

## ARTICLE 6

### BOARDS OF ADJUSTMENT

#### Section 6.1 General

There is hereby established two Boards of Adjustment, one for the City of Wagoner and one for the unincorporated portions of Wagoner County, as set out in the paragraphs below.

#### Section 6.2 City of Wagoner Board of Adjustment

##### Section 6.2.1 Appointment

The governing body of the municipality shall provide by ordinance for the appointment of a Board of Adjustment. The Board of Adjustment shall consist of five (5) members, each to be appointed for a term of three (3) years and removable for cause by the governing body, upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

##### Section 6.2.2 Meetings and Rules

The Board of Adjustment shall adopt rules in accordance with the provisions of this ordinance and other pertinent statutes. Meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. The Board of Adjustment shall be subject to the open meeting laws of the state and all meetings, deliberations and voting of the board shall be open to the public. The Board of Adjustment 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, and shall keep records of all official actions, all of which shall be immediately filed in the office of the Board of Adjustment and shall be public records.

##### 6.2.3 Powers

The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance;
2. To hear and decide special exceptions to the terms of the ordinance upon which the Board of Adjustment is required to pass under such ordinance;
3. To authorize in specific cases such variances from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the

provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done; and

4. Exceptions and/or variances may be allowed by the Board of Adjustment only after notice and hearing as provided in Section 6.2.7 of this ordinance.

#### 6.2.4 Extent of Relief

- A. In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with the provisions of the ordinance, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.
- B. The concurring vote of at least three members of the Board of Adjustment shall be necessary to reverse any order, requirement and decision or determination of any such administrative officer, or to decide in favor of the applicant, or to decide any matter upon which it is required to pass under this ordinance or to effect any variation in this ordinance.

#### 6.2.5 Special Exceptions

The Board of Adjustment is hereby authorized to make special exceptions to the terms of this ordinance in appropriate cases and subject to appropriate conditions and safeguards in harmony with its general purpose and intent and only in accordance with general provisions contained in this ordinance.

The Board shall hold a hearing and may grant the special exception after finding that the special exception will be in harmony with the spirit and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Provided that the Board in granting a special exception shall prescribe appropriate conditions and safeguards, and may require such evidence and guarantee of bond as it may deem necessary to enforce compliance with the conditions attached. A special exception which has not been utilized within two years from the date of the order granting same shall thereafter be void. For the purposes of this provision, utilization shall mean actual use or the issuance of a building permit, when applicable, provided construction is diligently carried to completion.

##### 6.2.5.1 Power of the Board to Grant Conditional Use Permits

The Board shall have the power to hear and decide applications for conditional use permits for only such uses for which these regulations require such a permit. Where a conditional use permit is required and granted, it shall be issued prior to issuance of a building permit or a certificate of occupancy, and shall be

issued subject to the specific conditions upon which the Board has determined to grant the permit.

The applicant shall submit a written application for a conditional use permit indicating the section of these regulations under which the permit is sought, stating the grounds on which a permit is requested, and submitting a site plan showing the proposed development. The Board shall hold a public hearing as provided in paragraph 6.2.7.

The Board shall make written findings certifying that the application complies with the pertinent individual conditions of use as set forth in Article 3. That any additional conditions of use specified in the granting of the permit are compatible with the general provisions of these regulations, as well as the provisions for the district in which such use is permitted, and that satisfactory provisions and arrangements have been made concerning the following where applicable:

1. Safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site.
2. Safety from fire hazard and measures for fire control.
3. Protection of adjacent property from flood or water damage.
4. Noise producing elements and glare of vehicular and stationary lights and effects of such lights on the established character of the neighborhood.
5. Location, lighting, and types of signs and relation to signs to traffic control and adverse effects on adjacent properties.
6. Street size and adequacy of pavement width for traffic reasonably expected to be generated by the proposed use around the site and in the immediate neighborhood.
7. Adequacy of parking as determined by requirements of these regulations for off-street parking facilities in the use district in which the site is located; location of ingress and egress points for parking and off-street loading spaces; and protection of public health by surfacing on all parking areas to control dust.
8. Such other measures as will secure and protect public health, safety, morals, and general welfare.

The Board shall consider the application and site plan and shall grant or deny the application. In granting an application, the Board shall impose such requirements and conditions, in addition to those expressly stipulated in these regulations for the particular use, as the Board may deem necessary for the protection of adjacent properties and the public interest.

Authority to issue building or occupancy permits pursuant to the granting of a conditional use permit shall expire two years after the granting of the conditional use permit, except when the following conditions have been met:

1. Building permits have been issued, materials have been acquired, and the foundation of at least one building has been placed on the site, or
2. Where no construction is required, an occupancy permit has been issued, and actual operation of the use has been started.

After authority for issuance of a building or occupancy permit, pursuant to the granting of a conditional use permit, has expired by default, no building or occupancy permit shall be issued except under a conditional use permit grant pursuant to the new application.

#### 6.2.6 Variances

A variance from the terms of this ordinance may be granted, as provided in this article, only upon a finding by the Board of Adjustment that:

1. The application of the ordinance to the particular piece of property would create an unnecessary hardship;
2. Such conditions are peculiar to the particular piece of property involved; and
3. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of this ordinance or the comprehensive plan.

#### 6.2.7 Notice and Hearings — Contents of Notice — Minus Variance or Exceptions

Notice of a public hearing before the Board of Adjustment shall be given by publication in a newspaper of general circulation in the municipality where the property is located and by mailing written notice by the clerk of the Board of Adjustment to all owners of property within a three hundred (300) foot radius of the exterior boundary of the subject property. A copy of the published notice may be mailed in lieu of written notice; however, the notice by publication and written notice shall be published and mailed at least ten (10) days prior to the hearing.

The notice, whether by publication or mail, of a public hearing before the Board of Adjustment shall contain:

1. Legal description of the property and the street address or broad and approximate location in the municipality;
2. Present zoning classification of the property and the nature of the appeal, variance or exception requested; and
3. Date, time and place of the hearing.

On hearings, involving minor variances or exceptions, notice shall be given by the clerk of the Board of Adjustment by mailing written notice to all owners of property adjacent to the subject property. The notice shall be mailed at least ten (10) days prior to the hearing and shall contain the facts listed in the above paragraph. The Board of Adjustment shall set forth in a statement of policy what constitutes minor variances or exceptions, subject to approval or amendment by the municipal governing body.

#### 6.2.8 Procedure for Appeals to the Board of Adjustment

Appeals from the action of any administrative officer to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer.

An appeal shall be taken within ten (10) days by filing with the officer from whom the appeal is taken and by filing with the Board of Adjustment a notice of appeal specifying the grounds therefor. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment certified copies of all the papers constituting the record of the matter, together with a copy of the ruling or order from which the appeal is taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal has been filed with him that by reason of facts stated in the certificate a stay would in his 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 Adjustment or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown; and

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as personal, written notice to the parties in interest and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

#### 6.2.9 Appeals From the Board of Adjustment

An appeal from any action, decision, ruling, judgement or order of the Board of Adjustment may be taken by any person or persons, jointly or severally aggrieved, or any taxpayer or any officer, department, board or bureau of the municipality to the district court in the county in which the situs of the municipality is located.

The appeal shall be taken by filing with the municipal clerk and with the clerk of the Board of Adjustment, within fifteen (15) days after the decision of the Board of Adjustment, a notice of appeal. The notice shall specify the grounds for the appeal. No bond or deposit for costs shall be required for such appeal.

Upon filing the notice of appeal, the Board of Adjustment shall forthwith transmit to the court clerk the original, or certified copies, of all papers con-

stituting the record in the case, together with the order, decision or ruling of the board.

The appeal shall be heard and tried do novo in the district court. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

An appeal to the district court from the Board of Adjustment stays all proceedings in furtherance of the action appealed from, unless the chairman of the board, from which the appeal is taken, certifies to the court clerk, after the notice of appeal has been filed, that by reason of facts stated in the certificate a stay would in his opinion cause imminent 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 district court upon application or notice to the administrative officer in charge of the enforcement of the terms and provisions of the ordinance, and upon notice to the chairman of the board from which the appeal is taken, and upon due cause being shown.

The district court may reverse or affirm, wholly or partly, or modify the decision brought up for review. Costs shall not be allowed against the Board of Adjustment unless it shall appear to the district court that the Board acted with gross negligence or in bad faith or with malice in making the decision appealed from. An appeal shall lie from the action of the district court as in all other civil actions.

### Section 6.3 County Board of Adjustment

The Board of County Commissioners shall appoint a County Board of Adjustment composed of five (5) members, residents of Wagoner County, two (2) of whom shall reside outside the corporate limits of the City of Wagoner, for a term of three (3) years, except that when the first appointment is made hereunder, the term of office of two (2) of said members shall be one (1) year, the term of two (2) of said members shall be two (2) years, and the term of office of one (1) of said members shall be three (3) years. A member of such County Board of Adjustment, once qualified, can thereafter be removed during his term of office only for cause and after a hearing held before the Board of County Commissioners. In the event of the death, resignation or removal of any such member before the expiration of his term, a successor shall be appointed by the Board of County Commissioners to serve his unexpired term. All members of the County Board of Adjustment shall serve as such without compensation.

The County Board of Adjustment shall elect its own Chairman and shall adopt rules or procedures consistent with the provisions of this Act. The Chairman, or, in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses. Four (4) members of the County Board of Adjustment shall constitute a quorum. All meetings of the County Board of Adjustment shall be open to the public and a public record shall be kept of all proceedings:

The County Board of Adjustment may, with the approval of the Board of County Commissioners, appoint such employees as may be necessary and may incur necessary

expenses, within the limits of the appropriations authorized by the Board of County Commissioners.

For each petition and for each request for a public hearing, the County Board of Adjustment shall collect a fee the amount thereof to be fixed by the respective Boards of County Commissioners which such fees shall be deposited with the County Treasurer as required by law, and credited to the General Fund of the county, and report thereof made to the Board of County Commissioners each month. Publication notices and transcripts on appeal shall be paid for by parties requiring or requesting the same.

### 6.3.1 Appeals to Board — Powers and Duties

Appeals to the County Board of Adjustment may be taken by any person aggrieved or by a public officer, department, board or bureau affected by any decision of the County Inspecting Officer in administering the county zoning regulations or building line and setback regulations. Such appeals shall be taken within a period of not more than ten (10) days, by filing written notice with the County Board of Adjustment and the County Inspecting Officer, stating the grounds thereof. An appeal from the County Board of Adjustment shall stay all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken shall certify to the Board of Adjustment that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. The County Board of Adjustment shall have the following powers and it shall be its duty:

1. To hear and decide appeals where it is alleged that there is error of law in any order, requirement, decision or determination made by the County Inspecting Officer in the enforcement of the county zoning regulations.
2. To hear and decide requests for map interpretations or for decisions on other special questions upon which it is authorized to pass by the regulations adopted by the Board.
3. Where, by reason of exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this Act would result in peculiar and exceptional difficulties to or exceptional and demonstrable undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such demonstrable difficulties or hardships, provided such relief can be granted without substantially impairing the intent, purpose, and integrity of the zone plan or other element of the comprehensive plan as embodied in the zoning regulations and map.

A variance from the terms of these regulations shall not be granted by the Board unless and until:

1. A written application for a variance is submitted demonstrating:
  - (a) That there exist special conditions and circumstances of the type specified above, which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.
  - (b) That said special conditions and circumstances do not result from actions of the applicant;
  - (c) That literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these regulations;
  - (d) That granting the variance requested will not confer on the applicant any special privilege that is denied by these regulations to other lands, structures, or buildings in the same district.
2. The Board shall hold a public hearing as provided in Paragraph 6.3.1.
3. The Board shall make a finding that the representations in the application responding to the requirements of Paragraph 6.3.1 are valid.
4. The Board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
5. The Board shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of these regulations, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of land, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

Under no circumstances shall the Board 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.

In granting any variance, the Board may prescribe appropriate 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 Article 7.

In exercising the above powers, such Board of Adjustment may, in conformity with the provisions of this ordinance and other pertinent statutes, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

In acting upon any appeal, such Board of Adjustment shall, in its consideration of and decision thereon, apply the principles, standards and objectives set forth and contained in all applicable regulations, ordinances and resolutions and in the comprehensive plan.

### 6.3.2 Special Exception

The Board of Adjustment upon application and after hearing subject to the procedural and substantive standards and requirements set forth herein, may grant special exceptions as set forth in this ordinance. A request for a special exception shall be initiated by the filing of an application with the Board, and shall be set for public hearing in accordance with the rules established by the Board.

The Board shall hold the hearing, and upon the concurring vote of three members may grant the special exception after finding that the special exception will be in harmony with the spirit and intent of this ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Provided that the Board in granting a special exception shall prescribe appropriate conditions and safeguards, and may require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions attached. A special exception which has not been utilized within two years from the date of the order granting same shall thereafter be void. For the purposes of this provision, utilization shall mean actual use or the issuance of a building permit, when applicable, provided construction is diligently carried to completion.

#### 6.3.2.1 Power of the Board to Grant Conditional Use Permits

The Board shall have the power to hear and decide applications for conditional use permits for only such uses for which these regulations require such a permit. Where a conditional use permit is required and granted, it shall be issued prior to issuance of a building permit or a certificate of occupancy, and shall be issued subject to the specific conditions upon which the Board has determined to grant the permit.

The applicant shall submit a written application for a conditional use permit indicating the section of these regulations under which the permit is sought, stating the grounds on which a permit is requested, and submitting a site plan showing the proposed development. The Board shall hold a public hearing as provided in paragraph 6.3.4.

The Board shall make written findings certifying that the application complies with the pertinent individual conditions of use as set forth in Article 3. That any additional conditions of use specified in the granting of the permit are compatible with the general provisions of these regulations, as well as the provisions for the district in which such use is permitted, and that satisfactory provisions and arrangements have been made concerning the following where applicable:

1. Safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site.
2. Safety from fire hazard and measures for fire control.
3. Protection of adjacent property from flood or water damage.
4. Noise producing elements and glare of vehicular and stationary lights and effects of such lights on the established character of the neighborhood.
5. Location, lighting, and types of signs and relation to signs to traffic control and adverse effects on adjacent properties.
6. Street size and adequacy of pavement width for traffic reasonably expected to be generated by the proposed use around the site and in the immediate neighborhood.
7. Adequacy of parking as determined by requirements of these regulations for off-street parking facilities in the use district in which the site is located; location of ingress and egress points for parking and off-street loading spaces; and protection of public health by surfacing on all parking areas to control dust.
8. Such other measures as will secure and protect public health, safety, morals, and general welfare.

The Board shall consider the application and site plan and shall grant or deny the application. In granting an application, the Board shall impose such requirements and conditions, in addition to those expressly stipulated in these regulations for the particular use, as the Board may deem necessary for the protection of adjacent properties and the public interest.

Authority to issue building or occupancy permits pursuant to the granting of a conditional use permit shall expire two years after the granting of the conditional use permit, except when the following conditions have been met:

1. Building permits have been issued, materials have been acquired, and the foundation of at least one building has been placed on the site, or

2. Where no construction is required, an occupancy permit has been issued, and actual operation of the use has been started.

After authority for issuance of a building or occupancy permit, pursuant to the granting of a conditional use permit, has expired by default, no building or occupancy permit shall be issued except under a conditional use permit grant pursuant to a new application.

### 6.3.3 Appeals to District Court

An appeal to the District Court from any decision, ruling, judgement or order of the County Board of Adjustment may be taken by any person or persons, firm or corporation, jointly or severally, aggrieved thereby, or any department, board or official of government by filing with the clerk of the Board within ten (10) days a notice of such appeal. No bond shall be required for such appeal, but costs may be required in the District Court as in other cases. Upon filing of such notice, the clerk of the Board shall forthwith transmit to the clerk of the District Court the originals or certified copies of all papers constituting the record in such case, together with the order, judgement or decisions of said Board. Said cause shall be tried de novo in the District Court and said Court shall have the same power and authority as the County Board of Adjustment, together with all other powers of the District Court in law or in equity. An appeal to the Supreme Court from the decision of the District Court shall be allowed as in other cases.

### 6.3.4 Notice of Public Hearing

Notice of all public hearings herein provided for shall be given by one (1) publication in a newspaper of general circulation in the municipality and the county at least fifteen (15) days prior to the date of such hearing.

## ARTICLE 7

### ENFORCEMENT AND ADMINISTRATION

#### Section 7.1 Zoning Clearance Permit

The Zoning Clearance Permit is a permit issued by the Zoning Administrator which states that a particular development meets all of the requirements of the Zoning Ordinance. It is not a building permit and does not authorize construction, it simply clears the land and structure in terms of zoning and authorizes the Building Inspector to issue the building permit. This permit also provides a good check for the applicant in that any irregularities can be eliminated before the detailed plans are prepared.

##### 7.1.1 Existing Buildings

Any building, structure or use lawfully existing at the time of enactment of this Ordinance may be continued even though such building, structure or use does not conform with the provisions of this Ordinance. However, no building or other structure shall be erected, constructed, enlarged, altered, or repaired, in such a manner as to prolong the life of the building; nor shall the use of any land or building or other structure be changed without a Zoning Clearance Permit issued authorizing such construction, alteration, repair or use changes as being in compliance with the provisions of this Ordinance.

##### 7.1.2 Application

An application for a Zoning Clearance Permit shall be made to the Zoning Administrator by the owner or proposed occupant of the building or land to be occupied or used, and said application shall state the location and legal description of said property and set out in detail the character and nature of the use to be conducted thereon. Within three days the Zoning Administrator shall grant or deny said Zoning Clearance Permit in accordance with the terms of this Ordinance.

##### 7.1.3 Accompanying Material

All applications for Zoning Clearance Permits shall be accompanied by a plat plan, drawn to scale on suitable paper, showing the actual dimensions of the lot to be built upon, and the size and location of the building to be erected and such other information as may be necessary to satisfy the requirements of these regulations.

##### 7.1.4 Fees

Zoning Clearance Permits shall not be issued until a fee of five dollars (\$5.00) shall have been paid.

##### 7.1.5 Penalties

Any persons, firm or corporation violating any provisions of this Ordinance is guilty of a misdemeanor and shall be fined not less than five dollars (\$5.00)