ARTICLE 14

BOARD OF APPEALS

(see Appeal of Administrative Decision page 11)

1. SCOPE OF REGULATIONS:

a. The regulations set forth in this article hereby establish and regulate the “Board of Zoning Appeals” These regulations as written permit the establishment by either city or county. State statute establishes “Board of Zoning Appeals”. Certain sections and regulations pertain only to municipalities while others pertain only to the county.

2.ESTABLISHMENT OF BOARD: APPOINTMENTS, TERMS, VACANCIES, REMOVALS,

AND CITY:

a. A Board of Zoning Appeals is hereby established consisting of three (3) members, all of whom shall be a home owners and a resident of the City. The members shall be appointed by the Mayor and with the consent of the Council; they shall serve terms of not more than three (3) years and the terms of not more than two (2) members of the Board shall expire within the same year. All members shall serve until their successors are appointed and qualified. Any vacancy in the membership shall be filled for the unexpired term. Members shall be removed for cause by the appointing authority upon written charges and after public hearing. The members of such board shall serve without compensation.

b. Budget: Board of Zoning Appeals: On or before the first Monday in June of each year, the Board of Zoning Appeals shall submit to the governing body its budget of expendi­tures for the ensuing fiscal year, itemizing the expenses and amounts and purposes. The governing body shall, thereupon, consider said budget and make such allowances to said Board of Zoning Appeals as it shall deem proper, and shall add the same to the general budget of the city.

3. GENERAL RULES:

a. Appeal from the decision of the Zoning Administrator in the enforcement of these Zoning Regulations shall be taken to the appropriate Board of Zoning Appeals. Appeal to the Board shall be conditioned only by paying a filing fee of Fifty ($50.00) dollars to the Planning Commission and following the procedural steps set out herein for appeals.

b. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator cer­tifies to the Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause eminent 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, or by a court of record on application, of notice to the Zoning Administrator and on good cause shown.

c. Unless regulated by other sections of these Zoning Regula­tions, the Board so concerned shall fix a reasonable time for the hearing of the appeal and other matters referred to it, and give not less than twenty (20) days public notice thereof by posting of not less than three (3) printed notices of the hearing in conspicuous place on or near the property upon which application for appeal is made, and shall give public notice as to the time, place, date, and subject in the appropriate official paper at least once, twenty (20) days prior to the hearing, as well as due notice to the parties in interest. The disposition of the appeal shall be made within a reasonable length of time. At the hearing, any party may appear in person, or by agent or by attorney.

4. POWERS AND DUTIES:

a. The Board of Zoning Appeals shall administer these Zoning. Regulations in accordance with the general powers set forth herein:

b. Appeals: To hear and decide appeals where it is alleged there is an error in order, requirement, decision, or determination made by an administrative official in the enforce­ment of any regulation adopted pur­suant to the Zoning powers herein granted. Appeals to the Board may be taken by any person aggrieved, or by any office, department, board, or bureau of the City or County, or any governmental agency or body affected in any decision of the administrative officer. Such appeal shall be taken within thirty (30) calendar days from the date notice of the Zoning Admini­strator’s determination is deposited in the United States mail, or served personally on the aggrieved party. Filing with the Secretary of the Board of Appeals a Notice of Appeal specifying the grounds thereof shall commence such appeal. The officer from whom the appeal is taken, when notified by the Board or its agent, shall forthwith transmit to the Secretary of said Board all the papers constituting the record upon which the action appealed from was taken.

c. Variances: To authorize in specific cases a variance from the specific terms of these Zoning Regulations which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of provisions of these regulations will, in an individual case, result in unnecessary hardship, provided that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. A variance may be granted in such individual case upon a finding by the Board that all of the following conditions have been met:

1. The variance requested arises from conditions which are unique and which are not ordinarily found in the same zoning district, and is created by these Zoning Regu­lations and not by an action or actions of the property owner or the applicant;

2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

3. That the strict application of the provisions of these Zoning Regulations will constitute unnecessary hardship upon the property owner;

4. That the variance requested will not adversely affect the public health, safety, morals, order, convenience, prosper­ity, or general welfare;

5. That granting the variance desired will not be opposed to the general spirit and intent of these Zoning Regulation.

5. EXCEPTIONS:

To grant exceptions to the provisions of these Zoning Regulations, but only in those instances where the Board is specifically authorized to grant such exceptions under the terms of these regulations. In no event shall exceptions to the provisions of these Zoning Regulations be granted where the use or exception contemplated is not specifically listed as an exception in these regulations. Further, under no conditions shall the Board of Zoning Appeals have the power to grant an exception when condi­tions of the exception, as established in these Zoning Regulations by the governing body, are not found to be present. In exercising the foregoing powers, the board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination provided that such action shall conform with the provisions of these Zoning Regulations, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may direct the issuance of a permit.

6.OTHERS:

a. To hear and decide applications for such zoning permits as are

set forth in these Zoning Regulations.

b. To permit the reconstruction of a non-conforming building,

which has been damaged by explosion, fire, act of God, or

public enemy, to the extent of less than fifty (50) percent of

its structural value, where the Board finds some com­pelling

necessity requiring a continuance of the non conforming use,

and the primary purposes of continuing the non-conforming use

is not to continue a monopoly.

c. To permit the extension of a district to include the whole

tract or parcel of land where the boundary line of a dis­trict

divides a tract or parcel of land not exceeding one- half (½)

acre held in a single ownership at the time of the passage of

these Zoning Regulations.

7. MEETING, RULES:

a. The Board shall annually elect one (1) of its members as

Chairman, one (1) of its members as vice-chairman, and one

(1)of its members as secretary. The Board shall adopt rules in

accordance with these Zoning Regulations. Meetings of the Board

shall be held at least twice annually: once each in the months of

January and July of each calendar year at such time and place as the

board fix by resolution. Special meetings may be called at any time by

the Chairman, or in his absence, the Vice-Chairman. The Chairman, or in

his absence, the acting Chairman may administer oaths. The Board shall

keep minutes of its proceedings, showing the description of evidence

presented, the findings of fact by the Board, the decision of the board

and the vote of each member upon each question, or if absent or failing

to vote, indicating such fact, and shall keep records of its

examinations and other official action, all of which shall be

immediately filed in the office of the Board and shall be a public

record.

8. ACTION OF THE BOARD, FINAL:

All actions of the Board of Zoning Appeals from the orders of the

Zoning Administrator shall be final subject to appeal to the

District Court of Osage County.