



# City of Elkins

## Planning Commission Meeting

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April 4, 2024

4:00 PM

401 Davis Avenue  
Council Chamber, 2nd Floor

### AGENDA

1. **Call to order and roll call**
2. **Presentation**
  - a. WVU Land Use and Sustainable Development Law Clinic: Board of Zoning Appeals training
3. **New business**
  - a. Election of officers
  - b. Proposed rules of procedure
  - c. Proposed forms and process for variance appeals
  - d. Proposed forms and process for conditional-use applications
4. **Announcements**
5. **Adjournment**



## CITY OF ELKINS AGENDA ITEM REPORT

|                          |   |
|--------------------------|---|
| <b>Meeting Date:</b>     | April 4, 2024   |
| <b>Section:</b>          | New business  |
| <b>Category:</b>         | Action Item   |
| <b>Agenda Item Name:</b> | Election of officers  |
| <b>Recommended By:</b>   | City Clerk  |
| <b>Summary:</b>          | <p>At its first regular meeting each year, the Board shall elect from its members a Chairperson and Vice Chairperson.</p> <p style="padding-left: 40px;">The Chairperson shall serve a term of one (1) year and shall preside at all public hearings held by the Board. The Chairperson may call special meetings of the Board as necessary and is empowered to certify by signature or otherwise any official and valid action of the Board. The Chairperson shall also perform such duties and functions as may from time to time be required by the Board.</p> <p style="padding-left: 40px;">During any absence of the Chairperson, the Vice Chairperson shall assume the duties and functions of Chairperson. The Vice Chairperson shall also perform such duties and functions as may from time to time be required by the Board.</p> |
| <b>Fiscal Impact:</b>    | None  |
| <b>Recommendation:</b>   | Hear nominations and vote to select a chairperson and vice chairperson  |
| <b>Attachments:</b>      | None  |



## CITY OF ELKINS AGENDA ITEM REPORT

|                          |  |
|--------------------------|--|
| <b>Meeting Date:</b>     | April 4, 2024  |
| <b>Section:</b>          | New business   |
| <b>Category:</b>         | Action Item  |
| <b>Agenda Item Name:</b> | Proposed rules of procedure  |
| <b>Recommended By:</b>   | City Clerk   |
| <b>Summary:</b>          | The Board of Zoning Appeals the City of Elkins Board of Zoning Appeals is duly authorized, pursuant to W.Va. Code § 8A-8-9 and Elkins City Code § 152.025, to adopt rules of procedure to carry out its obligations pursuant to the City of Elkins Zoning Ordinance and West Virginia law. |
| <b>Fiscal Impact:</b>    | None   |
| <b>Recommendation:</b>   | Consider for approval  |
| <b>Attachments:</b>      | 1. COE - BZA Rules of Procedure - draft - 2024_04_03   |

# Rules of Procedure of the City of Elkins Board of Zoning Appeals

Elkins, West Virginia

Effective \_\_\_\_\_

## Table of Contents

|   |          |
|---|----------|
| <b>Article I – General</b> .....                                    | <b>3</b> |
| Section 1.1 – Definitions .....                                     | 3        |
| Section 1.2 – Authority.....  | 4        |
| Section 1.3 – Severability.....                                     | 4        |
| Section 1.4 – Amendments.....                                       | 4        |
| <b>Article II – Organization</b> .....                              | <b>4</b> |
| Section 2.1 – Membership.....                                       | 4        |
| Section 2.2 – Term of Office.....                                   | 4        |
| Section 2.3 – Powers and Duties .....                               | 4        |
| <b>Article III – Officers</b> .....                                 | <b>5</b> |
| Section 3.1 – Elections .....                                       | 5        |
| Section 3.2 – Chairperson.....                                      | 5        |
| Section 3.3 – Vice Chairperson .....                                | 5        |
| Section 3.6 – Replacing Officers.....                               | 5        |
| Section 3.7 – Alternate Members .....                               | 5        |
| <b>Article IV – Meetings</b> .....                                  | <b>6</b> |
| Section 4.1 – Regular Meetings.....                                 | 6        |
| Section 4.3 – Recording of Meetings .....                           | 6        |
| Section 4.4 – Quorum and Majority Vote .....                        | 6        |
| Section 4.5 – Agendas .....   | 6        |
| Section 4.6 – Executive Sessions .....                              | 6        |
| Section 4.7 – Procedures for Conducting Meetings .....              | 6        |
| Section 4.8 – Open Governmental Proceedings .....                   | 6        |
| <b>Article V – Consideration of Items</b> .....                     | <b>6</b> |
| Section 5.1 – Voting.....   | 6        |
| Section 5.2 – Recusal .....   | 7        |
| Section 5.3 – Ex Parte Communications .....                         | 7        |
| Section 5.4 – Continuance.....                                      | 7        |
| Section 5.5 – Continuance, Rescheduling, or Postponement .....      | 7        |
| Section 5.6 – Submissions to the Board .....                        | 7        |
| Section 5.7 – Procedure for Hearings.....                           | 8        |
| Section 5.8 – Reopening Hearing.....                                | 8        |
| <b>Article VI – Appeals</b> .....                                   | <b>8</b> |
| Section 6.1 – Scope of Appeals to the Board .....                   | 8        |
| Section 6.2 – Time.....   | 9        |
| Section 6.3 – Posting of Property .....                             | 9        |
| Section 6.4 – Publication of Notice.....                            | 9        |
| Section 6.5 – Supplementation of Record for an Appeal Hearing ..... | 9        |
| Section 6.6 – Appeals of Board Decisions .....                      | 10       |

**RULES OF PROCEDURE OF THE**  
**CITY OF ELKINS BOARD OF ZONING APPEALS**

**WHEREAS**, W.Va. Code § 8A-8-1, et seq., provides for the establishment and powers of a Board of Zoning Appeals, and

**WHEREAS**, the City of Elkins Board of Zoning Appeals is duly authorized, pursuant to W.Va. Code § 8A-8-9 and Elkins City Code § 152.025, to adopt rules of procedure to carry out its obligations pursuant to the City of Elkins Zoning Ordinance and West Virginia law, and

**WHEREAS**, the City of Elkins Board of Zoning Appeals wishes to establish certain rules and regulations to effectuate its purpose and provide consistency for its proceedings,

**NOW, THEREFORE**, the City of Elkins Board of Zoning Appeals hereby adopts these Rules of Procedure which shall be applicable to all proceedings of the Board.

**ARTICLE I – GENERAL**

**Section 1.1 – Definitions**

As used throughout these Rules of Procedure, the following terms shall be defined as follows:

- |                                |   |
|--------------------------------|---|
| <i>Administrative Official</i> | Refers to any member of staff, including but not limited to the Zoning Officer, who has made a decision or determination of an issue relating to the Zoning Ordinance.  |
| <i>Appeal</i>                  | Refers to any appeal, application, or other item before the Board, including for approval of exceptions, variances, and conditional uses.   |
| <i>Appellant</i>               | Refers to any party which has filed a timely appeal with the Board.   |
| <i>Board</i>                   | Refers to the City of Elkins Board of Zoning Appeals.   |
| <i>City Council</i>            | Refers to the Elkins Common Council.  |
| <i>Conditional Use</i>         | A use enumerated in the Ordinance but not permitted by right that may be allowed by the Board upon a finding that the proposed use will not adversely affect the health, safety, and welfare of the public (as described in more detail in Elkins City Code § 152.029). |
| <i>Item</i>                    | Refers to any matter before the Board for consideration or discussion and shall be construed broadly.   |
| <i>Member</i>                  | Refers to a member of the Board.  |

Revised \_\_\_\_

|                   |   |
|-------------------|---|
| <i>Ordinance</i>  | Refers to the City of Elkins Zoning Ordinance.  |
| <i>Present</i>    | A person is present at a meeting when in attendance physically, or by video conference when the meeting is so noticed.  |
| <i>Respondent</i> | The Zoning Officer or other appropriate City official, when a timely appeal is filed alleging error with respect to a formal zoning decision or zoning determination or the owner of the property subject to an appeal by a third party.  |
| <i>Staff</i>      | Refers to City of Elkins employees.   |
| <i>Variance</i>   | A deviation from the minimum standards of the Zoning Ordinance that arises from special conditions that were not created by the person seeking the variance and which result in an unnecessary hardship and prevent any reasonable use of the property (as further defined in Elkins City Code § 152.028) |

### Section 1.2 – Authority

These Rules of Procedure and its provisions are authorized by W.Va. Code § 8A-8-9 and Elkins City Code § 152.025, which empowers the Board, among other things, to adopt rules and regulations concerning the filing of appeals, applications for variances and conditional uses, the giving of notice, and the conduct of hearings.

### Section 1.3 – Severability

The invalidation of any provision or section of these Rules of Procedure shall not invalidate any other provision or section of these Rules of Procedure.

### Section 1.4 – Amendments

These Rules of Procedure may be amended at any regular meeting of the Board by a majority vote of the Board and shall take effect either immediately or at a date certain determined by the Board.

## **ARTICLE II – ORGANIZATION**

### Section 2.1 – Membership

Pursuant to W.Va. Code § 8A-8-4, the Board shall be comprised of five (5) members appointed by the City Council. Membership on the Board shall be in compliance with all the requirements of W.Va. Code § 8A-8-4.

### Section 2.2 – Term of Office

Upon appointment to the Board, a member shall serve a term of three (3) years pursuant to W.Va. Code § 8A-8-4(d). If a vacancy occurs, the City Council shall appoint a member for the unexpired term.

### Section 2.3 – Powers and Duties

In addition to the powers and duties provided in these Rules of Procedure, the Board and its members shall have such other powers and duties as provided by ordinance and/or law, including but not limited to W.Va. Code § 8A-8-9.

## **ARTICLE III – OFFICERS**

### Section 3.1 – Elections

At its first regular meeting each year, the Board shall elect from its members a Chairperson and Vice Chairperson.

### Section 3.2 – Chairperson

The Chairperson shall serve a term of one (1) year and shall preside at all public hearings held by the Board. The Chairperson may call special meetings of the Board as necessary and is empowered to certify by signature or otherwise any official and valid action of the Board. The Chairperson shall also perform such duties and functions as may from time to time be required by the Board.

### Section 3.3 – Vice Chairperson

During any absence of the Chairperson, the Vice Chairperson shall assume the duties and functions of Chairperson. The Vice Chairperson shall also perform such duties and functions as may from time to time be required by the Board.

### Section 3.5 – Absence of Chairperson and Vice Chairperson

In the absence of the Chairperson and Vice Chairperson, any present member may call to order a regular or special meeting of the Board, which shall thereupon immediately empower one or more of its present members to fulfill the duties and functions of Chairperson and/or Vice Chairperson during said absence.

### Section 3.6 – Replacing Officers

In the event of the death, resignation, or removal of an officer of the Board, the Board shall thereupon elect one of its members to complete the unexpired term. A four-fifths majority of the total membership of the Board may, at any regular meeting, remove the Chairperson and/or the Vice Chairperson from office, provided that a new election to fill the remaining term(s) of office is immediately held.

### Section 3.7 – Alternate Members

Pursuant to W.Va. § Code 8A-8-4(e), the City Council may appoint up to three (3) additional members to serve as alternate members of the Board. The term for an alternate member is three (3) years. An alternate member shall serve on the Board when one of its regular members is unable to serve, and in such instance shall have all powers and duties of a regular member. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve. Alternate members shall be entitled to be present at all Board meetings and deliberations.

## ARTICLE IV – MEETINGS

### Section 4.1 – Regular Meetings

The Board shall meet as needed to hear appeals and applications, and otherwise at least twice per year.

### Section 4.3 – Recording of Meetings

All meetings of the Board shall be recorded, and such recordings shall be maintained and made available, upon request and in accordance with the procedures of the Board and/or its staff, to the public. Recordings shall be maintained by staff for a minimum of five years.

### Section 4.4 – Quorum and Majority Vote

In order to conduct a regular or special meeting, a quorum of members must be present. A majority of members of the Board shall constitute a quorum. Once the requirement for a quorum has been met, no action of the Board shall be official or valid unless authorized by a majority of members making up said quorum at a regular or special meeting.

### Section 4.5 – Agendas

An agenda shall be made available prior to the start of all meetings. Items shall be listed on the agenda in such a manner as to sufficiently identify the substance of the item and allow for a vote on the item by the Board if necessary. The Board may deviate from the order of an agenda if necessary.

### Section 4.6 – Executive Sessions

The Board may hold an executive session, closed to the public, during any meeting to consider matters permissible in executive sessions pursuant to W.Va. Code § 6-9A-4, including, but not limited to, deliberations toward a decision on an appeal or other item, privileged discussions with legal counsel, and personnel matters.

### Section 4.7 – Procedures for Conducting Meetings

In the absence of state law or of other procedures of the Board, Roberts Rules of Order, current edition, shall be the parliamentary authority of meetings of the Board.

### Section 4.8 – Open Governmental Proceedings

All meetings and actions of the Board shall comply with the requirements of West Virginia's open meetings laws, codified at W.Va. Code § 6-9A-1, et seq.

## ARTICLE V – CONSIDERATION OF ITEMS

### Section 5.1 – Voting

A member must be present at a meeting to vote on any item considered at said meeting. Voting by proxy is not permitted. Abstention and recusal shall be permitted only for reasons set forth in these Rules. Any member who abstains, recuses himself/herself, or otherwise chooses not to participate in a vote shall thereupon publicly state the reason.

### Section 5.2 – Recusal

A member may recuse himself/herself in relation to an item for the reasons set forth herein, in which case such member shall not participate in discussion, consideration or vote on said item. Valid reasons for recusal include (1) having a personal interest in an item, (2) having a contractual, employment, or other relationship with a party involved with an item, (3) being unable to impartially consider an item, or (4) having been absent from part or all of the discussion or consideration of an item. A member recusing himself or herself shall thereupon state the reason for such recusal and leave the meeting, remaining absent for the duration of consideration and/or discussion of the item.

At all times, a member shall recuse himself or herself when his or her participation in the consideration, discussion, or vote regarding an item would give rise to the appearance of impropriety.

At all times, a member shall make full public disclosure of any and all issues which may tend toward an appearance of impropriety, and such disclosure shall be made prior to the Board's consideration of the relevant item

### Section 5.3 – Ex Parte Communications

For purposes of these Rules of Procedure, ex parte communications consist of communications regarding the substance of an item that is or will be before the Board for consideration and/or discussion, when such communications are between one or more members of the Board and one or more individuals involved with the item. No member of the Board shall voluntarily and knowingly engage in ex parte communications without the authority of the Board. In the event that a member of the Board has engaged in or receives any ex parte communication, said member shall bring the same to the attention of the Board and shall publicly disclose the same. Communications with third parties regarding procedural aspects of items do not constitute ex parte communications.

### Section 5.4 – Continuance

The Board may continue, reschedule, or re-open proceedings on an item for any good cause.

### Section 5.5 – Continuance, Rescheduling, or Postponement

If an item is continued, rescheduled, or postponed, and the new time and date are announced at the same meeting, then no additional notice is required for that item. If an item is continued, rescheduled, or postponed, and the new time and date are not announced at the same meeting, all parties of record shall be provided not less than seven (7) calendar days notice of the new time and date.

### Section 5.6 – Submissions to the Board

Submissions regarding all items for Board consideration shall be made in accordance with the Ordinance, these Rules, and relevant staff procedures. Staff may establish deadlines for submittal of applications and supplemental material. Late submissions, including submissions made the day before or the day of any meeting of this Board, may not receive full consideration by the Board due to the lack of time for proper Board and staff review.

### Section 5.7 – Procedure for Hearings

Prior to hearings on all items, the Board will require all persons present who wish to give comments on any item to place their name on a written list of anticipated speakers.

Hearings on items shall be conducted in the following manner:

- (1) Chairperson opens public hearing;
- (2) Staff presents summary of application and staff report;
- (3) Applicant/Appellant testimony;
- (4) Respondent(s) testimony;
- (5) Public comment;
- (6) Rebuttals of staff, applicant/appellant and respondent(s);
- (7) Chairperson calls for a vote for closed deliberation and recesses public hearing if motion carries;
- (8) After consideration, Board reopens public hearing and renders a decision.

The Chairperson shall preside at the hearing and shall make such rulings as may be necessary to conduct a hearing in an efficient and orderly manner including, but not limited to, the imposition of time limitations and the exclusion of irrelevant, repetitive, or cumulative evidence or testimony. A member may question the rulings of the Chairperson, and such questions may be decided by a motion and subsequent majority vote of the Board.

### Section 5.8 – Reopening Hearing

At any time prior to the rendering and/or filing of a decision, the Board may, upon the request of a party or upon its own motion, reopen proceedings on an item for the receipt of further evidence or information. All parties of record shall be given proper notice of the reopening and granted an opportunity to review additional evidence and information and file any rebuttal or additional comments.

## **ARTICLE VI – APPEALS**

### Section 6.1 – Scope of Appeals to the Board

Pursuant to W.Va. Code § 8A-8-9, the Board shall hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official or party charged with the enforcement of a zoning ordinance or rule and regulation adopted pursuant thereto.

### Section 6.2 – Time

All appeals to the Board shall be filed within thirty (30) days of the entry of the order, requirement, decision or determination which is the subject of the appeal. Within ten (10) days of receipt of a complete appeal form and associated fee(s), the Board, through its Staff, shall set a date

for a public hearing of the appeal. The date of the appeal shall be no more than 45 days after receipt of the appeal.

### Section 6.3 – Posting of Property

If an appeal hearing involves the use of land, including requests for exceptions, variances, and conditional use permits, the property owner shall post signs on the property showing the date, time, and place of the hearing on every road, right-of-way, and/or easement on which the public may travel adjoining or abutting the property, as determined by the Zoning Administrator. The signs shall be posted at least fifteen (15) days in advance of the hearing. All signs shall be prepared by staff and the Appellant shall bear reasonable costs associated therewith.

The property owner is responsible for compliance with the posting requirements set out herein and said property owner shall bear the burden of proof of compliance in the event that a question regarding compliance arises. In the event that the application is for an appeal of a decision made by the Zoning Administrator that involves a property not owned or leased by the appellant, staff shall contact the property owner and inform them of the need to post a sign on their property. If they are unwilling to allow the appellant to post the sign, staff shall post the sign.

### Section 6.4 – Publication of Notice

At least fifteen (15) days prior to an appeal hearing, the Board, through its staff, shall publish a notice of public hearing in a local newspaper. The notice shall include the date, time, and place of the hearing and shall be a class I legal advertisement in compliance with W.Va. Code § 59-3-1, *et seq.* The Appellant shall bear the cost of the advertisement.

### Section 6.5 – Supplementation of Record for an Appeal Hearing

Appellant(s) may provide two copies of supplemental materials to the Board in advance of a hearing on an appeal of an administrative decision and the same must be submitted no later than 15 days prior to the hearing date. The Appellant(s) shall also deliver complete copies of the supplemental materials to any applicable Respondent(s) at the same time and shall certify to staff that such materials were delivered as required.

No later than one (1) week prior to an appeal hearing, any Respondent(s) may file documentation with the Board for consideration and shall deliver complete copies of any material submitted to all other parties and shall certify to staff that such materials were delivered as required. The Board may consider the written decision being appealed together with all materials in the official file maintained by staff at the time of the hearing without necessity of mailing or delivery to any party. The parties may review the administrative file prior to the hearing.

All submissions shall be made in accordance with the Board of Zoning Appeals Rules of Procedure. Failure to follow submission guidelines by an Appellant shall be considered failure to file a complete appeal and the Board in its discretion may postpone the hearing until the Appellant complies or ignore the supplemental materials and base its decision upon other materials provided.

### Section 6.6 – Appeals of Board Decisions

Pursuant to W.Va. Code § 8A-9-1, every decision of the Board is subject to review by petition for writ of certiorari in circuit court.

RULES OF PROCEDURE  
CITY OF ELKINS BOARD OF ZONING APPEALS  
*Revised* \_\_\_\_\_

These rules became effective on \_\_\_\_\_

CITY OF ELKINS  
BOARD OF ZONING APPEALS,

By: \_\_\_\_\_

Chairperson



## CITY OF ELKINS AGENDA ITEM REPORT

|                          |   |
|--------------------------|---|
| <b>Meeting Date:</b>     | April 4, 2024   |
| <b>Section:</b>          | New business  |
| <b>Category:</b>         | Action Item   |
| <b>Agenda Item Name:</b> | Proposed forms and process for variance appeals   |
| <b>Recommended By:</b>   | City Clerk  |
| <b>Summary:</b>          | Proposed application form for variances is attached. Variances are exceptions to the zoning code and are not granted for mere convenience or preference. It is very rare that the conditions exist to allow a variance. |
| <b>Fiscal Impact:</b>    | None  |
| <b>Recommendation:</b>   | Consider for approval   |
| <b>Attachments:</b>      | 1. BZA_variance_draft - 2024_04_03  |



**APPLICATION FOR ZONING VARIANCE**

**BOARD OF ZONING APPEALS**

Name of Applicant: \_\_\_\_\_ Are you the property owner? YES NO

Applicant Address: \_\_\_\_\_

Applicant Phone No: \_\_\_\_\_ Applicant Email: \_\_\_\_\_

Name of Property Owner if Different from Applicant: \_\_\_\_\_

Address of Structure: \_\_\_\_\_ Zoning District: \_\_\_\_\_

Current Use: \_\_\_\_\_

**See the back of this form for requirements for the granting of a variance.**

In addition to this form, the following shall be submitted prior to review by the City of Elkins:

1. Application for Certificate of Zoning Compliance showing denial
2. A plan drawn to scale which shall depict the overall site layout including building location, parking area, circulation, setbacks, lighting, landscaping, screening, signage, and building location on adjacent parcels.
3. The preliminary building plans and elevations illustrating modifications and alterations including an indication of exterior materials, textures, and colors being used on the project.
4. A letter summarizing the request along with any other information deemed helpful by the applicant or necessary by the Board to explain the nature of the requested variance and its consistency with the standards outlined on the back of this application.
5. Legal Description (may be found in deed)
6. Application Fee of \$200. You will be billed separately for the cost of legal advertisement and notification posters.

I certify under penalty of perjury that the information contained in this application and its supplements are true and correct.

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Date

**From Elkins City Code § 152.028 VARIANCES.**

A variance is a deviation from the minimum standards of this code and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

The Board of Zoning Appeals shall grant a variance to this code if it finds that the variance:

- (1) Will not adversely affect the public health, safety, or welfare, or the rights of adjacent property owners or residents;
- (2) Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;
- (3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
- (4) Will allow the intent of this code to be observed and substantial justice done.

The Board of Zoning Appeals shall not grant a variance to allow the establishment of a use in a zoning district when such use is prohibited by the provisions of this code.

##



## CITY OF ELKINS AGENDA ITEM REPORT

|                          |  |
|--------------------------|--|
| <b>Meeting Date:</b>     | April 4, 2024  |
| <b>Section:</b>          | New business   |
| <b>Category:</b>         | Action Item  |
| <b>Agenda Item Name:</b> | Proposed forms and process for conditional-use applications  |
| <b>Recommended By:</b>   | City Clerk   |
| <b>Summary:</b>          | <p>Proposed application form for conditional uses is attached.</p> <p>A conditional use is a use enumerated in the Ordinance but not permitted by right that may be allowed by the Board upon a finding that the proposed use will not adversely affect the health, safety, and welfare of the public (as described in more detail in Elkins City Code § 152.029).</p> |
| <b>Fiscal Impact:</b>    | None   |
| <b>Recommendation:</b>   | Consider for approval  |
| <b>Attachments:</b>      | 1. BZA_Conditional Use_draft - 2024_04_03  |



APPLICATION FOR **CONDITIONAL USE PERMIT**

BOARD OF ZONING APPEALS

Name of Applicant: \_\_\_\_\_ Are you the property owner? YES NO

Applicant Address: \_\_\_\_\_

Applicant Phone No: \_\_\_\_\_ Applicant Email: \_\_\_\_\_

Name of Property Owner if Different from Applicant: \_\_\_\_\_

Address of Structure: \_\_\_\_\_ Zoning District: \_\_\_\_\_

Proposed Use: \_\_\_\_\_

Was the existing structure originally used as a Permitted Use in the district? YES NO

In order for the Conditional Use Permit to be granted, the applicant must demonstrate to the Board that all standards described on the back of this application will be met.

In addition to this form, the following shall be submitted prior to review by the City of Elkins:

1. Application for Certificate of Zoning Compliance showing denial
2. A plan drawn to scale which shall depict the overall site layout including building location, parking area, circulation, setbacks, lighting, landscaping, screening, signage, and building location on adjacent parcels.
3. The preliminary building plans and elevations illustrating modifications and alterations including an indication of exterior materials, textures, and colors being used on the project.
4. A letter summarizing the request along with any other information deemed helpful by the applicant or necessary by the Board to explain the nature of the proposed use and its consistency with the standards outlined on the back of this application.
5. Legal Description (may be found in deed)
6. Application Fee of \$150.00

I certify under penalty of perjury that the information contained in this application and its supplements are true and correct.

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Date

The BZA shall approve an application for a conditional use permit, subject to such reasonable conditions and restrictions as are directly related to and incidental to the proposed conditional use permit, if it finds that the following general standards have been met:

1. The use is consistent with the policies and intent of the corresponding purpose for the zoning district in which it lies and the City's comprehensive plan.
2. The use is physically and operationally compatible with the surrounding neighborhood and surrounding existing uses.
3. The use will be designed, constructed, operated, and maintained so that it does not cause substantial injury to adjoining property.
4. The use will be adequately served by public facilities and services which include but are not limited to water, sewer, electric, schools, streets, fire and police protection, storm drainage, public transit, and public parks and trails.
5. Adequate off-street parking will be provided on the same property as the proposed conditional use as well as adequate ingress and egress to the property in compliance with the standards set forth in this code.
6. Any storage of hazardous material will comply with all state, federal, and local regulations, and all such material will be listed and made known to the Chief of the City of Elkins Fire Department.
7. The use will not endanger public health or safety or constitute a public nuisance.
8. The use will not conduct operations in connection with the use which are offensive, dangerous, or destructive of the environment.

Conditions may be imposed on a proposed conditional use to ensure that potential significant adverse impacts on surrounding uses will be reduced to the maximum extent feasible, including but not limited to conditions or measures addressing:

1. Location on a site of activities that generate potential adverse impacts such as noise and glare;
2. Hours of operation and deliveries;
3. Location of loading space and delivery zones;
4. Light intensity and hours of full illumination;
5. Placement of outdoor vending machines;
6. Loitering;
7. Litter control;
8. Placement of trash receptacles;
9. On-site parking configuration and facilities;
10. On-site circulation; and
11. Privacy concerns of adjacent uses.

##