

ARTICLE 13
ADMINISTRATION AND PROCEDURES

13.01 Purpose

The Administration and Procedures Provisions establish the methods for implementation of the Zoning Regulations. These provisions include procedures for reviewing specific uses within certain zoning districts; amending the Zoning Regulations; and granting variances.

13.02 Zoning Enforcement Officer

A. Role Filled by Zoning Enforcement Officer

The role of the Zoning Enforcement Officer shall be filled by the Douglas County Zoning Coordinator. The term “administrative official” as referenced in this article shall mean the Douglas County Zoning Coordinator or his/her designee.

B. Powers and Duties

The Zoning Enforcement Officer shall exercise the following powers and duties:

1. The Zoning Enforcement Officer shall exercise all enforcement powers, including but not limited to the investigation of complaints of zoning violations, issuance of notices to violators, and the preparation and submission to the County Attorney of reports of those zoning violations which continue unabated after exhaustion of reasonable administrative remedies toward their abatement, for such legal action as the facts of each report may require.
2. The Zoning Enforcement Officer shall determine the use type for any use.
3. In all cases in which the county commences court action, the Zoning Enforcement Officer shall cooperate with the county attorney by performing such additional investigative work as the county attorney shall require.
4. The Zoning Enforcement Officer shall attend the meetings of the Planning Commission and the Board of Adjustment as requested by those bodies, shall investigate and review all applications and cases presented, and shall advise on those applications and cases.
5. If the county attorney institutes legal proceedings the Zoning Enforcement Officer will cooperate fully with the legal department.

13.03 Site Plan Review Procedure

A. Purpose

The Site Plan Review Procedure provides for the administrative review, in addition to plan review required by other sections of the Douglas County Regulations, of projects that have potentially significant effects on traffic circulation or a significant effect on land uses in adjacent neighborhoods. The procedure provides for review and evaluation of site development features and possible mitigation of unfavorable effects on surrounding property.

B. Administration

The Zoning Enforcement Officer shall review, evaluate, and act on all site plans submitted pursuant to this procedure. Site plan actions of the Zoning Enforcement Officer related to enforcement may be appealed to the Board of Adjustment.

C. Uses Requiring Site Plan Review

Table 4.1. Permitted Uses by Zone District, identifies uses that are required to follow the Site Plan review procedure prior to the issuance of a building permit, unless they are otherwise subject to a Special Use Permit procedure for specific zoning districts. Permitted uses that are required to follow the Site Plan review procedure are noted in Table 4.1 with an asterisk.

D. Application Requirements

An application for a Site Plan Review may be filed by the owner(s) of a property or the owners' authorized agent with the Zoning Enforcement Officer. The application shall include the following information:

1. Name and address of the applicant.
2. Owner, address, and legal description of the property.
3. A description of the nature and operating characteristics of the proposed use.
4. A site plan, drawn to a scale sufficient to permit adequate review and dimensioned as necessary, showing the following information:
 - a. The date, scale, north point, title, name of owner, and name of person preparing the site plan.

- b. The location and dimensions of boundary lines, easements, and required yards and setbacks of existing and proposed buildings and site improvements.
- c. The location, size, and use of proposed and existing structures on the site.
- d. The location of all proposed site improvements, including parking and loading areas, pedestrian and vehicular access, sewers, sidewalks, utilities, service areas, fencing, screening, signs, landscaping, and lighting.
- e. Natural features assessment, as defined in section 7.03. A.
- f. Location of any major site feature, including drainage and contours at no greater than five foot intervals.
- g. Any other information that may be required for review by the Zoning Enforcement Officer.

E. Administrative Action and Appeal

The Zoning Enforcement Officer will generally act upon each complete application within ten working days of filing unless the applicant is notified that additional time will be required. An applicant may appeal a zoning determination made as part of the site plan review to the Board of Adjustment..

F. Review and Evaluation

- 1. The Zoning Enforcement Officer shall review and approve the site plan based on the criteria established in Table 13-1 and conformance with applicable regulations in this Zoning Regulation.
- 2. The Zoning Enforcement Officer shall make the following findings before approval of the site plan:
 - a. The proposed development, together with any necessary modifications, is compatible with the criteria established in Table 13-1.
 - b. Any required modifications to the site plan are reasonable and are the minimum necessary to minimize potentially unfavorable effects.
 - c. The site plan conforms to the Zoning Regulations and any other applicable County regulations.

G. Term and Modification of Approval

1. A Site Plan Approval shall become void two years after the date of approval, unless the applicant receives a Building Permit and diligently carries out development prior to the expiration of this period.
2. The Zoning Enforcement Officer may approve an application to modify a previously approved site plan if he/she determines that the modification does not affect findings related to the criteria set forth in Table 13-1.
3. The Zoning Enforcement Officer may revoke a Site Plan Approval if he/she determines that the development is not complying with the terms and conditions of the approval. Such revocation may be appealed to the Board of Adjustment.

H. Approval to Run with Land

An approval pursuant to this section shall run with the land unless an expiration date of such approval is specified at the time of approval.

13.04 Special Use Permit Procedures

A. Purpose

The Special Use Permit Procedure provides for public review and discretionary County Board approval for uses within zoning districts which have unusual site development or operating characteristics that could adversely affect surrounding properties.

B. Administration

The Planning Commission shall review and evaluate each application and transmit its recommendation to the County Board. The County Board shall review, evaluate, and act upon all applications submitted pursuant to this procedure.

C. Application Requirements

An application for a Special Use Permit may be filed by the owner(s) of a property or the owners' authorized agent with the Zoning Enforcement Officer. The application shall include the following information:

1. Name and address of the applicant.
2. Owner, address and legal description of the property.
3. A description of the nature and operating characteristics of the proposed use.

4. Any graphic information, including site plans, elevations, or other drawings, necessary to describe the proposed use to approving agencies.

TABLE 13-1: CRITERIA FOR SITE PLAN REVIEW AND SPECIAL USE PERMITS			
	CRITERIA	APPLICATION TO	
		Site Plan Review	Special Use Permit
Land Use Compatibility			
Development Density	Site area per unit or floor area ratio should be similar to surrounding uses if not separated by major natural or artificial features		X
Height and Scale			
Height and Bulk	Development should minimize differences in height and building size from surrounding structures. Differences should be justified by urban design considerations.	X	X
Setbacks	Development should respect pre-existing setbacks in surrounding area. Variations should be justified by site or operating characteristics.	X	X
Building Coverage	Building coverage should be similar to that of surrounding development if possible. Higher coverage should be mitigated by landscaping or site amenities.	X	X
Site Development			
Frontage	Project frontage along a street should be similar to lot width.	X	X
Parking and Internal Circulation	Parking should serve all structures with minimal conflicts between pedestrians and vehicles.	X	X
	All structures must be accessible to public safety vehicles.	X	X
	Development must have access to adjacent public streets and ways. Internal circulation should minimize conflicts and congestion at public access points.	X	X
Landscaping	Landscaping should be integral to the development, providing street landscaping, breaks in uninterrupted paved areas, and buffering where required by surrounding land uses. Parts of site with sensitive environmental features or natural drainage ways shall be preserved, consistent with conservation design regulations (Article 7).	X	X
Building Design	Architectural design and building materials should be compatible with surrounding areas or highly visible locations.		X
Operating Characteristics			
Traffic Capacity County Engineer review required.	Project should not reduce the existing level of traffic service on adjacent streets. Compensating improvements will be required to mitigate impact on street system operations.	X	X
External Traffic Effects County Engineer review required.	Project design should direct non-residential traffic away from residential areas.	X	X
Operating Hours	Projects with long operating hours must minimize effects on surrounding residential areas.	X	X
Outside Storage	Outside storage areas must be screened from surrounding streets and less intensive land uses.	X	X
Public Facilities			

TABLE 13-1: CRITERIA FOR SITE PLAN REVIEW AND SPECIAL USE PERMITS			
	CRITERIA	APPLICATION TO	
		Site Plan Review	Special Use Permit
Sanitary Waste Disposal	Developments within 500 feet of a municipal sanitary sewer must connect to sewer system. Individual disposal systems, if permitted, shall not adversely affect public health, safety, or welfare.	X	X
	Sanitary sewer must have adequate capacity to serve development.	X	X
Storm Water Management	Development should handle storm water adequately to prevent overloading of public storm water management system and such that there is no net increase in runoff from existing (pre-development) conditions.	X	X
	Development should not inhibit development of other properties.	X	X
	Development should not increase probability of erosion, flooding, landslides, or other run-off related effects.	X	X
	Stormwater Best Management Practices, including the use of LID techniques, are required.	X	X
Utilities	Project must be served by utilities. Verify utilities to serve the development.	X	X
Comprehensive Plan	Projects should be consistent with the comprehensive development plan of Douglas County.		X

D. Approval Process

1. The Planning Commission, following proper notice, shall hold a public hearing on each Special Use Permit and, following such public hearing, shall recommend action to the County Board. Such recommendation by the Planning Commission shall include the necessary findings of fact as required per state statute.

2. The County Board, after publication and public hearing, shall act on the Special Use Permit. If the Planning Commission recommends denial of the Special Use Permit, a majority plus one of the County Board is required for approval. The County Board may apply any additional reasonable conditions to the approval of the permit.

E. Criteria for Review

The Planning Commission and the County Board shall review and approve the site plan based on the criteria established in Table 13-1 and conformance with applicable regulations in this Zoning Regulation.

F. Scope of Approval

The County Board may, at its discretion, apply a Special Use Permit to a specific owner or applicant and may place a beginning and ending date on a Special Use Permit. The County Board may establish special site development or operational regulations as a condition for approval of a Special Use Permit.

G. Lapse and Revocation of Permit

1. A Special Use Permit shall become void two years after its effective date if the applicant has not carried out development or occupancy during that period. Such determination to be made by the Zoning Administrator.
2. The County Board may revoke a Special Use Permit should the operation of the use subject to such permit violate the conditions under which the permit was granted.

H. Previously Approved Permits

Any conditional or special use approved under regulations in effect before the effective date of this Regulation shall be considered to have a valid Special Use Permit; subject to requirements imposed at the time of the original conditional or special use approval.

I. Required Notice and Publication

Prior to consideration of a special use permit, notice of public hearings shall be provided as follows:

1. **Publication:** At least ten days before the date of hearing the Zoning Coordinator shall have published in the official publication as determined by the County Board Notice of the time, place and subject matter of such hearing.
2. **Notice:** A notice shall be posted in a conspicuous place on or near the property upon which action is pending. Such posted notice shall be so placed upon such premises that is easily visible from the street and shall be so posted at least ten days before the date of such hearing. It shall be unlawful for any person to move, displace, remove, mutilate, destroy or change such posted notice prior to such hearing.
3. Notice shall be provided to property owners within one (1) mile of subject property. Should adjoining property be owned by the applicant, the one (1) mile shall be measured starting from the periphery of the applicant's property.
4. Notification of adjacent jurisdictions shall be by current state statute requirements.

5. These notification requirements will generally apply to all applications heard by the Planning Commission that involve a specific parcel of land.

13.05 Amendment Procedures

A. Purpose

The Amendment Procedures describe the methods by which changes may be made in the text of the Zoning Regulations (text amendment) and/ or the official boundaries of zoning districts (rezoning).

B. Initiation of Amendments

1. Text amendments may be initiated by the Planning Commission or County Board.
2. Rezoning may be initiated by a property owner or authorized agent, the Planning Commission, or the County Board.

C. Rezoning Application Requirements

An application for a rezoning shall be filed with the Zoning Enforcement Officer. The application shall include the following information:

1. Name and address of the applicant.
2. Owner, address, and legal description of the property.
3. A description of the reason for the rezoning application and the nature and operating characteristics of the proposed use.
4. Any graphic information, including site plans, elevations, or other drawings, necessary to describe the proposed use to approving agencies.

D. Amendment Process

1. The Planning Commission, following notice as indicated in Section 13.05 E., shall hold a public hearing on each proposed text amendment or rezoning and, following such public hearing, shall recommend action to the County Board.

2. The County Board, after publication and public hearing, shall act on the proposed amendment: If the Planning Commission recommends denial of the amendment, a majority plus one of the County Board is required for approval.

E. Required Notice and Publication

Prior to consideration of amending, supplementing, changing, modifying, or repealing this regulation by the governing body, notice of public hearings shall be provided as follows:

1. Publication: At least ten days before the date of hearing the Zoning Coordinator shall have published in the official publication as determined by the County Board Notice of the time, place and subject matter of such hearing.
2. Notice: A notice shall be posted in a conspicuous place on or near the property upon which action is pending. Such posted notice shall be so placed upon such premises that is easily visible from the street and shall be so posted at least ten days before the date of such hearing. It shall be unlawful for any person to move, displace, remove, mutilate, destroy or change such posted notice prior to such hearing.
3. Notice shall be provided to property owners within one (1) mile of subject property. Should adjoining property be owned by the applicant, the one (1) mile shall be measured starting from the periphery of the applicant's property.
4. Notification of adjacent jurisdictions shall be by current state statute requirements.
5. These notification requirements will generally apply to all applications heard by the Planning Commission that involve a specific parcel of land.

13.06 Building Permits and Certificates of Zoning Compliance

A. Administration and Enforcement

1. The Zoning Enforcement Officer shall administer and enforce this regulation. The County Board may direct other persons to assist him/her.
2. If the Zoning Enforcement Officer shall find that any of the provisions of this regulation are being violated, he/she shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He/ she shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action

authorized by this regulation to ensure compliance with or to prevent violation of its provisions

B. Building Permits Required

No building or other structure shall be erected, moved, added to, or structurally altered without a permit therefore, issued by the administrative official. No building permit shall be issued by the administrative official except in conformity with the provisions of this regulation, unless he/she receives a written order from the Board of Adjustment in the form of an administrative review, special exception, or variance as provided by this regulation

C. Application for Building Permit

1. All applications for building permits shall include plans in duplicate drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the administrative official, including existing or proposed building or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this regulation. One electronic copy in pdf format shall also be provided on CD.
2. One copy of the plans shall be returned to the applicant by the administrative official, after he/ she shall have marked such copy either as approved or disapproved and attested to same by his signature on such copy. One copy of the plans, similarly marked, shall be retained by the administrative official.

D. Certificates of Zoning Compliance for New, Altered or Non-Conforming Uses

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a certificate of zoning compliance shall have been issued therefore by the administrative official stating that the proposed use of the building or land conforms to the requirements of this regulation.

E. Expiration of Building Permit

1. If the work described in any building permit has not begun within 180 days from the date of issuance thereof, said permit shall expire; it shall be cancelled by the administrative official; and written notice thereof shall be given to the persons affected.

2. If the work described in any building permit has not been substantially completed within two years of the date of issuance thereof, said permit shall expire and be cancelled by the administrative official, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained.
3. The expiration date of a building permit may be established for a period longer than two years if established at the time that such permit is issued by the County. The Zoning Enforcement Officer may, at his/her discretion, extend the expiration period of the building permit for extenuating circumstances.

F. Construction and Use to be as provided in Applications, Plans, Permits, and Certificates of Zoning Compliance

Building permits or certificates of zoning compliance issued on the basis of plans and applications approved by the administrative official authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this regulation.

13.07 Schedule of Fees, Charges, and Expenses

- A. The County Board shall establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining to this regulation.
- B. The schedule of fees shall be posted in the office of the administrative official, and may be altered or amended only by the County Board, except that the Zoning Coordinator shall have the authority to refund a collected fee due to an over payment.
- C. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.
- D. Required fees shall be doubled if construction has commenced prior to obtaining required permits.

13.08 Board of Adjustment

A. Establishment and Procedure

1. A Board of Adjustment is hereby established to provide relief in situations of hardship or to hear appeals as provided by this Section. A property owner may appeal an administrative decision, notice, order, or interpretation of the Zoning

Enforcement Officer if he/she claims that such decision incorrectly interprets or applies the provisions of this Regulation.

2. Appeals shall be made to the Board of Adjustment through the office of Environmental Services on written forms as provided by the Office.

B. Rules and Regulations

1. The Board of Adjustment shall adopt rules and regulations in accordance with this regulation and the laws of the State of Nebraska regarding zoning for counties as amended from time to time.
2. The concurring vote of four out of five members of such board as so composed shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning regulation, or to effect any variation in such regulation.

C. Proceedings of the Board of Adjustment

The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this regulation. Meetings shall be held when appeals (per 13.7 A.2) are received, at the call of the Chairman, and at such other times as the Board may determine. Such chairman, or, in his/her absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings and records shall be open to the public. The board 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.

13.09 Powers and Duties of the Board of Adjustment

The Board of Adjustment shall have only the following powers and duties:

A. Administrative Review

To hear and decide appeals where it is alleged there is error in any order, requirement, decisions or determination made by the Zoning Enforcement Officer in the enforcement of this Regulation.

B. Variances: Conditions Governing Applications: Procedures

To authorize upon appeal in specific cases such variance from the terms of this regulation as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this regulation would result in unnecessary hardship and so that the spirit or the regulation shall be observed and substantial justice done. A

variance from the terms of this regulation shall not be granted by the Board of Adjustment unless and until:

1. A written application for a variance is submitted demonstrating:
 - a. That strict application of the zoning regulation will produce undue hardship.
 - b. That such hardship is not shared generally by other properties in the same zoning district and in the same vicinity.
 - c. That the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
 - d. That granting the variance requested is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.
2. Notice of public hearing shall be given as per state statutory requirement;
3. The public hearing shall be held. Any party may appear in person, or by agent or by attorney;
4. The Board of Adjustment shall make findings that the requirements of Section **13.09 B.1** have been met by the applicant for a variance;
5. The Board of Adjustment shall further make a finding that the reasons set forth in the application as stated in 13.9 B. 1. above justify the granting of the variance, and that the variance will make possible the reasonable use of the land, building, or structure;
6. The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this regulation, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

C. Conditions for Grant of Variance

1. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation 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 regulation.

2. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this regulation in the district involved, or any use expressly or by implication prohibited by the terms of this regulation in said district.
3. 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.

D. Board has Powers of Administrative Official on Appeals; Reversing Decisions of Administrative Official

1. In exercising the above mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this regulation, reverse or affirm, wholly or partly, or may modify the order, requirement, decisions, 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.
2. The concurring vote of four members of the Board shall be necessary to reverse any order, requirements, decision, or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this regulation, or to effect any variation in the application of this regulation.

13.10 Appeals from the Board of Adjustment

Any person or persons, or any board, taxpayer, department, board or bureau of the county aggrieved by any decision of the Board of Adjustment may seek review of such decision by the District Court for the County in the manner provided by the laws of the State and particularly by Neb. Rev. Stat. 23-168.04, and amendments thereto.

13.11 Duties of Zoning Enforcement Officer, Board of Adjustment, County Board, and Courts on Matter of Appeal

- A. It is the intent of this regulation that all questions of interpretation and enforcement shall be first presented to the administrative official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the administrative official, and that recourse from the decisions of Board of Adjustment shall be to the courts as provided by law.
- B. Under this regulation the County Board shall have only the duties:
 1. Of considering and adopting or rejecting proposed amendments or permits, or the repeal of this regulation as provided by law, and

2. Of establishing a schedule of fees and charges as stated in Section 13 of this regulation.

13.12 Severability Clause

Should any section or provision of this regulation be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulation as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

13.13 Complaints Regarding Violations

Whenever a violation of this regulation occurs, or is allowed to have occurred, any person may file a written complaint, with name and address of the person(s) filing the complaint. Such complaints stating fully the causes and basis thereof shall be filed with the Zoning Enforcement Officer. He/she shall record properly such complaint immediately, investigate, and take action thereon as provided by this regulation.

13.14 Penalties for Violation

Any person who violates any of the prohibitions or provisions of any Article or Section of this Regulation shall be deemed guilty of a violation. Unless otherwise specified in the particular article or section for which the person stands convicted of violating, the penalty for such violation shall be a Class III misdemeanor. Every Twenty-four (24) hours in which a violation of this Chapter continues shall be considered a separate and distinct violation. (Ref. 23-114.05 RS Neb.)

13.14 Conflict

Conflict

To the extent that any provision or provisions of this Regulation are inconsistent or in conflict with any other provision of the County Code, Zoning Code or any regulation or regulation of the County, the provisions of this Regulation shall be deemed to control. When not inconsistent with the context, words used in the plural number include the singular number, and words used in the singular number include the plural number.