

ORDINANCE NO. 2026-6

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF SEWARD, CHAPTER 410 ZONING AND SUBDIVISION, ARTICLE 44.8 BOARD OF ADJUSTMENT ESTABLISHMENT; APPEALS PROCEDURE; TO AMEND ARTICLE 44.9 BOARD OF ADJUSTMENT POWERS AND DUTIES; & TO AMEND ARTICLE 44.16 GRANTING OF VARIANCES (EXCEPTIONS) AND CONDITIONS; TO REPEAL ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; TO PROVIDE FOR AN EFFECTIVE DATE; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SEWARD AS FOLLOWS:

That Chapter 410 of the Municipal Code of the City of Seward is hereby amended as follows:

Section 1. That §410-44.8 is amended as follows:

**§ 410-44.8 Board of Adjustment establishment; appeals procedure.**

A. Establishment; appointment of members; rules and regulations; meetings.

- (1) A Board of Adjustment is hereby established to provide relief in situations of hardship or to hear appeals as provided by this section. ~~The Board shall consist of five regular members, plus one additional alternate member who shall attend and vote only when one member is unable to attend for any reason.~~
- (2) ~~The City Council shall serve as the Board of Adjustment. Each member shall be appointed by the Mayor with the approval of the City Council for a three-year term and is removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member of the Board shall be appointed from the Planning Commission, and the loss of membership on the Commission by such member shall also result in his/her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board.~~
- (3) The Board of Adjustment shall adopt rules and regulations in accordance with these regulations and the laws of the State of Nebraska pursuant to Neb. RS 19-901 to 19-914. The President of the City Council shall serve as the Chairperson. Meetings shall be held at the call of the Chairman Chairperson and at such other times as the Board may determine. Such Chairman Chairperson, or, in his their absence, the an acting Chairman Chairperson, 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. The Board shall keep a record of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. ~~A majority~~ Two-thirds of the Board shall constitute a quorum for the transaction of business.
- ~~(4) At least one member of the Board of Adjustment shall reside outside of the corporate boundaries of the City but within its extraterritorial zoning jurisdiction.~~

B. Procedure for appeals.

- (1) Appeals shall be made to the Board of Adjustment through the office of

the Zoning Administrator in written form as determined by the Zoning Administrator. The Board shall fix a reasonable time for the hearing of the appeal and shall decide the appeal within 30 days of the date of the public hearing. An appeal stays all proceedings in furtherance of the action, unless the Zoning Administrator certifies to the Board that by reason of the facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property.

- (2) The Board shall provide a minimum of 10 days' notice of a public hearing on any question before it. Notice of the hearing shall be posted in a conspicuous place on or near the property on which the application has been made; by publication in a newspaper of general circulation in the City of Seward and by written notice to the appealing party.
- (3) Upon the public hearing, any party may appear in person or by agent or attorney. The concurring vote of ~~four out of five members~~ two-thirds of the members of the Seward City Council, acting as the Board of Adjustment, 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 Unified Land Development Ordinance, or to effect any variation in such regulations.

Section 2. That §410-44.9 is amended as follows:

§ 410-44.9 **Board of Adjustment powers and duties.**

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

- (1) Administrative review: to hear and decide appeals when it is alleged there is error in any order, requirement, decision or determination made by the Building Official, or his/her designee, in the enforcement of these regulations or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under Neb. RS 19-929(3).<sup>2</sup>
- (2) Interpretation of Zoning Map: to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map.
- (3) Variances to relieve hardships relating to property: to authorize, upon appeal, variances from the strict application of these regulations where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, such strict application would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property.
  - (a) Requirements for grant of a variance. No such variance shall be authorized by the Board unless it finds that:
    - [1] Strict application of the zoning regulations will produce undue hardship.
    - [2] Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity.

- [3] 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.
- [4] The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.
- [5] The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to these zoning regulations.
- [6] The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any ordinance or resolution.

(b) Findings by Board. The Board of Adjustment shall make findings that ~~the~~ all requirements of Subsection A(3)(a) have been met by the applicant for a variance.

(c) Conditions for grant of variance.

- [1] In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with these regulations. 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 these regulations and punishable under § 410-44.15 of these regulations.
- [2] Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of these regulations in the district involved, or any use expressly or by implication prohibited by the terms of these regulations in said district.
- [3] No nonconforming use of neighboring lands, structures or buildings in the same district and no permitted or nonconforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

B. Board has powers of Building Official on appeals; reversing decisions of Building 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 these regulations, 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 Building Official from whom the appeal is taken.
- (2) The concurring vote of ~~four~~ two-thirds of the Seward City Council, acting as the Board of Adjustment, 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 these regulations, or to effect any variation in the application of these regulations.

Section 3. That §410-44.16 is amended as follows:

~~§ 410-44.16 Granting of variances (exceptions) and conditions.~~

~~In addition to the exceptions contained in this chapter, the Planning Commission may recommend and the City Council may grant variances from the provisions of these regulations, but only after determining that:~~

- ~~A. There are unique circumstances or conditions affecting the property that are not the result of action by the subdivider.~~
- ~~B. The variance is necessary for the reasonable and acceptable development of the property in question.~~
- ~~C. The granting of the variance will not be detrimental to the public or injurious to adjacent and nearby properties.~~

Section 4. REPEAL. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. WHEN OPERATIVE; PUBLICATION IN PAMPHLET FORM. This ordinance shall be published in pamphlet form and shall be in full force from and after its passage, approval and publication or posting as required by law.

Dated this 2<sup>nd</sup> day of June, 2026

CITY OF SEWARD, NEBRASKA

  
Joshua Eickmeier, Mayor

ATTEST:

  
Derek Bargmann, City Clerk

