

Zoning Board of Adjustment Overview

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ZBA Overview: AGENDA

- Practical Expectations
- What is the Zoning Board of Adjustment (ZBA)?
- Creation of the ZBA
- ZBA Authority and Types of Cases
- Who Can Appeal to the ZBA
- Meeting Procedures
- Appeals from the ZBA's Decision
- Open Meetings Act

Practical Considerations & What is the ZBA?

ZBA OVERVIEW: PRACTICAL CONSIDERATIONS

What to Expect Practically at a ZBA Hearing?

- People are not typically happy to be at a ZBA hearing
- Apply the City's ordinances as written

ZBA OVERVIEW: WHAT IS THE ZBA?

- The Zoning Board of Adjustment is a sort of “safety valve” to prevent the unconstitutional or unlawful application of city ordinances
- The ZBA is a quasi-judicial body and acts as a fact finder
- No appeal from the ZBA to the City Council

Creation of the ZBA

ZBA OVERVIEW: CREATION OF THE ZBA

- Texas Local Government Code Chapter 211
 - Authorizes cities to create zoning boards of adjustment
 - Sets the authority of the board
 - Sets the procedure for appeal to the board
 - Sets judicial review of the ZBA's decision

ZBA OVERVIEW: CREATION OF THE ZBA

- City of Burleson Home Rule Charter
 - Section 9(b) – “The city council shall create a board of adjustment as provided by state law which shall have the power and authority to perform those functions established in the zoning ordinance and by state law.”
- City of Burleson Code of Ordinances
 - Section 11 of Appendix B – Board of Adjustment
 - 11-100 – Organization – 9 members, with 4 alternates

ZBA CASES

ZBA OVERVIEW: ZBA CASES

- The ZBA hears different types of cases
 - Appeals of the Zoning Administrator's determinations
 - Variances from the Zoning Ordinance
 - Special Exceptions to the Zoning Ordinance
 - Permit the enlargement of a Nonconforming Use

ZBA OVERVIEW: ZBA CASES:

Zoning Administrator

- The ZBA hears appeals from decisions of the Zoning Administrator
 - The Zoning Administrator is an administrative official charged with interpretation and enforcement of the City's Zoning Ordinance

ZBA OVERVIEW: ZBA CASES: VARIANCE

- *Variance.* A relaxation by the board of adjustment of the dimensional regulations of this ordinance where the action will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions or the situation of the applicant, a literal enforcement of this code would result in unnecessary and undue hardship.
- ZBA may permit such variance or modifications of the height, yard, area, coverage and parking regulations as may be necessary to secure appropriate development of a parcel of land which differs from other parcels in the district by being of such restricted area, shape or slope that it cannot be appropriately developed without such modification.

ZBA OVERVIEW: ZBA CASES: VARIANCE

- In exercising its power to grant a variance in accordance with this ordinance, the ZBA shall make findings that:
 - 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.
 - That a variance is necessary to permit the applicant the same rights in the use of his property that are presently enjoyed, under the ordinance, by other properties in the vicinity and zone, but which rights are denied to the property on which the application is made.
 - That the granting of the variance on the specific property will not adversely affect the land use pattern as outlined by the land use plan and will not adversely affect any other feature of the comprehensive plan of the city.
 - That the variance, if granted, will not be materially detrimental to the public welfare or the use, enjoyment, or value of property in the vicinity.

ZBA OVERVIEW: ZBA CASES: SPECIAL EXCEPTION

- *Special exception.* A special exception is a use that would not be appropriate generally or without restriction throughout the zoning district but which, if controlled as to number, area, location or relation to the neighborhood, would be wholly compatible with conditions affecting the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted in such zoning districts as special exceptions if approved by the zoning board of adjustments (See section 11, Board of adjustment).

ZBA OVERVIEW: ZBA CASES: NONCONFORMING USES

- The ZBA may permit the reconstruction, extension or enlargement of a building occupied by a nonconforming use on the lot or tract occupied by the building, and the addition of off-street parking or off-street loading to a nonconforming use.

ZBA Meeting Procedures

ZBA OVERVIEW: MEETING PROCEDURES

- Who Can Appeal to the ZBA?
 - The person that filed the application that is the subject of the appeal
 - The owner of the property that is the subject of the appeal
 - The City, its officers and department heads and boards
 - A person “aggrieved” by the decision and is the owner of property within 200 feet of the property that is the subject of the appeal

ZBA OVERVIEW: MEETING PROCEDURES

- Person files an application to appear before the board
- Appeal from Zoning Administrator decision must be within 20 days of the decision
- The ZBA (city staff) sets a time for the appeal hearing, gives public notice of the hearing, and notifies the real property owners within 200 feet of the hearing
- ZBA must hear the appeal within 60 days of filing
- Board may adopt procedures, chair may administer oaths, compel attendance, and has same subpoena power as municipal court
- The Board renders a decision within a “reasonable” amount of time after the hearing
- The person may represent themselves or have an attorney represent them

ZBA OVERVIEW: MEETING PROCEDURES

- ZBA is a quasi-judicial body
- ZBA reviews the facts presented and makes a determination based on the facts and the city's Zoning Ordinance
- The hearing before the ZBA creates a record, do not want outside information informing the decision
 - Do not go visit the site
 - Do not talk to the applicant
 - Do not talk to city staff
- ZBA hearings follow a pattern that looks much like a trial without rules of evidence
- In appeal of Zoning Administrator decision, no burden of proof

ZBA OVERVIEW: MEETING PROCEDURES

- Anatomy of Hearing
 - Determine the ZBA has standing
 - Opening Statements
 - Presentation of Evidence
 - Direct and Cross-Examination of Witnesses
 - Closing Statements
 - Public Hearing – Allow Members of the Public to Speak
- The ZBA may ask questions at any time

ZBA OVERVIEW: MEETING PROCEDURES

- The ZBA may meet with its attorney in executive session
- The ZBA may have an attorney that is different than the city attorney
- The ZBA must reduce its decision to writing
- It takes 7 votes out of the 9 ZBA members to grant relief
- The record of the ZBA hearing must be preserved

Appeals from the ZBA & Open Meetings Act

ZBA OVERVIEW: APPEALS FROM THE ZBA

- ZBA decision may be appealed to a court of record
- The City, any person aggrieved by the decision, or a taxpayer may appeal the decision
- The appeal of the ZBA decision must be made within 10 days of the filing of the ZBA's decision

ZBA OVERVIEW: OPEN MEETINGS ACT

- ZBA Meetings are open to the public
- ZBA Meetings must occur at duly called public meeting
- ZBA members should not meet or deliberate outside the public meeting
 - Telephone
 - Texts
 - Emails
 - Social Media

Questions/Comments