

# SECTION 11

## BOARD OF ADJUSTMENT

### 11.01 CREATION AND MEMBERSHIP

A Board of Adjustment is hereby established. The Board consists of five members to be appointed for a term of five years excepting that when the Board is first created one member shall be appointed for a term of five. No member of the City Council, Planning and Zoning Commission, or any City employee may be a member of the Board of Adjustment. At least three of the five must not be involved in the business of purchasing or selling real estate. A Chairperson is elected by a majority vote of the members of the Board. Members of the Board of Adjustment may be removed from office by the City Council for cause upon written charges and after public hearing. Vacancies will be filled by the City Council for the unexpired term of the member affected.

### 11.02 MEETINGS AND PROCEEDINGS

The Board of Adjustment must adopt rules necessary to conduct its affairs, and in keeping with the provisions of this Ordinance. Meetings will be held at the call of the chairperson and at other times as the Board may determine. Members of the Board of Adjustment are not at liberty to discuss any appeals or applications outside the bounds of a meeting, and like judges, they must receive all of the evidence and arguments in the course of a public meeting on the particular issue. The chairperson, or the acting chair, may administer oaths and compel attendance of witnesses by subpoena. All meetings must be open to the public.

The Board of Adjustment must keep minutes of its proceedings showing the vote of each member upon each question, or if the member is absent or fails to vote the minutes must indicate that fact. The Board must keep records of its examinations and other official actions, all of which is a public record and be immediately filed in the office of the City Clerk as a public record.

11.03 **VOTING AND DECISIONS:**

- A. A quorum for a meeting of the Board of Adjustment consists of at least three of the five members being present. A quorum is necessary for a meeting to be considered an official meeting that allows the Board to take action on any issue before it.
- B. The concurring vote of three members of the Board is necessary to reverse an order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance.
- C. Any issue that receives less than three concurring votes of the members present at an official meeting is defeated.
- D. All decisions and findings of the Board on any appeal or upon any application for a variance or conditional use, after a public hearing, is the final administrative decision and is subject to judicial review.

11.04 **FEES**

Fees shall be in the amount established from time to time by resolution of the Tiffin City Council, and must be paid to the City Clerk at the time an appeal, variance, conditional use, or revised site plan is filed.

11.05 **POWERS AND DUTIES**

The Board of Adjustment has the following powers and duties:

- A. **Appeals:** To hear and decide appeals where it is alleged there was error in any order, requirement, decision, or determination made by the Administrative Officer in the enforcement of this Ordinance.
- B. **Special Exceptions:** To hear and decide special exceptions to the terms of this Ordinance upon which the Board is required to pass under this Ordinance.
- C. **Variances:** To authorize upon appeal in specific cases such variance from 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 and so the spirit of this Ordinance is observed and substantial justice done. Under no circumstances may the Board of 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 the district.

**11.06 APPEALS TO THE BOARD OF ADJUSTMENT**

Matters concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by any officer, department, board or bureau of the governing body of the town affected by any decision of the Administrative Officer.

- A. Such appeals must be taken within a reasonable time, not to exceed 30 days by filing a Notice of Appeal specifying the grounds thereof with the City Clerk. The Appellant must provide no less than ten (10) copies off their Notice of Appeal, including all supporting documents, and the filing fee, otherwise the Notice shall be rejected by the Clerk. The Clerk will then distribute copies of the appeal immediately to the Planning and Zoning Commission and the City Attorney and the Board of Adjustment. The Planning and Zoning Commission Administrative Officer must forthwith transmit to the Board of Adjustment the appeal and all paper constituting the record upon which the action appealed from was taken.
- B. The Planning and Zoning Commission Administrative Officer must fix a reasonable time not exceeding 30 days from the date the Notice of Appeal is received to set a request for hearing before the Board of Adjustment. At the hearing, any party may appear in person or by agent or attorney. The Board of Adjustment shall provide a decision within a reasonable amount of time, but not exceeding 32 days from the date of the hearing date of the appeal. The amount of time to provide decision may be extended if otherwise mutually agreed by the Board of Adjustment and the petitioner on appeal.
- C. An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrative Officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with the Administrative Officer, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In this case, proceedings are not stayed other than by a restraining order that may be granted by the Board of Adjustment or by a court of record on application, on notice to the Administrative Officer from whom the appeal is taken and on due cause shown.

**11.07 SPECIAL EXCEPTIONS APPLICATION PROCEDURES:**

- A. The Board of Adjustment will hear and decide only such special exceptions as the Board of Adjustment is specifically authorized to pass on by the terms of this section, including the following:
  - 1. To decide such questions as are involved in determining whether special exceptions should be granted; and
  - 2. To grant special exceptions with such conditions and safeguards as are appropriate under this Ordinance, or
  - 3. To deny special exceptions when not in harmony with the purpose and intent of this Ordinance.
- B. A special exception may not be granted by the Board of Adjustment unless and until the conditions are met as shown below:
  - 1. There will be no more than 30 days between the time an application is filed with the P&Z and the date set for its consideration by the Board of Adjustments. A written application for a special exception is submitted to the City Clerk indicating the section of this Ordinance under which the special exception is sought and stating the grounds on which it is requested. The City Clerk must distribute the

written application to the Planning and Zoning Commission and to the City Council and the City Attorney. Hearing may not be held until after the Council has held a meeting where the application can be reviewed and comments made. In any event, hearing may not be held less than 31 days from date application has been received by the P&Z for review and recommendation unless otherwise mutually agreed between the applicant and the City. The City must take action on the application no later than 31 days following the public hearing.

2. Notice of Public Hearing must be given at least seven days in advance but not more than 20 days before of the public hearing in the manner required for a public hearing by the Iowa Code for cities the size of Tiffin. Notice must also be mailed to all property owners within a distance of 200 feet of the affected property both within and outside the boundaries of the City. The applicant is responsible for providing an accurate list of property owners and mail addresses for each owner of record.
3. The public hearing must be held. Any party may appear in person, or by agent or attorney.
4. The Board of Adjustment must make a written Finding as to the application. If the Finding grants the special exception, the Finding must state that the grant of the special exception will not adversely affect the public interest. Further, in granting any special exception, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of the conditions and safeguards, when made a part of the terms under which the special exception is granted, are deemed a violation of this Ordinance and punishable under Section 13 Administration and Enforcement and Violations and Penalties of this Ordinance. The Board of Adjustment must prescribe a time limit within which the action for which the special exception is required must start or completed, or both. Failure to take action to start or complete within the time limit set voids the special exception permit.

#### 11.08 VARIANCES APPLICATION AND PROCEDURE

A variance from the terms of this Ordinance may not be granted by the Board of Adjustment unless and until:

- A. **Application for a Variance:** A written application is submitted to the City Clerk, who will distribute copies immediately to the Board of Adjustment, P&Z Commission, and City Attorney and City Engineer. The application must demonstrate:
  1. That special conditions and circumstances exist that are peculiar to the land, structure, or building involved and that are not applicable to other lands, structures, or buildings in the same district;
  2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district. 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 will be considered grounds for the issuance of a variance; and
  4. That the special conditions and circumstances do not result from the actions of the applicant.
- B. **Public Hearing:** Notice of public hearing must be given as in accordance with the State of Iowa Open Meetings Law. The public hearing must be held. Any party may appear in person, or by agent or by attorney.
  - C. **Finding:** Upon the finding by the Board of Adjustment that the requirements of Section 11.08(A)(1-4) have been met by the applicant for a variance, the Board of Adjustment must 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.
  - D. **Safeguards and Violations:** The Board of Adjustment must also make a finding that granting 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. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations 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 13 Administration and Enforcement and Violations and Penalties.
  - E. **Recording:** The decision of the Board shall be recorded in the official minutes of the Board of Adjustment meeting.

**Expiration of Variances:** Variances granted by the Board of Adjustment expire one year from the date they are granted by the Board if the variance allows construction that is not initiated within that one year and completed by the following year.

#### 11.09 APPEALS FROM THE BOARD OF ADJUSTMENT

Any person or persons, or any board, taxpayer, department, board or bureau of the town aggrieved by any decision of the Board of Adjustment may seek review by a court of record within 30 days of such decision, in the manner provided by the laws of the State.