

SECTION 17-35. BOARD OF ADJUSTMENT

(a) Organization and Procedure:

- (1) Establishment:** A Board of Adjustment is hereby re-established in accordance with the provisions of §211.008 Texas Local Government Code.
- (2) Membership:** The Board shall consist of five (5) Members and two (2) Alternates, each to be appointed or reappointed by the City Council. Members of the Board shall serve for two-year terms of office with appointments beginning July 1st. Members shall be appointed by Places number 1 through 5, with Alternates 1 and 2. Places 1, 3, and Alternate 1 shall be appointed in odd-numbered years, and Places 2, 4, and Alternate 2 shall be appointed in even-numbered years so that Board memberships will be staggered. At least one member of the Board shall be a member of the Planning and Zoning Commission (the required position being designated as Place 5), and his term shall be for a one-year term of office, and shall expire on June 30th of each year. Each member of the Board shall be removable for just cause by City Council upon written charges and after public hearings. Vacancies shall be filled by the City Council for the unexpired term of any member whose term becomes vacant. The Board shall elect its own Chairman, who shall serve for a period of one (1) year or until his successor is elected.
- (3) Meetings:** Meetings of the Board shall be held at the call of the Chairman and at such times as the Board may determine.
- (4) Hearings:** The hearings of the Board of Adjustment shall be public; however, the Board may go into executive session for discussion but not for a vote on any case before it. The Board shall hear the intervention of any owner of property adjacent to, in the rear of, or across the street from, a lot as to which the granting of any building permit is pending, and shall also hear any other parties in interest. All hearings are to be heard by at least four (4) members of the Board.
- (5) Rules and Regulations:** 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, and shall keep records 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. The Board of Adjustment shall act by resolution in which four (4) members must concur. The Board shall adopt from time to time such additional rules and regulations as it may deem necessary to carry into effect the provisions of the Ordinance, and shall furnish a copy of the same to the Building Inspector, all of which rules and regulations shall operate uniformly in all cases. All of its resolutions and orders shall be in accordance therewith.

(b) Appeals:

- (1) Procedure:** Appeals may be taken to and before the Board of Adjustment by any person aggrieved, or by any Officer, Department, Board, or Bureau of the City. Such appeal shall be made by filing with the Office of the Board a notice of appeal and specifying the grounds thereof. The Office or Department from which the appeal is taken shall forthwith transmit to the Board of Adjustment all of the papers constituting the record upon which the action appealed from was taken. No appeal may be taken with regard to any platted lot until after approval of the final plat by the City Council.
- (2) Stay of Proceedings:** An appeal shall stay all proceedings in furtherance of the action appealed from unless the Building Inspector shall certify to the Board of Adjustment that by reason of facts in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of equity, after notice to the office from whom the appeal is taken and on due cause shown.

- (3) **Notice of Hearing on Appeal:** The Board shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and shall mail notices of such hearing to the petitioner and to the owners of property lying within two hundred (200) feet or less street frontage of any point of the lot or portion thereof on which a variation is desired, and to all other persons deemed by the Board to be affected thereby, such owners and persons being determined according to the current tax rolls of the City. Depositing of such written notice in the mail shall be deemed sufficient compliance therewith.
- (4) **Decision by Board:** The Board shall decide the appeal within a reasonable time. Upon the hearing, any party may appear in person or by agent or attorney. The Board may reverse or affirm wholly or partly or may modify the order, requirements, decision, or determination as in its opinion ought to be made in the premises, and to that end, shall have all powers of the officer or department from whom the appeal is taken.
- (5) **Fees:** Each appeal or request for hearing before the Board of Adjustment shall be accompanied by payment of a non-refundable fee.
- (c) **Powers and Duties of Board:**
- (1) **Subpoena Witnesses, Etc.:** The Board shall have the power to subpoena witnesses, administer oaths, and punish for contempt, and may require the production of documents, under such regulations as it may establish.
- (2) **Appeals Based on Error:** The Board shall have the power to hear and decide appeals where it is alleged there is error of law in any order, requirements, decision or determination made by the Building Inspector in the enforcement of this Ordinance.
- (3) **Special Exceptions:** The Board shall have the power to hear and decide special exceptions to the terms of this Ordinance upon which the Board is required to pass as follows or elsewhere in this Ordinance:
- a. Permit the erection and use of a building or the use of premises for railroads or for such uses as are in general conformance with the Master Plan and present no conflict or nuisance to adjacent properties.
 - b. To permit a public utility or public service or structure in any district, or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare.
 - c. To grant a permit for the extension of a use, height or area regulation into an adjoining district, where the boundary line of the district divides a lot in a single ownership on the effective date of this Ordinance.
 - d. Permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God, or the public enemy, to the extent of more 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.
 - e. To grant a permit for enlargement or expansion of a nonconforming use.
 - f. To determine whether an industry should be permitted within District "LI", Light Industrial, and District "HI", Heavy Industrial, because of the methods by which it would be operated and because of its effect upon uses within surrounding zoning districts.

- g.** To determine in cases of uncertainty the classification of any use not specifically named in this Ordinance.

(4) Variances: The Board shall have the power to authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship, and so that the spirit of this Ordinance shall be observed and substantial justice done, including the following:

- a.** Permit a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographical or other conditions, provided such variance will not seriously affect any adjoining property or the general welfare.
- b.** Authorize upon appeal, whenever a property owner can show that a strict application of the terms of this Ordinance relating to the construction or alterations of buildings or structures will impose upon him unusual and practical difficulties or particular hardship, such variances from the strict application of the terms of this Ordinance as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the Comprehensive Plan as established by this Ordinance, and at the same time, the surrounding property will be properly protected.

(5) Changes: The Board shall have no authority to change any provisions of this Ordinance and its jurisdiction is limited to hardship and border-line cases which may arise from time to time. The Board may not change the district designation of any land either to a more restrictive or less restrictive zone.