

Recommended by the Planning Commission on June 1, 2020

NEWTON ORDINANCE NO. 5014-20

NORTH NEWTON ORDINANCE NO. 635-20

A JOINT ORDINANCE OF THE CITIES OF NEWTON, KANSAS AND NORTH NEWTON KANSAS, AMENDING ARTICLE XIII. OF THE ZONING ORDINANCES OF THE CITIES OF NEWTON AND NORTH NEWTON, KANSAS, PERTAINING TO THE JOINT BOARD OF ZONING APPEALS AND VARIANCES AND REPEALING THE ORIGINAL ARTICLE XIII.

BE IT ORDAINED BY THE GOVERNING BODIES OF THE CITIES OF NEWTON, KANSAS AND NORTH NEWTON, KANSAS:

SECTION 1. Article XIII. Of the Zoning Ordinances of the Cities of Newton and North Newton, Kansas, pertaining to the Joint Board of Zoning Appeals and Variances, is hereby amended to read as follows:

ARTICLE XIII

JOINT BOARD OF ZONING APPEALS

13.1. General Provisions:

- 13.1-1. Authorization: A Joint Board of Zoning Appeals has been established by the Newton City Commission and the North Newton City Council pursuant to K.S.A.12-759.
- 13.1-2. Membership: The Newton/North Newton Area Planning Commission shall perform the duties of the Joint Board of Zoning Appeals. The officers of the Newton/North Newton Area Planning Commission shall also serve as officers of the Joint Board of Zoning Appeals.
- 13.1-3. Meetings: All meetings of the Joint Board of Zoning Appeals shall be held at the call of the Chairman and at such other times as the Board may determine; and shall be open to the public.
- 13.1-4. Records: The Joint Board of Zoning Appeals shall keep minutes of its proceedings, showing evidence presented, findings of fact by the Board, decisions of the Board and the vote upon each question. Records of all official actions of the Board shall be filed in its office and shall be a public record.
- 13.1-5. Filing Fee: For the purpose of wholly or partially defraying the cost of the proceedings prescribed herein, including publication costs, the applicant wishing

to appear before the Joint Board of Zoning Appeals shall pay a fee in the amount of one-hundred (\$100.00).

- 13.1-6. List of Property Owners: Any person desiring a variance, temporary structure and use permit, or a substitution of a nonconforming use shall file with the application a certified ownership list of names and addresses of all owners of all properties lying within 200 feet of the outer limits of the land in question.
- 13.1-7. Powers: The Joint Board of Zoning Appeals shall have the following powers and duties pursuant to K.S.A. 12-759 *et seq.*:
- A. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the Zoning Administrator or any other administrative official in the enforcement of the Zoning Ordinance.
 - B. To hear and decide upon applications for variances from the regulations and restrictions imposed by this Ordinance in the manner and subject to the procedures and standards set forth in this Article.
 - C. To hear and decide upon applications for temporary structure and use permits provided such use is of a temporary nature and does not involve the erection of a substantial structure. A zoning certificate for such use shall be granted in the form of a temporary and revocable permit for not more than 12 months subject to such conditions as will safeguard the public health, safety, conveniences and general welfare.
 - D. To hear and decide upon applications for a substitution of nonconforming use pursuant to Article XII, of the Zoning Ordinance.
 - E. To hear and decide, in accordance with the provisions of any regulations, requests for interpretation of any map and all other matters referred to it upon which the Board is required or authorized to pass by this Ordinance.
 - F. In exercising the abovementioned powers, the Board may 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 shall be proper, and to that end shall have all the powers of the administrative officer from whom the appeal is taken. The concurring vote of a majority of members present shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or to decide in favor of the applicant or any matter upon which it is required to pass under this Ordinance, or to effect any variation in this Ordinance.

13.2. Appeals to the Joint Board of Zoning Appeals:

- 13.2-1. Authorization: An appeal from a decision of the Zoning Administrator or any other administrative official or agency with respect to the interpretation or application of this Ordinance may be taken to the Joint Board of Zoning Appeals by any person aggrieved or by any officer, department, board or governmental agency or body affected by such decision of the Zoning Administrator, or other administrative official or agency.
- 13.2-2. Time for Appeals: The Board of 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 to the Joint Board of Zoning Appeals specifying the grounds therefore and paying the fee specified. The official or agency from whom the appeal is taken, when notified by the Board or its agent of such appeal, shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed was based.
- 13.2-3. Stay of Proceedings: An appeal shall stay all legal proceedings in furtherance of the action appealed from unless the Zoning Administrator or other administrative official or agency certifies to the Joint Board of Zoning Appeals, after notice of the appeal has been filed, that by reason of specified facts stated in the certificate of a stay would, in his/their judgment, 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 a court of record upon application; upon notice to the Zoning Administrator; and upon due cause shown.
- 13.2-4. Hearing and Notice: The Joint Board of Zoning Appeals shall fix a reasonable time and place for the hearing of the appeal or any other matter referred to it. 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 fixed for hearing. A copy of such notice shall be mailed to each party in interest. Any party in interest may appear and be heard at the hearing in person, by agent or by attorney.
- 13.2-5. Decision: The Joint Board of Zoning Appeals shall render a written decision on the appeal without unreasonable delay after the close of the hearing, and in all cases, within thirty (30) days after the close of the hearing. In rendering the decision, the Joint Board of Zoning Appeals shall be bound by the provisions of this Ordinance.

13.3. Variances:

- 13.3-1. Authorization of Variances: The Joint Board of Zoning Appeals may authorize such variances from the terms of this Ordinance as will not be contrary to the public interest. Variances may be authorized only when the Board has made

findings of fact based upon the specific standards set forth in this Article, that owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in unnecessary hardship for the owner, lessee or occupant of land or structures.

13.3-2. Application for Variance: A written application for a variance shall be filed with the Joint Board of Zoning Appeals which shall contain the following information, as well as such additional information as may be prescribed by rule or regulation of the Board:

- A. The particular requirements of this Ordinance which prevent the proposed use or construction.
- B. The characteristics of the subject property which prevent compliance with the requirement of this Ordinance.
- C. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction.
- D. The particular hardship which would result if said particular requirements were applied to the subject property or structure.

13.3-3. Notice and Hearing: The Board shall fix a reasonable time for the hearing of an appeal or any other matter referred to it. Notice of the time, place and subject of such hearing shall be published once in the official city newspaper in the case of the City at least 20 days prior to the date fixed for hearing. A copy of the notice shall be mailed to each party to the appeal.

13.3-4. Standards for Granting Variances: The Board of Zoning Appeals shall not grant a variance as authorized by Section 13.3-1 of this Article unless the Board makes a finding that all of the following conditions have been met:

- A. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant;
- B. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
- C. That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
- D. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and

E. That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.

13.3-5. **Conditions and Restrictions:** In granting a variance, temporary structure and use permit, or a substitution of a nonconforming use, the Board may impose such conditions, safeguards and restrictions upon the subject property as may be necessary to insure compliance with the standards set forth in this Article, to reduce or minimize any potentially injurious effect of such variance upon other property, and to fulfill the general purposes and intent of this ordinance. Failure to comply with any of the conditions or restrictions imposed on the variance shall constitute a violation of this ordinance.

13.3-6. **Prohibitions:** Under no circumstances shall the Board grant a variance to allow a use that is not permissible under the terms of this Ordinance in the district involved. No nonconforming use of adjacent lands or structures in the same district and no permitted or nonconforming use of adjacent lands or structures in the same district and no permitted or nonconforming use of lands or structures in other districts shall be considered grounds for the issuance of a variance. Some variances are not within the jurisdiction of the Board, including:

- A. Building or fire code variances;
- B. Variances that would allow a prohibited use or prohibited sign;
- C. Variances used to vary state or federal laws or regulations unless such authority is expressly granted to the City.

13.3-7 **Expiration of Approval.** In the event that the variance applicant fails to commence the development activity within one-hundred and eighty (180) days after the variance has been granted, the such variance shall expire.

13.3-8. **Decision:** The decision shall be rendered in the manner required and subject to the provisions of Section 13.2-5 of this Article.

13.4. Exceptions:

13.4.1 Then deemed necessary by the Board of Zoning Appeals, the Board may grant exceptions from the zoning regulations on the basis and in the manner hereinafter provided:

- A. In those instances where the Board is specifically authorized to grant such exceptions and only under the terms of the zoning regulation.

- B. In no event shall exceptions to the provisions of the zoning regulation be granted where the use or exception contemplated is not specifically listed as an exception in the zoning regulation. Further, under no conditions shall the Board of Zoning Appeals have the power to grant an exception when conditions of this exception, as established in the zoning regulation by the governing body, are not found to be present.

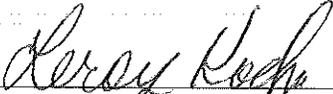
13.5. Appeals.

- 13.5-1. Any person, official or government agency dissatisfied with any order or determination of the Board may bring an action in Harvey County District Court to determine the reasonableness of any such order or determination. Such appeal shall be filed within thirty (30) days of the final decision of the Board.

SECTION 2. Original Article XIII. of the Zoning Ordinances of the Cities of Newton, Kansas, and North Newton, Kansas, is hereby repealed.

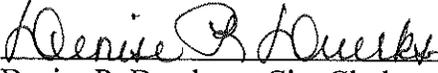
SECTION 3. This Ordinance shall not be effective unless it is duly adopted by the governing bodies of both the City of Newton, Kansas, and the City of North Newton, Kansas; and, upon such adoption, this ordinance shall take effect and be in force from and after its summary publication in the official newspapers of said Cities.

PASSED AND ADOPTED by the governing body of the City of Newton, Kansas, this 9th day of June 2020.



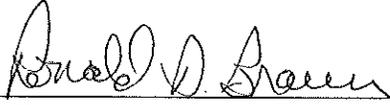
Leroy Koehn, Mayor

ATTEST:



Denise R. Duerksen, City Clerk

PASSED AND ADOPTED by the governing body of the City of North Newton, Kansas, this 8th day of June 2020.



Ron Braun, Mayor

ATTEST:



Patricia S. Redding, City Clerk