

# AGENDA

## **Board of Adjustment**

Monday, February 27, 2006  
City Hall Council Chambers

**\* Note New Meeting Time: 5:30 p.m. \***

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1. Call to Order
2. Approval of Board of Adjustment Minutes:  
February 28, 2005
3. Training: The Role of the Board of Adjustment  
CMC 21.60 (attached)
4. Election of Officers
5. Adjournment

*If you will be unable to attend this meeting, please contact Susan at the Planning Department office at 498-9240 no later than noon on the meeting date.  
(Responses may be e-mailed to [sbeeman@cityofcheney.org](mailto:sbeeman@cityofcheney.org))*

**BOARD OF ADJUSTMENT MINUTES**  
**February 28, 2005**

**BOARD MEMBERS PRESENT:** John Boots, Tom Davis, Vincent Barthels and John Matthews.

**BOARD MEMBERS ABSENT:** Clark Messex.

**STAFF PRESENT:** John Montague, Glenn Scholten and Susan Beeman.

**CALL TO ORDER:** Chairman Boots called the meeting to order at 5:28 p.m.

**APPROVAL OF MINUTES:** Mr. Barthels made a motion to accept the minutes of the December 27, 2004 Board of Adjustment meeting with the following correction: The last sentence in the third paragraph under 'Board Training' be stricken. Seconded by Mr. Matthews; motion carried unanimously.

**Amending Rules of Procedure:**

Mr. Barthels noted that he likes the idea of moving the regular meeting time from 7 p.m. to 5:30 p.m. Mr. Matthews agreed. Mr. Davis made a motion to approve the amended Rules of Procedure as presented. Seconded by Mr. Barthels; motion carried unanimously.

**Information Item - Board Training:**

Mr. Montague gave a report on the history of building permit activity over the last 10 years. He said that when the Building Department issues 600 to 700 permits each year, there are going to be some situations where a citizen feels irritated and wants to appeal the decision of the Building Official. The City recently adopted the International Codes, which have some changes from what the Board may be familiar with under the older building codes.

Mr. Montague reviewed definitions under the International Building Code, and discussed the difference between 'dwelling unit' and 'dwelling structure.' The property owner is the person with ultimate responsibility for the building.

Mr. Montague explained that the International Property Maintenance Code applies to all existing residential and non-residential premises. The intent of the code is to ensure public health, safety and welfare insofar as they are affected by the occupancy of buildings.

The International Building Code gives some latitude with regard to historic buildings, as long as they are safe. Mr. Montague continued to review and explain provisions of the code.

Mr. Boots asked if most appeals are going to be on the technical side. Mr. Montague said that would probably be the case, and we have the option of sending those to a hearing

examiner who has technical expertise to hear and make a recommendation to the Board. The City has given some thought to going to a hearing examiner system, but typically changes of that nature take a long time to enact.

Mr. Scholten commented that issuance of a variance must be supported by topography or an oddly-shaped parcel of land. The criteria in the code for a variance refers to “a grant of special privilege.” Mr. Scholten gave examples of what may constitute a grant of special privilege.

Mr. Davis noted that some jurisdictions periodically rewrite their zoning codes, taking into account variances that have been issued.

**Election of Officers:**

Mr. Matthews made a motion to elect Mr. Boots chairman by acclamation. Seconded by Mr. Davis; motion carried unanimously. Mr. Matthews made a motion to elect Mr. Davis vice-chairman. Seconded by Mr. Barthels; motion carried unanimously.

There being no further business for the Board of Adjustment, Mr. Davis made a motion to adjourn. Seconded by Mr. Barthels; motion carried unanimously. Chairman Boots adjourned the meeting at 6:21 p.m.

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John Boots, Chairman

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Susan Beeman, Secretary

## TITLE 21 ZONING\*

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### **Chapter 21.60 Board of Adjustment**

[21.60.010 Creation.](#)

[21.60.020 Meetings.](#)

[21.60.030 Powers and duties-Decisions of building official.](#)

[21.60.040 Powers and duties-Variances.](#)

[21.60.060 Written report.](#)

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#### **21.60.010 Creation.**

Pursuant to RCW 35A.63.110, a board of adjustment is established. "Board" when used in this chapter means the board of adjustment. "Zoning regulations" when used in this chapter means Title 21, as it now exists, and all changes, additions, and amendments thereto. The board shall consist of five members, all of whom shall serve without salary. The board members shall be appointed by the mayor with the consent of the council and shall consist of citizens having an understanding of the benefits of zoning to the municipality. In case any vacancy occurs in the membership of the board for any cause, the mayor shall fill the vacancy by making an appointment with the consent of the council. The members of the board may be removed by the mayor subject to the approval of the council, for such causes as he deems sufficient, which shall be set forth in a letter filed with the council. The initial membership shall consist of one member appointed for one year, one for two years, one for three years, and two for four years; and each appointment thereafter shall be for four years. Terms of members shall expire on the second Monday in January of the applicable year. No member of the board shall be a member of the planning commission or the city council. The director of community development or his/her designee shall be the secretary of the board, without a vote. (Ord. R-40 § 37, 1998; Ord. N-90 § 1(part), 1986).

### **21.60.020 Meetings.**

Meetings of the board shall be held at least once each year and at such other times as the chairman of the board may determine. There shall be a fixed place of meeting and all regular board meetings shall be open to the public. The presence of three members shall be necessary to constitute a quorum. (Ord. N-90 § 1(part), 1986).

### **21.60.030 Powers and duties-Decisions of building official.**

The board may review any interpretation of the provisions of the zoning regulations made by the building official, and any order, requirement, decision or determination relating thereto, in application of the specific provisions of the zoning regulations to any parcel of land and/or structure. The board may affirm or reverse the interpretation of the provisions of the zoning regulations made by the building official, and any order, requirement, decision or determination relating thereto; and the board's decision shall be based upon the records and the findings in each case and to that end it shall have all of the powers of the building official. (Ord. N-90 § 1(part), 1986).

### **21.60.040 Powers and duties-Variances.**

(a) Recognizing that there are certain uses of property that may or may not be detrimental to the public health, safety, morals and general welfare, depending upon the facts in each particular case, a limited power to grant variances for such uses as to size and setback requirements is vested, by specific mention in this chapter, in the board. The board shall have and exercise original exclusive jurisdiction in receiving, granting or denying all applications for such variance uses as provided for in this chapter and shall have the power to place in such permits, conditions or limitations in its judgment required to secure adequate protection to the zone or locality in which the use is to be permitted.

(b) No variance shall be granted by the board until after public hearing, as provided in Section 21.60.090, and until after the building official has found that the provisions of all other laws, with which compliance is required, have been fulfilled and until the board finds:

- (1) The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and
- (2) That the variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and zone in which the subject property is located; and
- (3) That the granting of the variance shall not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated. (Ord. N-90 § 1(part), 1986).

### **21.60.060 Written report.**

In deciding any of the matters referred to in Section 21.60.030 and 21.60.040, the board shall issue a written report giving the reasons for its decision, and including in its report the findings required in subsection (b) of Section 21.60.040. (Ord. N-90 § 1(part), 1986).

### **21.60.070 Rules of the board.**

The board shall adopt its own rules of procedure consistent with the terms of this chapter and keep a record of its proceedings, findings and actions in each case, and the rule of each member on each question considered in the proceedings. (Ord. N-90 § 1(part), 1986).

#### **21.60.080 Appeals to the board.**

Any person or persons aggrieved, or any officer, official of any department or commission of the city, jointly or severally, may file a written petition with the board for a review of the building official's interpretation of the provisions of the zoning regulations. The petition shall be filed with the office of the mayor within fourteen days after the petitioner receives either written or oral notice of the interpretation of any provision of the zoning regulations by which petitioner deems himself/herself to be aggrieved.

- (1) Each petition for appeal shall contain the legal description, address, or project name which the building official's interpretation directly affects;
- (2) The petition shall set forth the provisions of the zoning regulations which the building official has interpreted, the building official's interpretation, the petitioner's interpretation of the same and the reasons why the petitioner believes the interpretation of the building official to be incorrect;
- (3) The petition shall contain the name or names of all aggrieved parties and the names of all attorneys or agents representing the aggrieved parties together with the mailing address of the parties, their agents and attorneys;
- (4) The mayor's office shall transmit the petition to the board secretary, who shall fix a date for the hearing on the petition, which date shall not be less than fifteen days nor more than sixty days from the date upon which the petition was received by the mayor's office;
- (5) At least fifteen days prior to the date fixed for the hearing, the secretary of the board shall cause to be mailed to the petitioner or their agents or attorneys, and to the owners of affected property and abutting properties, at the respective addresses shown on the petition, a notice of the time and place of the hearing on the petition. At the hearing the petitioner may appear in person, by agent or by attorney. All city officials and other interested persons may be heard at the hearing in support of or in opposition to the petition. (Ord. T-84 § 11, 2005: Ord. P-44 § 1, 1992: Ord. N-90 § 1(part), 1986).

#### **21.60.090 Application and hearing.**

(a) All applications for variances permitted by this chapter shall be submitted in writing to the department of community development.

- (1) Each such application shall contain the name and mailing address of the applicant or applicants, the legal description of the property for which the variance or permit is requested, the nature of the variance or permit requested, and a concise statement as to the reasons why the property is suited to the variance or permit. The application shall be accompanied by a plot plan, drawn to scale, showing the dimensions of any and all existing structures and all structures to be erected on the property involved and the yard area thereof.
- (2) The board, director of community development, or his/her designee may, at any time, require the applicant to furnish such additional written information as may be necessary to enable the board to determine whether the application should or should not be granted.

(3) With each application for a variance, there shall be paid by the applicant, at the time of filing the application with the department of community development, a fee in accordance with Chapter 21.68 to defray the city's cost and expenses in processing the application, including the publication and mailing of the notices required by subsection (b) of this section. All fees so collected by the department of community development shall be transmitted to the office of the city treasurer who shall deposit the fees in the city's general fund.

(b) The director of community development or his/her designee shall fix a time, date and place for public hearing on the application before the board at its first sub-subsequent regular meeting falling not less than ten days after notice given in the following manner:

(1) By United States mail addressed to the applicant and to the owners of all adjoining or abutting property. Property separated from the proposed use by a street, highway, or other public road or alley shall be construed to be adjoining or abutting for the purpose of giving notice. Notices addressed to the last known address of the taxpayer of record according to the office of the Spokane County assessor shall be deemed proper notice to the owner of the property;

(2) By not less than two printed or written notices posted in a conspicuous place at or near the location of the proposed use;

(3) By publication of notice thereof in a newspaper of general circulation delivered in the city of Cheney, such publication to be made at least ten days prior to the hearing. The notice shall contain the name of the applicant or applicants, the legal description of the property involved, the street address or a common description of the property involved, the use requested, the date, time, and place of the public hearing thereon, and shall specify that any person interested may appear at the public hearing and be heard either for or against the application.

(c) At the public hearing the board shall proceed to hear all persons present who desire to be heard either for or against the application and shall render its decision upon the application at the conclusion of the hearing or as soon thereafter as reasonably possible. Any building permit thereafter issued for the property shall be in accordance with and subject to all terms and conditions contained in the decision of the board.

(d) The board shall maintain in the department of community development full and complete written record of all proceedings, factual findings and conclusions reached on any and all such applications. A copy of the findings and conclusions shall be transmitted to the building official. (Ord. R-40 § 39, 1998; Ord. N-90 § 1(part), 1986).

#### **21.60.100 Building permit time limit.**

Whenever the board by its decision authorizes the issuance of a permit under the terms of this chapter, if the building permit or occupancy permit is not obtained by the applicant within one year from the date of the board's written decision, the board's decision shall cease to be effective. (Ord. O-71 § 7, 1990; Ord. N-90 § 1(part), 1986).

#### **21.60.110 Order to stop work due to failure to comply.**

(a) In addition to all other penalties prescribed in this chapter, whenever, if, in the opinion of the building official, any person granted a permit under this chapter fails to comply with all of the terms, conditions or limitations of the permit and of the decision of the board authorizing the granting of the permit, the building official shall issue an order, in writing, requiring that all further work on the premises or the use thereof be stopped until the violation has been corrected. If the violation is not corrected or if the work on the premises or use thereof is not stopped or

suspended until the violation is corrected, the building official shall give written notice to the owner or occupant of the premises deemed in violation that the building official will apply to the board for an order revoking the permit. The written notice shall specify the time, the date and place of the hearing when the building official will appear before the board to request the revocation and shall advise the owner or occupant of the premises deemed in violation, sent by certified mail with a return receipt requested, at least five days prior to the date of the hearing. At the hearing, the board shall have the power to sustain or overrule the order of the building official and to revoke the permit granted. An affirmative vote of three members of the board is necessary before the request for revocation by the building official is denied.

(b) The board shall keep in the department of community development full and complete records of all proceedings, factual findings and conclusions of the board in all such hearings. (Ord. R-40 § 40, 1998; Ord. N-90 § 1(part), 1986).

#### **21.60.120 Application for review-Stay of proceedings.**

An application to the board for review of the building official's interpretation of the provisions of the zoning regulations or of any orders, requirements, decisions or determinations relating thereto made by the building official or by the board shall operate to stay all further proceedings from the building official and shall operate to prohibit the owner or occupant of the property in question from proceeding with the construction of and/or occupancy of the improvement or occupation of the premises in question. (Ord. N-90 § 1(part), 1986).

#### **21.60.130 Decisions of board final unless appealed to the superior court.**

All decisions and orders of the board shall be final and conclusive unless the original applicant or an adverse party makes application to the superior court of Spokane County for a writ of certiorari, a writ of prohibition or a writ of mandamus. For any appeal under this section, the city shall provide for a record that shall consist of the following:

- (1) Written findings and conclusions;
- (2) Written minutes of proceedings;
- (3) A taped transcript of proceedings. (Ord. T-84 § 12, 2005; Ord. N-90 § 1(part), 1986).

#### **21.60.140 Cost of transcript.**

Should a transcript of the proceedings of the board be desired by any person, other than as provided in Section 21.60.130, the same shall be furnished on request. The fee for preparing and certifying the transcript shall be in accordance with Chapter 21.68, which fee shall be paid to the department of community development. The applicant shall deposit the estimated cost thereof with the department of community development at the time of request. The secretary of the board shall be under no duty to surrender the transcript to any applicant until the fees are paid. All fees received shall be transmitted to the department of community development to the city treasurer for deposit in the general fund of the city. (Ord. R-40 § 41, 1998; Ord. N-90 § 1(part), 1986).

#### **21.60.150 Penalty for violation.**

Any person who wilfully violates or fails to comply with any order of the board or with any order of the building official issued in pursuance of the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof shall be subject to the penalties provided in Section 21.04.060. (Ord. N-90 § 1(part), 1986).