



**Zoning Board of Adjustment
Rules of Procedure
February 25, 2008**

1. Authority

- 1.1 Ordinance: Section 3-300C of the Zoning Ordinance of the City provides that the Board may determine the rules of its proceedings, not inconsistent with the Ordinance. The following set of rules shall be in effect upon their adoption by the Board and until they are amended or new rules adopted in the manner provided by these rules.

2. General Rules

- 2.1 Meetings to be public: The Board shall comply with the Texas Open Meetings Act. Every regular, special, or called meeting of the Board shall be open to the public. Meetings need not be open to the public when the Board is consulting with its attorney.

- 2.2 Quorum: Seven members of the Board shall constitute a quorum.

A total of thirteen regular and alternate members will be notified and will be expected to attend each Board meeting whenever possible. The intent of this practice is to provide nine voting members for every meeting. All alternate members are encouraged to attend all meetings to be aware of the business before the Board.

In the event fewer than nine regular members are present at the call to order, the Chair shall designate the alternate member(s) to take a place on the dais and vote on all items of the agenda.

- 2.3 Minutes of Meetings: Accurate minutes of all proceedings of the Board shall be kept by the Secretary to the Board.

Board minutes shall be reviewed by members who were in attendance at that particular meeting. The Chair will announce when the minutes are approved.

At the end of the meeting, the Chair will sign a results agenda indicating the Board's decision on each item that was on the agenda. The Secretary to the Board shall file the decision in the Board's office immediately after the meeting.

- 2.4 Right of Floor: Any member desiring to speak shall wait to be recognized by the Chair, and shall confine his/her remarks to the subject under consideration.

- 2.5 Rules of Order: Robert's Rules of Order shall govern procedures not included in these rules.
- 2.6 Suspension of Rules: Any provision of these rules not governed by State law or City ordinance may be temporarily suspended by 2/3 vote of members of the Board present and voting.
- 2.7 Amendment of Rules: These rules may be amended or new rules adopted, by a majority vote of all members of the Board present and voting, provided that the proposed amendments or new rules shall have been introduced at a prior meeting.

3. Type of Meetings

- 3.1 Regular Meetings:
 - a. The Board shall meet regularly once a month and more often on the call of the Chair.
 - b. The regular meetings of the Board shall be held in the Council Chamber of City Hall at 6:30 p.m. on the third Monday of each month, unless otherwise determined by the Board.
- 3.2 Special Meetings: Special meetings may be called by the Chair or the Mayor. Where possible, special meetings shall be announced during a regular meeting; otherwise, the notice of the special meeting, including the day and hour of such meeting, shall be given as much in advance of such meeting as possible.
- 3.3 Recessed Meetings: Any meeting of the Board may be recessed to a later time provided that no recess shall be for a longer period than until the next regular meeting.

4. Officers and Duties

- 4.1 Chair: The Chair is appointed by the Mayor and City Council. The Chair shall preside at all meetings of the Board.
- 4.2 Vice-Chair: The Board shall elect from its own membership a vice chair. In the absence of the Chair, the Vice Chair shall preside. In the absence of both the Chair and the Vice Chair, the Secretary shall call the meeting to order and the Board shall elect an acting Chair.
- 4.3 Secretary: The Director of Community Development and Planning, or his designee, shall act as Secretary for the Board. The Secretary shall provide for all notices required by State law and City ordinance.
- 4.4 Call to Order: The meetings of the Board shall be called to order by the Chair.

- 4.5 Preservation of Order: The Chair shall preserve order and decorum, prevent personalities or the impugning of members' motives, and confine members in debate to the question under discussion.
- 4.6 Points of Order: The Chair shall determine all points of order, subject to the right of any member to appeal to the Board. If any appeal is taken, the question shall be, "Shall the decision of the Chair be sustained?"

5. Order of Business

- 5.1 Agenda: The order of business of each meeting shall be as contained in the agenda prepared by the Secretary.

The agenda shall be a listing, by topic or case, of subjects to be considered by the Board and shall be delivered to members no later than the Friday preceding the Monday to which it pertains.

- 5.2 General: Prior to any application for a hearing, appeal, or other action before this 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 Secretary at least sixteen 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.

- 5.3 Variance: In applications for a variance to the Zoning Ordinance, a committee composed of representatives of the Community Development and Planning Department and City Attorney's Office 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 5.4. 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.

Should the Board grant the variance, its motion shall state upon the record the specific findings required by the Zoning Ordinance.

- 5.4 Appeals of Administrative Decisions: Any person aggrieved by a determination of the administrative official may appeal to the Board by application as prescribed in Section 5.2. 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 Secretary as part of the record.

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

- a. The Director of Community Development and Planning or his designated representative shall present background information regarding the case. The Director 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.

- 5.5 Special Exceptions: Special exception requests shall be presented pursuant to Section 5.2. At a public hearing, the applicant must provide evidence satisfying each requirements set out in the Zoning Ordinance for the particular special exception.

The Board has discretion to refuse or grant special exceptions even if the requirements of the ordinance are addressed. There is no precedent set by the grant or denial of a special exception.

Should the Board grant the special exception, its motion shall state upon the record the specific findings required by the Zoning Ordinance.

- 5.6 Zoning Map Interpretation: Requests for zoning map interpretations shall be filed in accordance with Section 5.2 where no prior disposition of the interpretation has been rendered by the Board.
- 5.7 Hearing: The Board shall conduct its meetings with the following sequence in the hearing of evidence in all cases other than hearings to amortize a nonconforming use, and appeals of the decision of an administrative official in enforcement of the Zoning Ordinance:
- a. The Director of Community Development and Planning or his designated representative shall present background information regarding the case;
 - 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 render its decision.
- 5.8 Amortization of nonconforming uses: The Board may require the discontinuance of a nonconforming use under a plan whereby full value of the structure or use can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of the Zoning Ordinance. The Board shall initiate the action on its own motion or otherwise. After initiation of the amortization process, the Chair shall issue a subpoena and interrogatories to the owner of the nonconforming use. After the city staff has examined the information provided by the owner and any information provided by an expert in amortization analysis, a hearing will be scheduled before the Board. The City may provide an expert opinion to the Board with a recommendation of an amortization period. The owner of the nonconforming use may provide a brief to the Board in support of the amortization period the owner proposes. 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 Secretary as part of the record.

The Board shall conduct hearings to determine the amortization period in the following sequence:

- a. The Director of Community Development and Planning or his designated representative shall present background information regarding the case. The Director may elect to have the City Attorney or the City's expert present evidence and witnesses as part of this presentation;

- b. The owner of the nonconforming use may cross-examine any witnesses presented by the City at the conclusion of the City's presentation of each witness;
- c. The owner of the nonconforming use may then present his proposed amortization period, which may include introduction of evidence and witnesses supporting the owner's proposal;
- d. The City may cross-examine any witnesses presented by the owner at the conclusion of the owner's presentation of each witness;
- e. The City, then the appellant, may provide closing arguments.
- f. 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.
- g. When the Chair has determined that the Board has adequate information to make a decision, the hearing will then be declared closed. Upon the 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.

6. Consideration of Motions

- 6.1 Questions to be Stated: The Chair shall state all questions submitted for a vote and announce the result.
- 6.2 Recording of Votes: A record of each member's vote shall be taken on all motions and shall be entered in the minutes of the Board.
- 6.3 Majority Vote Required:
 - a. The concurring vote of seven members of the Board shall be necessary to reverse any order, requirement, decision, or determination of an administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass, or to grant any variance in the Zoning Ordinance.
 - b. A simple majority shall be required for the Board to approve any matter not referred to in Section 6.3a.
- 6.4 Tie Vote: In the event of a tie in votes of any motion, the motion shall be considered lost.
- 6.5 Voting Required: No member shall be excused from voting except on matters involving the consideration of his own official conduct, or where his financial interests are involved, or unless excused by the Board for other valid reasons by a majority vote.

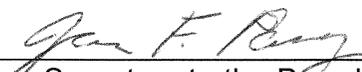
6.6 Order of Precedence of Motions: The following motions shall have priority in order indicated:

Not debatable
(1) Adjourn (When privileged ^{1,2}) (2) Take a recess (When privileged ^{1,3}) (3) Raise a question of privilege. (4) Lay on the table. (5) Previous question (2/3 vote required) (6) Limit or extend limits of debate (2/3 vote required ³)
Debatable
(7) Postpone to a certain time ³ (8) Commit or refer ³ (9) Amend ⁴ (10) Postpone indefinitely (11) Main motion ³
Footnotes
1. The first two motions are not always privileged. To adjourn shall lose its privileged character and be a main motion if in any way qualified. To take a recess shall be privileged only when other business is pending.
2. A motion to adjourn is not in order: a. When repeated without intervening business or discussion. b. When made as an interruption of a Member while speaking. c. While a vote is being taken.
3. Can be amended – others cannot be amended.
4. A motion to amend shall not be debatable when the question to be amended is not debatable.

6.7 Withdrawal of Motions: A motion may be withdrawn, or modified, by the maker of the motion without asking permission until the motion has been stated by the Chair. If the maker of the motion modifies the motion, the member seconding the motion may withdraw the second. After the question has been stated, the maker of the motion shall neither withdraw it nor modify it without the consent of the Board.

6.8 Amendments to Motions: No motion or proposition of a subject different from that under consideration shall be admitted under color of amendment. A motion to amend a main motion shall be in order, but one to amend an amendment shall not be in order.

Introduced on the 17th day of December 2007 and the 28th day of January 2008.
Approved by the Zoning Board of Adjustment on the 25th day of February 2008.


Secretary to the Board