

## HOUSE BILL No. 2483

By Committee on Judiciary

1-19

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1 AN ACT concerning planning and zoning; amending K.S.A. 12-759 and  
2 12-760 and repealing the existing sections.  
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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 12-759 is hereby amended to read as follows: 12-  
6 759. (a) Any governing body which has enacted a zoning ordinance or  
7 resolution shall create a board of zoning appeals by adoption of the  
8 appropriate ordinance or resolution. Such board shall consist of not less  
9 than three nor more than seven members. If a city enacts zoning  
10 regulations which affect land outside the corporate limits of such city, at  
11 least one member of the board shall be a resident of the area outside the  
12 city's limits. The members first appointed shall serve respectively for terms  
13 of one, two and three years, divided equally or as nearly equally as  
14 possible among the members. Thereafter the terms of the members may be  
15 changed to either three or four years, whichever is deemed to be in the best  
16 interest of the city or county. Vacancies shall be filled by appointment for  
17 the unexpired terms. The members of such board shall serve without  
18 compensation. The board annually shall elect one of its members as  
19 chairperson, and shall appoint a secretary who may be an officer or an  
20 employee of the city or county. The board shall adopt rules in accordance  
21 with the provisions of the ordinance or resolution creating the board.  
22 Meetings of the board shall be held at the call of the chairperson and at  
23 such other times as the board may determine. The board shall keep  
24 minutes of its proceedings, showing evidence presented, findings of fact  
25 by the board, decisions of the board and the vote upon each question.  
26 Records of all official actions of the board shall be filed in its office and  
27 shall be a public record. The governing body, in the ordinance or  
28 resolution creating such board, may establish a scale of reasonable fees to  
29 be paid in advance by the party appealing. Any two or more cities or  
30 counties which have established a joint planning commission may  
31 establish a joint board of zoning appeals.

32 (b) Any board of zoning appeals in existence on the effective date of  
33 this act shall continue in existence, but shall be governed by the provisions  
34 of this act.

35 (c) The board of zoning appeals shall administer the details of appeals  
36 from or other matters referred to it regarding the application of the zoning

1 ordinance or resolution as hereinafter provided. The board shall fix a  
2 reasonable time for the hearing of an appeal or any other matter referred to  
3 it. Notice of the time, place and subject of such hearing shall be published  
4 once in the official city newspaper in the case of a city and in the official  
5 county newspaper in the case of a county at least 20 days prior to the date  
6 fixed for hearing. A copy of the notice shall be mailed to each party to the  
7 appeal and to the appropriate planning commission.

8 (d) Appeals to the board of zoning appeals may be taken by any  
9 person aggrieved, or by any officer of the city, county or any governmental  
10 agency or body affected by any decision of the officer administering the  
11 provisions of the zoning ordinance or resolution. Such appeal shall be  
12 taken within a reasonable time as provided by the rules of the board, by  
13 filing a notice of appeal specifying the grounds thereof and the payment of  
14 the fee required therefor. The officer from whom the appeal is taken, when  
15 notified by the board or its agent, shall transmit to the board all the papers  
16 constituting the record upon which the action appealed from was taken.  
17 The board shall have power to hear and decide appeals where it is alleged  
18 there is error in any order, requirement, decision or determination made by  
19 an administrative official in the enforcement of the zoning ordinance or  
20 resolution. In exercising the foregoing powers, the board, in conformity  
21 with the provisions of this act, may reverse or affirm, wholly or partly, or  
22 may modify the order, requirement, decision, or determination, and to that  
23 end shall have all the powers of the officer from whom the appeal is taken,  
24 may attach appropriate conditions, and may issue or direct the issuance of  
25 a permit.

26 (e) When deemed necessary by the board of zoning appeals, the  
27 board may grant variances and exceptions from the zoning regulations on  
28 the basis and in the manner hereinafter provided: (1) To authorize in  
29 specific cases a variance from the specific terms of the regulations which  
30 will not be contrary to the public interest and where, due to special  
31 conditions, a literal enforcement of the provisions of the regulations, in an  
32 individual case, results in unnecessary hardship, and provided that the  
33 spirit of the regulations shall be observed, public safety and welfare  
34 secured, and substantial justice done. Such variance shall not permit any  
35 use not permitted by the zoning regulations in such district. A request for a  
36 variance may be granted in such case, upon a finding by the board that all  
37 of the following conditions have been met: (A) That the variance requested  
38 arises from such condition which is unique to the property in question and  
39 which is not ordinarily found in the same zone or district; and is not  
40 created by an action or actions of the property owner or the applicant; (B)  
41 that the granting of the permit for the variance will not adversely affect the  
42 rights of adjacent property owners or residents; (C) that the strict  
43 application of the provisions of the zoning regulations of which variance is

1 requested will constitute unnecessary hardship upon the property owner  
2 represented in the application; (D) that the variance desired will not  
3 adversely affect the public health, safety, morals, order, convenience,  
4 prosperity, or general welfare; and (E) that granting the variance desired  
5 will not be opposed to the general spirit and intent of the zoning  
6 regulations; and (2) to grant exceptions to the provisions of the zoning  
7 regulation in those instances where the board is specifically authorized to  
8 grant such exceptions and only under the terms of the zoning regulation. In  
9 no event shall exceptions to the provisions of the zoning regulation be  
10 granted where the use or exception contemplated is not specifically listed  
11 as an exception in the zoning regulation. Further, under no conditions shall  
12 the board of zoning appeals have the power to grant an exception when  
13 conditions of this exception, as established in the zoning regulation by the  
14 governing body, are not found to be present.

15 (f) Any person, official or governmental agency dissatisfied with any  
16 order or determination of the board may bring an action in the district  
17 court of the county to determine the reasonableness of any such order or  
18 determination. Such appeal shall be filed within 30 days of the final  
19 decision of the board. *The district court shall retain jurisdiction of the*  
20 *matter for any remand proceeding.*

21 (g) A planning commission also may be designated as a board of  
22 zoning appeals under this section.

23 ~~(h) The provisions of this section shall become effective on and after~~  
24 ~~January 1, 1992.~~

25 Sec. 2. K.S.A. 12-760 is hereby amended to read as follows: 12-760.

26 ~~(a)~~ Within 30 days of the final decision of the city or county, any person  
27 aggrieved thereby may maintain an action in the district court of the  
28 county to determine the reasonableness of such final decision. *The district*  
29 *court shall retain jurisdiction of the matter for any remand proceeding.*

30 ~~(b) The provisions of this section shall become effective on and after~~  
31 ~~January 1, 1992.~~

32 Sec. 3. K.S.A. 12-759 and 12-760 are hereby repealed.

33 Sec. 4. This act shall take effect and be in force from and after its  
34 publication in the statute book.