

Sec. 146-165. - Board of adjustment.

A board of adjustment is hereby established in accordance with the provisions of Texas 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 similarly appointed to serve in the absence of one or more regular members. Each member of the board, regular and alternate, shall be removable for cause by city council upon a written charge and after a public hearing. Vacancies shall be filled by the city council for the unexpired term of any member, regular or alternate, whose term becomes vacant. The board shall elect its own chairperson from regular members, who shall serve for a period of one year or until their successor is elected.
- b. *Meetings.* Meetings of the board shall be held at the call of the chairperson 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 before the board must be heard by at least four 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. The concurring vote of at least four members of the board is necessary to:
  1. reverse an order, requirement, decision, or determination of an administrative official;
  2. decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or
  3. authorize a variation (or variance) from the terms of a zoning ordinance.

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 not later than the 20<sup>th</sup> day after the date the decision is made. 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 variance is desired, and to all other persons deemed by the board to be effected 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, not later than the next meeting for which notice can be provided following the hearing and not later than the 60<sup>th</sup> day after the date the appeal is filed. Upon the hearing, any party may appear in person or by agent or attorney. The board may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination from which an appeal is taken and make such order, requirement, decision, or determination as in its opinion ought to be made, and to that end, shall have the same authority as the administrative official.

(3) *Powers and duties of board.*

- a. *Subpoena witnesses, etc.* The board shall have the power to subpoena witnesses and records, 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 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 otherwise in conflict with the standards 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 and/or area regulation into an adjoining zoning district, where the boundary line of the zoning district divides a lot in a single ownership on the effective date of the ordinance from which this section is derived;
  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, 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.

The board shall also have the power to hear and decide special exceptions to the terms of chapter 122, article IV, entitled "Fences" in accordance with the requirements set forth in section 122-178.

- 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 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 zoning ordinance as established by this chapter, and at the same time, the surrounding properties 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. In addition, the board may not add a use or authorize a use in a zoning district where such use is not otherwise permitted save and except through the approval of a special exception under subsection (3)c.3, hereinabove.
  - f. *Amortization of nonconforming land uses.* The board shall have the authority to establish a compliance date for nonconforming uses at the request of the city council in accordance with section 146-40 (Nonconforming uses and nonconforming structures) of this chapter.
- (4) *Public hearings and notices.*
- a. *Public hearings required.* Public hearings shall be required in conjunction with requests for variances and special exceptions, appeals of an administrative official's determination and appeals based on error. Public hearings shall also be required for determinations regarding legal nonconformities, the continuing lawful use of nonconforming uses and property and structures, the expansion of or changes in nonconforming uses and the reconstruction of nonconforming structures. Public hearings are also required for all matters regarding the amortization of nonconforming uses and the establishment of compliance dates.
  - b. *Notice of public hearings.* Notice of public hearings be provided as follows:
    1. Written notice mailed to the parties in interest and to each owner of property, as indicated by the most recently approved tax roll, lying within 200 feet or less of any point or portion of the subject property prior to the tenth day before the date of the hearing; and
    2. Publication in the official newspaper of the city prior to the 15th day before the date of the hearing.