

**Sec. 146-165. - Board of adjustment.**

A board of adjustment is hereby established in accordance with the provisions of V.T.C.A., Local Government Code § 211.008 et seq., regarding the zoning of cities and with the powers and duties as provided in said statutes.

(1) Organization.

- a. Membership. The board shall consist of five citizens, each to be appointed or reappointed by the mayor and confirmed by the city council, for staggered terms of two years. In addition, two alternate members shall be appointed to serve in the absence of any regularly appointed member. 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 year or until his successor is elected.
- b. Meetings. Meetings of the board shall be held at the call of the chairman and at such times as the board or chief building official may determine.
- c. Hearings. The hearings of the board of adjustment shall be public. 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 five members of the board.
- d. 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 or order. Approval of any request shall require four affirmative votes. Any request not approved by affirmative vote of four or more members shall be considered denied. 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 chief building official, all of which rules and regulations shall operate uniformly in all cases. All of its resolutions and orders shall be in accordance therewith.

(2) Appeals.

- a. Procedure. Appeals may be taken from an administrative officer's decision and may be taken to and before the board of adjustment by any person aggrieved by the decision, or by any officer, department, board, or bureau of the city affected by the decision. The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed within a reasonable time as determined by the rules of the board. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.
- b. Stay of proceedings. An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.
- c. Notice of hearing on appeal. The board shall fix a reasonable time for the hearing of the appeal or other matters referred to it, shall give public notice of the hearing, and shall mail notices of such hearing to the petitioner and to the owners of property lying within 200 feet or less 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, postage-paid, shall be deemed sufficient compliance therewith.
- d. 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 of the administrative officer 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.

(3) Powers and duties of board.

- a. 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.

- b. Appeals based on error. The board shall have the power to hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by the chief building official and/or director of planning in the enforcement of this chapter.
- c. Special exceptions. The board shall have the power to hear and decide special exceptions to the terms of this chapter upon which the board is required to pass as follows or elsewhere in this chapter:
1. To permit the erection and use of a building or the use of premises for railroads if such uses are in general conformance with the master plan and present no conflict or nuisance to adjacent properties;
  2. 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;
  3. 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 the ordinance from which this section is derived; and
  4. 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 50 percent of its ~~fair market value~~ total appraised value as determined by the Collin Central Appraisal District, 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. ~~;-and~~
  - ~~5. Waive or reduce the parking and loading requirements in any of the districts, whenever the character of use of the building is such as to make unnecessary the full provision of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.~~
- d. Variances. The board shall have the power to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will

result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done, ~~including the following:~~

- ~~1. 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; and~~
  - ~~2. Authorize upon appeal, whenever a property owner can show that a strict application of the terms of this chapter 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 this chapter as are in harmony with its general purpose and intent, but only when the board is satisfied that a granting of such variation 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 zoning ordinance as established by this chapter, and at the same time, the surrounding property will be properly protected.~~
- e. Changes. The board shall have no authority to change any provisions of this chapter and its jurisdiction is limited to hardship and borderline 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.

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