

ARTICLE XIV

ADMINISTRATION

PART 1. OFFICE OF THE ADMINISTRATOR

14-101. Authorization. A Zoning Administrator shall be appointed by the City Manager of the City of Manhattan. The Zoning Administrator shall be responsible for carrying out his/her duties under these regulations.

14-102. Duties of the Zoning Administrator. The Zoning Administrator, or his/her designee shall enforce these regulations, and in addition thereto and in furtherance of said authority, shall:

- (A) Review applicable building permits, sign permits, and occupancy certificates for compliance with these regulations.
- (B) Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of these regulations.
- (C) Receive, file, and forward to the Board of Zoning Appeals the records in all appeals and all applications for conditional uses, exceptions and variances.
- (D) Maintain permanent and current records of the zoning ordinance, including but not limited to, all zoning maps, amendments, conditional uses, exceptions, variances, appeals and applications thereof and records of hearings thereon.
- (E) Maintain for distribution to the public a supply of copies of the zoning map or maps, the compiled text of the zoning ordinance, and the rules of the Board of Zoning Appeals. A fee for each copy shall be charged to defray the cost of printing.
- (F) Provide such clerical, technical and consultative assistance as may be required by the Manhattan Urban Area Planning Board or the Board of Zoning Appeals and other boards, commissions and officials in the exercise of their duties relating to these regulations.

PART 2. BUILDING PERMIT AND OCCUPANCY CERTIFICATES

14-201. Applications for Building Permit. Every application for a building permit, except those specifically exempted by the Zoning Administrator, shall be accompanied by the following:

- (A) The approved and filed Final Plat or Replat, whichever is applicable, of the

piece or parcel of land, lot, lots, block or blocks, or parts or portions thereof, drawn to scale showing actual dimensions of the piece or parcel, lot, lots, block or blocks, or parts or portions thereof, according to the recorded plat of such land.

(B) A site plan, dimensioned and drawn to scale in such form as may, from time to time, be prescribed by the Zoning Administrator, showing the location, ground area, height, and bulk of all present and proposed structures, drives and parking lots, the building setback lines in relation to lot lines, waste disposal areas, the use to be made of such present and proposed structures on the land, and such other information as may be required by the Zoning Administrator for the proper enforcement of these regulations.

(C) A landscape and screening plan showing the location, size, quantity and species of all proposed plantings, and the location, height and design of all walls and fences. Such plan shall meet or exceed all applicable requirements of these regulations, and shall indicate the size of all landscape materials at the time of planting.

14-202. Issuance of Building Permit. Applications for building permits shall be reviewed in a timely manner for compliance with these regulations. No building permit shall be issued unless and until it has been approved by the Zoning Administrator as being in compliance with these regulations. Any building permit issued in conflict with the provisions of these regulations shall be null and void.

14-203. Occupancy Certificates. If any other code adopted by the City requires that an occupancy certificate be issued, said certificate shall not be issued unless and until it has been approved by the Zoning Administrator as being in compliance with these regulations. Any occupancy certificate issued in conflict with these regulations shall be null and void.

PART 3. THE BOARD OF ZONING APPEALS

14-301. Authorization. A Board of Zoning Appeals shall be established by the Governing Body of the City as prescribed by law.

14-302. Membership. The Board of Zoning Appeals shall consist of five (5) members all of whom shall be residents of the City of Manhattan and shall serve without compensation. No member shall hold any other public office in the City. The members of the Board of Zoning Appeals shall be appointed by the Mayor with the consent of the Governing Body of the City. The members first appointed shall serve respectively for the following terms or until their respective successors are appointed and qualify; one (1) for one year, two (2) for two years, and two (2) for three years. Each member succeeding the first five (5) members, except those appointed to fill an unexpired term, shall serve for a term of three years. Vacancies upon the Board of Zoning Appeals shall be filled for the unexpired term of the

member whose office has become vacant in the same manner as is provided for the appointment of such member. The Board of Zoning Appeals shall annually elect one of its members as chairperson. The Board of Zoning Appeals may also select from among its members a vice-chairperson and such other offices as the Board of Zoning Appeals shall consider necessary. The Board of Zoning Appeals shall appoint, as secretary, the staff person designated by the City Manager. The secretary shall maintain records and keep minutes of all proceedings before the Board of Zoning Appeals. The members of the Board of Zoning Appeals shall serve at the pleasure of the City Commission, and may be removed at any time for any reason by a majority vote of the City Commission.

14-303. Jurisdiction. The Board of Zoning Appeals shall have the following jurisdiction and authority:

- (A) To hear and decide appeals subject to the procedure and standards set out in Part 4 of Article XIV where it is alleged there is an error in any order, requirement, decision or determination (all herein referred to collectively as “decision”) made by the Zoning Administrator under these regulations.
- (B) To hear and rule upon applications for variances from the provisions imposed by these regulations in the manner, and subject to the procedure and standards set out in these regulations.
- (C) To hear and rule upon applications for exceptions from the provisions imposed by these regulations in the manner, and subject to the procedure and standards set out in these regulations.
- (D) To hear and rule upon applications for conditional use permits in the manner, and subject to, the procedure and standards set out in these regulations.
- (E) To hear and decide all matters referred to it upon which it is required or authorized to rule by these regulations or applicable state law.

14-304. Meetings. All meetings of the Board of Zoning Appeals shall be held at the call of the chairperson and at such other times as the Board of Zoning Appeals may determine.

14-305. Hearings and Rules. The presentation of all evidence in matters considered by the Board of Zoning Appeals at hearings required by these regulations, shall be open to the public; however, any deliberation may upon a vote of a majority of the members present be conducted in closed session. Any person may appear and testify at a hearing, either in person or by a duly authorized agent or attorney. The chairperson, or in his/her absence the vice-chairperson may administer oaths and may compel the attendance of witnesses. The Board of Zoning Appeals shall keep minutes of its proceedings showing evidence presented, findings of fact by the Board of Zoning Appeals, decisions of the Board and the vote of each member upon each question, or if absent or failing to vote, indicating such fact. Records of all

official actions of the Board of Zoning Appeals shall be filed in the Office of the Zoning Administrator and shall be open to public inspection during reasonable business hours. The Board of Zoning Appeals shall adopt and make available to the public its own rules of procedure not in conflict with the provisions of these regulations or the applicable Kansas statutes.

14-306. Finality and Judicial Review of Decisions of the Board of Zoning Appeals. All decisions and findings of the Board of Zoning Appeals, on appeal or upon an application for a conditional use permit, exception, or a variance, shall be final decisions, and shall, in all instances, be subject to judicial review in the manner provided by the applicable Kansas statutes.

PART 4. APPEALS

14-401. Authorization. An appeal from a decision of the Zoning Administrator with respect to the interpretation or application of these regulations may be taken to the Board of Zoning Appeals by any person aggrieved, or by any officer of the City, County or any governmental agency or body affected by such decision of the Zoning Administrator.

14-402. Time for Appeals. The Board of Zoning Appeals shall prescribe the time for taking appeals by general rule. Appeals shall be taken within the prescribed time by filing a notice of appeal with the Office of the Zoning Administrator. The notice of appeal shall specify the grounds for such appeal. Upon receipt of a notice of appeal, the Zoning Administrator shall forthwith transmit to the Board of Zoning Appeals all of the papers constituting the record upon which the decision being appealed was based.

14-403. Stay of Proceedings. An appeal shall stay all legal proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Zoning Appeals, after the notice of appeal has been filed, that by reason of facts stated in the certificate a stay would, in the Zoning Administrator’s opinion, cause imminent peril to life or property. In such case the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Zoning Appeals, or by a court of record on application, on notice to the Zoning Administrator and on due cause shown.

14-404. Hearing and Notice.

(A) The Board of Zoning Appeals shall select a reasonable time and place for the hearing of the appeal. Public notice of the time, place, date and subject of such hearing shall be published once in the official city newspaper at least twenty (20) days prior to the date of hearing. A copy of such notice shall be mailed to each party in interest, to the Planning Board; and if action directly affecting specific property is the subject of the appeal, then to owners of all property within 200 feet of the boundaries thereof. The Board

of Zoning Appeals may give such additional notice as it may from time to time by rule provide. Any party in interest may appear and be heard at the hearing in person, by agent, or by attorney.

(B) The applicant shall be responsible for posting signs on the property in question to give notice of the public hearing, in the same manner as described in Section 15-203 of these regulations.

14-405. Decision of Appeals. The Board of Zoning Appeals may affirm or reverse, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and to that end shall have all the powers of the Zoning Administrator, may attach appropriate conditions and may issue or direct the issuance of a permit. The concurring vote of three members of the Board of Zoning Appeals shall be necessary to reverse, wholly or partly, modify, or attach any additional conditions to any decision or determination appealed from the Zoning Administrator under these regulations. A final decision of the Board of Zoning Appeals occurs upon the concurring vote of three members of the Board on the appeal at the public hearing. The Board of Zoning Appeals shall render a written decision on the appeal without unreasonable delay after the close of a hearing.

14-406. Records of Appeals. The Zoning Administrator shall maintain complete records of all actions of the Board of Zoning Appeals with respect to appeals.

PART 5. VARIANCES

14-501. Authorization. When deemed necessary by the Board of Zoning Appeals, the Board may grant variances, on the basis and in the manner hereinafter provided, to authorize in specific cases a variance from the specific terms of these regulations which will not be contrary to the public interest, and where, due to special conditions, a literal enforcement of the provisions of these regulations, in an individual case, results in unnecessary hardship, provided that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not allowed by these regulations in such district.

14-502. Application for Variance. An application for a variance, together with an application for a building permit or sign permit when applicable, shall be filed with the Secretary of the Board of Zoning Appeals. Application shall be made using the forms provided by the Secretary of the Board of Zoning Appeals and shall contain in complete form all information requested on the forms, as well as such additional information as may be requested by the Secretary, or the Board. As part of the application, the applicant shall be obligated to provide a complete and correct list of all owners of record of all property located within 200 feet of the boundaries of the property to be affected by the proposed variance.

14-503. Hearing and Notice. The Board of Zoning Appeals shall select a reasonable time and place for the hearing. Notice shall be given in the manner required for hearings on appeals by Section 14-404 of these regulations except that no notice need be given to the Planning Board. Such notice shall contain the date, time and place of the hearing, the street address or common description of the property involved, and a brief description of the relief sought. The Board of Zoning Appeals may give such additional notice as it may from time to time, by rule provide. Any party in interest may appear and be heard at the hearing in person, by agent or by attorney.

14-504. Standards for Variances.

(A) The Board of Zoning Appeals shall not grant a variance as authorized in Section 14-501 hereof unless it shall, in each case, make specific written findings of fact, based upon the particular evidence presented to it, that all of the following standards have been met:

- (1) The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant;
- (2) The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
- (3) The strict application of the provisions of these regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
- (4) The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
- (5) Granting the variance desired will not be opposed to the general spirit and intent of these regulations.

14-505. Conditions and Restrictions. In granting a variance, the Board of Zoning Appeals may impose such conditions, safeguards and restrictions upon the premises benefited by the variance as may be necessary to comply with the standards set out in Section 14-504, and to carry out the general purpose and intent of these regulations. Failure to comply with all of the conditions, safeguards and restrictions placed on a variance shall constitute a violation of these regulations.

14-506. Decisions and Records. A final decision of the Board of Zoning Appeals occurs upon the majority vote of the Board on the variance request at the public hearing. The Board of Zoning Appeals shall render a written decision on an application for a variance without unreasonable delay after the close of a hearing. The Zoning Administrator shall maintain complete records of all actions of the Board of Zoning Appeals with respect to applications for variances.

14-507. Period of Validity. No variance granted by the Board of Zoning Appeals shall be valid for a period longer than 180 days from the date on which the Board of Zoning Appeals grants the variance, unless within such 180 day period: (1) a building permit is obtained and the construction, moving or remodeling of a structure is started, or (2) a use is commenced or continued pursuant to the variance. The Board of Zoning Appeals may grant additional extensions not exceeding 180 days each, upon written application, without notice or hearing.

PART 6. EXCEPTIONS

14-601. Authorization. When deemed necessary by the Board of Zoning Appeals, the Board may grant exceptions from the provisions of these regulations on the basis and in the manner hereinafter provided, and only in those instances where the Board is specifically authorized to grant such exceptions. In no event shall an exception be granted unless it is specifically listed as an exception in these regulations.

14-602. Application for Exceptions. An application for an exception, together with an application for a building permit or sign permit when applicable, shall be filed with the Secretary of the Board of Zoning Appeals. Application shall be made using the forms provided by the Secretary of the Board of Zoning Appeals and shall contain in complete form all information requested on the forms, as well as such additional information as may be requested by the Secretary, or the Board. As part of the application, the applicant shall be obligated to provide a complete and correct list of all owners of record of all property located within 200 feet of the boundaries of the property to be affected by the proposed exception.

14-603. Hearing and Notice. A hearing on the application shall be held and notice thereof given as specified under Section 14-503 of these regulations.

14-604. Authorized Exceptions. The Board of Zoning Appeals is hereby authorized to grant exceptions from the following requirements of these regulations:

- (A) Any bulk regulation.
- (B) Any requirement for surfacing of off-street parking, provided the Board also requires a reasonable schedule within which such surfacing requirement shall be complied with.
- (C) Any requirement related to the number of off-street parking spaces.
- (D) Any regulation related to the height or setback of signs.
- (E) Those portions of the Flood Plain Regulations described herein.
- (F) The height restrictions prescribed by the AO, Airport Overlay District, provided the Federal Aviation Administration (FAA) has provided a

determination of no adverse impact on the operation of air navigation facilities and the safe, efficient use of navigable airspace.

- (G) Any of the Compatibility Standards in the TNO, Traditional Neighborhood Overlay District, or the M-FRO, Multi-Family Redevelopment Overlay District.
- (H) Any of the following requirements in Article XII Telecom Structures: Section 12-109, Lot Size Requirements; Section 12-110 Bulk Regulations; Section 12-111 (C) pertaining to co-location; and Section 12-112 Use Limitations.
- (I) Any of the Front Yard Restrictions in Article VII Off-Street Parking and Loading, Section 7-102 (C)(2)–(4) pertaining to driveways, parking and landscaping.

14-605. Standards for Exceptions. The Board of Zoning Appeals shall not grant an exception as authorized in Section 14-604 hereof unless it shall, in each case, make specific written findings of fact, based upon the particular evidence presented to it, that all of the following standards have been met:

- (A) The property complies with all applicable requirements of these regulations, other than the one for which an exception is being requested;
- (B) The proposed exception will not cause a substantial adverse effect on nearby properties;
- (C) The exception desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;
- (D) The strict application of these regulations is unreasonable, or unnecessary when all facts and circumstances are considered. In determining this standard, the Board shall weigh all facts and circumstances and place whatever emphasis and relevance it deems to be appropriate on each. Examples of such facts and circumstances to be considered are as follows:
 - (1) Whether or not conditions of the property requiring the exception were created by the applicant with prior knowledge and disregard of applicable regulations;
 - (2) Whether or not the applicant acquired the property with knowledge of the conditions which require the exception and whether or not the consideration for the acquisition took into account such conditions;
 - (3) Whether or not there are reasonable alternatives which would allow the property to meet the strict application of these regulations; and
 - (4) Whether or not a granting of the exception will result in a relative

gain to the health, safety and general welfare of the Community;
and,

(E) Any other standards for exceptions that are specifically identified in these regulations.

14-606. Conditions and Restrictions. In granting an exception, the Board of Zoning Appeals may impose such conditions, safeguards and restrictions upon the premises benefited by the exception as may be necessary to comply with the standards set out in Section 14-605, and to carry out the general purpose and intent of these regulations. Failure to comply with all of the conditions, safeguards and restrictions placed on an exception shall constitute a violation of these regulations.

14-607. Decisions and Records. A final decision of the Board of Zoning Appeals occurs upon the majority vote of the Board on the exception request at the public hearing. The Board of Zoning Appeals shall render a written decision on an application for an exception without unreasonable delay after the close of the hearing. The Zoning Administrator shall maintain complete records of all actions of the Board of Zoning Appeals with respect to applications for exceptions.

14-608. Period of Validity. No exception granted by the Board of Zoning Appeals shall be valid for a period longer than 180 days from the date on which the Board of Zoning Appeals grants the exception, unless within such 180 day period: (1) a building permit is obtained and the construction, moving or remodeling of a structure is started, or (2) a use is commenced or continued pursuant to the exception. The Board of Zoning Appeals may grant additional extensions not exceeding 180 days each, upon written application, without notice or hearing.

PART 7. CONDITIONAL USES

14-701. Authorization. The Board of Zoning Appeals may grant the establishment of those conditional uses that are expressly authorized to be allowed as a conditional use in a particular zoning district. No conditional use shall be granted unless the Board of Zoning Appeals is specifically authorized by these regulations to grant such conditional use, and unless such grant complies with all of the applicable provisions of these regulations.

14-702. Application for Conditional Use Permit. An application for a conditional use permit, together with an application for a building permit when applicable, shall be filed with the Secretary of the Board of Zoning Appeals. Application shall be made using the forms provided by the Secretary of the Board of Zoning Appeals, and shall contain in complete form all information requested on the forms, as well as such additional information as may be requested by the Secretary, or the Board. As part of the application, the applicant shall be obligated to provide a complete and correct list of all owners of record of all property located within 200 feet of the boundaries of the property on which the proposed conditional use would be located.

14-703. Hearing and Notice. A hearing on the application shall be held and notice thereof given as specified under Section 14-503 of these regulations.

14-704. Standards for Conditional Use Permits. The Board of Zoning Appeals shall not grant a conditional use permit unless it shall, in each specific case, make specific written findings of fact, based upon the particular evidence presented to it, that all the following standards have been met:

- (A) The proposed conditional use complies with all applicable provisions of these regulations, including lot size requirements, bulk regulations, use limitations, and performance standards.
- (B) The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.
- (C) The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:
 - (1) The location, nature and height of buildings, structures, walls and fences on the site, and
 - (2) The nature and extent of landscaping and screening on the site.
- (D) Off-street parking and loading areas will be provided in accordance with the standards set forth in Article VII of these regulations, and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.
- (E) Adequate utility, drainage, and other such necessary facilities have been or will be provided.
- (F) Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
- (G) Any other standards for conditional uses that are specifically identified in these regulations.

14-705. Conditions and Restrictions. In granting a conditional use, the Board of Zoning Appeals may impose such conditions, safeguards and restrictions upon the premises benefited by the conditional use as may be necessary to comply with the standards set out in Section 14-704, and to carry out the general purpose and intent of these

regulations. Failure to comply with all of the conditions, safeguards and restrictions placed on a conditional use shall constitute a violation of these regulations.

14-706. Decisions and Records. A final decision of the Board of Zoning Appeals occurs upon the majority vote of the Board on the conditional use request at the public hearing. The Board of Zoning Appeals shall render a written decision containing specific findings of fact on an application for a conditional use without unreasonable delay after the close of the hearing. The Zoning Administrator shall maintain complete records of all actions of the Board of Zoning Appeals with respect to applications for conditional uses.

14-707. Period of Validity. No conditional use permit granted by the Board of Zoning Appeals shall be valid for a period longer than 180 days from the date on which the Board of Zoning Appeals grants the conditional use, unless within such 180 day period: (1) a building permit is obtained and the erection or alteration of a structure is started, or (2) a use is commenced or continued pursuant to the conditional use. The Board of Zoning Appeals may grant additional extensions not exceeding 180 days each, upon written application, without notice or hearing.

PART 8. FEES, PENALTIES AND ENFORCEMENT

14-801. Fees. Any application for a building permit, occupancy certificate, variance, exception, conditional use permit, or amendment, or the filing of a notice of appeal shall be accompanied by such fee as shall be specified from time to time by ordinance of the Governing Body of the City.

14-802. Penalties. Any violation of any provision of these regulations shall be punishable by a fine not to exceed five-hundred dollars (\$500) or by imprisonment for not more than six (6) months for each offense or by both such fine and imprisonment. Each day's violation shall constitute a separate offense.