

ARTICLE 43

NONCONFORMING DEVELOPMENT

11.4301 Purpose

The purposes of this Article are:

- a. To allow for reasonable use of legally created lots of record that do not meet current minimum requirements for their respective zoning districts.
- b. To provide for reasonable use of legally constructed structures that do not meet current site development regulations for their respective zoning districts.
- c. To allow for the reasonable continuation of legally established uses that do not meet current use regulations for their respective zoning districts.
- d. To limit the continuation and provide for the gradual replacement of nonconforming uses.

11.4302 Regulations Additive

Regulations for nonconforming uses are in addition to regulations for nonconforming structures. In the event of a conflict, the most restrictive regulation shall apply.

11.4303 Nonconforming Lots

a. Pre-Existing Lots of Record

Nonconforming lots of record existing at the time of the adoption of this chapter shall be exempt, unless otherwise provided, from the minimum lot area and lot width requirements of each zoning district. Such lots may be developed with any use allowed by the regulations for the district and must comply with all other site development regulations set forth by the Zoning Regulations.

b. Reductions Due to Public Acquisition

If a portion of a legally existing lot in any district is acquired for public use, the remainder of this lot shall be considered a conforming lot.

11.4304 Nonconforming Structures

These regulations apply to buildings and structures that were constructed legally under regulations in effect before the effective date of these Regulations.

a. Continuation

A lawful nonconforming structure existing on the effective date of this section may be continued, repaired, maintained, or altered, subject to the provisions of this Section.

b. Additions or Enlargements to Nonconforming Structures

1. A lawful nonconforming structure may be added to or enlarged if the addition satisfies one or more of the following conditions:

(a) The enlargement or addition, when considered independently of the existing building, complies with all applicable setback, height, off-street parking, and landscaping requirements.

(b) The nonconforming building and impervious surface coverages on the site are not increased and the building, after the addition, conforms to height and off-street parking regulations applicable to its zoning district.

(c) The addition projects no further into a required side yard setback than the existing building; the length of the side wall of the addition is the smaller of 25 feet or 50 percent of the length of the existing nonconforming side wall; and the enlarged building complies with building and impervious coverage, front and rear yard setbacks, and height regulations applicable to its zoning district.

2. No permitted addition to a nonconforming structure may place a wall within ten feet of a window of an adjacent pre-existing residential structure.

3. Nonconforming buildings shall be limited to one addition or enlargement pursuant to these regulations.

c. Moving of Nonconforming Structures

A lawful nonconforming building or structure shall not be moved in whole or in part to another location on its lot unless every part of the structure conforms to all site development regulations applicable to its zoning district.

d. Repair of Nonconforming Structures

A lawful nonconforming building damaged by fire, explosion, storm or other calamity, except flood damages, may be repaired and reconstructed provided there is no increase in the degree of nonconformity.

e. Conversion of a Conforming Building

A conforming building shall not be changed in any way that will result in a nonconforming development.

f. Applicability of Landscaping and Screening Regulations

A pre-existing structure, building, or development shall be exempt from Section 38, Landscaping and Screening Regulations. However, any expansion of such structure, building, or development or any adjacent new development onto property that is or becomes vacant on or after the effective date of these Regulations shall be subject to Section 38.

11.4305 Nonconforming Uses

a. Continuation of Nonconforming Uses

1. Any nonconforming use lawfully existing on the effective date of these regulations may continue, subject to the limitations of this Section.
2. Whenever the use of a premise becomes nonconforming through a subsequent change in the Unified Land Development Ordinance or zoning district boundaries, such use may be continued or changed to another nonconforming use of the same or lesser intensity if approved by the City Council at a public hearing following a public hearing by the Planning Commission including their recommendation to the City Council.

b. Change of Nonconforming Uses

A nonconforming use may be changed to another nonconforming use of the same or lesser intensity, as measured by the Intensity Rating in the Use Matrix, provided an application for such change is first approved by the City Council after public hearing and recommendation of the Planning Commission.

c. Enlargement of Nonconforming Uses

A building or structure housing a lawful nonconforming use may not be added to or enlarged.

d. Abandonment of Nonconforming Use

1. If any structure or property used as a lawful nonconforming use becomes vacant or unused for a continuous period of twelve months, any subsequent use must conform to all use regulations applicable to the property's zoning district.
2. If a structure housing a nonconforming use converts to a conforming use, it forfeits any further claim to nonconforming use rights.

e. Allowance for Repairs

Repairs and maintenance of a structure occupied by a nonconforming use may be made, provided that no structural alterations are made other than those required by law.

f. Damage or Destruction of Structures

Should a structure occupied by a lawful nonconforming use be damaged to the extent that the cost of restoration exceeds 60 percent of the replacement cost of the structure, the nonconforming use shall no longer be permitted.

g. Nonconforming Uses and Special Use Permits

A lawful pre-existing use that requires a Special Use Permit in its zoning district shall be presumed to have the appropriate Permit and shall be considered a conforming use. The use shall be subject to the regulations governing lapses or revocation of Permits, set forth in Section 44.

ARTICLE 44

ADMINISTRATION AND PROCEDURES

11.4401 Purpose

The Administration and Procedures Provisions establish the methods for implementation of the Unified Land Development Ordinance. These provisions include procedures for reviewing specific uses within certain zoning districts; amending the Zoning Regulations; and granting variances.

11.4402 Site Plan Review Procedure

a. Purpose

The Site Plan Review Procedure provides for the administrative review in addition to plan review required by other sections of the Seward Municipal Code of projects that have potentially significant effects on traffic circulation or a significant effect on land uses in adjacent neighborhoods. The procedure provides for review and evaluation of site development features and possible mitigation of unfavorable effects on surrounding property.

b. Administration

The Zoning Administrator, or his/her designee shall review, evaluate, and act on all site plans submitted pursuant to this procedure. An applicant may appeal a denial of any application to the Planning Commission and City Council.

c. Uses Requiring Site Plan Review

All uses indicated as subject to Site Plan Review in Table 11.4401 are subject to the provisions of this section, unless otherwise subject to a Special Use Permit procedure for specific zoning districts.

d. Application Requirements

An application for a Site Plan Review may be filed by the owner(s) of a property or the owners' authorized agent with the Zoning Administrator. The application shall include the following information:

1. Name and address of the applicant.
2. Owner, address, and legal description of the property

3. A description of the nature and operating characteristics of the proposed use.
4. A site plan, drawn to a scale sufficient to permit adequate review and dimensioned as necessary, showing the following information:
 - a) The date, scale, north point, title, name of owner, and name of person preparing the site plan.
 - b) The location and dimensions of boundary lines, easements, and required yards and setbacks of existing and proposed buildings and site improvements.
 - c) The location, size, and use of proposed and existing structures on the site.
 - d) The location of all proposed site improvements, including parking and loading areas, pedestrian and vehicular access, sewers, sidewalks, utilities, service areas, fencing, screening, landscaping, and lighting.
 - e) Location of any major site feature, including drainage and contours at no greater than five foot intervals.
 - f) Any other information that may be required for review by the Zoning Administrator, or his/her designee.

e. Administrative Action and Appeal

The Zoning Administrator, or his/her designee must act upon each complete application within ten working days of filing. An applicant may appeal a denial to the Board of Adjustment within ten days of the action. The Board of Adjustment shall consider the appeal at the first available meeting after the filing of the appeal.

f. Review and Evaluation

1. The Zoning Administrator, or his/her designee (or the Board of Adjustment in cases of appeal), shall review and approve the site plan based on the criteria established in Table 11.4401 and conformance with applicable regulations in these Zoning Regulations.
2. The Zoning Administrator, or his/her designee (or the Board of Adjustment in cases of appeal), shall make the following findings before approval of the site plan:
 - a) The proposed development, together with any necessary modifications, is compatible with the criteria established in Table 11.4401.
 - b) Any required modifications to the site plan are reasonable and are the minimum necessary to minimize potentially unfavorable effects.
 - c) The site plan conforms to the Zoning Regulations.

g. Modification of Site Plan

The Zoning Administrator, or his/her designee (or the Board of Adjustment in cases of appeal), may require modification of a site plan as a prerequisite for approval. Required modifications may be more restrictive than base district regulations and may include, but not be limited to, additional landscaping or screening; installation of erosion control measures; improvement of access or circulation; rearrangement of structures on the site; or other modifications deemed necessary to protect the public health, safety, welfare, community character, property values, and/or aesthetics.

h. Term and Modification of Approval

1. A Site Plan Approval shall become void two years after the date of approval, unless the applicant receives a Building Permit and diligently carries out development prior to the expiration of this period.
2. The Zoning Administrator, or his/her designee, may approve an application to modify a previously approved site plan if he/she determines that the modification does not affect findings related to the criteria set forth in Table 11.4401.
3. The Zoning Administrator, or his/her designee may revoke a Site Plan Approval if he/she determines that the development is not complying with the terms and conditions of the approval. Such revocation may be appealed to the Board of Adjustment.

i. Approval to Run With Land

An approval pursuant to this section shall run with the land until the expiration date of such approval.

11.4403 Special Use Permit Procedure

a. Purpose

The Special Use Permit Procedure provides for public review and discretionary City Council approval for uses within zoning districts, which have unusual site development or operating characteristics that could adversely affect surrounding properties.

b. Administration

The Zoning Administrator shall be responsible for the administration of the Special Use Permit Procedure. The Planning Commission shall review, evaluate, and make a recommendation on each application. The City Council shall approve or deny applications for Special Permit Uses.

c. Application Requirements

An application for a Special Use Permit may be filed with the Zoning Administrator by the owner(s) of a property or the owners' authorized agent. The application shall include the following information:

1. Name and address of the applicant.
2. Owner, address and legal description of the property (shall be verified with a certified copy of the last deed or document of record from the Seward County Register of Deeds Office).
3. A description of the nature and operating characteristics of the proposed use.
4. Any graphic information, including site plans, elevations, other drawings, or other materials determined by the Zoning Administrator to be necessary to describe the proposed use to approving agencies.

d. Approval Process

1. The Planning Commission, following ten days notice and publication, shall hold a public hearing on each proposed Special Use Permit application and, following such public hearing, shall recommend action to the City Council. A vote either for or against the application by a majority of all Planning Commission members shall constitute a recommendation to the City Council. A vote either for or against an amendment by less than a majority of all Planning Commission members shall constitute a failure to make a recommendation to the City Council.
2. The City Council, following ten days notice and publication, shall hold a public hearing on each proposed Special Use Permit application and, following such public hearing, shall act on the proposed Special Use Permit. On applications that receive a recommendation of approval from the Planning Commission, a majority vote of those members either elected or appointed to the City Council is required for approval. On applications that receive a recommendation of denial from the Planning Commission, a majority vote plus one of those members either elected or appointed to the City Council is required for approval.
3. Protest: If a valid protest petition opposing an amendment is filed with the City Clerk by eligible property owners, pursuant to Section 19-905 R.R.S. 1943 (Reissue 1991), a majority vote plus one of those members either elected or appointed to the City Council is required for approval. A valid protest petition must meet the following criteria:
 - a) Submission of the petition in the office of the City Clerk within fourteen (14) days after the conclusion of the public hearing on the amendment by the Planning Commission.
 - b) Notarized signatures by at least one of the following:
 - 1) The owner or owners of at least 20% of the property proposed for the Special Use Permit.
 - 2) The owners of 20% of the total area, excepting public rights-of-way and public property, within the zoning jurisdiction of the city and within 300 feet of the proposed rezoning.

e. Required Notice and Publication

Prior to consideration of amending, supplementing, changing, modifying, or repealing these regulations by the governing body, notice of public hearings shall be provided by the following methods:

1. **Notice By Posted Sign:** A notice shall be posted in a conspicuous place on or near the property upon which action is pending. Such notice shall be not less than eighteen inches in height and twenty-four inches in width with a yellow or white background and black letters not less than one and one-half inches in height. Such posted notice shall be so placed upon such premises that is easily visible from the street and shall be so posted at least ten days before the date of such hearing. It shall be unlawful for any person to remove, mutilate, destroy or change such posted notice prior to such hearing.
2. **Publication:** At least ten days before the date of hearing, the City Clerk/Zoning Administrator shall have published in a daily newspaper having a general circulation in the City of Seward a notice of the time, place and subject matter of such hearing.
3. **Notification by Mail:** At least 15 days prior to the date of hearing, the party initiating the request shall present the City Clerk/Zoning Administrator a certified address list of those persons who own property within 300 feet of the subject site. The City Clerk/Zoning Administrator shall mail notice of the time, place, and subject matter of the hearing to such property owners at least 10 days prior to the date of the hearing.

f. Criteria for Review

1. The Planning Commission and City Council shall review and approve the site plan based on the criteria established in Table 11.4401 and conformance with applicable regulations in this Ordinance.

g. Scope of Approval

1. The Planning Commission and/or City Council may, at their discretion, apply a Special Use Permit to a specific owner or applicant. The approving agencies may establish special site development or operational regulations as a condition for approval of a Special Use Permit.
2. The Planning Commission or City Council, in cases of appeal, shall not grant a Special Use Permit for any home occupation/home-based business, which is otherwise prohibited under Section 11.3110 of these Regulations.

h. Lapse and Revocation of Permit

1. A Special Use Permit shall become void six months after its effective date if the applicant has not carried out development or occupancy during that period. After such expiration, the applicant must reapply for another Special Use Permit, following the procedures of this section.

2. The City Council may revoke a Special Use Permit should the operation of the use subject to such permit violate the conditions under which the permit was granted.

i. Previously Approved Special Use Permits

1. Any special use approved under regulations in effect before the effective date of this Ordinance shall be considered to have a valid Special Use Permit, subject to requirements imposed at the time of its approval.

2. Any use lawfully established before the effective date of this Ordinance and required by this Unified Land Development Ordinance to have a Special Use Permit within its respective zoning district shall be deemed to have such a valid Special Use Permit, provided that it complies with all other applicable provisions of this Ordinance.

Table 11.4401: **Criteria For Site Plan Review And Special Use Permits**

Land Use Compatibility	CRITERION	APPLIES TO	
		Site Plan Review	Conditional Use Permit
Development Density	Site area per unit or floor area ratio should be similar to surrounding uses if not separated by major natural or artificial features.	X	X
Height and Scale			
Height and Bulk	Development should minimize differences in height and building size from surrounding structures. Differences should be justified by urban design considerations.	X	X
Setbacks	Development should respect pre-existing setbacks in surrounding area. Variations should be justified by site or operating characteristics.	X	X
Building Coverage	Building coverage should be similar to that of surrounding development if possible. higher coverage should be mitigated by landscaping or site amenities.	X	X
Site Development			
Frontage	Project frontage along a street should be similar to lot width.	X	X
Parking and Internal Circulation	Parking should serve all structures with minimal conflicts between pedestrians and vehicles.	X	X
	All structures must be accessible to public safety vehicles.	X	X
	Development must have access to adjacent public streets and ways. Internal circulation should minimize conflicts and congestion at public access points.	X	X
Landscaping	Landscaping should be integral to the development, providing street landscaping, breaks in uninterrupted paved areas, and buffering where required by surrounding land uses. Parts of site with sensitive environmental features or natural drainageways should be preserved.	X	X
Building Design			
	Architectural design and building materials should be compatible with surrounding areas or highly visible locations		X
Operating Characteristics			
Traffic Capacity	Project should not obstruct traffic on adjacent streets. Compensating improvements will be required to mitigate impact on street system operations.	X	X
External Traffic Effects	Project design should direct non-residential traffic away from residential areas.	X	X
Operating Hours	Projects with long operating hours must minimize effects on surrounding residential areas.	X	X

Table 11.4401: **Criteria For Site Plan Review And Special Use Permits**

	CRITERIA	APPLIES TO	
		Site Plan Review	Special Use Permit
Operating Characteristics			
Outside Storage	Outside storage areas must be screened from surrounding streets and less intensive land uses.	X	X
Public Facilities			
Sanitary Waste Disposal	Developments within 300 feet of a public sanitary sewer must connect to sewer system. Individual disposal systems, if permitted, shall not adversely affect public health, safety, or welfare.	X	X
	Sanitary sewer must have adequate capacity to serve development.	X	X
Storm Water Management	Development should handle storm water adequately to prevent overloading of public storm water management system.	X	X
	Development should not inhibit development of other properties.	X	X
	Development should not increase probability of erosion, flooding, landslides, or other run-off related effects.	X	X
Utilities	Project must be served by utilities.	X	X
	Rural estate subdivisions should be located in designated areas which can accommodate utility and infrastructure installation consistent with the need to protect the environment and public health.	X	X
Comprehensive Plan			
	Projects should be consistent with the City of Seward's Comprehensive Development Plan.		X

11.4404 Amendment Procedure

a. Purpose

The Amendment Procedures describe the methods by which changes may be made in the text of the Zoning Regulations (text amendment) and/ or the official boundaries of zoning districts (rezoning).

b. Initiation of Amendments

1. Text amendments may be initiated by a citizen, the Planning Commission or City Council.
2. Rezoning may be initiated by a property owner or authorized agent; the Planning Commission; or the City Council.

c. Rezoning Application Requirements

An application for a rezoning may be filed with the Zoning Administrator, or his/her designee. The application shall include the following information:

1. Name and address of the applicant.
2. Owner, address and legal description of the property (shall be verified with a certified copy of the last deed or document of record from the Seward County Register of Deed's Office).
3. A description of the reason for the rezoning application and the nature and operating characteristics of the proposed use.
4. Any graphic information, including site plans, elevations, other drawings, or other materials determined by the Zoning Administrator to be necessary to describe the proposed use to approving agencies.

d. Amendment Process

1. The Planning Commission, following fifteen days notice and publication, shall hold a public hearing on each proposed text amendment or rezoning and, following such public hearing, shall recommend action to the City Council. A vote either for or against an amendment by a majority of all Planning Commission members shall constitute a recommendation to the City Council. A vote either for or against an amendment by less than a majority of all Planning Commission members shall constitute a failure to make a recommendation to the City Council.
2. The City Council, following fifteen days notice and publication, shall hold a public hearing on each proposed text amendment or rezoning and, following such public hearing, shall act on the proposed amendment or rezoning. On applications that receive a recommendation of approval from the Planning Commission, a majority vote of those members either elected or appointed to the City Council is required for approval. On applications that receive a recommendation of denial from the Planning Commission, a majority vote plus one of those members either elected or appointed to the City Council is required for approval.

3. Protest: If a valid protest petition opposing an amendment is filed with the City Clerk by eligible property owners, pursuant to Section 19-905 R.R.S. 1943 (Reissue 1991), a majority vote plus one of those members either elected or appointed to the City Council is required for approval. A valid protest petition must meet the following criteria:

a) Submission of the petition in the office of the City Clerk within fourteen (14) days after the conclusion of the public hearing on the amendment by the Planning Commission.

b) Notarized signatures by at least one of the following:

1) The owner or owners of at least 20% of the property proposed for rezoning.

2) The owners of 20% of the total area, excepting public rights-of-way and public property, within the zoning jurisdiction of the city and within 300 feet of the proposed rezoning.

e. Required Notice and Publication

Prior to consideration of amending, supplementing, changing, modifying, or repealing these regulations by the governing body, notice of public hearings shall be provided by the following methods:

1. Notice By Posted Sign: A notice shall be posted in a conspicuous place on or near the property upon which action is pending. Such notice shall be not less than eighteen inches in height and twenty-four inches in width with a yellow or white background and black letters not less than one and one-half inches in height. Such posted notice shall be so placed upon such premises that is easily visible from the street and shall be so posted at least ten days before the date of such hearing. It shall be unlawful for any person to remove, mutilate, destroy or change such posted notice prior to such hearing.

2. Publication: At least fifteen days before the date of any public hearing required by this Ordinance, the City Clerk shall have published in a daily newspaper having a general circulation in the City of Seward a Notice of the time, place and subject matter of such hearing.

11.4405 Extension of the Extra-Territorial Jurisdiction

Upon the automatic extension of the two-mile Extra-Territorial Jurisdiction due to annexation, the City Council with the recommendation of the Planning Commission shall zone properties within the newly established Jurisdiction concurrent with adoption of the annexation ordinance. The zoning shall consider the Comprehensive Development Plan of the City of Seward and the present use of the land.

11.4406 Building Permits and Certificates of Zoning Compliance

a. Administration and Enforcement

The Zoning Administrator shall administer and enforce these regulations and may direct other persons to assist him/her.

If the Zoning Administrator, or his/her designee shall find that any of the provisions of these regulations are being violated, he/she shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He/she shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by these regulations to ensure compliance with or to prevent violation of its provisions.

b. Building Permits Required

No building or other structure shall be erected, moved, added to, or structurally altered without a permit therefore, issued by the administrative official. No building permit shall be issued by the building official except in conformity with the provisions of these regulations, unless he/she receives a written order from the Board of Adjustment in the form of an administrative review, special exception, or variance as provided by these regulations.

c. Application for Building Permit

All applications for building permits shall include plans if applicable in duplicate drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration.

The application shall include such other information as lawfully may be required by the building official, including existing or proposed building or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of these regulations. One copy of the plans shall be returned to the applicant by the building official, after he/she shall have marked such copy either as approved or disapproved and attested to same by his signature on such copy. One copy of the plans, similarly marked, shall be retained by the building official.

d. Expiration of Building Permit

1. If the work described in any building permit has not begun within 180 days from the date of issuance thereof, said permit shall expire; it shall be canceled by the building official; and written notice thereof shall be given to the persons affected.
2. If the work described in any building permit has not been substantially completed within two years of the date of issuance thereof, said permit shall expire and be canceled by the building official, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building permit has been obtained.

3. The expiration date of a building permit may be established for a period longer than two years if established at the time that such permit is issued by the City. The Building Official, or his/her designee may, at his/her discretion extend the expiration period of the building permit.

f. Construction and Use to be as Provided in Applications, Plans, Permits, and Certificates of Zoning Compliance

Building permits or certificates of zoning compliance issued on the basis of plans and applications approved by the building official authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement, or construction at variance with that authorized shall be deemed violation of these regulations, and punishable as provided by Section hereof.

11.4407 Schedule of Fees, Charges and Expenses.

The City Council shall establish a schedule of fees, charges, and expenses and a collection procedure for building permits, appeals, and other matters pertaining to these regulations.

The schedule of fees shall be posted in the office of the Building and Zoning Department, and may be altered or amended only by the City Council.

Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

11.4408 Board of Adjustment

a. Establishment

1. A Board of Adjustment is hereby established to provide relief in situations of hardship or to hear appeals as provided by this Section. The Board shall consist of five regular members, plus one additional alternate member who shall attend and vote only when one member is unable to attend for any reason.

2. Each member shall be appointed by the Mayor with the approval of the City Council for a three-year term and is removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member of the Board shall be appointed from the Planning Commission, and the loss of membership on the Commission by such member shall also result in his/her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board.

3. The Board of Adjustment shall adopt rules and regulations in accordance with these regulations and the laws of the State of Nebraska pursuant to Sections 19-901 to 19-914 of Nebraska State Statutes. Meetings shall be held at the call of the Chairman and at such other times as the Board may determine. Such chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings and records shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact. The Board shall keep a

record of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. A majority of the Board shall constitute a quorum for the transaction of business.

b. Procedure for Appeals

1. Appeals shall be made to the Board of Adjustment through the office of the Zoning Administrator in written form as determined by the Zoning Administrator. The Board shall fix a reasonable time for the hearing of the appeal and shall decide the appeal within 30 days of the date of the public hearing. An appeal stays all proceedings in furtherance of the action, unless the Zoning Administrator certifies to the Board that by reason of the facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property.

2. The Board shall provide a minimum of ten days notice of a public hearing on any question before it. Notice of the hearing shall be posted in a conspicuous place on or near the property on which the application has been made; by publication in a newspaper of general circulation in the City of Seward; and by written notice to the appealing party.

3. Upon the public hearing, any party may appear in person or by agent or attorney. The concurring vote of four out of five members of such board as so composed shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any Unified Land Development Ordinance, or to effect any variation in such regulations.

11.4409 Powers and Duties of the Board of Adjustment

The Board of Adjustment shall have only the following powers and duties:

a. Administrative Review: To hear and decide appeals where it is alleged there is error in any order, requirement, decisions or determination made by the Building Official, or his/her designee in the enforcement of these regulations or any regulation relating to the location or soundness of structures

b. Interpretation of Zoning Map: To hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map.

c. Variances to Relieve Hardships Relating to Property: To authorize, upon appeal, variances from the strict application of these regulations where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of 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, such strict application would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property.

1. Requirements for Grant of a Variance. No such variance shall be authorized by the Board unless it finds that:

(a) Strict application of the zoning regulations will produce undue hardship.

(b) Such hardship is not shared generally by other properties in the same zoning district and in 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.

(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.

(e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to these Zoning Regulations.

(f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any Ordinance or Resolution.

2. Findings by Board. The Board of Adjustment shall make findings that the requirements of Section 49.9c(l) have been met by the applicant for a variance.

3. Conditions for Grant of Variance.

(a) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with these regulations. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these regulations and punishable under Section 1214 of these regulations.

(b) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of these regulations in the district involved, or any use expressly or by implication prohibited by the terms of these regulations in said district.

(c) No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

e. Board has Powers of Building Official on Appeals: Reversing Decisions of Building Official

In exercising the above mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of these regulations, reverse or affirm, wholly or partly, or may modify the order, requirement, decisions, or determination as ought to be made, and to that end shall have the powers of the Building Official from whom the appeal is taken.

The concurring vote of four members of the Board shall be necessary to reverse any order, requirements, decision, or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under these regulations, or to effect any variation in the application of these regulations.

11.4410 Expiration or Revocation of Board of Adjustment Actions.

a. A variance or other permissive action of the Board of Adjustment shall become void six months after its effective date if the applicant has not carried out development or occupancy during that period. After such expiration, the applicant must reapply for another appropriate Board of Adjustment action, following the procedures of this section.

2. The Board of Adjustment may revoke a variance or other permissive action should the applicant violate the conditions under which the variance or other action was granted.

11.4411 Appeals from the Board of Adjustment.

Any person or persons, or any board, taxpayer, officer, department, board or bureau of the city aggrieved by any decision of the Board of Adjustment may seek review of such decision by the District Court for the County in the manner provided by the laws of the State and particularly by 19-912 R.R.S. 1943 (Reissue 1991), and amendments thereto.

11.4412 Duties of Zoning Administrator, Board of Adjustment, City Council, and Courts on Matters of Appeal.

a. It is the intent of these regulations that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of Board of Adjustment shall be to the courts as provided by law.

b. Under these regulations the City Council shall have only the duties (1) of considering and adopting or rejecting proposed amendments, or the repeal of these regulations as provided by law, (2) of establishing a schedule of fees and charges as stated in Section 12 of these regulations, and (3) of directing a city officer to appeal a decision of the Board of Adjustment.

11.4413 Severability Clause.

Should any section or provision of this resolution be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the resolution as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

11.4414 Complaints Regarding Violations.

Whenever a violation of this ordinance occurs, or is allowed to have occurred, any person may file a written complaint. Such complaints stating fully the causes and basis thereof shall be filed with the Zoning Administrator. He/she shall record properly such complaint immediately, investigate, and take action thereon as provided by this resolution.

11.4415 Penalties for Violation.

a. Any person, firm, or corporation violating any provision of the Zoning Regulations of the City of Seward, Nebraska, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be

fined in any sum not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00) for each offense, and any actual costs or expense incurred by the City as a result of said offense shall be taxed as costs as a part of the judgment of conviction.

b. The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

c. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.