variance, the board shall:
    - (i) Indicate the specific section of chapters 3 through 11 of this title under which the variance is being considered, and shall state its findings beyond such generalities as “in the interest of public health, safety, and general welfare.”
    - (ii) In cases pertaining to hardship, specifically identify the hardship warranting such action by the board;
  - (g) Any decision made by the board on a special exception shall indicate the specific section of chapters 3 through 11 of this title under which the permit is being considered and shall state its findings beyond such generalities as “in the interest of public health, safety, and general welfare,” and shall state clearly the specific conditions imposed in granting such permit;

- (h) Appeals will be assigned for hearing in the order in which they appear on the calendar thereof, except that appeals may be advanced for hearing by order of the board, good and sufficient cause being shown;
  - (i) At the public hearing of the case before the board, the appellant shall appear on his own behalf or be represented by counsel or agent. The appellant's side of the case shall be heard first and those in objection shall follow. To maintain orderly procedure, each side shall proceed without interruption from the other.
- (8) Stay of proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the building inspector certifies to the board, after such notice of appeal shall have been filed, that by reason of facts stated in the certificate such stay would cause imminent peril to life or property. In such instance the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board or by a court of competent jurisdiction on application, on notice to the building inspector, and on due cause shown.
- (9) Liability of board members, building inspector, and employees. Any board member, building inspector, or other employee charged with the enforcement of chapters 3 through 11 of this title, acting for the Town of Bell Buckle in the discharge of his duties, shall not thereby render himself liable personally, and he is hereby relieved from all personal liability and shall be held harmless by the Town of Bell Buckle of any damage that may accrue to persons or property as the result of any act required or permitted in the proper discharge of their duties. Any suit brought against any board member, building inspector, or employee charged with the enforcement of any provision hereof shall be defended by legal representatives furnished by the Town of Bell Buckle until the final termination of such proceedings.
- (10) Right to entry upon land. The board, its members, and employees, in the performance of its work, may enter upon any land within its jurisdiction and make examinations and surveys and place or remove public notices as required hereby.  
(Ord. 60 of Aug. 13, 1981)

## **11-1105**

Zoning variances. The board of zoning appeals may grant variances where it makes findings of fact based upon the standards prescribed in this chapter.

- (1) Application for variances, notice of hearing, fee. A written application for a variance shall be filed with the board by the property owner or his designated agent and the application shall contain information and exhibits as may be required under section 11-1103 (2). No more than 60 days after the filing of the application, a hearing shall be held on the application, unless otherwise withdrawn or postponed by written request by the applicant. Notice of hearing shall be in accordance with section 11-1104(7). A fee of \$15.00 payable to the Town of Bell Buckle shall be charged to cover partial review and processing of each application for a variance, except that the fee shall be waived for a governmental agency.

- (2) Notice to affected property owners. It shall be the general rule of the board that reasonable efforts shall be made to contact and notify interested parties, who in the opinion of the board, may be affected by any matter brought before the board. In all cases all owners of record of adjoining property, including those separated by a public way from the premises in question shall be notified. The notification required to meet this provision shall be accomplished by direct mail addressed to the respective owners at the address given in the latest assessment roll.
- (3) Standards for variances. The board shall not grant a variance unless it makes findings based upon evidence presented to it as follows:
- (a) The particular physical surroundings, shape, or topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of chapters 3 through 11 of this title were carried out must be stated;
  - (b) The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district;
  - (c) The variance will not authorize activities in a zone district other than those permitted by chapters 3 through 11 of this title.
  - (d) Financial returns only shall not be considered as a basis for granting a variance;
  - (e) The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of the provisions of chapters 3 through 11 of this title.
  - (f) That granting the variance requested will not confer on the applicant any special privilege that is denied hereby to other lands, structures, or buildings in the same district.
  - (g) The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
  - (h) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located; and
  - (i) The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
- (4) Non-conformity does not constitute grounds for granting variance. No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- (5) Prohibition of use variances. Under no circumstances shall the board of appeals grant a variance to allow a use not permissible under the terms of chapter 3 through 11 of this title in the district involved, or any use expressly or by implication prohibited by the terms hereof in said district.
- (6) Conditions and restrictions by the board. The board may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the provisions set out in subsection (3) to reduce or minimize the

injurious effect to such variation upon surrounding property and better carry out the general intent of chapters 3 through 11 of this title. The board may establish expiration dates as a condition or as a part of the variances.

- (7) Board powers. In exercising its powers, the board of appeals may so long as such action is in conformity with the terms hereof, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the administrative official from whom the appeal is taken.
- (8) Variance appeals. Any person including any agency of the city government aggrieved by a decision of the board on a variance may appeal by certiorari to a court of competent jurisdiction. The judgment and findings of the board on all questions of fact that may be involved in any appeal, cause, hearing, or proceeding under this chapter shall be final and subject to review only for illegality or want of jurisdiction. (Ord. 60 of Aug. 13, 1981)

### **11-1106**

Special exceptions. The board of appeals may hear and decide, in accordance with the provisions of chapters 3 through 11 of this title, requests for special exceptions. In the review of such requests the following procedure shall be followed by the board.

- (1) Application; public hearing. The application for a special exception shall be made by the property owner or his designated agent and filed in writing with the board and shall contain information and exhibits as may be required under section 11-1103(2) or in the case of buildings or other structures or uses to be located within the flood plain districts, as may be required by section 11-801. Not more than 60 days after filing such application, a hearing shall be held on the application, unless otherwise withdrawn or postponed upon written request by the applicant. Notice of hearing shall be held in accordance with section 11-1104(7)(b). A fee of \$25.00 payable to the Town of Bell Buckle shall be charged to partially defray the cost of review and processing for each application for a special exception, except that the fee shall be waived for any governmental agency.
- (2) Requirements for a special exception permit. General requirements are hereby established which shall apply to all applications for special exceptions, and specific standards listed shall apply to the issuance of a special exception permit as appropriate. The board may impose such other conditions and restrictions upon the premises benefited by a special exception as may be necessary to comply with the provisions set out in subsections (3) and (4) of this section in order to reduce or minimize the injurious effect of such use upon and ensure compatibility with surrounding property and to better carry out the general intent of chapters 3 through 11 of this title. The board may establish expiration dates for the expiration of any special exception as a condition of approval.
- (3) General requirements. A special exception shall be granted provided the board finds that it:
  - a. Is so designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected;

- b. Will not adversely affect other property in the area in which it is located;
  - c. Is within the provision of “special exceptions” as set forth in chapters 3 through 11 of this title; and
  - d. Conforms to all applicable provisions hereof for the district in which it is to be located and is necessary for public convenience in that location.
- (4) Specific requirement. In addition to the requirements of the applicable district and the general requirements set forth above, specific requirements for certain uses as established hereafter shall also be a consideration as appropriate.
- a. Churches.
    - (i) Such facilities shall be located only on major or collector streets as shown on the official major thoroughfare plan.
    - (ii) No such facilities shall be permitted on a zone lot unless it contains twice the lot area requirements of the district in which it is to be located.
    - (iii) Off-street parking requirements can be suitably met.
  - b. Governmental uses. (Municipal, state, and federal)
    - (i) The location, size and design of such facilities shall be such that the proposed development shall be compatible with the development within the surrounding area, thus reducing the impact upon the surrounding area.
    - (ii) The traffic generated by such facility shall be safely accommodated along major streets without traversing local minor streets.
    - (iii) The proposed facility shall provide a basic community function or essential service necessary for a convenient and functional living environment in order to be located on the proposed site.
    - (iv) The off-street parking requirements shall be based upon a recommendation from the planning commission.
    - (v) The site plan for such facilities shall first be approved by the planning commission taking into account the above conditions as well as any other pertinent factors related to the use and operation of such facility.
  - c. Health care facilities and nursing homes.
    - (i) No hospital shall be located on a zone lot unless it contains a minimum of five (5) acres.
    - (ii) All parking requirements must be met with parking areas located on the same zone lot as the use.
    - (iii) Hospitals and health clinics shall be located on major or collector streets as shown on the official major thoroughfare plan.
    - (iv) The location and operation of such facility shall be basically in keeping with the character of the surrounding area and shall not represent an incompatible intrusion into the neighborhood.
  - d. Philanthropic institutions, private clubs, and recreation areas.

- (i) No such facilities shall be located on a zone lot unless it contains twice the lot area requirements of the district.
- (ii) Off-street parking shall be provided on the same zone lot as the facility and shall be one (1) space for each four (4) seats in an assembly area or one (1) space for each 75 square feet of gross floor area, whichever is greater.
- (iii) The location and operation of such facility shall be basically in keeping with the character of the district and shall not represent an incompatible intrusion into the neighborhood.
- (iv) The traffic generated by such facility shall be safely accommodated along the street(s) providing access to the lot.

e. Schools.

- (i) No such facility shall be located on a zone lot which does not meet the acreage requirements recommended by the appropriate state agency.
- (ii) The traffic generated by such facility shall be safely accommodated along the street(s) providing access to the site.
- (iii) The facility shall not have an adverse effect upon surrounding properties.
- (iv) Off-street parking shall be provided on the same zone lot as the facility.

f. Multi-family developments, mobile home parks, and planned developments.

- (i) In addition to the standards contained in chapter 9, the board of appeals shall specifically find that there will be no adverse effect upon surrounding properties. In making this finding the board shall consider the effect of the traffic generated, availability of utilities, and adequacy of the site to accommodate the use.
- (ii) The traffic generated by such use shall be safely accommodated by the street(s) providing access to the site.
- (iii) Prior to review by the board, the site plan shall be approved by the planning commission. (Ord. 60 of Aug. 13, 1981)