AN ORDINANCE introduced by Mayor James A. McClinton relating to the Board of Zoning Appeals, amending City of Topeka Code Chapter 48, Article XXXIV and §§ 2-192, 48-34.00, 48-34.01, 48-34.02, 48-34.03, 48-34.04, 48-34.05, 48-34.06, 48-34.07, 48-34.08, 48-34.09, 48-34.10, and 48-34.11 and specifically repealing said original sections.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That Topeka City Code § 2-192, Board of zoning appeals, is hereby amended to read as follows:

Topeka Board of zoning appeals.

(a) Purpose. The purpose of the Topeka board of zoning appeals is to administer the details of appeals from or other matters referred to it regarding the application of the zoning regulations of the city. The Topeka board of zoning appeals shall have the power to hear and determine appeals and refusals of building permits where it is alleged there is error in any order, requirement, decision or determination made by an administration official in the enforcement of the zoning regulations. The Topeka board of zoning appeals may grant exceptions to the zoning regulations or variances in accordance with the procedures set forth in Section the Comprehensive Zoning Regulations as codified at City of Topeka Code § 48-34.00 et seq. of the Comprehensive Zoning Regulations. The Topeka board of zoning appeals may also hear appeals of the sign ordinances. The board of zoning appeals shall conduct business in accordance with Section the Comprehensive Zoning Regulations as codified at City of Topeka Code § 48-34.00 et seq. of the Comprehensive Zoning Regulations.
Regulations.

(b) Membership. The Topeka board of zoning appeals shall consist of seven (7) members. Three members shall be appointed by the board of county commissioners and four shall be appointed by the mayor. None of the members shall hold any other public office by the city or county except that two (2) members may be members of the Topeka Planning Commission. The appointees made by the board of commissioners shall reside outside of inside the corporate area of the City of Topeka.

Section 2. That Topeka City Code § 48-34.00, Board of zoning appeals, is hereby amended to read as follows:

Topeka Board of Zoning Appeals.

There is hereby created a joint Topeka-Shawnee County Metropolitan Topeka Board of Zoning Appeals, hereinafter referred to as the metropolitan board of zoning appeals.

Section 3. That Topeka City Code § 48-34.01, Composition; appointment, is hereby amended to read as follows:

Composition; appointment.

The board of zoning appeals shall consist of seven (7) members of whom three shall be appointed by the board of commissioners and four shall be appointed by the mayor. None of the members shall hold any other public office by the city or county except that two (2) members may be members of the Topeka Planning Commission.

The appointees made by the board of commissioners shall reside outside of inside the corporate area of the City of Topeka.
Section 4. That Topeka City Code § 48-34.02, Terms of members, is hereby amended to read as follows:

Terms of members.
The members of the metro board of zoning appeals first appointed shall serve respectively for terms of one (1), two (2) or three (3) years, divided equally or as nearly equally as possible between the members. Thereafter, members shall be appointed for terms of three (3) years each. Vacancies shall be filled by appointment for the unexpired term. The members of the metro board of zoning appeals shall serve without compensation.

Section 5. That Topeka City Code § 48-34.03, Meetings, is hereby amended to read as follows:

Meetings.
The metro board of zoning appeals shall annually at its regular meeting in January of each year elect one (1) of its members as chairperson and vice-chairperson. The code enforcement director, City of Topeka public works department planning director, or designee, shall act as secretary for the board of zoning appeals. The board of zoning appeals shall adopt its own rules, consistent with the authority granted herein. The board of zoning appeals shall cause records of its meeting to be kept which records contain evidence presented, findings by the board of zoning appeals, decisions of the board of zoning appeals and the vote on each appeal case. Meetings shall be scheduled by the chairperson on a monthly basis.
Section 6. That Topeka City Code § 48-34.04, Powers and duties, generally, is hereby amended to read as follows:

Powers and duties, generally.

The metro board of zoning appeals shall administer the details of the application of this chapter, and regulations appeals from or other matters referred to it regarding the application of the zoning regulations in accordance with the general rules set forth in this chapter, including the power to hear and determine appeals from the refusal of building permits, home occupation permits pursuant to T.C.C. § 48-29.01(a)(9) where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning regulations and to permit exceptions to, or variations from this chapter in the classes of cases or situations, in accordance with the purpose, conditions and procedures specified in this chapter. In addition, the board of zoning appeals shall have power to hear and determine appeals from any person whose application for a permit to hang, erect or locate a sign under adopted sign regulations relating to size, height, and illumination has been denied or an appeal by any person desiring to appeal from any decision of the code enforcement director in the enforcement of the city sign regulations or any person who has been denied a sign permit by the county.
Section 7. That Topeka City Code § 48-34.05, Records, is hereby amended to read as follows:

Records.

Records of all official actions of the metre board of zoning appeals shall be filed within the office of the code enforcement director, City of Topeka public works department with the planning department and shall be a public record.

Section 8. That Topeka City Code § 48-34.06, Notice of appeal, is hereby amended to read as follows:

Notice of appeal.

Appeals to the metre board of zoning appeals may be taken by any person aggrieved or by any governmental body affected by any officer administering the provisions of this chapter or the provisions of the city/county sign regulations. Such appeal shall be taken within thirty (30) calendar days of the decision by filing a notice of appeal specifying the grounds thereof and the payment of the filing fee. Said notice of appeal and payment of the filing fee shall be made in the office of code enforcement director, City of Topeka public works planning department.

Section 9. That Topeka City Code § 48-34.07, Appeal stays proceedings, is hereby amended to read as follows:

Appeal stays proceedings.

An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies under oath to the metre board of zoning appeals that a stay would cause imminent threat to life or property. In such
case, proceedings shall not be stayed otherwise than by appropriate injunctive relief
granted by a court of competent jurisdiction.

Section 10. That Topeka City Code § 48-34.08, Notice and hearing, is hereby
amended to read as follows:

Notice and hearing.

The metre board of zoning appeals shall fix the time for the hearing of the
appeal, give notice of the time, place and subject in such hearing by publishing the
same once in the official city and county newspaper at least twenty (20) days prior to
the date fixed for the hearing and by mailing a copy of the notice to each party to the
appeal and to the planning commission. Notice of appeal as provided for herein shall
also be mailed to adjoining property owners, if any, by first class mail. Ownership of
adjoining properties shall be established by the records of the register of deeds office,
Shawnee County. Failure by any party or adjoining property owner to receive notice
shall not invalidate the appeal proceedings. Upon the hearing, any party may appear in
person or by agent or by attorney.

Section 11. That Topeka City Code § 48-34.09, Variances/authority, is hereby
amended to read as follows:

Variances/authority.

The metre board of zoning appeals may in specific cases authorize a variance
from the specific terms of this chapter which will not be contrary to the public interest
and where owing to special conditions a literal enforcement of the provisions of this
chapter will in an individual case result in unnecessary hardship and provided that the

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spirit of this chapter shall be observed, public safety and welfare secured and
substantial justice done. Such variance shall not permit either directly or indirectly any
use, including defined types of signs, not otherwise permitted by each district use
regulations. In no event shall the metre board of zoning appeals vary or otherwise grant
appeals from building and setback lines shown on a recorded plat of subdivision unless
done so in accordance with the findings set forth in this chapter.

Section 12. That Topeka City Code § 48-34.10, Conditions/findings, is hereby
amended to read as follows:

**Conditions/findings Findings.**

Before a variance may be granted, the metre board of zoning appeals shall find
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 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 this chapter 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, property or general welfare; and

(e) That granting the variance desired will not be opposed to the general spirit
and intent of this chapter.

The secretary of the board of zoning appeals shall cause all variances which are granted by the board of zoning appeals to be filed of record with the Register of Deeds office, Shawnee County, Kansas.

Section 13. That Topeka City Code § 48-34.11, Exceptions, is hereby amended to read as follows:

**Exceptions Conditions.**

The board of zoning appeals shall have the power to permit the following exceptions to the district regulations set forth in this chapter by the issuance of a permit maintaining conditions governing design, construction or operation of the exception so as to adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property:

(a) The reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God or public enemy to the extent of less than 50 percent of its fair market value where the board finds some compelling necessity requiring a continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly.

The board of zoning appeals may impose such conditions on a variance as are necessary to accomplish the purposes of the zoning regulations, to prevent or minimize adverse impacts upon the public and neighborhoods, and to ensure compatibility of the site with its surroundings. These conditions may include but are not limited to

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limitations on size, bulk and location; standards for landscaping, buffering and
screening, lighting and adequate ingress and egress, and guarantees of performance.

Section 14. That Topeka City Code Chapter 48, Article XXXIV, Appeals, is hereby amended by the addition of the following language:

Exceptions.

The board of zoning appeals shall have the power to permit the following exceptions to the district regulations set forth in this chapter by the issuance of a permit maintaining conditions governing design, construction or operation of the exception so as to adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property:

(a) The reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God or public enemy to the extent of less than fifty percent (50%) of its fair market value where the board finds some compelling necessity requiring a continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly.

Section 15. That Topeka City Code Chapter 48, Article XXXIV, Appeals, is hereby amended by the addition of the following language:

Variances not allowed.

In exercising its authority, the board of zoning appeals shall not grant a variance that would create any of the following effects:

(a) The effect of the variance on the specific property would adversely affect the land use pattern as outlined by any city land use plan or policy.
(b) The variance would be material detriment to the public welfare or create injury to the use, enjoyment or value of property in the vicinity.

(c) The variance is not the minimum variance that will relieve the proven hardship.

(d) The variance would allow a use not allowed in the permitted zoning district in which the parcel is located.

(e) The variance will relieve the applicant of conditions or circumstances that are caused by the illegal subdivision of land, which subdivision of land caused the property to be unusable for any reasonable development under the existing regulations.

(f) The variance is grounded solely upon the opportunity to make the property more profitable or to reduce expense to the owner.

(g) The variance will modify any condition imposed by the Topeka Planning Commission or City Council as part of a conditional use or planned unit development.

Section 16. That Topeka City Code Chapter 48, Article XXXIV, Appeals, is hereby amended by the addition of the following language:

**Recording with register of deeds.**

The secretary of the board of zoning appeals shall cause all variances which are granted by the board of zoning appeals to be filed of record with the register of deeds.

Section 17. That original City of Topeka Code Chapter 48, Article XXXIV and §§ 2-192, 48-34.00, 48-34.01, 48-34.02, 48-34.03, 48-34.04, 48-34.05, 48-34.06, 48-34.07, 48-34.08, 48-34.09, 48-34.10, and 48-34.11 are hereby specifically repealed.
Section 18. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

PASSED AND APPROVED by the Council of the City of Topeka **JUL 13 2004**

ATTEST: [Seal]

James A. McClinton, Mayor

Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY

DATE **3/24/04** BY **3BC**

TO BE CODIFIED

NOT TO BE CODIFIED