

4/8/02

BOARD OF ADJUSTMENT RULES AND REGULATIONS

I. PURPOSE:

These rules shall apply to the City of Austin Board of Adjustment, Airport Board of Adjustment, and Sign Review Board. Pursuant to City Council authorization, the members of the Board of Adjustment also sit as the Airport Board of Adjustment. In accordance with City Code Section 2-4-571, five members and alternates of the Board of Adjustment serve as five members of the seven-member Sign Review Board. Wherever these rules refer to "the Board" or "the Board of Adjustment" they shall also be understood to refer to the Airport Board of Adjustment or the Sign Review Board when appropriate.

II. ORGANIZATION AND OFFICERS:

201. Organization

The Board of Adjustment consists of five members and such alternate members as may be appointed by the City Council. The Board is organized under the laws of the State of Texas and the City Code of the City of Austin. Alternate members shall serve in the absence of regular members. Wherever these rules refer to "members", they shall also be understood to refer to alternate members when appropriate. To the extent possible, regular board members or alternates who hear an original case shall also hear any postponement, continuance, rehearing or reconsideration of a case. The seven-member Sign Review Board consists of five members or alternates of the Board of Adjustment hearing a case, plus two additional members to be appointed by the City Council to the Sign Review Board.

202. Officers

A Chair and Vice-Chair shall be elected annually from among the Board's membership at a special called meeting at which no cases are scheduled. The Building Official, and his/her designated representative, shall serve the Board as Executive Secretary.

203. Duties of Officers

- A. The Chair, or in his/her absence, the Vice-Chair, shall preside at all meetings, shall decide all points of order or procedure, shall swear in all witnesses, and compel the attendance of witnesses as necessary.
- B. The Executive Secretary shall be custodian of the records and shall attend to the official correspondence and shall supervise the clerical work of the Board.

III. MEETINGS:

301. Regular Meetings

Regular meetings of the Sign Review Board and the Board of Adjustment shall be held every second Monday of every month at 5:30 P.M. in accordance with a schedule as the Board may adopt. The Board may schedule a regular meeting on a different day if necessary. When the Sign Review Board and the Board of Adjustment meetings are scheduled for the same day and time, the Sign Review Board shall meet and consider items on its agenda prior to the Board of Adjustment meeting. Meetings of the Board shall be adjourned no later than 11:00 P.M. unless there is a vote of at least three members to continue the meeting beyond 11:00 P.M.

302. Special Meetings

A special meeting may be called for work sessions, executive sessions, to accommodate an excess of cases or for any other lawful purpose. Notice of a special meeting shall be mailed to every member and alternate member at least seven days prior to the day of the meeting. On request, or with the concurrence of any three members, the chair may call a special meeting.

303. Quorum

A quorum shall consist of four members.

304. Cases to be Heard at Each Meeting

The Board shall consider all cases which must be heard at each meeting in order to comply with Land Development Code requirements, or other applicable requirements, regarding timely decisions.

305. Agenda

The agenda for each meeting will be prepared by the Executive Secretary. The agenda shall include appeals and other matters scheduled for consideration by the Board. There may be attached to the agenda a list of matters pending further action by the Board and pending report of disposition by the Executive Secretary.

IV. RECORDS

401. Official Records

The official records shall be maintained by the Executive Secretary and shall include rules and regulations, and the minutes of the Board together with all findings, decisions and other official actions, and such other documentation and tangible items as may be appropriate.

402. Recording of Vote

The Executive Secretary for the Board shall keep minutes of its proceedings which shall show the vote of each member on every question on which the Board is required to act, or if absent or failing to vote, indicating that fact.

403. Files – Retention

All appeals and other matters coming before that Board shall be filed in the Watershed Protection & Development Review Department or its successor department in accordance with that department's general file system. Original papers of all appeals shall be retained for not less than ten years after date of application. Thereafter they may be microfilmed, along with other special matter as the Executive Secretary deems essential, for permanent record, in accordance with state law.

404. Public Record

The official record, appeals accepted for filing, and other matters presented to the Board in regular or special meetings shall be on file in the Watershed Protection & Development Review Department or its successor department and shall be open to public inspection during customary working hours.

V. APPEALS

501. Types of Appeal

The Board of Adjustment shall consider two types of appeal: for interpretation of the meaning or intent of the zoning regulations within the Land Development Code, and for variance from the literal enforcement of the zoning regulations within the Land Development Code in order to achieve a reasonable development of property, in accordance with the Board of Adjustment's statutory authority, and pursuant to the requirements of the City Code.

The Sign Review Board shall consider only variances from requirements of the sign regulations, and other matters specifically delegated to the Sign Review Board as set out in the Land Development Code.

The Airport Board of Adjustment shall consider only variances from City of Austin airport zoning regulations, in accordance with the Airport Board of Adjustment's statutory authority.

502. Refusal Required

No appeal shall be taken to the Board until and unless the Building Official has first refused a permit for plans submitted or has rendered an interpretation of the zoning regulations within the Land Development Code, or has rendered a decision under the sign regulations within the Land Development Code, or the city's airport zoning regulations.

VI. APPLICATION REQUIRED FOR BOARD REVIEW (General)

601. Form

Every appeal must be filed on an application form provided by the Executive Secretary and shall be complete in all respects before it is accepted for filing. The Board shall not act upon an application which is not made in the form prescribed or which is incomplete. Appeals to the Board of Adjustment may be filed by the owner or agent of any property subject to the City's zoning regulations or by any person aggrieved, or by any officer, department, board (excluding the Board of Adjustment) or commission of the City affected by a decision of the Building Official. Appeals to the Sign Review Board may be filed by the owner or agent of any property subject to the City's sign regulations, or by a person aggrieved by a decision of the building official under the sign regulations.

Appeals to the Airport Board of Adjustment may be filed by the owner or agent of any property subject to the City's airport zoning regulations.

602. Owner/Agent Filing

If an appeal is filed by the owner of the property, which is the subject of an action of the Building Official, the application must be signed by the property owner or his/her agent. If the application is signed by an agent, the agent must indicate the name of his/her principal and the agent's capacity to serve that principal. An agent must submit evidence sufficient to establish his/her authority to act on behalf of the owner.

603. Standing – Burden of Proof

In all appeals, the burden of proof shall be on the applicant to demonstrate standing before the Board by clear and convincing evidence. If the Board, on hearing the evidence regarding the applicant's standing, dismissed the appeal for lack of standing, the Board's action shall constitute a final order disposing of the appeal.

604. Time For Filing Application for Board Review; Time for Hearing on Application

An application for Board interpretation review shall be filed with the Board within 20 days after the date of decision of the Building Official. An original application for a variance may be filed at any time. (See Rule 703 below.) The Board shall hold a hearing on each appeal not later than 45 days after the date the application is filed, unless the item is postponed.

605. Posting Notice of Appeal

A. Notice shall be as required by the Land Development Code. The required sign(s) indicating that a variance, administrative appeal or other action of the Board has been requested must be posted on the subject property for no less than ten (10) full days immediately prior to and including the date of the public hearing, and the posting of the sign(s) must comply with Land Development Code. If the subject property is adjacent to more than one public street, a sign will be posted in accordance with this rule facing each street.

In accordance with the Land Development Code, the postponement or continuation of a public hearing does not require additional notice if such postponement or continuance is to a specific date and time no later than 60 days from the date of the hearing for which notice was given.

- B. Failure of an applicant to maintain a sign in accordance with this rule may result in a postponement of the consideration of the request at a public hearing until this rule has been complied with.

VII. SUBMISSION OF EVIDENCE, WITHDRAWAL OF APPEAL, LIMITATION ON APPEALS

701. Submission of Evidence

Evidence supporting the grant or denial of an appeal shall be submitted only through the Executive Secretary or to the Board in a public meeting.

702. Withdrawal of Appeal

Any appeal may be withdrawn upon written notice to the Executive Secretary. Further, an applicant for variance, upon written notice to the Executive Secretary, may withdraw his or her appeal application after an approval by the Board, and such withdrawal shall have the same effect as a denial as of the date of withdrawal. The Executive Secretary shall announce at the board meeting the withdrawal of any appeals, when withdrawal is filed after public notice has been made.

703. Limitation on Appeal Applications

Following the denial of a variance, no application for the same or substantially the same variance on the same or substantially the same site shall be filed within one year of the date of denial. The Board shall not hear appeals concerning notice or procedure requirements of the Land Development Code, or matters in which jurisdiction is vested in another municipal board or commission.

VIII. INTERPRETATION REVIEW

801. Interpretation: Basis for Filing

Whenever it is alleged that there is an error in an order, requirement, decision, determination, or application by the Building Official of the requirements of the zoning regulations within the Land Development Code, an appeal for interpretation of the regulations or map designations may be filed with the Board.

802. Evidentiary Requirements

An appeal application shall include:

- A. A statement by the applicant describing the way it is alleged the Land Development Code should be interpreted, together with diagrams and charts illustrating the proper application of the map or text provisions of the Land Development Code.
- B. A statement by the Building Official giving the reasons for the Official's interpretation of the Land Development Code.

803. Interpretation: Basis for Action

- A. Before acting on an appeal for interpretation the Board shall consider:
 - 1. the facts and statements filed in the application;
 - 2. the testimony and other evidence presented at the public hearing. The applicant may submit additional information during the hearing.
 - 3. the Building Official's technical report on the appeal, and;
 - 4. the Board's consideration and evaluation of the language of the Land Development Code and of related ordinances bearing thereon;

804. Prerequisite Findings

The Board shall make such interpretation as ought to be made provided it finds that all of the following conditions exist.

- 1. That there is reasonable doubt or difference of interpretation as to the specific intent of the regulations or map;
- 2. That an appeal of use provisions could ^{not} clearly permit a use which is in character with the uses enumerated for the various districts and with the objective of the district in question.
- 3. That the resulting interpretation will ~~not~~ grant a special privilege to one property inconsistent with other properties or uses similarly situated.

opponents
would
say
② not
③ will

IX. REQUESTS FOR VARIANCES

901. Variance: Special Information Required

- A. An application for a variance must contain information addressing each of the factual elements upon which the Board must base its affirmative findings of fact which would support the findings required by the Land Development Code.
- B. When an appeal is submitted for variance from setback, side or rear yard requirements, the applicant shall provide the same information for properties adjoining the common lot line as may be applicable to the appealed requirements.

902. Findings for Zoning Variance

- A. Basic Criteria: The Board of Adjustment may grant a variance if it makes affirmative findings on each of the following criteria:
 - 1. The zoning regulations applicable to the property do not allow for a reasonable use.
 - 2. The hardship for which the variance is requested is unique to the property and not general to the area in which the property is located.
 - 3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of regulations to the zoning district in which the property is located.
- B. Parking: Additional Criteria. The Board may grant a variance to a regulation prescribed by the Land Development Code with respect to the loading facility or off-street parking requirement if it makes findings of fact that the following additional circumstances also apply:
 - 1. That neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specified regulation.
 - 2. That the granting of the variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic on the streets.

3. That the granting of the variance will not create a safety hazard or any other condition inconsistent with the objective of the Land Development Code.

A variance granted under Subsection (B) applies only to the use for which the variance was granted and does not run with the land on which the use is located.

903. Specific Findings For Sign Variances by Sign Review Board

The Sign Review Board may grant a variance from the terms the sign regulations of the Land Development Code, if it determines that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated, and that :

1. The variance is necessary because strict enforcement of the provisions of the sign regulations of the Land Development Code prohibit any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site, such as its dimensions, landscaping or topography; or
2. Granting the variance will not have a substantially adverse impact upon neighboring properties; or
3. Granting the variance will not substantially conflict with the stated purposes of the sign regulations of the Land Development Code.

904. Specific Findings for Airport Zoning Variances by Airport Zoning Board of Adjustment (Local Government Code Section 241.034)

The Airport Zoning Board of Adjustment shall allow a variance from an airport zoning regulation if it finds that:

1. A literal application or enforcement of the regulation would result in practical difficulty or unnecessary hardship; and
2. The granting of the relief would:
 - a. result in substantial justice being done;
 - b. not be contrary to the public interest; and
 - c. be in accordance with the spirit of the regulation and Chapter 241 of the Texas Local Government Code.

905. Conditions on Variances

The Board may impose any reasonable condition on any variance that is considered necessary to accomplish the purposes of the Land Development Code, and the applicable state law.

X. HEARINGS AND DECISIONS

1001. Public Hearings

Hearings on all matters on which a decision of the Board is required by law shall be open to the public, in accordance with the Open Meetings Act. The applicant may appear in his/her own behalf or be represented by counsel or agent.

1002. Order of Business

The Chair shall call the Board to order. The Executive Secretary shall record the members present and absent, and shall call each appeal in the order filed, and shall announce the case number, the name of the applicant, and the location of the property involved. The Executive Secretary shall describe the nature of the case, and advise the Board of any communications received. Supporting evidence for and against each case shall be presented to the Board.

1003. Procedure for Hearing

A. The Chair shall first call upon the applicant to present his/her case. The applicant shall first address his/her standing to appear before the Board by asserting his/her status as:

1. The property owner or agent of the subject tract, or
2. A person owning real property within 300' of the subject tract.

The applicant shall then present his/her arguments. The Chair shall then inquire if there are others affected who support the appeal, who may then speak, within the remaining time allotted.

B. The Chair shall next call on those opposed to the granting of the appeal to present their arguments. The applicant shall then have the right of rebuttal to arguments presented by opposition. Following the rebuttal the Chair shall order the hearing closed.

C. Each side shall proceed without interruption by the other and all arguments and pleadings shall be addressed to the Board. No argument between applicant and opponents will be permitted. If requested, limited cross-examination between applicant and opponents will be allowed.

D. The Board may continue a hearing on any appeal for which the applicant fails to appear unless the applicant has requested that the Board act without his/her being present at the hearing; provided, however, that the Board may dismiss for want of prosecution any appeal in which the applicant has failed to appear for three (3) meetings at which the appeal was set for hearing; and provided further, that the Board shall hear those persons appearing in response to the notice of hearing.

E. Time Limits for Presentations

1. Variances

All presentations on behalf of an application for a variance shall be limited to a total of five (5) minutes. All presentations on behalf of opponents shall have a total of five (5) minutes to state their opposition to the application. The applicant shall have a total of two (2) minutes to rebut the arguments of the opponents to the application.

2. Interpretations

All presentations on behalf of an application for interpretation shall be limited to a total of ten (10) minutes. All presentations on behalf of opponents shall have a total of ten (10) minutes to state their opposition to the application. The applicant shall have a total of three (3) minutes to rebut the arguments of the opponents to the application.

3. Increase of Time Limits

Upon the motion of any member and a positive vote by a majority of the Board, or upon a ruling by the Chair, these time limits may be equitably extended. After the public hearing is closed, no further public comment shall be accepted unless requested by the Chair.

1004. Board's Questions

After closing the public hearing, the Chair shall direct any question to the applicant or any person speaking in order to bring out all relevant facts, circumstances and conditions affecting the appeal, and then shall call for questions from other members of the Board and from the Building Official or his/her designated representative. During its review, the Board may call on any party to the proceeding for further questioning.

1005. Disposition of Appeals

The Board may grant, may modify, or may deny any appeal. The Board may also defer action on any appeal whenever it concludes that additional evidence is needed or that alternate solutions need further study. However, the Board of Adjustment must act upon an application for a variance no later than the next scheduled meeting after the public hearing is closed. An appeal may be dismissed or postponed when the Board finds that the appeal has been improperly filed. The Sign Review Board must act upon an application for variance within the time period prescribed by the Land Development Code, unless an extension or postponement has been granted at the request of the applicant.

1006. Vote Required

The concurring vote of four members shall be necessary to grant or to grant conditionally any matter appealed to the Board. When a motion in favor of an applicant fails to receive four affirmative votes, it shall be entered in the minutes as a vote to deny; or if a member is absent at the vote and if the vote of that member added to the number voting for the applicant would equal four, the motion shall be recorded as a vote to continue consideration to the next meeting. When a motion to deny an appeal to the Board of Adjustment receives at least two affirmative votes, it shall be entered in the minutes as a vote to deny.

1007. Reconsideration of Action

A. Any appeal which has received final action may be reconsidered once by the Board in accordance with the procedure listed below. A request to reconsider may be initiated by any person having standing as provided by Rule 603. Requests for reconsideration shall be filed in writing with the Executive Secretary within seven (7) days after the Board's decision.

B. A request to reconsider shall state clearly how the Board erred in its determination; why the action should be reconsidered; and shall be

601 ?

supported by such new evidence as was not available at the time of original consideration.

- C. When a request to reconsider has been properly filed pursuant to this Section 1007 of the Rules and Regulations, the Secretary shall place the matter on the agenda of the next month's regular meeting of the Board. The Board shall review the written request for reconsideration at the time and shall, on the basis of the written material submitted by the applicant in support of the request, determine whether the matter shall be reconsidered, because of an error in its original determination or on the basis of new evidence not presented to the Board at the time of the original hearing, which might affect its determination. The affirmative vote of three members of the Board shall be necessary to grant the applicant a reconsideration, which shall then be heard immediately following the Board's decision to reconsider. Failure of a motion to reconsider shall constitute final action on the matter.

XI. CONDUCT OF BOARDMEMBERS

1101. Disqualification from Voting

- A. A member shall disqualify himself or herself from voting whenever he or she has a personal or monetary interest in the property under appeal, or will be directly affected by the decision of the Board, or is otherwise disqualified by state law or city ordinance.
- B. Any member may disqualify himself or herself from voting whenever any applicant or his/her agent has sought to influence the vote of any member on his/her appeal, other than in the public hearing.
- C. Members shall not individually investigate cases before the Board, other than routine site visits. A member shall be disqualified if he/she receives material information regarding a case before the Board which is not made available to other board members. However, a member who inadvertently receives information not made available to other board members shall publicly disclose such information and its source, and may participate in the consideration of the case.

1102. Compliance with Ethics Requirements; Removal from Office; Attendance at Meetings

- A. Board members shall conform to standards of conduct as set out in the Chapter 2-3 of the City Code (Ethics Ordinance).

- B. City Council may remove a board member for cause on a written charge after a public hearing, as provided in Local Government Code Section 211.008 (b). Cause for removal from office includes, but is not limited to, failure to abide by the requirements in this Section XII.
- C. The Board may recommend to the City Council removal of any of its members for cause, including repeated failure or refusal to comply with these rules or other applicable law.
- D. Members shall regularly attend meetings as required in City Code Section 2-4-3.

XII. RULES AND AMENDMENTS

1201. Amendment Procedure

Amendments to these Rules and Regulations may be made by the Board at any meeting, upon the affirmative vote of four members, provided any such amendment is proposed at a preceding meeting and appears in the minutes of such meeting. By unanimous consent of the Board's members, amendments may be adopted at the meeting at which introduced but shall not become effective until the next regular meeting.

1202. Copy of Rules

A copy of these Rules and Regulations and of any amendments thereto will be made available to the public by the Executive Secretary upon request.

1203. Repealing Clause

All previously adopted rules and regulations of the Board shall be and the same are hereby expressly repealed.

These Rules and Regulations were adopted by the Board effective April 8, 2002.

Attest: _____

Clara Hilling

Watershed Protection and Development Review Department