

Sec. 14.02.153 Board of adjustment

(a) Organization of board of adjustment.

(1) There is hereby created a board of adjustment which, pursuant to section 211.008(g) of the Texas Local Government Code, shall consist of all the members of the City's governing body. The Mayor shall serve as the chairperson and the Mayor Pro Tem shall serve as the vice-chairperson. All cases to be heard by the board will always be heard by a minimum of 4 members.

(2) The board shall adopt rules to govern its proceedings; provided, however, that the rules are not inconsistent with this article or state law. Meetings of the board shall be held at the call of the chairperson and at other times as the board may determine, and in accordance with the Texas Open Meetings Law. The chairperson, or in his or her absence, the vice-chairperson or acting chairperson, may administer oaths and compel the attendance of witnesses.

(3) The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep a record of its examinations and other official actions, all of which shall be immediately filed in the office of the city secretary and shall be a public record.

(b) Appeals to board.

(1) Appeals to the board can be taken by any person aggrieved by any decision of the city administrator or his or her designated zoning administrator, or by any officer or department of the city. This appeal shall be filed within 15 days after the decision has been rendered by the city administrator or administrative officer by filing with the city secretary and with the board of adjustment, a notice of appeal specifying the grounds thereof. The administrative officer or department from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the records upon which the action appealed from was taken.

(2) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the city administrator or designated administrative officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him or her, that by reasons of facts stated in the certification, a stay would, in his or her opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or a court of record on application or [on] notice to the officer from whom the appeal is taken and on due cause shown.

(3) No appeal to the board for a variance on the same piece of property shall be allowed prior to the expiration of 180 days from a previous ruling of the board on any appeal to that body unless other property in the immediate vicinity has, within the 180-day period, been changed or acted on by the board or city council so as to alter the facts and conditions on which the previous board action was based. This change of circumstances shall permit the rehearing of an appeal by the board, prior to the expiration of the 180-day period, but the conditions shall in no way have any force in law to compel the board, after a hearing, to grant a subsequent appeal. The subsequent appeal shall be considered entirely on its merits and the peculiar and conditions related to the property on which the appeal is brought.

(4) At a public hearing relative to any appeal, any interested party may appear in person or by his or her agent or attorney. The burden of proof shall be on the applicant to establish the necessary facts to warrant favorable action of the board on any appeal or variance request. Any variance granted or authorized by the board under the provisions of this article shall authorize the issuance of a building permit or certificate of occupancy, as the case may be, for a period of 90 days from the date of the favorable action of the board, unless the board shall have in its action approved a longer period of time and has so shown the specific longer period in the minutes of its action. If the building permit and/or certificate of occupancy shall not have been applied for within the 90-day period or such extended period as the board may have specifically granted, then the variance shall be deemed to have been waived and all rights thereunder terminated. This termination and waiver shall be without prejudice to a subsequent appeal and the subsequent appeal shall

be subject to the same regulation and requirement for hearing as herein specified for the original appeal.

(c) Actions of board.

(1) In exercising its powers, the board may, in conformity with the provisions of the statutes of the State of Texas, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination as ought to be made and shall have all the powers of the city administrator or other administrative official from whom the appeal is taken. The board shall have the power to impose reasonable conditions to be complied with by the applicant.

(2) The concurring vote of 4 members of the board shall be necessary to reverse any order, requirement, decision or determination of the city administrator or other administrative official, or to decide in favor of the application for a specific use permit on any appearance or any variance [sic].

(d) Notice of hearing before board.

(1) The board shall hold a public hearing on all appeals requests and variance requests made to it, and written notice of the public hearings shall be sent to the applicant and all other persons who are owners of real property lying within 200 feet of the property on which the appeal is made. This notice shall be given no less than 10 days before the date set for hearing to all owners who have rendered their property for city taxes as the ownership appears on the last city tax roll. This notice may be served by depositing the same, properly addressed and postage paid, in the United States post office. Notice shall also be given by publishing the same in the official publication of the city at least 10 days prior to the date set for hearing, which notice shall state the time and place of the hearing.

(2) Additionally, the city administrator should erect a sign on the property of which a variance has been requested. The sign shall be erected adjacent to a street if possible and in a conspicuous place. The sign should have an area of 4 or more square feet. The sign should state that a request for a variance has been made on that particular property and the telephone number of the city offices from where the dates of public hearings and more information about the zoning request may be obtained. The sign should be erected prior to the hearing as early as possible and convenient. The erection and continued maintenance of this sign, however, shall not be deemed a condition precedent to the granting of any zoning variance, or the holding of any public hearing.

(e) Jurisdiction of board. When, in its judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially or permanently injured, the board may, in specific cases, after public notice and public hearing and subject to appropriate conditions and safeguards, authorize the following variances to the regulations herein established and take action relative to the continuance and discontinuance of a nonconforming use:

(1) To hear and decide appeals where it is alleged there is error on any order, requirement, decision or determination made by the city administrator or other zoning administrator in the enforcement of this article;

(2) Interpret the intent of the zoning district map where uncertainty exists because the physical features on the ground vary from those on the zoning district map and none of the rules set forth in [section 14.02.004](#) apply;

(3) Initiate on its motion or cause presented by interested property owners action to bring about the discontinuance of a nonconforming use;

(4) Require the discontinuance of a nonconforming use under any plan whereby full value of the structure 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 this article;

(5) Permit the change of occupancy of a nonconforming use to another nonconforming use in accordance with the provisions of [section 14.02.108](#);

(6) Permit the enlargement of a nonconforming use in accordance with the provisions of [section 14.02.108](#);

(7) Permit the reconstruction of a nonconforming structure or building on the lot or tract occupied by the building, provided the reconstruction does not, in the judgment of the board, prevent the return of the property to a conforming use or increase the nonconformity of a nonconforming structure beyond what is permitted by [section 14.02.108](#);

(8) Require the vacation and demolition of a nonconforming structure which is deemed to be obsolete, dilapidated or substandard; and

(9) Permit a variance such as the front yard, side yard, rear yard, lot width, lot depth, coverage, minimum setback standards, off-street parking, off-street loading regulations, lot area, maximum height, or building, where the literal enforcement of the provisions of this article would result in an unnecessary hardship, or where the variance is necessary to permit [development on] a specific parcel of land which differs from other parcels of land in the same district by being of an area, shape or slope that it cannot be developed in a manner commensurate with the development permitted upon other parcels of land in the same district.

(f) Appeals of board action. Any person or persons, jointly or severally aggrieved by any decision of the board, any taxpayer or any officer, department or board of the municipality may present to a court of record (district court) a petition, duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of illegality. This petition shall be presented to the court within 10 days after the decision of the board and not thereafter.

(Ordinance 240 adopted 3/15/94; 2007 Code, sec. 155.62; Ordinance 2019.18.03C adopted 3/18/19)

State law reference—Establishment and authority of zoning board of adjustment, V.T.C.A., Local Government Code, sec. 211.008 et seq.