



Tomball Board of Adjustments

Annual Report

2009



John Ford, Chairman
Brett Tynes, Vice Chairman
Latrell Shannon
Rick Tomlinson
Tana Ross
John Lynch, Alternate 1
Barbara Tague, Alternate 2

Board of Adjustments Action Overview

This annual report covers the Board of Adjustment's (BOA) actions since the adoption of the Tomball Zoning Ordinance (Ordinance 2008-01) in February 2008. During this time span, the BOA conducted 13 meetings; six in 2008 and seven in 2009.

The City of Tomball has received 22 BOA applications. The City received 13 applications in 2008; the nine received in 2009 represented a 31% decrease in applications received. Many applications received included more than one BOA decision request as reflected below in the legal descriptions for the BOA cases heard. For example, BOA Case P09-179 was an appeal of an administrative decision *or* a special exception for the reconstruction of non-conforming structures and the resumption of a nonconforming use. Of the 22 applications received, 17 decisions were made by the BOA, four applications were withdrawn by the applicant(s), and one application is still pending.

Cases Presented

Interpretation/Administrative Appeal

The BOA hears interpretations and appeals by applicants that allege error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the Zoning Ordinance. The BOA is granted the authority to reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the Board has the same authority as the City Manager or his/her designee.

Since the passage of the Zoning Ordinance in February 2008, the BOA has heard three interpretation or administrative appeals cases. The interpretation and administrative appeal case topics included side yard setback requirements, front yard fence encroachments, and the reestablishment/reconstruction of nonconforming uses and structures. Of the three interpretation/administrative appeal applications, the BOA approved two and denied one, representing a 66.6% approval rate.

Variance

A variance is the authority to depart from the application of areas, setbacks, height, and similar regulations to prevent unnecessary hardships. The Board may authorize a variance from the regulations established in the Zoning Ordinance if it finds that undue hardship will result from requiring compliance. Variances may be granted only when in harmony with the general purpose and intent of the Zoning Ordinance so that the public health, safety, and welfare may be secured and that substantial justice may be done.

Since the passage of the Zoning Ordinance in February 2008, 14 variance applications have been heard by the BOA. The variance case topics included front/side/rear yard

setback reduction, two-way drive aisle width reduction, lot width/area reduction, building orientation, front yard fence encroachment, lot coverage, accessory building location, and alleyway access for a nonresidential use. Of the 14 variances brought before the BOA, 11 were approved and three were denied, representing a 78.6% approval rate.

Special Exception

A special exception, although a type of variance, is differentiated from the variances described above in that it does not require a finding of hardship and applies only to nonconforming uses and structures, off-street parking requirements, and landscaping requirements. In granting a special exception, the Board may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety, and general welfare.

Since the passage of the Zoning Ordinance in February 2008, three special exception applications have been heard by the BOA. The special exception case topics included off-street parking, landscaping, and the reconstruction/resumption of a nonconforming structure/use. Of the three special exception applications brought before the BOA, two were approved and one was denied, representing a 66.6% approval rate.

BOA Training/Workshops

At its first meeting on May 6, 2008, the Board of Adjustments entered into a Training Workshop presented by Olson & Olson, LLP to discuss the duties and responsibilities of the Board of Adjustments pertaining to zoning issues. The Board also viewed the video presentation on the Open Meetings Act.

On June 3, 2008, the Board adopted its Working Rules of Procedure (attached), which outlines the organization of the Board, its authority, and the formal decision-making process.

At its July 23, 2009 special meeting, the Board viewed “Introduction to the Zoning Board of Adjustments”. This training presentation was created by the American Planning Association and the Lincoln Institute of Land Policy and covered a number of topics including:

- Board functions and powers
- Types of variances
- Historical background of the BOA
- How to conduct effective public hearings
- Findings of fact
- Defensible decision making

The Engineering & Planning Department will pursue additional BOA training opportunities, workshops, training videos, and reading materials in fiscal year 2010. The goal of these training opportunities is to ensure that the Board understands its role in the

City's development process and is made aware of emerging trends in development and land use policy.

Additional Staff Comments

The time period since the adoption of the Zoning Ordinance has been a notable learning experience for the City of Tomball in general and the Board of Adjustments in particular. The City has taken a number of steps to advance the Zoning Ordinance and its ability to effectively implement land use and development policy within its planning area. These steps include the adoption of the *Major Thoroughfare Plan*, the completion of the *2920 Access Management Study*, and the adoption of the *Livable Centers Downtown Plan* and *Comprehensive Plan*. In order to further refine the *Comprehensive Plan* and the Zoning Ordinance, the City is pursuing a Downtown Specific Plan to identify specific land uses, development standards and design guidelines appropriate for the Downtown area in order to revitalize the Downtown and create a more livable and vibrant Downtown core.

Additionally, the BOA process has helped City staff identify a number of weaknesses in the Zoning Ordinance that need to be reviewed in the upcoming Zoning Ordinance update. One of the responsibilities of City staff is to identify those variances, special exceptions, and interpretations/administrative appeals that are repeatedly presented and to determine if these requests are site specific or if they are an indication of a weakness in the City's ordinances.

An example of an area that the BOA process has helped to identify as a potential shortcoming is Section 34.5.B.3 and 34.5.B.4 of the Zoning Ordinance. Currently the ordinance permits a building in the Old Town & Mixed Use District to have a zero foot side yard setback only if it is a retail use that is platted as such into an "overall shopping center." The area where this is most relevant is in the Old Town Tomball section along Main Street where a number of the buildings have zero foot side yards, but were never platted as a retail center. In BOA Case P09-127, South Texas Coffee House was attempting to have a zero foot side yard setback. The request was consistent with many of the existing buildings in Downtown, but the Zoning Ordinance prohibits this without the granting of a variance because it is not platted into an overall retail shopping center. As a result of this case and the BOA discussion that followed, City staff will recommend that this section be revised to permit properties located on Main Street, Market Street, and Commerce Street to have a zero foot side building line so long as the wall adjoining the building line is constructed with materials giving it a four-hour firewall rating.

Legal Descriptions of BOA Cases Heard

BOA Case P08-019: Request by John E. Bailey, Jr. for an interpretation of or a variance from the terms of the City of Tomball Code of Ordinances related to the proposed construction of an enclosed patio that would encroach 4 feet 2 inches over the 10-foot building setback line applicable to the property. The project site is an approximately 3,630 square foot lot located at 706 South Oak Street, in the SF-6- Single Family 6 District.

BOA Case P08-021: Request by Burhan Ali, on behalf of Dr. Mustansir Vejlani, for a variance from the terms of the City of Tomball Code of Ordinances to allow an 18-foot wide drive aisle where a minimum 24-foot wide drive aisle is required for two-way traffic. The project site is an approximately 0.2755 acre lot located at 721 James Street, on the southwest corner of James Street and School Street, in the O- Office District.

BOA Case P08-027: Request by David Schulke, on behalf of Tomball Independent School District, for a special exception to the City of Tomball Code of Ordinances for a reduction in the off-street parking requirements to allow a total of 222 parking stalls where the Zoning Ordinance requires 322 parking stalls and to allow for a reduction in the landscape requirements, in order to facilitate site renovations. The project site is the Tomball Intermediate School located at 723 West Main Street, Tomball, TX 77375.

BOA Case P08-028: Request by D & N Real Estate Investments for a variance from the terms of the City of Tomball Code of Ordinances to allow the creation of a lot, the result of a proposed three-parcel replat, with a lot width of 75 feet where a minimum lot width of 85 feet is required for newly created lots in the D-Duplex Residential District. The project site consists of Lots 43, 44 and 45 of Block 74 of Revised Map of Tomball; as Recorded in Vol. 4, Pg. 25, of the Map Records of Harris County, situated in the Ralph Hubbard Survey, Abstract 383, Harris County, Texas (321 Foster Street, Tomball, TX, 77375).

BOA Case P08-061: Request by Rose Land Ventures, LLC for variances related to the construction of a duplex development on three lots totaling approximately 0.2238 acres at 409 Ash Street, situated on the easterly side of Ash Street, southerly of Timkin Road in the D-Duplex Residential District. Variances requested: 1) to allow the creation of a lot, the result of a proposed three-parcel replat, with a lot width of 75 feet where a minimum lot width of 85 feet is required for newly created lots in the D-Duplex Residential District; 2) to allow the creation of a lot with a total lot area of 9,750 sq. ft. where a minimum lot area of 10,200 sq. ft. is required; 3) to allow the front of the duplex structure to face the side yard where the Code requires structures to face the front yard; 4) to allow a 15' front setback where the Code requires a 25' front setback; and 5) to allow a 6' tall fence to encroach 10' feet into the required 25' front setback.

BOA Case P08-066: Appeal by Ray Vitulli, on behalf of St. Anne Catholic Community, from alleged error by City official in interpretation of Zoning Ordinance Sections 42.4 (B), 42.5 and 43.4(5), or alternatively a request for a variance from the terms of the City of Tomball Code of Ordinances related to the proposed construction of 6-foot wrought iron fence with brick columns that would encroach approximately 15 feet into the required 25-foot front yard setback. The project site is located at 1111 South Cherry Street, in the SF-9- Single Family 9 District.

BOA Case P08-078: Request by Halmude Naumann Jr. for four variances from the City of Tomball Code of Ordinances to address the construction of two carports at 1034 Pitchford Road, Tomball, Texas: a variance to allow a 0 foot rear yard setback where the

city requires a 25 foot rear yard setback; a variance to allow a 30 foot front yard setback where the city requires a 60 foot front yard setback; a variance to allow 45% lot coverage where the city requires 40% lot coverage; and a variance to allow an accessory building (carport) in front of the main building. The project site consists of Tract 272A in the Corrected Plat of Tomball Outlots recorded in Volume 4, page 75 of the map records of Harris County (1034 South Pitchford Road, Tomball, Texas).

BOA Case P08-079: Request by John L. Lynch, CPA for two variances from the City of Tomball Code of Ordinances to address parking at 705 Mason Street, Tomball, Texas: a variance to allow a 9 foot aisle width for two-way traffic where the city requires a 24 foot two-way traffic drive aisle; and a variance to allow vehicular access to the non-residential use from the adjacent alley. The project site consists of Lots 43 & 44 of Block 96 of Tomball Townsite recorded in Volume 4, page 25 of the map records of Harris County.

BOA CASE P08-086: Request by David Janke for a variance from the City of Tomball Code of Ordinances to legalize an existing storage building that does not meet the required side yard setback. The variance request is to allow a 7' side setback where the city requires a 25' side yard setback for accessory structures. The project site is located at 1335 Neal Drive, Tomball, Texas in the SF-20-E Single-Family Estate Residential-20 District. The approximately 5 acre tract is legally described as Lot 33 of the Tomball Outlots Subdivision, Volume 2, Page 65 of the map records of Harris County, Texas.

BOA Case P08-089: Request for two variances from the City of Tomball Code of Ordinances related to the proposed construction of an accessory structure and the relocation of an existing single family residence, a result of the Rudolph Road Widening Project, located at 1102 Rudolph Road, situated on the easterly side of Rudolph Road, northerly of the Harris County Flood Control drainage ditch. Variances requested: 1). to allow a 9 foot side yard setback for the accessory structure where the Code requires a minimum 25 foot side yard; and 2). to allow an 8 foot front yard setback for the single family residence where the Code requires a minimum 35 foot front setback.

BOA Case P09-094: Request by Manuel A. Garcia, on behalf of Emergency Services District #8, for a variance from Section 34.5(B)(3) of the City of Tomball Comprehensive Zoning Ordinance, to allow a 15' rear setback for a proposed carport where a 20' rear setback is required in the OT & MU- Old Town & Mixed Use District for nonresidential uses that are adjacent to single-family, duplex, or patio home districts and uses. The project site is an approximately 1.1234 acre tract located at 29530 Quinn Road, Tomball, TX, 77375.

BOA Case P09-102: Request by R.B. Denton, on behalf of Craftsman Home Builders Inc., for variances from Section 34.4 (A) (1) & (2) of the City of Tomball Comprehensive Zoning Ordinance, to allow a 6,500 square foot lot area, where a 7,000 square foot lot area is required and to allow a 65 foot lot width, where a 70 foot lot width is required for duplex developments. The project site is an approximately 0.149 acre lot located at 306 Houston Street, Tomball, TX, 77375.

BOA CASE P09-127: Request by Curtis and Patsy Morris D/B/A South Texas Coffee House for three variances from Section 34.5.B.3 (size of yards) of the City of Tomball Zoning Ordinance seeking a reduction in the side yard setback (1) to permit the construction of a walk-in cooler attached to the main structure, (2) to permit the placement of an accessory structure, and (3) to allow the construction of an addition to the existing building two feet (1') from the side property line. The project site is an approximately .2043 acre tract located at 425 West Main Street, Tomball, Texas 77375.

BOA CASE P09-148: Request by Paul Gonzalez, on behalf of Samuel McCraw of Smart Partners LLC, for variances from Section 16.4.A.1 (Minimum Lot Area) and Section 16.4.A.2 (Minimum Lot Width) of the City of Tomball Zoning Ordinance. Applicant proposes to subdivide a .381 acre tract in an SF-9 Single Family Residential 9 District into two lots: each new lot would have a lot width of 67 feet where a minimum lot width of 75 feet is required; and each new lot would have a minimum lot area of 8,298 square feet where a minimum area of 9,000 square feet is required. The .381 acre tract known as Tract 65D in the Joseph House Survey, A-34, City of Tomball, Harris County, Texas, is located on the easterly side of Martens Road, northerly of Zion Road.

BOA Case P09-170: Request by R.B. Denton, on behalf of Craftsman Home Builders Inc., for a variance from Section 39.1 of the City of Tomball Comprehensive Zoning Ordinance, to allow a 22 foot wide drive aisle for two-way traffic, where 24 feet is required. The project site is an approximately 0.149 acre lot located at 306 Houston Street, Tomball, TX, 77375.

BOA Case P09-175: Request by Hal Lynch, on behalf of Tomball Hospital Authority (d/b/a Tomball Regional Hospital), for a special exception to the City of Tomball Comprehensive Zoning Ordinance for a reduction in the off-street parking requirements established in Section 38.2 for a "School - College or University" to allow 254 parking stalls where the Zoning Ordinance requires 352 parking stalls. The project site is legally described at Reserve A, Block 1 as shown on the final plat of "Doctors Professional Office Building Subdivision" generally located on the northerly side of Graham Drive, easterly of Holderrieth Boulevard.

BOA Case P09-179: Request by Ray Jackson, on behalf of Richard and Judy Matthews, for an appeal of an administrative decision or a special exception for the reconstruction of non-conforming structures and the resumption of a nonconforming use (a paintball facility) at 31233 Quinn Road. The project site is legally described as Tract 12, Abstract 34 of the Joseph House Survey generally located on the westerly side of Quinn Road southerly of Spring Creek.

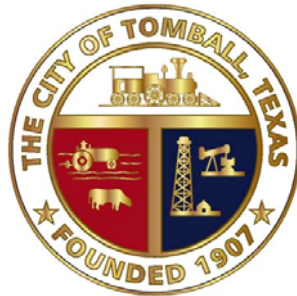
Table 1: Approved BOA Cases

BOA Case #	Request Type	Request Description	Location	Zoning District	Staff Recommendation
P08-019	Interpretation or Variance	Side Yard Setback Reduction	706 S. Oak St.	SF-6	None Provided
P08-021	Variance	Two-Way Drive Aisle Width Reduction	721 James St.	O	Approval
P08-027	Special Exception	Off-Street Parking and Landscape Reductions	Main & Vernon Ave.	OT&MU	Approval of Parking, None for Landscaping
P08-028	Variance	Lot Width Reduction	325 Foster St.	D	Approval
P08-061	Variance	Lot Width Reduction, Lot Area Reduction, Building Orientation, Front Yard Setback Reduction, Front Yard Fence Encroachment	409 Ash St.	D	Approval
P08-066	Interpretation and/or Variance	Front Yard Fence Encroachment	1111 S. Cherry St.	SF-9	None Provided
P08-078	Variance	Rear Yard Setback Reduction, Front Yard Setback Reduction, Exceeding Lot Coverage, Accessory Building Location In Front of Main Building	1034 S. Pitchford	AG	Denial
P08-079	Variance	Two-Way Drive Aisle Width Reduction, Allow Access to Alley	705 Mason St.	OT&MU	Denial of Driveway, Approval of Alleyway Access
P08-089	Variance	Side & Front Yard Setback Reductions	Rudolph Rd.	SF-20	Approval
P09-094	Variance	Rear Yard Setback Reduction	29530 Quinn Rd.	OT&MU	Approval
P09-127	Variance	Side Yard Setback Reduction	425 W. Main	OT&MU	Approval
P09-170	Variance	Two-Way Drive Aisle Width Reduction	306 Houston St.	OT&MU	Denial
P09-175	Special Exception	Off-Street Parking Reduction	Between Holderrieth & School St.	GR	Approval

Table 2: Denied BOA Cases

BOA Case #	Request Type	Request Description	Location	Zoning District	Staff Recommendation
P08-086	Variance	Side Yard Setback Reduction	1335 Neal Dr.	SF-20	Approval
P09-102	Variance	Lot Area and Lot Width Reductions	306 Houston St.	OT&MU	Denial
P09-148	Variance	Lot Area and Lot Width Reductions	North of Zion, East Side of Martens	SF-9	Denial
P09-179	Admin. Appeal or Special Exception	Reconstruction of Nonconforming Structures and the Resumption of a Nonconforming Use	31233 Quinn Rd.	SF-20	Denial

BOARD OF ADJUSTMENTS
CITY OF TOMBALL, TEXAS



WORKING RULES OF PROCEDURE
ADOPTED JUNE 2008

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**BOARD OF ADJUSTMENTS
RULES OF PROCEDURE
CITY OF TOMBALL, TEXAS**

I. ORGANIZATION AND OFFICERS

101. Organization

The Board of Adjustment (the “Board”) shall consist of five (5) regular members and such alternate members as appointed by the City Council of the City of Tomball, Texas. The Board shall be organized and shall exist under and pursuant to the laws of the State of Texas, especially Texas Local Government Code chapter 211, and the Ordinances of the City of Tomball, especially Zoning Ordinance Section 9.

102. Officers

In May of each year, the Board shall meet and elect from among its members a Chairperson and a Vice Chairperson. If any meeting of four (4) or more members of the Board neither the Chairperson nor the Vice-Chairperson is present, then those Board members present shall elect one of their number to be Chairperson for conducting the meeting as provided herein.

103. Duties of Officers

- A. The Chairperson, or in the Chairpersons absence, the Vice-Chairperson, shall preside at all meetings, shall decide all points of order or procedure, and as necessary shall administer oaths and compel attendance of witnesses.
- B. The presiding officer shall question all witnesses and/or staff, and request other members of the panel to ask any questions which may assist the board and panels of the board in arriving at a just and fair decision.
- C. The presiding officer shall sign the minutes of the Board meetings over which he or she presides and each case decided upon in accordance with the decision of the Board.

104. Duties of Board Administrator

The Board Administrator shall:

- (1) Receive all complete applications to the Board for processing;
- (2) Receive all evidence submitted for the Board’s review;

- (3) Provide technical assistance to the Board;
- (4) Assist the general public with information, procedures, policies, case status, and site plans;
- (5) Gather needed information from outside sources and confer with all sections and departments of the city for case analysis;
- (6) Provide research on cases;
- (7) Prepare Board documents, dockets, notices, and advertisements, and write necessary letters to the property owners;
- (8) Direct, conduct, and supervise all administrative functions of the Board operation as may be deemed necessary;
- (9) Coordinate the work of the Board;
- (10) Serve as liaison between the Board and the City Planning and Zoning Commission, City Manager, and various other officers of the City of Tomball, including, but not limited to, the Building Official, the City Attorney, and the Director of Engineering and Planning

105. Duties of the Secretary

The secretary shall be generally responsible for the clerical work of the board and panels of the board, under the direction and supervision of the board administrator. The secretary shall:

- (1) Keep the minutes of all meetings and proceedings in a substantially bound book showing the vote and motion of each member upon each question, or if absent, or failing to vote, indicating that fact, and attesting the minutes;
- (2) Compile the required records, log appeals and applications to the Board, prepare case folders, notices and envelopes, prepare mail to applicants, type letters and memoranda; and
- (3) Call Board Members for meetings, maintain files, number each case, and furnish each Member of the Board with a copy each staff report and supporting documentation.

106. Meetings; Agendas

- A. **Regular Meetings.** The Board shall conduct regular biannual meetings in May and November. All regular meetings shall begin promptly at 6:00 p.m. Meetings shall be held at Tomball City Hall unless otherwise posted in accordance with state law.
- B. **Special meetings.** Special meetings may be held at any time designated by the Chairperson or the City Planning Director. Zoning Ordinance 9.3.

- C. **Agenda.** The agenda for meetings of the Board shall be prepared by the Board Administrator and posted by the Secretary in the manner required by state law.
- D. **Order of Agenda.** The agenda shall be organized as follows: call to order; roll call; old business, new business, and adjournment. Applications shall be listed by time of filing.

107. Board Proceedings; in general.

- A. **Decorum.** Each member of the Board shall occupy their assigned seat while the Board is in session, and if away from their seat shall not be allowed to speak or vote on any questions before the Board.
- B. **The Chairperson.**
 - (1) **Calling Board to order.** At the posted time of the meeting, the Chairperson, as presiding officer, shall assume the Chairperson and call the meeting to order.
 - (2) **The meeting.** During the meeting, the Chairperson shall preserve order and decorum and decide all questions of order; decide who is allowed to speak, and in what order, be it either a board member or a member of the audience; and decide the order of business. The Chairperson shall, if necessary to preserve order and decorum, cause to be silenced or removed from the council chamber any person speaking out of order or disrupting the order or business of the meeting. The Chairperson may speak from the Chairperson upon all questions.
- C. **Quorum.** Four (4) regular and alternate members of the board, including the Chairperson shall constitute a quorum of the Board for the purpose of transacting business. Texas Local Government Code 211.008(d); Zoning Ordinance 9.3.
- D. **Abstentions.** Any presiding officer or board member who fails or refuses to vote without filing an affidavit describing a conflict of interest shall be recorded as having cast a negative vote.

108. Public participation in meetings; in general

- A. Citizens desiring to address the board on matters germane and relevant to any subject matter of the Board's affairs or business, including matters other than public hearings on the posted agenda for the meeting that they are attending, shall sign in on the form provided by the Secretary stating their name, address, phone number and the topic that they wish to address. All speakers must come to the podium unless the Chairperson permits otherwise. The Chairperson may establish a time limit on any discussion. Citizens shall observe the rules of decorum and courtesy and further shall speak only upon recognition by the Chairperson. No formal action or discussion by Board is permitted on any issue not listed on the posted agenda.**

- B. No one except members of the Board and the officers of the city in the discharge of their official duties shall be permitted to participate in the deliberations of the Board concerning an agenda item.**

- C. The Chairperson may determine the location of recording equipment and the manner in which the recording is conducted so long as such rules do not unreasonably impair a person's right to record an open meeting.**

109. Parliamentary Rules

In all Board meetings the following rules of procedure will be followed.

- A. Questions to contain one subject. All questions (motions) submitted for a vote shall contain only one (1) subject. If a question contains two (2) or more subjects and the question reasonably permits a division, then any member may require a division.**

- B. Main motion. A subject is introduced by a main motion. Once seconded, no other topics should be taken up until after the motion is disposed of.**

- C. Second. Any motion requires a second or it dies for lack of a second. A presiding officer may second a motion.**

- D. Motion to amend. This motion is used when the intention is to change, add, or omit some part of a main motion. This motion is debatable and requires a majority vote of the members present for passage. A motion to amend is not amendable. First a vote is held on the motion**

to amend. If that vote is affirmative, the second vote is held on the main motion as amended. Only one (1) amendment to a motion may be on the floor at any one (1) particular time.

- E. Motion to table or postpone to a time certain. This motion requires that consideration of the main motion be delayed until a certain, stated time for, among other reasons, obtaining more information. A future date certain shall be set when the subject is considered. This motion is debatable and requires a majority vote of the members present for passage.**
- F. Motion to call the question. This motion is made to end discussion that has become lengthy or repetitious. When seconded, the Chairperson immediately calls the vote on the question of closing the discussion. This motion is not debatable and requires a majority vote of the members present for passage.**
- G. Motion to reconsider. The Board may reconsider a vote during the same meeting on motion by a member who voted on the prevailing (winning) side of the issue. This motion is debatable and requires a majority vote of the members present for passage. If that vote is affirmative, a second vote is held on the issue to be reconsidered.**
- H. Vote. The Chairperson shall call for a vote by requesting "all in favor say aye" and "all opposed say nay". No member may vote by proxy.**
- I. Point of order, questions and inquiries. A point of order may be raised at any time and supersedes any issue being discussed at the time. The Chairperson shall rule on the point of order before proceeding. Any member of the Board dissatisfied with the ruling may appeal to the meeting for a final decision. The appeal is debatable and the Chairperson may participate in the debate without giving up the Chairperson. A majority of no votes is necessary to reverse the ruling. Whenever necessary, advice may be asked as to correct procedures or facts may be requested. The Chairperson shall respond to the question or refer it to the proper person.**
- J. Motion to adjourn. At the conclusion of business, the Chairperson may declare the meeting adjourned without waiting for a motion or a member may move to adjourn. A motion to adjourn by a member is not debatable and a majority vote of the members present is required**

for passage. When the meeting is adjourned, the meeting is immediately halted.

- K. **Suspension of rules.** Any one (1) or all of these rules provided in this chapter may be suspended by a majority vote. A motion to suspend rules cannot interrupt an individual speaking. This motion is debatable.

110. Parliamentarian

The parliamentarian shall be the Secretary.

111. Executive Sessions

Executive sessions are parts of meetings closed to the public. The Board may retire into an executive session to discuss any matter on the posted agenda for which the meeting may be closed. Prior to the executive session, the presiding officer shall announce the executive session and the section or sections of the Texas Open Meetings Act under which the executive session is authorized. The Chairperson or another person designated by the Chairperson shall keep a certified agenda of the meeting. No voting will be conducted in the executive session. Adjournment of the executive session and any vote needed shall be made during the regular or special meeting.

112. Minutes; Records of the Board

- A. **The Secretary shall prepare and submit to Board no later than 24 hours preceding a regular meeting a draft of the minutes of the previous meetings of the Board that have not been approved by the Board. For each question before the Board, the minutes should state the question, the movant and second, and the vote of each member of Board voting and/or abstaining.**
- B. **Records of the Board shall be kept on file in the City's offices and shall be made available for public inspection in accordance with applicable open records laws.**

113. Contempt.

Any person who fails or refuses to obey a subpoena from the Board or who fails or refuses to produce books, papers, or other evidence for an inquiry by the Board shall be punishable as a class C misdemeanor.

II. MATTERS FOR CONSIDERATION

201. Authority of the Board

In accordance with Chapter 211 of the Texas Local Code and the City's Zoning Ordinance, the Board shall:

1. Hear and decide appeals that allege error in an order, requirement, decision or determination by an administrative official in the enforcement of the City's Zoning Ordinance;
2. Authorize, in specific cases, a variance or special exception from the terms of the City's Zoning Ordinance, if the action is not contrary to the public interest, and if, due to special conditions, a literal enforcement of the provisions of the Zoning Ordinance would result in unnecessary hardship, and so that the spirit of the Zoning Ordinance is observed and substantial justice is done; and
3. Make interpretations on zoning district boundaries shown on the Zoning Map where uncertainty exists because physical conditions on the ground differ from those on the Zoning Map or where the rules in Section 4 of the Zoning Ordinance do not apply or are ambiguous. City Zoning Ordinance 9.4.A.

202. Application required.

- A. An application for consideration by the Board of an appeal, the granting of a special exception, or the granting of a variance shall be filed on the appropriate form provided by the City and shall be accompanied by the prescribed fee. The application shall bear the signature of the owner of the affected property, or, if signed by someone other than the owner, accompanied by an acknowledged power of attorney authorizing the applicant to file on behalf of the owner.
- B. Application for an appeal of a decision made by a City Administrative Official shall be filed within fifteen calendar (15) days after the date of such decision which is subject to the appeal. Zoning Ordinance 9.8.C.
- C. Every application shall be filed with the Board Administrator. Compare Zoning Ordinance 9.8.C.

- D. Any application not filed at least thirty (30) calendar days before a regular meeting of the Board shall be placed on the agenda of a subsequent meeting of the Board. See generally Zoning Ordinance 9.9.**
- E. Evidence relating to any matter before the Board shall be submitted only to the Board in public meeting.**

III. HEARINGS AND DECISIONS

301. Open to the Public

Hearings on all matters on which a decision of the Board is required by law or by the Zoning Ordinance shall be open to the public. The applicant may appear on his own behalf or be represented by counsel or agent.

302. Order

The Chairperson shall call each matter in the order in which it was filed, and shall announce the name of the applicant, the location of the property involved, and the nature of the request. Supporting evidence for and against each case shall be presented to the Board. Each case may be taken under advisement until all have been heard.

303. Procedure for hearing

- A. The Chairperson shall first call upon the City Manager’s designee to present the staff report and any information deemed necessary or appropriate relative to the application. Zoning Ordinance 9.9.B.**
- B. The Chairperson shall next call on the applicant to present the applicant’s case and all evidence supporting the application. The applicant bears the burden of proof in establishing the facts that may justify an action in favor of the applicant. Zoning Ordinance 9.9.E The Chairperson shall then ask of the applicant if there are others affected who support the application.**
- C. The Chairperson shall next call on those opposed to the granting of the application to present their evidence and arguments.**
- D. The applicant shall have the right of rebuttal. Following rebuttal, the Chairperson shall order the hearing closed.**

- E. Each side shall proceed without interruption by the other, and all argument and pleadings shall be addressed to the Chairperson. No questioning or arguments between individuals appearing before the Board will be permitted.**

304. Board's Questions

The Board may direct any question to the applicant, or to any person speaking on the application, in order to bring out relevant facts, circumstances, and conditions affecting the application, and the Chairperson shall call for questions from the members of the Board and from the City's staff before closing the hearing on each application.

305. Decision

After each application has been heard, it shall be reviewed and acted upon.

The Board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination, and for that purpose the Board has the same authority as the City Manager. Zoning Ordinance 9.4.B. The Board may grant, grant conditionally, grant with modifications, or may deny an application for variance or special exception. The Board may also defer action on any matter whenever the Board concludes that additional evidence is needed or that alternate solutions need further study.

306. Vote required

The concurring vote of four (4) members shall be necessary to grant any matter requested of the Board. When a motion in favor of an applicant fails to receive four (4) affirmative votes, then the Secretary shall record that fact and shall note in the minutes of the Board that the appeal or request is denied. Zoning Ordinance 9.4.C.

307. Written decision

Decisions of the Board shall be reduced to writing and filed with the records of the Board and a copy delivered to the applicant.

IV. AMENDMENTS TO RULES OF PROCEDURE

These rules may be amended by a simple majority vote of the members present at a meeting of the entire Board.

Appendixes:

Zoning Ordinance Section 9

Texas Local Government Code Sections 211.008 through 211.010.