

Unified Development Regulations

3. Organization, Appeals, and Special Procedures

3.1. Creation, Membership, and Rules of the Planning Commission

3.1.1. Authorization

- a. A Planning Commission is hereby created and appointed by the Board of County Commissioners. There shall be ten (10) regular voting members of the Planning Commission: two (2) members shall be appointed from each County Commission district and four (4) members shall be appointed at-large.

3.1.2. Membership

- a. Planning Commissioners may be appointed for terms of one, two, or three years, and each may serve for two (2) consecutive full terms without re-appointment from the County Commission. Following their second term, a Planning Commissioner may continue to serve, but the County Commission must re-appoint the Planning Commissioner at the conclusion of each subsequent term.
- b. Planning Commissioners shall be at least 18 years of age
- c. Planning Commissioners may be removed for cause including, but not limited to:
 1. Failure to attend meetings
 2. Abuse of office
 3. Serious conflict of interest
 4. Abusive conduct
- e. Removal requires a majority vote of the Board of County Commissioners. Any Planning Commissioner removed from office shall have the right to file an appeal, within 14 days of removal, for a full hearing of the matter before the Board of County Commissioners.
- f. Appointments to fill vacancies of unexpired terms shall be made by the Board of County Commissioners.

3.1.3. Specific Duties

- a. To make or cause to be made a Comprehensive Plan for Pottawatomie County for submission and final decision to the Board of County Commissioners and to propose and recommend revisions and amendments to the Comprehensive Plan to the Board of County Commissioners.
- b. To conduct all required public hearings, and to decide if hearing should be adjourned from time to time, or conducted at a place, after official notice, more appropriate to the occasion.
- c. To recommend all actions, after hearing, concerning zoning text and map amendments, conditional or special uses, and final plats for consideration to the Board of County Commissioners.
- d. To review, for final approval or disapproval, all required site plans.
- e. To add conditions to subdivision plats and zoning map amendments when, in the opinion of a majority of Planning Commissioners, such conditions are essential to the



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preservation of property values, the public health, safety, welfare, and the peaceful and quiet enjoyment of property.

- f. To grant area and bulk variances on preliminary subdivision plats when, in the opinion of a majority of Planning Commissioners, such variations are essential to preserve natural resources, overcome practical difficulty, and serve the public interest.
- g. To hold an annual meeting in June of each year for the purpose of electing a Planning Commission Chairperson, a Vice Chairperson, and Secretary. Elections shall be conducted in accordance with *Roberts Rules of Order* by voice vote.

3.1.4. Meetings

- a. All meetings shall be conducted by the Chairperson of the Planning Commission, or in his/her absence, by the Vice Chairperson or Secretary, or then by the most senior member. The Chairperson, and other officers, shall be elected by a simple majority of Planning Commissioners on an annual basis. All officers shall serve for one year, or until their successors are elected, and may succeed themselves for each year during their terms.
- b. All meetings (other than special meetings) of the Planning Commission shall be held according to the official Yearly Planning Commission Hearing Calendar at a location designated by the Chairperson of the Planning Commission. When there is no official agenda, a meeting may be canceled at the discretion of the Chairperson. The Chairperson, or the Vice Chairperson in the Chairperson's absence, shall have the power to call any special meetings, to change a meeting time or place, or allow Planning Commissioners to attend remotely. Meetings shall generally be conducted in accordance with *Roberts Rules of Order*.

3.1.5. Rules for Voting

- a. The Chairperson shall vote only to break a tie vote. The Chairperson shall lead all discussions, and call for all votes.
- b. All official votes shall be by a simple majority of a quorum. A quorum is six commissioners present at any meeting.
- c. All votes shall be "yes" or "no" by voice of the members; written votes are not allowed. The Chairperson may require reasons for the vote from each Commissioner when the magnitude of the change requested for the plan or zoning change is extensive. Official votes shall also be written by the Secretary or designee in the form of minutes; minutes shall be approved each meeting.
- d. Any Commissioner, including the Chairperson, may disqualify themselves without stating reasons, by announcing the disqualification for the record and leaving the table at the beginning of a public hearing. In the case of a challenge by an applicant or member of the public, the Chairperson shall rule on disqualifications. Reasons for disqualification shall be, but are not limited to, the following:
 1. To avoid the appearance of impropriety
 2. If the Planning Commissioner is a property owner within the statutory distance for notification of a hearing
 3. If the Planning Commissioner is a relative, employer, employee, or a business partner of the Applicant



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4. If the Planning Commissioner is an agent for the Applicant (in a business or legal capacity).
5. If the Planning Commissioner feels that he/she cannot render a fair and impartial judgment due to past association, hearsay, or actions of the applicant or member of a public hearing.

3.1.6. Conduct of Hearings

- a. An Applicant, or an agent for the Applicant, must be present to introduce a proposal for change, except that this rule may be waived by a majority vote of the Planning Commission. If an Applicant or agent is not present, and the item is tabled, then the Applicant shall automatically be granted an extension until the next regularly scheduled meeting of the Planning Commission. If the Applicant or agent fails to appear at the next regularly scheduled meeting, the item shall be deemed void and the applicant must reapply.
- b. All members (or their agents) attending a public hearing shall have the right to speak to the business at hand. The Planning Commission shall not hold a closed meeting or executive session. The Chairperson may set reasonable time limits for the duration of all discussions and comments. The Chairperson is authorized to suspend or amend hearing rules, or require *ad hoc* rules of order, control, and meeting management that furthers fairness and due process requirements. During the public comment portion of the hearing, parties shall speak in the following order:
 1. A member of the planning staff opens the hearing by explaining the nature of the request, its location, and the action or votes required of the Planning Commission. Next the applicant or agent introduces the proposal.
 2. The Planning Commission/Staff may ask questions to clarify any points made by the Applicant. Following this, any member of the public hearing may request points of clarification. Before proceeding, the Chairperson may poll the members of the Planning Commission and the staff to determine if the application is sufficient to conduct an informed public hearing. Sufficiency shall be based upon the completeness of the application, quality of data, regulation requirements (including sanitation reports, and the timeliness of submission of materials to the staff for review.
 3. The members of the public hearing who received statutory notification may speak to support the proposal
 4. The members of the public hearing who received statutory notification may speak to voice disapproval of the proposal
 5. A period of rebuttal shall be allowed for the Applicant and those in favor or opposition
 6. Any member of the public hearing may speak
 7. Final rebuttal for the Applicant shall be allowed
 8. The Chairperson shall officially close the public hearing phase of the particular business at hand
 9. The Planning Commission, after placing a formal motion on the table, shall debate the facts presented at the hearing
- c. Following debate, the Planning Commission shall vote (within 90 days) on the motion. Decisions of the Commission shall be



based upon facts entered into the record at the hearing phase of the meeting, the recommendations of the Staff, the adopted plan, and the preservation of property values, health, public safety, and the general welfare.

- d. Appropriate considerations for voting on an issue may also include the need for the proposed change; the magnitude of the change; whether or not the change will bring harm to established property rights, and the effective use of the land.

3.1.7. Effect of Voting

- a. Votes shall be cast either as a "yes" or "no" on an issue. A majority vote "yes" shall be deemed to mean a positive recommendation to the Board of County Commissioners. A majority vote "no" shall mean a negative recommendation; a tie vote presented to the Board of County Commissioners shall have the same meaning as a "no" recommendation.
- b. In the case of a final plat, the vote of endorsement by the Planning Commission is not advisory, and does not require approval by the Board of County Commissioners. However, the final plat shall be sent to the Board of County Commissioners for approval of all public dedications. If the Board of County Commissioners does not accept the dedications within 60 days after plat endorsement by Planning Commission, the Register of Deeds shall not file the plat instrument, and all action shall be void.
- c. In the case of a proposed zoning amendment to the land use map or the regulation text, the vote of the Planning Commission is advisory. Upon receiving an advisory vote, the Board of County Commissioners may:
 1. Approve by resolution such recommendation
 2. Override the recommendation by a 2/3 majority vote
 3. Return the recommendation for study and reconsideration with a statement that specifies the reasons for refusal to approve or disapprove.
- d. If the Board of County Commissioners returns a recommendation, the Planning Commission may resubmit the original recommendation or submit new or amended recommendations without reconvening the public hearing. When the reconsideration is returned the Board of County Commissioners may, by simple majority vote, adopt, revise, amend, or reject such recommendations. Failure to return a recommendation on the part of the Planning Commission shall be considered a re-submission of the original recommendation.

3.2. Board of Zoning Appeals

3.2.1. Membership Requirements

- a. Members must be 18 years of age or older
- b. Members must be a current resident of Pottawatomie County

3.2.2. Composition of the Board

- a. Five members of the Pottawatomie County Planning Commission shall serve as the Board of Zoning Appeals.

3.2.3. Service of Members

- a. Members may be removed by the Board of County



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Commissioners for just cause, violation of conflict of interest, bias, and failure to attend scheduled meetings.

- b. Appointments to fill unexpired terms shall be made by the Board of County Commissioners using alternates, or by selecting new members from County Commission districts.

3.2.4. Duty of Chairperson

- a. The members of the Board of Zoning Appeals shall annually elect a Chairperson and a Vice-Chair. The members elected shall not be the same Chairperson or Vice-Chairperson of the Planning Commission
- b. The Chairperson of the Board of Zoning Appeals shall call all meetings (and designate the location of meetings) on request of the Zoning Administrator, County Planner, and/or Board of County Commissioners.
- c. The Chairperson shall also conduct meetings according to *Roberts Rules of Order*.
- d. The Chairperson shall insure that all final orders or decisions of the Board of Zoning Appeals are rendered, in writing, within 60 days of the original hearing date.
- e. The Vice-Chair shall serve in the absence of the elected Chairperson, and following this, the most senior members shall serve as Chairperson *pro tempore*.

3.2.5. Meetings and Votes of the Board

- a. The Chairperson shall conduct all meetings and take all votes. Meetings shall be held at a time and place designated by the Chairperson
- b. All votes shall be "yes" or "no" by voice, with a taped record and written minutes kept of each session. Abstentions shall not be allowed, but members may disqualify themselves, for cause, in accordance with the Guidelines for Conflict of Interest listed above in Article 3.1.5 above.
- c. If a member disqualifies themselves, the Chair may designate one of the alternates to fill his or her place on the Board of Zoning Appeals
- d. All hearings before the BZA shall be open to the public. The BZA may, however, adjourn a hearing from time to time, and may meet in closed session to debate the record created at the public hearing. The BZA shall issue its findings to applicants orally immediately following a hearing or in writing within 60 days after the first hearing, unless the applicant requests an extension of time.
- e. The BZA is a quasi-judicial body, and therefore due process is required for all official hearings. All persons wishing to give testimony before the BZA shall be administered an oath or affirmation by the Chairperson. The hearing procedure thereafter shall be the same as for the Planning Commission.
- f. The Chairperson of the BZA may establish, from time to time, reasonable limitations on testimony, and shall have the power to rule on objections and other points of order raised by a Commissioner, an applicant, or member of the public hearing. The Chairperson shall have the authority to rule out of order testimony that is not factual, based upon supposition or hearsay.



3.2.6. Duties of the Board of Zoning Appeals

- a. The BZA is hereby authorized to hear appeals from any person or official affected by any decision of the Zoning Administrator or County Planner. In exercising the power of appeals, the BZA may reverse amend, modify, or affirm any discretionary act, requirement, decision, or determination of the Zoning Administrator. To this end, the BZA shall have all of the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit.
- b. Any person, official or governmental agency dissatisfied with any order, determination, or action of the BZA may bring action in the district court of the County to determine the reasonableness of any action or order. Such appeals shall be filed within 30 days of the final decision of the Board.

3.2.7. Procedure for Appeals

- a. The appeal must be brought within 60 days of the final decision or action of the Zoning Administrator
- b. The appellant must file the proper forms provided by the Zoning Administrator, and pay the posted appeals fee
- c. Notice of the appeal must be published once in the official County newspaper, at least 20 days prior to the hearing
- d. The appellant or agent must appear before the BZA on the appointed time and day for the hearing. Failure to appear, unless waived by the BZA for cause, shall result in a dismissal of the appeal, and shall require re-application unless the 60 day time limit for appeal has passed
- e. When an appeal is filed, the action of the Zoning Administrator or County Planner shall be stayed pending a final decision of the BZA
- f. Actions of the BZA are final orders and are not sent to the Board of County Commissioners for review or approval

3.2.8. Variances

- a. To authorize, in specific cases, a variance from the specific terms of the regulations which would not be contrary to the public interest, and, due to special circumstances, where a literal enforcement of the provisions of the regulations, in an individual case, results in an unnecessary hardship, and provided that:
 1. The spirit of the regulations is observed
 2. The public safety and welfare is secured
 3. Substantial justice is done in contrast to a mere favor or special benefit
- b. In order for the BZA to grant a variance, the board must specifically find for the record that:
 1. The variance arises from a condition unique to the property in question, and is not a general condition found in the neighborhood
 2. That granting the variance will not adversely affect the rights of adjacent property owners or residents



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3. That strict adherence to the regulations in the specific case will constitute unnecessary hardship upon the property owner requesting the variance. The board must determine that hardship is greater than the economic disadvantage and in fact extends to a means of livelihood, a matter of protecting title to a property, or if left uncorrected, would result in a severe and irrevocable change in the applicant's ability to transfer property. A hardship may also be construed to be honest error imposed upon a property owner by a ministerial official, or licensed professional, or through eminent domain or zoning resulting in a substantial loss of property rights.
4. The variance desired will not adversely affect the public health, safety, morals, or welfare, convenience, prosperity, or general order

3.2.9. Requirements for Applicants - Supporting Data for Variances

- a. Unless otherwise notified by the County Planner, all applications for a variance or exception shall be accompanied by the following supporting data:
 1. An accurate legal description of the property
 2. A map of the property from the GIS Department of Pottawatomie County
 3. Fill out and submit all forms provided by the staff
 4. An appointment with the staff to review the variance. If possible, bring photos that clarify the need for the variance and help to document the hardship
 5. A Statement of Purpose that explains the need for your variance. Explain or clarify and extenuating circumstances that would help to support the need for the variance.

3.3. Representatives and Agents

- 3.3.1. Nothing contained in this ordinance shall be construed as prohibiting the right of any applicant or a member of the public hearing to retain an agent to represent them before the Planning Commission, BZA, or Board of County Commissioners. Likewise, legal counsel may be used to represent any person having business pertaining to these regulations. All persons, and their agents or counsel, have a right to speak at the designated time, submit written comments for the record, make objections, note exceptions, or request points of clarification for the record during public hearings.



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