

ORDINANCE RECORD

REDFIELD DIRECT E2401275KV

ORDINANCE NO. 1535

AN ORDINANCE TO AMEND SECTION 32.03 OF THE LA VISTA MUNICIPAL CODE, REGARDING THE BOARD OF ADJUSTMENT AND BOARD OF APPEALS; AND TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES PREVIOUSLY ENACTED, SEVERABILITY, PUBLICATION AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AS FOLLOWS:

Amendment of Section 32.03. Section 32.03 of the La Vista Municipal Code is hereby amended to read as follows:

“§ 32.03 BOARD OF ADJUSTMENT AND BOARD OF APPEALS.

(A) The Mayor shall appoint, with the consent of the City Council, a Board of Adjustment which shall consist of five regular members plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason. Each member of the Board shall serve a term of three years, unless reappointed, and shall be removable only for cause by the Mayor, with the consent of the City Council, upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by such member shall also result in his or her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment. After the effective date of this section, the first vacancy occurring on the Board of Adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city at such time as more than 200 persons reside within such area. Thereafter, at all times, at least one member of the Board of Adjustment shall reside outside the corporate boundaries of the city but within its extraterritorial zoning jurisdiction.

(Neb. RS 19-908)

(B) The members of the Board shall serve without compensation and may be required, in the discretion of the Mayor and City Council, to give a bond in a sum set by resolution of the Mayor and City Council and conditioned upon the faithful performance of their duties. The Board shall conduct an organizational meeting in January of each year and elect from its membership a Chairperson and a Secretary. It shall be the duty of the Secretary to keep complete and accurate minutes of all Board meetings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the City Clerk and shall be public record. All meetings of the Board shall be open to the public and shall be held at such times as the Chairperson may, in his or her discretion, call a meeting, and at such other times as the Board may determine. Special meetings may also be held upon the call of any three members of the Board. At least four members of the Board shall constitute a quorum for the purpose of doing business. The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to Neb. RS 19-901 to 19-914.

(C) It shall be the duty of the Board

(1) To hear and decide appeals pursuant to Neb. Rev. Stat. Section 19-910 where it is alleged there is error in any order, requirement, decision or determination made by a city official based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures; provided, however, any order or decision of the Building Inspector under any standard code adopted, or modified and adopted, in Title XV ("Standard Codes"), shall be appealed to the Board of Appeals as provided in subsection (F) below.

(2) To hear and decide, in accordance with the provisions of the zoning regulations, requests for interpretation of any map; and

(3) Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the 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, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the

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property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning regulation.

(4) No such variance shall be authorized by the Board unless it finds that:

- (a) The strict application of the zoning regulation would produce undue hardship;
- (b) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- (c) 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; and
- (d) 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.

No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

(D) In exercising the above-mentioned 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 ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken. The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such city official or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variance in such regulation. (Neb. RS 19-910)

(E) The Board shall be responsible for making such reports and performing such other duties as the Mayor and City Council may designate. Neither the Mayor nor any member of the City Council shall serve as a member of the Board of Adjustment. No member of the Board of Adjustment shall serve in the capacity of both Chairperson and Secretary of the Board.

(F) Board of Appeals. Members of the Board of Adjustment also shall constitute and serve as the members of the Board of Appeals for purposes of appeal of any decisions of the Building Inspector under Standard Codes; specifically:

- (1) The Board of Appeals shall have the same number of members and alternate members, qualification requirements for membership, and term of office as provided in subsection (A) above. Each appointment to the Board of Adjustment pursuant to subsection (A) also shall constitute appointment of such person to the Board of Appeals for purposes of hearing and deciding appeals of orders or decision by the Building Official pursuant to Chapter 150 and Standard Codes, and
- (2) Resignation, removal or other termination of any member from the Board of Adjustment also shall constitute resignation, removal or termination of such member from the Board of Appeals.
- (3) Provided however, members of the Board of Appeals shall serve at the pleasure of the Mayor, and may be removed at any time by the Mayor, with or without cause, subject to approval of the City Council. Any vacancy resulting from removal of a member of the Board of Appeals pursuant to this subsection (3) shall be filled for the remaining term by appointment by the Mayor, subject to approval of the City Council, with a person having such qualifications as the Mayor determines appropriate.
- (4) Unless otherwise specified by the Board of Appeals, the Chairperson and Secretary of the Board of Adjustment from time to time also shall serve as the Chairperson and Secretary of the Board of Appeals.

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- (5) The owner of real property or improvements, or his or her agent or occupant may appeal any order or decision of the Building Inspector under the Standard Codes to the Board of Appeals. Appeal to the Board of Appeals shall not stay any order or decision of the Building Inspector, unless otherwise specified by the Board of Appeals.
- (6) Provisions of this subsection (F), 32.03 or this Code that are applicable to the Board of Appeals shall apply notwithstanding any provisions of any standard codes adopted, adopted and modified, or referenced in Chapter 150, (together "Standard Codes") to the contrary. If there is any conflict, inconsistency or ambiguity between or among the provisions of subsection (F), 32.03 or this Code and provisions of any Standard Codes with respect to the Board of Appeals, the provisions of subsection (F), 32.03 or this Code shall govern and control, in that order.

(G) Except as otherwise provided to the contrary in Neb. Rev. Stat. Sections 19-907 through 19-912 for meetings or hearings of the Board of Adjustment, the following rules shall apply to meetings and hearings of the Board of Adjustment or Board of Appeals.

- (1) All regular and special meetings of the Board shall be open to the public and shall be held at such times as the Chairperson, Secretary, Board or City Clerk may determine in her, his or its discretion. The Secretary or Secretary's designee shall keep complete and accurate minutes of all Board meetings and records of all Board examinations and other official actions in accordance with applicable law, all of which may be filed in the office of the City Clerk and shall be public record.
- (2) The number of Members constituting a quorum for purposes of holding a meeting or hearing shall be equal to at least two-thirds of the number of membership positions of the Board.
- (3) Appeal of any order or decision of a City official shall be perfected within twenty days after the date of such order or decision by filing a written notice of appeal with such City official and the Secretary of the Board specifying the grounds for such appeal. Hearing on such appeal shall be held by the Board within a reasonable time after the appeal is filed, as determined by the Chairperson, Secretary, Board or City Clerk. The City Clerk or City Clerk's designee shall transmit to the Board such papers, documents or other information constituting the record upon which the City official's order or decision was based.
- (4) The Mayor, City Council, City Administrator or Board shall be authorized to appoint a hearing officer ("Hearing Officer") to assist, advise and take such actions on behalf of the Board in connection with procedural or technical aspects of a hearing on an appeal. Provided, however, the Board at any time may elect to perform any action designated in this Code for the Hearing Officer. In all events the Board will decide an appeal.
- (5) The Hearing Officer will convene the meeting and hearing and act on any initial procedural or administrative matters. The hearing will be conducted by the Hearing Officer in open session, except for any closed session in accordance with the Open Meetings Act. The hearing shall be recorded by a qualified court reporter and by stenographic means. A transcript of the proceeding shall be made available to all parties upon request and upon payment of the fees to transcribe the proceeding. The Hearing Officer or any Board Member or notary public is authorized to administer oaths. The Hearing Officer will rule on any objections, evidentiary or procedural matters. The hearing will follow a format similar to civil trials and shall include:
 - a. Each of the following, first by the City official or such official's representative ("Appellee"), followed by the party appealing the official's order or decision, or such party's representative ("Appellant"), unless otherwise indicated:

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- i. Opening statement by each party.
- ii. Presentation of evidence, including, examination of witnesses and introduction of exhibits by each party.
- iii. Cross examination, objections by opposing party to any examination, testimony or exhibits, and Hearing Officer rulings on any such objections.

- b. Appellee's rebuttal of Appellant's evidence.
- c. Closing argument of Appellee and Appellant, and Appellee rebuttal of Appellant's closing argument.

(6) Unless otherwise elected by the Board, a hearing will be conducted as an informal hearing. The Board may admit and give probative effect to relevant evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs, and exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence, and shall give effect to the privilege rules of evidence in sections Neb. Rev. Stat. Sections 27-501 through 27-513 but shall not otherwise be bound by usual common-law or statutory rules of evidence. Fees and costs of a court reporter shall be paid by the party or parties against whom a final order or decision is rendered. Informality in the proceeding or manner of taking testimony shall not invalidate any decision of the Board.

(7) Upon the conclusion of all evidence, the Board shall deliberate and decide the appeal based on whether the order or decision of the City official was within the City official's authority and whether there was sufficient relevant evidence presented at the hearing to support the order or decision of the City official. Evidence is sufficient if the City official could reasonably find the facts as the City official did, and the action of the City official was not arbitrary or capricious. An action is "arbitrary and capricious" if it is taken in disregard of the facts or circumstances of the case, without some basis which would lead a reasonable and honest person to the same conclusion. The Board shall have the power and authority to affirm, modify or reverse the City official's order or decision, subject to any conditions the Board determines necessary or appropriate. The affirmative vote of at least four members of the Board shall be required to reverse or modify an order or decision of the City official. Notwithstanding anything in this paragraph to the contrary, the Hearing Officer may provide the Board a proposed decision that the Board in its sole discretion may elect to accept, modify and accept as modified, or reject. Any order or decision of the Board shall be final. A copy of any order or decision of the Board reduced to writing shall be available for inspection in the office of the City Clerk

(8) The Board shall be authorized to adopt any additional rules as the Board determines necessary or appropriate."

Repeal of Conflicting Provisions. Section 32.03 and all ordinances and any parts of ordinances as previously enacted that are in conflict with this ordinance or any part hereof are hereby repealed.

Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this ordinance and each section, subsection, sentence clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Publication and Effective Date. This ordinance shall be in full force and effect from and after passage, approval and publication in book, or pamphlet, or electronic form in accordance with applicable law.

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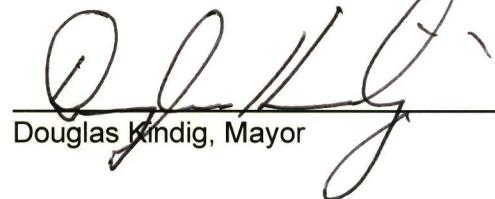
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PASSED AND APPROVED THIS 18TH DAY OF FEBRUARY 2025.



ATTEST:

CITY OF LA VISTA


Douglas Kindig, Mayor



Rachel D. Carl, CMC
City Clerk