

CITY OF HILSHIRE VILLAGE
RULES OF
THE BOARD OF ADJUSTMENT
(as amended July 21, 2020)

Article I: Meetings

- Sec. 1.** Meetings of the Board of Adjustment shall be held at the offices of the City of Hilshire Village, 8301 Westview, or in the event the City Office is unavailable or inappropriate, any such other place as may be determined by the Chairman.
- Sec. 2.** Upon notification from the City Secretary/Administrator that an Application has been filed, the Chairman shall call a public hearing in respect of such Application, and shall provide for the proper posting, notification, advertisement, and conduct of such hearing.
- Sec. 3.** Special meetings may be called by any member of the Board. Notice of Special Meetings shall be posted at the City office and given to each member at least 72 hours before the time set for the meeting.
- Sec. 4.** A quorum of the Board shall consist of four (4) members.
- Sec. 5.** All Board meetings shall be open to public attendance except where a closed meeting is authorized under state law.
- Sec. 6.** In all matters submitted to the Board for decision, the Board shall fix a reasonable time for public hearing thereon and shall give public notice of the hearing and due notice to the parties in interest. The Board shall give notice to the applicant and to all owners of property within this City lying within two hundred (200) feet of the property affected, as shown on the City Tax Rolls, by mailing United States post cards to each of such parties at the address, if any, shown on the City's tax rolls, not less than ten (10) days before the date of such hearing. The hearing shall be held so that the Board may make a final decision within sixty (60) days of the date of the application for hearing.

Article II: Cases Before the Board

Sec. 1. Each application to the Board, whether an appeal from an order, decision, or determination of the Building Official, or whether for a special exception or for a variance, shall be made on official Form 1.

Sec. 2. All information called for by Form 1 shall be furnished by application in the manner therein prescribed.

A. ***Appeals from official's decision.*** Applications for an appeal from the decision of the City Secretary/Administrator, Building or Zoning Official, or other officer or board of the City must be filed within twenty (20) days of the official's decision and shall include the street address and legal description of the property to which the decision in question relates; the name, address, and contact information of the person filing the appeal; the nature and date of the decision in question; the specific interest the person filing the appeal has in the decision in question; a brief explanation as to why the applicant believes the decision was incorrect; and any other information that the applicant believes relevant to the Board's consideration of the matter.

B. ***Variances.*** Applications for a variance must include the street address and legal description of the property to which the decision in question relates; the name, address, and contact information of the person filing the appeal; the provision of the zoning chapter from which the applicant seeks relief; a brief explanation why the applicant believes that the Board should grant the requested variance, including the special conditions that cause applicant's hardship and the conditions that should be applicable to the variance so that the spirit of the Zoning Ordinance is observed and substantial justice is done; and any other information that the applicant believes relevant to the Board's consideration of the matter.

C. ***Special Exceptions.*** Applications for a special exception must include: the street address and legal description of the property to which the decision in question relates; the name, address, and contact information of the person filing the appeal; a citation to the provision of the zoning chapter that authorizes the special exception requested; a specific description of the special exception that the applicant seeks; a brief explanation why the applicant believes the Board should grant the special exception; and any other information that the applicant believes relevant to the Board's consideration of the matter.

D. **Combined Applications.** A single application may combine an appeal and one or more requests for variances or special exceptions if they all relate to a single property and contain the information required for each request.

Sec. 3. The original and twelve (12) complete duplicate copies of each application shall be filed with the City Secretary/Administrator, along with the required fee as designated on the Permit Fee Schedule of the City of Hilshire Village. After conferring with the Chairman, the City Secretary/Administrator shall provide the duplicate copies to the Building Official, the Mayor, the City Attorney, and each member and alternate of the Board of Adjustment, along with any other documents the Chairman may specify. The City Secretary/Administrator shall file the original application and retain two (2) duplicate copies for the purpose of being reproduced by citizens having an interest in the particular application.

Sec. 5. A. **Time limit.** Every application for appeal of from an official's decision shall be made within twenty (20) days from the date of refusal of a permit by, or date of order, ruling, decision or determination of the official; no application made later shall be considered by the Board. On receiving the notice of appeal, the official from whom the appeal is taken shall immediately transmit to the Board all papers constituting the record of the action that is appealed.

B. **Other.** Subject to the provisions of Article V, Section 4, an application for a special exception or a variance may be filed at any time.

Sec. 6. Any communication purporting to be an application shall be regarded as mere notice to seek relief until it is made in the form required by these rules and signed by the applicant. No application is complete until all applicable fees have been paid.

Sec. 7. Any applicant may, in writing, withdraw the application at any time.

Sec. 8. An application may be amended after notice has been given only by permission of the Board.

Sec. 9. The owner or owners of the property involved in an application must join in the application.

Sec. 10. The City Secretary/Administrator is authorized to reject incomplete forms. The City Secretary/Administrator is authorized to act for the Board to reject any application that is: a) not filed by the applicable deadline; b) not substantially complete; or c) that is not accompanied by the required fee. An applicant who believes that the City Administrator wrongfully rejected an application may

appeal the City Administrator's decision to the Board by filing a written notice of appeal with the City Administrator within twenty (20) days. The City Administrator shall place the matter on the agenda of the next Board meeting.

- Sec. 11.** An appeal of the decision of an official stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the Board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed by a restraining order granted by the Board, after notice to the official, if due cause is shown.

Article III: The Docket and Calendar

- Sec. 1.** Each application filed in proper form with the required data shall be numbered serially and docketed by the City Secretary/Administrator. The docket numbers shall begin anew on January first of each year and shall be hyphenated with the number of the year in which the application is filed.
- Sec. 2.** All cases shall be scheduled for the earliest hearing practicable based on the ten-to-twenty (10-20) day notice requirement and schedule constraints of key participants and officials.
- Sec. 3.** Applications shall be heard in the order in which they are filed with the City Secretary/Administrator, except that an application may be advanced for hearing by order of the Board upon good cause shown.
- Sec. 4.** All notices of hearings shall be given on Form II and in accordance with provisions of the Zoning Ordinance of the City of Hilshire Village and the Statutes of Texas.
- Sec. 5.** No notice other than that provided for in these rules and the Zoning Ordinance of the City of Hilshire Village and Texas Statutes will be required to be given to applicants or others interested in hearings by the Board.
- Sec. 6.** If, for any reason, any application cannot be heard or its hearing completed on the day set, the Board may order said hearing to be recessed to a follow-up meeting. Unless otherwise noticed, such follow-up meetings shall be scheduled as soon as practicable based on required notice requirements and the schedule constraints of key participants and officials.

Article IV: Hearings

- Sec. 1.** Hearings shall be held by the Board of Adjustment as soon as practicable following receipt of a proper application.
- Sec. 2.** A quorum for hearing by the Board shall consist of four (4) members, but a lesser number may meet and recess a hearing.
- Sec. 3.** Hearings shall be open to the public.
- Sec. 4.** The Board may issue subpoenas to compel the attendance of witnesses, and it may swear witnesses.
- Sec. 5.** The applicant may appear in applicant's own behalf or be represented by agent or attorney at said hearing. In the absence of any personal appearance on behalf of applicant, the Board will proceed to dispose of the matter before it.
- Sec. 6.** Applicant has burden of establishing all facts required as the basis for granting the applicant's request for relief.
- Sec. 7.** The Building Official or the Building Official's designated representative is ordinarily responsible for presenting the City's side of the case, but it may be presented by any other representative of the City.
- Sec. 8.** At a hearing, the general order of presentation shall be as follows unless applicant makes a written request for a formal hearing:
- A. Building Official or other City representative
 - B. Applicant
 - C. Other interested parties
 - D. Applicant's rebuttal
 - E. Board questions, discussion, and deliberation
- Sec. 9.** All parties to any case, including, without limitation, the parties listed in Section 8 above, may introduce evidence, examine witnesses, and cross-examine any other witnesses. An interested party is a person who lives within two hundred (200') feet of the property on which the decision is made, unless otherwise approved by the Board.
- Sec. 10.** The Board has discretionary power to specify the amount of time allotted to presenting parties and take any other actions needed to conduct an orderly meeting.

- Sec. 11.** Upon written request of the applicant or another interested party, the following additional procedures shall be applicable to the Board's consideration of an appeal and application:
- A. The applicant shall be given the right to open and close the evidence.
 - B. The applicant may, at its sole election, permit City staff to present its recommendation on the matter during the applicant's opening. Otherwise, the staff shall present its recommendation, if any, after the applicant and any other parties have completed their presentations.
 - C. If one or more of the parties file a written request for the right to cross examine witnesses, all witness testimony shall be submitted in question and answer form, and all parties shall have the right to cross-examine any witnesses whose testimony is adverse to that party's position.
 - D. Members of the Board may question any witness or party, regardless of whether the witness testimony is presented in question and answer form.
 - E. Any written or physical evidence offered by the parties or by City staff shall be submitted through the City Secretary/Administrator to the Board or to the Board during a public meeting. Strict rules of evidence shall not be followed with regard to physical or written evidence, but the Board may allow any party or the Building Official to point out questions of authenticity, reliability, relevance, bias, prejudice, etc.

Article V: Final Disposition

Sec. 1. BOARD DECISION

- A. **Time.** The Board shall decide the appeal at the end of the hearing or at the next meeting following the hearing; provided, further, the Board shall decide the appeal not later than the sixtieth (60th) day after the date the appeal is filed.
- B. **Scope.** In the final disposition of any application, the written decision shall affirm, modify, or reverse the refusal of a permit by, or any other decision of the Building Official. In case of an application for variance or special exception, the decision shall set forth that the application is denied or that it is granted with or without conditions, and said decision shall specifically set forth what variations or special exceptions are permitted and what conditions, if any, shall be complied with. Every application shall be disallowed, unless the

concurring vote of not less than four (4) members of the Board shall be in favor of the appeal or application. The vote of each member present on each decision shall be recorded with the decision.

- Sec. 2.** If an application is granted by the Board, unless otherwise requested by the applicant and specified in such granting order, all permits necessary for the prosecution of the work shall be obtained within one hundred twenty (120) days and construction completed within two (2) years from the date of permission by the Board, unless extension of said time is granted by the Board; failing any of which the order granting such application shall terminate and be of no further force and effect.
- Sec. 3.** At the conclusion of the hearing, the original decision of the Board shall be filed with the records of the Board at the City office, and maintained as a permanent record of the Board. A copy of the Board's decision shall promptly be provided to the applicant and any other persons who were admitted as interested parties to the proceedings. The decision is a public record available for public inspection.
- Sec. 4.** No additional application to the Board of Adjustment shall be allowed for substantially the same relief for substantially the same property, unless there shall have been a substantial change in the circumstances affecting such property since the prior decision on substantially the same piece of property.

Article VI: Precedents

- Sec. 1.** No action of the Board of Adjustment shall set a precedent. Each case shall be decided upon its merits and upon the circumstances attendant thereto.

Article VII: Members and Officers

- Sec. 1.** Unless designated by the Council of the City of Hilshire Village, a Chairman and Vice Chairman shall be elected by the Board of Adjustment.
- Sec. 2.** The Chairman shall preside at all meetings and hearings of the Board.
- Sec. 3.** The Chairman, subject to these rules, shall decide all points of procedure unless otherwise directed by a majority of the Board in session at the time.
- Sec. 4.** The Chairman, unless otherwise directed by a majority of the Board, shall appoint committees as may be found necessary.

- Sec. 5.** The Chairman shall report at each meeting on all official transactions that have not otherwise come to the attention of the Board.
- Sec. 6.** The Chairman shall, subject to these rules and further instructions from the Board, transact the official business of the Board, supervise the related work of the City Secretary/Administrator, request necessary help, direct the work of all subordinates, and exercise general disciplinary power.
- Sec. 7.** In the event of the recusal, absence or disability of the Chairman, the Vice-Chairman shall perform the duties of the Chairman.
- Sec. 8.** The alternate members of the Board carry all of the rights and responsibilities of the regular members, including receiving notice of and attending meetings of the Board, except that an alternate member shall vote only when requested to serve by the Mayor or Chairman or, in their absence, by the Vice Chairman, in the event of recusal, absence, or disability of a regular member.
- Sec. 9.** The Board may elect a Board Secretary from among its members and alternates to be responsible for drafting Minutes of the Board's proceedings subject to Board approval as well as related activities the Board may request.
- Sec. 10.** The City Secretary/Administrator, subject to the provisions of the Zoning Ordinance, these rules, and the direction of the Board and its Chairman, shall issue all correspondence and notices drafted by the Board and otherwise required by these rules and the order of the Board; shall attend all meetings of the Board and all hearings; shall scrutinize all applications to see that these rules are complied with; shall keep the dockets and Minutes of the Board's proceedings; shall compile all required records; shall maintain the necessary files and indexes, and generally execute all clerical work of the Board.
- Sec. 11.** The City Secretary/Administrator shall, upon receipt of necessary documentation and/or information from the Chairman, docket the application and notify on Form II any property owner or other person required to be notified under these rules, the provisions of the Zoning Ordinance, and State law, as amended from time to time.
- Sec. 12.** Upon receipt of any application which has been scheduled for hearing, the Building Official or the Building Official's designated representative shall make a personal inspection of the premises, see that all maps and plats are properly prepared, and be prepared to advise the Board at the Public Hearing

on the physical conditions of the property affected by such application, and of the surrounding property.

Sec. 13. The Building Official or other official City representative may request from the applicant(s) such additional information and data as may be required to fully advise the Board with reference to the application, whether such information and data is called for by the official forms or not. Any failure or refusal on the part of the applicant to furnish such additional information or data shall be grounds for the dismissal of the application by the Board.

Article XIII: Forms

Sec. 1. The forms referred to in the above rules of procedure and made a part thereof are:

Form I – Application to Board of Adjustment.

Form II – Notice of Public Hearing.

Article IX: Docket, Minutes, and Files

Sec. 1. The City Secretary/Administrator shall be provided with a docket book which shall be kept posted to date.

Sec. 2. The docket shall be a well-bound book in which the City Secretary/Administrator shall enter the unique serial number of the application, the name of the applicant, a short description, by street number or otherwise, of the premises, the nature of the application, and the final disposition when the case has been disposed of. All continuances, postponements, dates of sending notices, and other steps taken and acts done shall be noted on the docket.

Sec. 3. The Minutes shall reflect the proceedings of each meeting including without limitation a listing of any evidence offered, all orders of the Board, the findings of the Board, and the decision relating to each case acted on, showing the vote of each member of the Board, those absent being so marked, together with all other actions of the Board.

Sec. 4. The minutes shall be approved as presented or corrected by vote of the Board no later than the next Board meeting and filed, by the City Secretary/Administrator, with all other documents generated by the application.

Sec. 5. The City Secretary/Administrator shall maintain a complete file with respect to each application; each such file shall display prominently the unique serial number of the subject application and contain all pertinent originals, particularly the approved Minutes and the written decision of the Board, and a copy of every other document presented as evidence and/or considered in respect of the application.

Article X: Other Action

Sec. 1. Every action of the Board not otherwise provided for shall require a majority vote of the members present at a legally constituted meeting.

Article XI: Advice

Sec. 1. No informal requests for advice, or moot questions, will be considered by the Board.

Sec. 2. Any advice, opinion, or information given by a Board member or the City Secretary/Administrator, or any other official or employee of the City of Hilshire Village, shall not be binding on the Board; therefore, it is declared to be the policy of the Board to deprecate any such personal appeals.

Article XII: Order of Business at Meetings

Sec. 1. The general order of business at meetings of the Board shall be as follows:

- A. Roll Call.
- B. Communications.
- C. New business.
- D. Report of Committees
- E. Reading, correction if necessary, and vote to approve the Minutes of previous meeting

Article XIII: Effective Date.

Sec. 1. These rules shall become effective immediately upon the approval of the City Council of the City of Hilshire Village, Texas.