

**City of McKinney, Texas
Board of Adjustment
Rules of Procedure**

A. General

1. Authority

These Rules of Procedure are adopted in accordance with Paragraph (1)d. of Section 146-165 of the Code of Ordinances, City of McKinney, Texas (“McKinney Code”) and Texas Local Government Code § 211.008(e).

2. Applicability of Rules of Procedure

These Rules of Procedure will be used by the Board of Adjustment in conjunction with and subject to the provisions of McKinney Code § 146-165, as it may hereafter be amended. In the event of any conflict between these Rules of Procedure and McKinney Code § 146-165 the requirements of McKinney Code § 146-165 will control.

3. Right of Floor

Any member desiring to speak shall wait to be recognized by the Chair, or Presiding Officer, and shall confine their remarks to the subject under consideration.

4. Rules of Order

Robert’s Rules of Order will generally be used to govern procedures not included in these rules or in McKinney Code § 146-165.

5. Suspension of Rules

Any provision of these rules not governed by State law or City ordinance may be temporarily suspended by the affirmative vote of four or more members of the Board present and voting.

6. Amendment of Rules

These rules may be amended or new rules adopted by majority vote of the Board members present and voting, provided that the proposed amendments or new rules were introduced at a prior meeting and following the approval thereof by the City Council.

B. Officers and Duties

1. Chair

The Chair shall be selected in accordance with McKinney Code § 146-165(1)a, and shall preside at all meetings of the Board.

2. Vice-Chair

The Board shall also elect a Vice-Chair from its regular members, who shall serve for a period of one year or until their successor is elected. In the absence of the Chair, the Vice Chair shall preside. In the absence of both the Chair and the Vice-Chair, the regular member with the longest tenure on the Board shall call the meeting to order and the Board shall elect an acting Chair.

3. Call Order

The meetings of the Board shall generally be called to order by the Chair, or the Vice Chair in the absence of the Chair.

4. Preservation of Order

The Chair shall preserve order and decorum, prevent personality conflicts or the impugning of members' motives, and confine members in debate to the question under discussion.

5. Points of Order

The Chair shall determine all points of order, subject to the right of any member to appeal to the Board. If an appeal is taken, the question put to the Board shall be, "Shall the decision of the Chair be sustained?"

C. Appeals Alleging Error by an Administrative Officer or the Building Official

1. General

Prior to any application for an appeal before the Board, the applicant must have first made application for the appropriate permit or obtained a determination of the effect of the Zoning Ordinance from the administrative official. An application to the Board may then be completed and filed with the Board's Secretary (or Staff Liaison) at least sixteen (16) working days prior to the next meeting, accompanied by the required fee, legal description of the property involved and any other supportive evidence the applicant may wish to present to the Board in consideration of the matter.

2. Submissions to Board

Any person aggrieved by a determination of an administrative official may appeal to the Board by application as prescribed in Section C.1. Requests of this nature will be heard in a public hearing. The City Attorney may provide a legal brief to the Board in support of the administrative official's decision. The appellant may provide a brief to the Board in support of the appeal. A brief may be provided in advance or at the beginning of the hearing. If a brief is first provided at the hearing, the Board may recess to review the brief before conducting the hearing. All witnesses must be sworn in and their testimony taken under oath, and any evidence presented will be retained by the Board's Secretary (or Staff Liaison) as part of the record.

3. Public Hearing

The Board shall conduct its hearing on an appeal in the following sequence:

- a. The Chief Building Official or Director of Planning or their designated representative shall present background information regarding the case. They may elect to have the City Attorney present evidence and witnesses as part of this presentation.
- b. The appellant may cross-examine any witnesses presented by the City at the conclusion of the City's presentation of each witness.
- c. The appellant may then present his appeal which may include introduction of evidence and witnesses supporting the appeal.
- d. The City may cross-examine any witnesses presented by the appellant at the conclusion of the appellant's presentation of each witness.
- e. Other witnesses or parties of interest may present information supporting the appeal. At the conclusion of the testimony of other witnesses supporting the appeal, the City and the appellant will have an opportunity to cross-examine the witnesses.
- f. Other witnesses or parties of interest may present information in opposition to the appeal. At the conclusion of the testimony of other witnesses in opposition to the appeal, the City and the appellant will have an opportunity to cross-examine the witnesses.
- g. The City, then the appellant, may provide closing arguments.
- h. The Board may ask questions of a witness after the cross-examination of that witness. The Board may ask questions of the appellant or City staff presenting the case at any time during the presentations. The Chair may exclude evidence upon a sustained objection by the City or the appellant that evidence is irrelevant or unduly repetitious.

- i. When the Chair has determined that the Board has adequate information to make a decision, the hearing will then be declared closed. Upon completion of the Board's deliberation, the Board shall render an unbiased decision based on the record and supported by reasons and findings of fact.

4. Decision by the Board

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.

D. Variances from the Dimensional Requirements of Zoning Ordinances

1. General

The applicant must submit an application for a variance with the Board's Secretary (or Staff Liaison) at least sixteen (16) working days prior to the next meeting, accompanied by the required fee, legal description of the property involved and any other supportive evidence the applicant may wish to present to the Board in consideration of the matter.

2. Alleged Error in Refusal to Process Variance Application

In applications for a variance to the Zoning Ordinance, City Staff shall review the variance request and determine whether the Board has jurisdiction to hear the request as defined by the Zoning Ordinance and Texas law. Should the staff committee determine the applicant does not invoke the jurisdiction of the Board to apply for a variance the applicant may appeal that administrative decision pursuant to Section C, above. At the hearing of that appeal, the Board shall first determine the question of its jurisdiction to entertain the request. If the Board finds it has jurisdiction, it may then proceed to hear the request for the variance.

3. Purpose

The Board may authorize a variance from the zoning regulations on a specific parcel of land when, in the Board's opinion, such variance will not be contrary to the public interest, where, owing to special conditions of the property, a literal enforcement of the provisions of the zoning regulations will result in unnecessary hardship, and so that the spirit of the zoning regulations shall be observed and substantial justice done, including:

- (a) Permit a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardships 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

- (b) Authorize upon application and hearing, whenever a property owner can show that a strict application of the terms of the zoning regulations relating to the construction or alterations of buildings or structures will impose unusual and practical difficulties or particular hardship, such variances from the strict application of the zoning regulations as are in harmony with their general purpose and intent, ONLY when the Board is satisfied 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 regulations and at the same time, the surrounding property will be properly protected.

4. Limits on Board Authority

The Board shall have no authority to change any provisions of the zoning regulations 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 specifically identified in the zoning regulations. In addition, the Board cannot grant a variance from any requirements of one or more of the *International Codes* as adopted and amended by the City.

5. Submissions to the Board

Requests for variances will be heard in a public hearing following notice to owners of property situated within two hundred feet of the subject property. The Board shall review the application and the recommendation of the Chief Building Official or Director of Planning or their designated representative. The applicant may provide a packet of supplemental information to the Board in addition to the application supporting the variance request. Such supplemental information may be provided in advance or at the beginning of the public hearing. If supplemental information is provided at the public hearing, the Board may recess to review the supplemental information before conducting the hearing. All witnesses must be sworn in and their testimony taken under oath, and any evidence presented will be retained by the Board's Secretary (or Staff Liaison) as part of the record.

6. Public Hearing

The public hearing shall comply with Tex. Loc. Gov't Code §211.008, McKinney Code § 146-165, and these Rules of Procedure. The Board shall conduct its hearing on a variance in the following sequence:

- a. The Chief Building Official or Director of Planning or their designated representative shall present background information regarding the case. They may elect to have the City Attorney present evidence and witnesses as part of this presentation.
- b. The applicant shall present information supporting the request;

- c. Other witnesses or parties of interest may present information supporting the request;
- d. Those in opposition may then present information to the Board;
- e. The applicant will then be allowed a rebuttal; and,
- f. The hearing will then be declared closed.

Upon the completion of the Board's deliberation, the Board shall approve, approve with conditions, or deny the application.

7. Required findings

If the Board approves the requested variance, the Board's motion shall state upon the record the specific findings required by the zoning regulations that:

- a. There are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the same area and the same zoning district.
- b. A variance is necessary to permit the applicant the same rights in the use of this property that are presently enjoyed by other properties in the vicinity and same zoning district, but which rights are denied to the property on which the application is made.
- c. The granting of the variance on the specific property will not adversely affect the land use pattern as outlined by the future land use plan and will not adversely affect any other feature of the City's comprehensive master plan.
- d. The variance, if granted, will be no material detriment to the public welfare or injury to the use, enjoyment or value of property in the vicinity.
- e. The spirit of the zoning regulations shall be observed and substantial justice done with the granting of the variance.

8. The Board's Order

As noted above, after the hearing is closed, the Board shall approve, approve with conditions, or deny the application for a variance. In addition to the authority granted by Tex. Loc. Gov't Code § 211.009, the Zoning Board of Adjustment may authorize upon appeal in specific cases, and subject to appropriate conditions and safeguards, such variances from street frontage setback, side setback, rear setback, lot width, lot depth, or minimum setback standards, where the literal enforcement of the provisions of this ordinance would result in an unnecessary hardship, and so that the spirit of the code shall

be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development of other parcels of land in districts with the same zoning. A variance may not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor may a variance be granted to permit a person a privilege in developing a parcel of land not permitted by this Code to other parcels of land in districts with the same zoning district.

The Order must also identify each specific variance approved or allowed together with any conditions thereon with enough specificity and detail to enable the Director of Planning and the Chief Building Official and their respective designees to understand and enforce the Board's order.

E. Amortization of, and Establishment of, Compliance Date for Nonconforming Uses

1. In General

Amortizing and establishing a compliance date for a nonconforming use is a two-part process. There is an initial hearing that determines whether there is a need for a compliance date, and if the Board determines a need exists, a second hearing will be held to establish the compliance date.

If the Board denies the City's request for a compliance date, the Property Owner may continue to operate the nonconforming use. If the Board finds there is a need for a compliance date, a second hearing will be set to determine an amortization period and establish a compliance date. Once the Board decides on the compliance date, the nonconforming use must cease operation on the date, and it may not operate thereafter unless it becomes a conforming use.

The Board reserves the right to modify the following procedures as necessary to ensure orderly conduct of the hearing.

2. Procedure for the First Hearing

A. Briefing by the Board Chair

- (1) The Board Chair will provide opening remarks, detailing the nature and duties of the Board and procedures to be followed.
- (2) The briefing will be recorded.

B. *The Hearing*

- (1) Each side will have 20 minutes to present its witness testimony (including cross-examination) and documentary evidence, with 5 additional minutes for rebuttal/arguments.
- (2) The Board Chair will call the case and swear in individuals who intend to testify. All attorneys who wish to speak must also be sworn in.
- (3) The hearing will be recorded.
- (4) Documents and exhibits submitted in advance of the hearing will be offered as evidence. The documents and exhibits that are admitted become part of the Board's official record and will be retained by the Board.
- (5) The City's representative shall present its proposed amortization period, along with background information regarding the case. The representative, the City Attorney, or the City's expert may present evidence and witnesses as part of this presentation.
- (6) The Property Owner may cross-examine any witnesses presented by the City at the conclusion of the City's examination of each witness.
- (7) The Property Owner may then present its proposed amortization period, along with any evidence and witnesses supporting the Property Owner's proposal.
- (8) The City may cross-examine any witnesses presented by the Property Owner at the conclusion of the Property Owner's examination of each witness.
- (9) The Board may ask questions of a witness after the cross-examination of that witness. The Board may ask questions of the City's representative or the Property Owner's representative presenting the case at any time during the presentations. The Board Chair may exclude evidence that is irrelevant or unduly repetitious.
- (10) Testimony from the public will be heard by the Board (each individual will be allotted 3 minutes to speak).
- (11) The City, then the Property Owner, may provide closing arguments.
- (12) When both sides have concluded their presentations, the hearing will be closed. Upon the completion of the Board's deliberation, the Board shall render an unbiased decision, by motion, based on the record.
 - a. If the Board finds there is not a need for a compliance date, the decision is final.

- b. If the Board finds there is a need for a compliance date, a second hearing will be set. At the second hearing, the Board will establish a compliance date for the nonconforming use.

3. Procedure for the Second Hearing

A. Obtaining Information Prior to the Hearing

- (1) As provided by City ordinance, the Board may issue a subpoena to the Property Owner for relevant documents and may request that the Property Owner permit the City's representative to conduct a physical inspection of the Property for the purpose of determining an appropriate amortization period for the nonconforming use.
- (2) Documents received from the Property Owner and information obtained from a physical inspection will be analyzed by a qualified consultant retained by the City in determining the appropriate amortization period for the nonconforming use.
- (3) Failure or refusal of the Property Owner to provide documents as directed by a subpoena issued by the Board or to permit a requested physical inspection shall not prevent the Board from determining an amortization period and establishing a compliance date. In addition, such failure or refusal of the Property Owner shall constitute the Property Owner's waiver of any and all rights to challenge the qualifications of any witness providing testimony, opinions, or evidence of any kind or nature to the Board for its consideration in determining an amortization period and establishing a compliance date. The Property Owner's failure or refusal to provide documents or to permit a physical inspection shall also result in the Property Owner's waiver of any and all rights to challenge any evidence, information, testimony, theories, conclusions, analyses, opinions, or results submitted to the Board for its consideration in determining an amortization period and establishing a compliance date.
- (4) Furthermore, failure or refusal of the Property Owner to provide documents as directed by a subpoena issued by the Board or to permit a requested physical inspection shall constitute a waiver by the Property Owner to participate in the hearing, and the procedures regarding the Property Owner's participation at the second hearing shall not apply at that hearing. In such a case, the Property Owner may address the Board as part of (and subject to the same time allotment as) testimony from the public.

B. *Briefing by the Board Chair*

Briefing by the Board Chair for the second hearing will be conducted using the same procedures as for the first hearing.

C. *The Hearing*

The second hearing will be conducted using the same procedures and time limits as for the first hearing.

Upon the completion of the Board's deliberation in the second hearing, the Board shall establish, based on the record, a compliance date for the nonconforming use.