

**BYLAWS AND RULES OF PROCEDURE  
OF  
The Village of Duncan, Nebraska Board of Adjustment**

**CHAPTER 1 - BYLAWS**

**ARTICLE 1 - ESTABLISHMENT**

Section 1 - ESTABLISHMENT: The Village of Duncan Board of Adjustment (hereinafter called the "Board"), is duly established under Section 19 of the Laws of Nebraska and Ordinance No. 09-165 of the Village of Duncan, Nebraska Board of Trustees.

Section 2 - NAME: The legal name of the Board shall be the Village of Duncan, Nebraska Board of Adjustment and commonly known as the Village Board of Adjustment.

**ARTICLE 2 - COMPOSITION OF THE BOARD**

Section 1 - MEMBERSHIP: The Village Board of Trustees shall, in accordance with Section 19.911 Neb. Rev. Stat. serve as the Board of Adjustment.

Section 2 - COMPENSATION: All members of the Board shall serve without compensation, except for any compensation provided as members of the Village Board of Trustees.

Section 3 - TERMS OF OFFICE: The term of each Board of Adjustment member shall be the same as the term of office on the Village Board of Trustees.

**ARTICLE 3 - OFFICERS AND STAFF**

Section 1 - BOARD OFFICERS: The Chairperson and Vice Chairperson of the Village Board of Trustees shall serve as the Chairperson and Vice Chairperson of the Board of Adjustment. The Secretary of the Board of Adjustment shall be the Village Clerk.

Section 2 - DUTIES OF OFFICERS:

Chairperson: The Chairperson shall preside over Board meetings and, on behalf of the Board, shall exercise general supervision over the affairs of the Board. The Chairperson, or in his/her absence the acting Chairperson, shall have the authority to administer oaths, compel the attendance of witnesses, make determinations of points of order and procedure and to sign all official documents and communications of the Board. The Chairperson shall also have the authority to establish public hearing dates and have the Village Planning and Zoning Administrator publish notice for public hearings in connection with any proper petition to the Board without the consent of the Board members.

Vice-Chairperson: The Vice-Chairperson shall have the responsibilities and authorities of the Chairperson during the absence or disability of the Chairperson. The Vice-Chairperson shall have the authority to act as Chairperson in the event a conflict of an interest by the Chairperson.

Secretary: The Secretary shall be responsible for keeping a complete and accurate record of all Board proceedings, including keeping of records and minutes and shall certify all official acts of the Board, including votes of each member on all matters for which a vote is required.

In the event of the absence or disability of both the Chairperson and Vice-Chairperson, the Secretary shall preside over the meeting, provided however, that the first and only item of business shall be the election of a Chairperson pro-tempore, or in the absence of a quorum, to announce that all business to come before the Board is continued to the next meeting of the Board and to announce the date, time and location of the next meeting of the Board. In the absence of the elected Secretary, the Chairperson shall appoint a Secretary pro-tempore.

#### **ARTICLE 4 - GENERAL RULE**

Section 1 - **RULES:** In all matters not otherwise provided for by statute, the applicable Zoning Regulations, or these Bylaws and Rules of Procedure, the most recent edition of Robert's rules of Order available to the Board, as interpreted by the presiding officer, shall govern the conduct of the Board's meetings.

#### **ARTICLE 5 - AUTHORITY**

Section 1 - **POWERS AND DUTIES:** In accordance with Nebraska Law and the Village of Duncan Zoning Regulations, the Board shall have the following powers and duties and ONLY these powers and duties, all subject to the conditions and safeguards set forth in the applicable Zoning Regulations:

- A. Adopt Rules: The Board shall have the authority to adopt these uniform rules and procedures pertaining to investigations, applications, conduct of public hearings, findings of fact and Board actions.
- B. Appeals: The Board shall have the authority to hear and decide appeals from the Zoning Administrator where it is alleged that there is an error in any order, requirement, decision or determination made by the Zoning Administrator in the administration and enforcement of the applicable Village Zoning Regulations.
- C. Map Interpretation: The Board shall have the authority to hear and decide requests for interpretation of any map contained in the Comprehensive Plan and the Official Zoning Map of the Village.
- D. Variance: The Board shall have the authority to hear and authorize variances from the terms and requirements of the applicable Village Zoning Regulations where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property existing at the time of adoption 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 requirement of the applicable Village Zoning Regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, provided that authorization of a variance shall be in strict compliance with the limitations for granting of a variance as set forth in the applicable Village Zoning Regulations.

- E. Enforcement: The Board shall have the authority to invoke any legal and authorized remedy for the enforcement of the Village Zoning Regulations and the decisions of the Board, including the authority to order the discontinuance and stay of work or construction on any premises when such work or construction is in violation of the requirements of the Village Zoning Regulations.
- F. Authorization of Others: The Board shall have the authority to authorize the Zoning Administrator, the Village Attorney, or other official or person to act on behalf of the Board in filing and pursuing litigation necessary to enforce the Village Zoning Regulations.

Section 2 - **POWER OF ADMINISTRATIVE OFFICIALS:** In exercising the above-mentioned powers and duties, the Board, in conformity with Nebraska law, these Bylaws and Rules of Procedure and the requirements and limitations set forth in the Village Zoning Regulations, may reverse or affirm, wholly or partially, or modify any order, requirement, decision or determination and to this end shall have all the powers of the officer or agency from whom the appeal is taken.

## **CHAPTER 2 – RULES OF PROCEDURE**

### **ARTICLE 1 - MEETINGS**

Section 1 - **NUMBER OF MEETINGS:** Meetings of the Board shall be held at the call of the Chairperson of the Board and at such other times as the Board determines it is necessary to conduct its affairs, responsibilities and duties. Special meetings of the Board may be called at any time by the Chairperson or by any Two (2) of the regular Board members and notice of such special meetings shall be posted and/or published in accordance with Nebraska law and/or the Village Zoning Regulations.

All meetings of the Board shall be open to the public and conducted in accordance with the State of Nebraska Public Meetings and Disclosure laws. Executive sessions of the Board are prohibited unless such session shall deal exclusively with discussion of legal actions against or initiated by the Board. No action shall be taken by the Board during any executive session.

Any visitation by a quorum of the Board to any premises for which an application to the Board has been filed shall constitute a meeting of the Board and such visitation shall not be conducted unless and until proper notice of such meeting of the Board is provided. Any member of the Board, individually or members of the Board constituting less than a quorum of the board may visit any such premises without public notice being provided.

Section 2 - **RECORDS:** The Board shall adopt rules for transaction of its business and shall keep a record of its motions, votes of each member on each motion and its other transactions, determinations and findings. The records of the Board shall be maintained in the Office of the Village Clerk of Duncan and shall be a public record.

Section 3 - **QUORUM:** A quorum of the Board shall be a majority of the regular Board members (3 members) to transact business of the Board, except for the following types of petitions which may come before the Board which shall require a consenting vote of a minimum of Two Thirds (2/3) of the Board – a minimum of four (4) voting members:

- A. Reverse any order, requirement, decision, or determination of the Zoning Administrator on appeal;
- B. To decide in favor of a petitioner on any matter upon which the Board is required to pass as set forth in the Village Zoning Regulations;
- C. To approve any variance from the requirements of the Village Zoning Regulations.

No official business of the Board shall be transacted by the Board without a quorum (3 members) present and no public hearing shall be opened at any meeting of the Board unless a minimum of four (4) members are present.

Section 4 - **CANCELLATION OF MEETINGS:** Whenever it is ascertained that a quorum of the Board is or will not be present at any Board meeting, the Chairperson shall dispense with the meeting by opening the meeting and informing all in attendance that a meeting cannot be held due to lack of a quorum and that all petitions which were to have been presented to

the Board shall be continued to the specific date, time and location for the next meeting of the Board.

Section 5 - VOTING: The following rules shall apply to all actions of the Board which require adoption of a motion:

- A. Majority: No action of the Board shall be official unless such action is authorized by a vote of a majority of the members of the Board, provided that in deciding any appeal of an order, requirement, decision, or determination of the Zoning Administrator, in deciding in favor of the petitioner on any matter upon which the Board is required to pass under the requirements of the Village Zoning Regulations, or in deciding any variance from the requirements of the such Regulations, a minimum concurring vote of four (4) voting members shall be required.
- B. Voting Method: All votes of the Board shall be voice (roll call) vote duly recorded as to the vote cast by each voting member.
- C. Voting Required: Except in the case of a conflict of interest, as specified in Section 7 herein, all voting members of the Board present at each meeting of the Board shall vote on each matter for which a public hearing is held. An abstention from voting for any other reason shall be the same as casting a negative vote.
- D. Absentee Voting: Absentee or proxy voting by any Board member is prohibited. Members must be present to on any matter before the Board. In the event a member is absent for a part of public hearing, such member's eligibility to vote on the matter under consideration at such public hearing shall be determined by the Chairperson.

Section 7 - CONFLICT OF INTEREST: A Board member shall not participate in the discussion of any matter before the Board in which he/she has a direct or indirect ownership or financial interest nor shall such member vote on deciding such matter. A member shall declare, for the record, that he/she has such a conflict of interest prior to the discussion of any issue in which a conflict of interest exists and such member shall refrain from any discussion of the matter. Questions as to whether such a conflict of interest exists shall be determined by the Chairperson. When there is uncertainty as to the applicability of this Section, the member involved shall abstain from any discussion or vote on such matter. In all cases, the Secretary shall enter into the minutes of the Board the fact that a member (by name) declared or was declared by the Chairperson, to have a conflict of interest and abstained from all discussion and voting on the matter in which the conflict of interest exists.

Nothing in this Section shall prevent a member of the Board from presenting a petition before the Board on his/her own behalf, but members of the Board shall not appear before the Board representing or on the behalf of others.

Section 8 - EX PARTE COMMUNICATION: Any Board member who wishes to visit the premises for which an application to the board has been submitted may do so provided that any Board member who has any communication with an applicant after said applicant has filed

an application with the Board shall, prior to any discussion of the application at public hearing, publicly indicate that such communication occurred and shall indicate the items discussed in such communication.

Section 9 - **ORDER OF BUSINESS:** The order of business at meetings of the Board shall be as listed below, provided that such order of business may be changed by the Chairperson upon the consent of a majority of those members present.

1. Roll Call
2. Approval of Minutes
3. Public Hearings (including any public hearings continued from prior meetings)
4. Communications
5. Old Business
6. New Business
7. Reports and Recommendations
8. Adjournment

## **ARTICLE 2 - PUBLIC NOTICE AND HEARINGS**

Section 1 - **APPLICATION:** Each petition to the Board shall be on an application from prescribed by the Board and shall be accompanied by such information and exhibits as is specified on such application form together with payment of any applicable fees. Any communication purporting to be a petition that is not on the prescribed application form or does not contain all information requested on such form shall be considered incomplete and shall not be considered at public hearing and no fee shall be accepted.

Section 2 - **ELIGIBLE APPLICANTS:** Any person affected by the interpretation of any map contained in the Village of Duncan, Nebraska official Zoning Map, any person requesting a variance from the requirements of the applicable Village Zoning Regulations and any person, or their authorized representatives, aggrieved, or any officer, department, board or bureau affected by any decision of the Zoning Administrator may make application to or appeal to the Board. Appeals shall be taken within a reasonable time, as provided by these Rules of Procedure. Such appeals shall be evidenced by the signature of each person appealing a decision of the Zoning Administrator or by signature of a person having power of attorney for such person(s). Such appeals shall be in the form of a letter, signed by the person making such appeal and such letter shall specify the grounds for the appeal. Applications for map interpretations, variances or appeals shall be accompanied by payment of any fee established for such applications or appeals by the Village of Duncan Board of Trustees.

Section 3 - **ACTION BY ADMINISTRATIVE OFFICIAL:** The administrative official from whom an appeal is taken, when notified by the person making the appeal, shall notify the Board of the appeal, shall schedule a public hearing, shall cause public notice of the public hearing to be published and shall transmit all records regarding the appeal to the Board for its consideration.

Section 4 - **NOTICE OF PUBLIC HEARING:** Public notice of any petition filed with the Board which requires action of the Board at public hearing shall be given in by publication thereof in a newspaper of general circulation in the Village at least one (1) time ten (10) days prior

to such hearing. Proof of such publication of each public hearing notice shall be obtained by the Board and maintained in the records of the Board. In addition to the publication of notice, a notice shall be posted in a conspicuous place on or near the property for which action is pending. Such notice shall not be less than eighteen inches in height and twenty-four inches in width with a white or yellow background and black letters not less than one and one-half (1-1/2) inches in height. Such posted notice shall be so placed upon such premises that it is easily visible from the street nearest the same and shall be posted at least ten (10) days prior to the date of such hearing.

At the option of the Village Board of Trustees, in place of the posted notice provided above, the owners or occupants of the real estate within three hundred feet of the property for which action is pending may be personally served with a written notice thereof at least ten (10) days prior to the date of the hearing, if they can be served with such notice within Platte County. Where such notice cannot be served personally upon such owners or occupants in Platte County, a written notice of such hearing shall be mailed by first class mail to such owners or occupants addressed to their last known address at least ten (10) days prior to such hearing.

If record owner(s) of property included in any petition to come before the Board are non-residents of the Village, a written notice of such public hearing shall be mailed by certified mail (receipt requested) to the last known address of such owner(s) at least ten (10) calendar days prior to such public hearing. Determination of the last known address of such owner(s) shall be derived from the records of the Platte County Treasurer.

Section 5 - CONTENTS OF NOTICE OF PUBLIC HEARING: Any notice of public hearing required by the Village Zoning Regulations shall contain, at a minimum, the following information:

- A. A statement explaining the type of petition filed with the Board;
- B. The general location of the land included in such petition by address or other sufficiently identifiable geographic description regarding the location of such property.
- C. The legal description of the property included in the petition.
- D. The time, place and location of the public hearing to be conducted by the Board.
- E. A statement that the application associated with such petition may be examined in the Office of the Village Clerk of Duncan prior to the public hearing;
- F. A statement that all interested parties may offer oral comments at the public hearing and/or may file written comments with the board concerning the petition and that such comments shall be considered by the Board, provided such written comments are received by the Board prior to the public hearing date;
- G. Any other statement as may be required by law.

Section 6 -

**CONDUCT OF PUBLIC HEARINGS:** The Board shall utilize an agenda prepared by the Zoning Administrator to determine the order of business at each meeting. Public hearings on petitions submitted to the Board shall be heard in the order that applications for such petitions were received and in accordance with the Order of Business prescribed in these Rules of Procedure, except that the Order of Business may be changed by the Chairperson, upon the consenting vote of those Board members present. Each public hearing shall be conducted in accordance with the following procedure:

- A. The Chairperson shall request proof of notification of public hearing from the Zoning Administrator. In the event such public hearing notice was not published and/or posted or mailed notices were not given at least ten (10) days prior, the Chairman shall continue such public hearing to the specified date, time and place and shall instruct the Zoning Administrator to publish, post or mail such notice, including the revised date, time and place of such public hearing.
- B. The Chairperson shall request verification from the Zoning Administrator that the application for the petition to be heard at public hearing is complete in all respects, as required by the applicable application form(s) and with regard to any application submission requirements set forth in the applicable Village Zoning Regulations. If such application is incomplete, such petition shall be automatically continued to the next meeting of the Board and the Chairperson shall state the date, time and place of such next meeting and shall issue instructions to the petitioner that the application must be completed prior to the next Board meeting or the petition shall be removed from consideration by the Board until such time as it is complete.
- C. The Chairperson shall make a determination that the Board has the authority to act on the application filed with the Board.
- D. The Chairperson shall make a determination that the petitioner, his/her attorney or other authorized representative is present and desires to proceed with the public hearing or if the petitioner, his/her attorney or other authorized representative would like a continuance of the hearing or would like to withdraw the petition. If the petitioner, his/her attorney or other authorized representative is not present, such petition shall be automatically placed at the bottom of the Order of Business. If the petitioner, his/her attorney or other authorized representative is still not present when the public hearing for this petition is called again, such petition shall be automatically continued to the next meeting of the Board, as determined by the Chairperson, and all persons present shall be verbally notified of the date, time and place of such continued public hearing by the Chairperson.
- E. If the public hearing is to proceed, the Chairperson shall open the public hearing and the Board shall hear testimony in the following order:
  - 1. Presentation of the petition request by the petitioner or his/her attorney or other authorized representative;
  - 2. Presentation of comments or recommendations by the Zoning Administrator or other technical staff, agency, or consultant serving the Board, or from which the Board has sought input or advise;

3. Reading of any written communications or comments received by the Board regarding the petition;
4. Comments and questions by members of the Board;
5. Comments and questions by any members of the public either in support of or in opposition to the petition;
6. Rebuttals or final statement by the petitioner or his/her attorney or other authorized representative.

F. After all public comments have been heard, the Chairperson shall declare the public hearing closed and shall call for a motion for action on the petition. Additional public comment shall not be permitted after the closing of the public hearing, except at the discretion of the Chairperson. Board members may discuss the petition prior to any motion in order to clarify the issues pertaining to such petition. Any motion which is made and seconded is open for discussion by the Board members only, unless the Chairperson specifically invites additional comments by the petitioner or the public. The Chairperson shall have the authority to limit discussion by the Board or the public if such discussion is repetitious or irrelevant.

Section 6 - VOTING: Action on any matter requiring a public hearing by the Board must be made through passage of a motion. Failure of a motion due to lack of second or due to lack of the minimum required majority voting in favor or the motion shall not constitute any action by the Board. Each motion on any matter requiring a public hearing shall be decided by a roll call vote of all members present. All voting shall be in accordance with the requirements of Article 1, Section 6 of these Rules of Procedure. If a sufficient number of Board members are not present after any abstentions, action on the petition shall be continued to the next meeting of the Board, as determined by the Chairperson and the Chairperson shall verbally indicate to all persons present at the public hearing the date, time and place of such meeting. The votes cast by each member of the Board shall be recorded in the minutes of the board.

Section 7 - RULES OF CONDUCT: The following rules of conduct shall apply to and at all public hearings conducted by the Board:

A. Representation: A petitioner may appear in person, by agent or attorney and may present any supporting witnesses, evidence, statements and arguments in support of the petition. Persons in support of or in opposition to the petition may appear in person, by agent or attorney and may present witnesses, evidence, statements and arguments in favor of or in opposition to the petition. Any person interested in any petition before the Board shall have the right to be heard and such persons shall not be required to enter any written statement at the public hearing. A Board member and the Zoning Administrator may represent their own petition, but shall not under any circumstances represent others before the Board.

B. Board Participation: Board members shall be provided adequate opportunity to examine witnesses and question any evidence, statements and arguments presented in the interest of a fair and complete hearing.

C. Comments Addressed to the Chairperson: All comments the petitioner, his/her

agent or attorney or the members of the public present at any public hearing shall be addressed to the Board through the Chairperson. Comments and arguments between the petitioner, his/her agent or attorney and other persons in attendance at the public hearing shall be prohibited by the Chairperson.

- D. Authority of the Chairperson: The Chairperson shall have the authority to prohibit repetitious or irrelevant testimony and comments and shall have the authority to limit the length of testimony by each person to a length of time deemed appropriate for a fair and complete hearing.
- E. Orderly Conduct: Every person appearing before the Board shall abide by the order and direction of the Chairperson. Discourteous, disorderly, or contemptuous conduct shall not be permitted by the Chairperson and the Chairperson shall have the authority to have any person guilty of such conduct removed from the hearing room.

### **ARTICLE 3 - DISPOSITION OF PETITIONS**

Section 1 - **MOTIONS:** The final disposition of any petition duly filed and brought before the Board shall be in the form of a motion, properly seconded and adopted. Said motion shall specifically set forth one of the following forms of dispositions:

Section 2 - **DISMISSAL:** A petition may be dismissed from consideration by the Board in accordance with the following situations:

- A. Dismissal of Petitions: The Board may dismiss a petition after one (1) continuance if the petitioner or his/her authorized representative fails to appear to present the petition or if such petition has been improperly or incompletely filed and has not been modified after original consideration by the Board.
- B. Lack of Jurisdiction: The Board shall dismiss a petition if it finds that it has no authority of jurisdiction over the matter contained in the petition.

Section 3 - **WITHDRAWAL OF PETITIONS:** A petition filed with the Board may be withdrawn from consideration in accordance with the following situations and limitations:

- A. Withdrawal without Prejudice: Any petition may be withdrawn without prejudice, provided a written or verbal request from the petitioner or his/her agent or attorney is received by the Board at any time prior to any motion by the board for action on said petition.
- B. Withdrawal Not Permitted: No petition may be withdrawn after a motion has been made and seconded and a vote of the Board has been ordered by the Chairperson.

Section 4 - **AMENDMENT OF PETITIONS:** No petition shall be amended during any public hearing to increase the land area involved in the petition or to substantially change the petition without re-filing of a revised petition with re-notification of the public and notice of public hearing. Determination of whether a proposed amendment constitutes a substantial change shall be made by the Chairperson. Any petition may be amended to decrease the land area

involved or to allow minor changes in the petition without such re-filing and re-notification.

Section 5 - CONTINUANCE OF PETITIONS: A petition filed with the Board for consideration at public hearing may be continued to the next meeting of the Board in accordance with the following:

- A. Request by Petitioner: A petitioner or his/her agent or attorney may request a continuance of a petition, either verbally or in writing at any time prior to action on a motion of the Board regarding such petition. After one continuance, unless the petitioner intends to completely withdraw the petition, the petitioner shall be required to show good and sufficient cause for such continuance and it shall be within the Board's authority to grant or deny the continuance request.
- B. Motion by the Board: Any member of the board may at any time move to continue a petition before the Board. Such a motion when duly seconded and approved by a vote of the Board shall continue the petition to a date, time and place specified in the motion. The Board may include in such motion, such specific instructions for re-notification of the public and publishing of a public hearing notice if the Board determines such would be in the best interest of a fair and complete public hearing. If such re-notification is required, the petitioner shall not pay any additional fees unless the reason for the continuance was due to a lack of information or other incompleteness of the petitioner's application.
- C. Automatic Continuance: In the event that the Board cannot achieve a quorum or a minimum of four (4) concurring votes on any motions to approve or deny a petition, such vote shall be declared indecisive and the petition shall be automatically continued to the next meeting of the Board. When declaring an indecisive vote and a continuance of the petition, the Chairperson shall state the date, time and location of the next Board meeting at which the petition will be considered by the Board.
- D. Improper Notice: If the Chairperson shall find that proper notice of the public hearing has not been given, the Chairperson shall automatically continue the public hearing to the next meeting of the Board and the Chairperson shall instruct the Zoning Administrator to publish proper notice of the public hearing in accordance with the requirements of the Village Zoning Regulations. The Chairperson shall also state the date, time and location of the next Board meeting at which the affected petition shall be heard.

Section 6 - APPROVAL OF PETITIONS: The Board may approve or appeal presented before the Board in accordance with the requirements and limitations set forth in the applicable Village Zoning Regulations. Such approval may take either of the following forms:

- A. Conditional Approval: A motion to approve a petition may be conditional upon the petitioner's compliance with a requirement or requirements imposed by the board. Such conditions of approval shall be specifically stated in the motion to approve and recited to the petitioner. The Board may impose a time limit for the fulfillment of any such condition or conditions, provided such time limits are consistent with any applicable section of the Village Zoning Regulations. The

petitioner shall be required to notify the Zoning Administrator of the fulfillment of all such conditions. In the event any condition is not fulfilled or the time for compliance has expired, the Zoning Administrator shall issue a written request to the petitioner to show cause why the Board's conditional approval should not be revoked. The Board may investigate the matter and take such remedial action as it deems appropriate to assure the proper enforcement of its decisions and the requirements of the Village Zoning Regulations.

- B. Unconditional Approval: If the Board has no conditions to impose upon a petition, the Board may approve the petition as presented.

Section 7 - **SPECIFIC REQUIREMENTS IN APPROVAL OF A VARIANCE**: In any action by the Board with regard to approval of a variance, such action shall be taken in accordance with the limitations of Nebraska law and the requirements and limitations of the applicable Village Zoning Regulations and these Rules of Procedure. In any action to approve a variance, the Board shall make findings which shall be recorded in the minutes of the Board that:

- A. The strict application of any applicable provision of the applicable Village Zoning Regulation would, in each specific variance petition, result in at least one of the following:
1. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exceptional narrowness, shallowness or shape of the piece of property in questions;
  2. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exception topographic conditions on the piece of property in questions;
  3. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to other extraordinary and exceptional situation or condition of the piece of property in question.
- B. In authorizing any variance the Board shall also make findings, which shall be recorded in the minutes of the Board, that EACH of the following requirements for authorizing a variance can be met:
1. Such variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the applicable Village Zoning Regulations;
  2. The strict application of the applicable requirements of the applicable Village Zoning Regulations would produce an undue hardship upon the owner of the property included in the petition;
  3. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
  4. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by such variance;

5. The authorization of a variance is based upon reasons of demonstrable and exceptional hardship stemming from characteristics of the property involved in the petition and not for reasons of convenience, profit or desire of the property owner;
6. The condition or situation of the property included in such petition or the intended use of such 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 applicable Village Zoning Regulations.

Section 8 - **EXPIRATION OF APPROVAL:** Any petition approved by the Board, unless otherwise stipulated by the Board in its motion to approve such petition, shall expire and become null and void six (6) months after the date of such approval by the Board, unless the petitioner has substantially put into effect the use of the property for which the petition was approved or the petitioner can show just cause for not having implemented the approved petition.

Section 9 - **DISAPPROVAL OF PETITIONS:** If the Board approves a motion to deny any petition presented to it, such motion shall be approved by a minimum of four (4) voting members and the Board shall state the reason(s) for such denial and such reason(s) shall be recorded in the minutes of the Board.

Section 10 - **REFILING OF PETITIONS:** No petition which has been denied by the Board shall again be brought before the Board for hearing within six (6) months from the date of such denial unless the Board finds that there is a substantial change in the petition or circumstances affecting the petition or there is additional evidence to be presented. In such case, the matter may again be submitted for the Board's consideration upon approval of a motion to permit such resubmission by the Board.

**ARTICLE 4 - BOARD RECORDS**

Section 1 - **RESPONSIBILITY:** It shall be the duty of the Board to maintain all its records and files, including official minutes of the Board. The Chairperson shall appoint the Village Clerk or such other Village official to keep and maintain such records and files. All records of the Board shall be a public record and open to public inspection.

Section 2 - **MINUTES:** The Secretary of the Board shall prepare an accurate record of all public hearings and official actions of the Board and the minutes representing such record shall be made available to the public within ten (10) days following any meeting of the Board. Such minutes shall not, however, become official minutes of the Board until approved by the Board at its next meeting. The Board shall have the authority to require modifications to such minutes prior to approval to create a more accurate or detailed record of the Board's actions. Upon approval of the minutes by the Board, copies shall be made available to any interested party.

Section 3 - **AUDIO OR VIDEO TAPE RECORDINGS:** The Secretary of the Board may make taped or other mechanical recordings of the Board's proceedings. Such recordings, if made, shall remain on file in the office of the Zoning Administrator at least until the official minutes for which the Board's proceedings were recorded have been prepared and approved by the Board.

Such recordings shall not be removed from the office of the Village Clerk by any person other than by order of a court of competent jurisdiction. Interested persons may listen and/or watch such recordings in the office of the Village Clerk and may transcribe any information on such recordings.

Section 4 - PETITION APPLICATIONS AND FILES: A file shall be maintained for each application filed with the Board. Such files shall contain, at a minimum, the completed application form, the proof of public notice and such other supporting materials and exhibits pertaining to such application submitted by the petitioner or any other person, together with a copy of the section of the Board's official minutes which indicate the Board's action regarding the application.

**ARTICLE 6 - AMENDMENTS OF SUSPENSION OF BYLAWS AND RULES OF PROCEDURE**

Section 1 - AMENDMENTS: These Bylaws and Rules of Procedure may be amended by the Board at any meeting of the Board upon the affirmative vote of three (3) members of the Board, provided however, that the proposed amendment(s) shall have been presented in writing to the full Board at the previous meeting of the Board.

Section 2 - SUSPENSION: The suspension of any rule or procedure set forth herein may be authorized by the Board at any meeting of the Board upon the affirmative vote of three (3) Board members, provided however, that no rule or procedure which is required to comply with the Village Zoning Regulations or Nebraska law shall be suspended.

**ARTICLE 7 - SEPARABILITY**

If any section, clause, provision, or portion of these Bylaws and Rules of Procedure shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section, clause, provision or portion of these Bylaws and Rules of Procedure.

**ARTICLE 8 - CERTIFICATE OF ADOPTION**

The foregoing Bylaws and Rules of Procedure of the Village of Duncan, Nebraska Board of Adjustment are hereby adopted by affirmative vote of the Board on this 4th day of May, 2009.

---

Signature of Chairperson

---

Attest by Secretary