

1 DIVISION 3. – BOARD OF ADJUSTMENT

2 Sec. 107-483. – Creation.

3 (a) The city has created a board of adjustment consisting of five members who are residents
4 of the city.

5 (b) Members of the board shall be appointed by the mayor, subject to confirmation by the
6 city council. Members of the city council and planning and zoning commission are not
7 eligible for appointment to the board.

8 (c) The mayor also shall appoint, subject to confirmation by the city council, four alternate
9 members of the board who shall be residents of the city, but who shall not be members
10 of the city council or planning and zoning commission. Alternate members shall, upon
11 request by the chairperson of the board, serve on the board in the absence of one or
12 more regular members, so that all cases heard by the board will always be heard by at
13 least 75 percent of the members, regular or alternate.

14 Sec. 107-484. – Terms.

15 (a) Each member and alternate member of the board shall serve a two-year term,
16 commencing on January 1 and ending on December 31 of the following year. The terms
17 of board members shall be staggered.

18 (b) Regular and alternate board members serving upon the effective date of this division shall
19 continue to serve, and this division shall be deemed to carry forward and continue the
20 terms of office of such members.

21 Sec. 107-485. – Removal.

22 (a) A regular or alternate member of the board may be removed from office by the city
23 council for just cause and upon written charges being presented to the member.

24 (b) Upon request of the person against whom removal proceedings are pending, a public
25 hearing shall be conducted to determine the merits of the written charges submitted.

26 Sec. 107-486. – Filling Vacancies.

27 Any vacancy on the board shall be filled by appointment by the mayor and confirmation
28 by the city council for the unexpired term of the regular or alternate member whose position
29 becomes vacant.

30 Sec. 107-487. – Organization.

31 (a) The chairperson of the board shall be elected by majority vote of the members of the
32 board.

33 (b) The chairperson shall serve a term of one year, commencing on January 1 and ending on
34 December 31, except that upon expiration of his term the chairperson shall continue to
35 serve until his successor is elected.

36 Sec. 107-488. – Meetings.

37 (a) Meetings of the board shall be held at the call of the chairperson and at such other times
38 as the board may determine.

39 (b) Meetings of the board shall comply with the provisions of the state open meetings act,
40 V.T.C.A., Government Code ch. 551, including posting notices and agendas so as to
41 adequately inform the public of the time, location and substance of business to be
42 undertaken. Meetings closed to the public or executive sessions are normally not
43 appropriate for the board and will not be conducted without the advice and consent of
44 the city attorney.

45 Sec. 107-489. – Rules and regulations.

46 (a) The board shall adopt rules necessary to the conduct of its affairs and shall furnish a copy
47 of such rules to the building official. Rules adopted by the board shall be consistent with
48 the provisions of this division.

49 (b) All orders and other enactments adopted by the board shall be in accordance with its
50 rules and regulations.

(c) 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 such fact, and shall keep records of its examinations and other official actions, all of which shall be promptly filed in the office of the board and shall be a public record. The office of the board shall be the office of the city administrator where such records shall repose.

(d) The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of the building official or to decide in favor of the applicant on any matter upon which the board is required to pass under ~~the division~~this Chapter.

Sec. 107-490. – ~~Appeals based on error~~Powers of the Board.

The board shall, pursuant to the provisions provided for ~~have~~ herein, have the power to:

(1) Hear and decide an appeal where it is alleged that there is an error in any order, requirement, decision or determination made by the building official in the enforcement of this ~~division~~Chapter; ~~and~~

(2) Hear and decide special exceptions as authorized in this Chapter;

~~(1)(3)~~ Authorize a variance to the regulations as provided for in this Chapter; and

~~(2)(4) Decide any question involving the interpretation of any provision of this division, including determination of the location of any district boundary with respect to which there is uncertainty.~~ Determine, in cases of uncertainty, the classification of any use not specifically named in this Chapter.

Sec. 107-491. – Special exceptions.

(a) ~~When, in its judgment, the public convenience and welfare will not be substantially or permanently injured, t~~he board may, in a specific case, where the board makes the findings required under subsection (c) herein, ~~after public notice and hearing,~~ grant the following special exceptions from the requirements of this division:

(1) Permit the reconstruction of a nonconforming building or structure that has been damaged by fire or other cause;

(2) Permit the enlargement or extension of a nonconforming use or nonconforming building upon the lot occupied by such use or building at the time of the passage of this division;

(3) In undeveloped sections of the city, grant temporary and conditional permits for not more than two years, provided that the grant of a temporary or conditional permit shall not be reason or cause for extension of such permit;

(4) Permit such modifications of yard, open space, lot area, or lot width regulations as may be necessary to improve a parcel of land, if the parcel is of such restricted size that it cannot be appropriately improved without such modification; or

(5) Permit ~~a public utility or public service use or structure in any district, or a~~ public utility or public service building of a ground area or height at variance with those provided for the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety or general welfare.

(b) The board may grant such other special exceptions as may be provided for elsewhere in this division, subject to the terms and conditions therein set out.

(c) Prior to granting a special exception, the board shall make a finding that it is empowered under this ~~division~~ Chapter to grant the special exception, that the public convenience and welfare will not be substantially or permanently injured in the granting of the special exception, and that the grant of the special exception will not adversely affect the public health, convenience, safety or general welfare.

(d) In granting a special exception, the board may prescribe appropriate conditions and safeguards in conformity with this division.

(e) The board shall prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both. Failure to ~~begin or~~

~~complete, or both, such action within~~ comply with the time limits set by the board
shall void the special exception.

~~(f) The board shall determine, in cases of uncertainty, the classification of any use not
specifically named in this division.~~

Sec. 107-492. – Variances.

(a) The board may authorize upon appeal, in specific cases, such variances from the terms
of this ~~division~~ Chapter, ~~where the board finds that the variance as 1)~~ will not be
contrary to the public interest, 2) where, owing to special conditions, literal
enforcement of the provisions of this ~~division~~ Chapter will result in unnecessary
hardship, and 3) ~~so that~~ the spirit of this ~~division~~ Chapter ~~shall will~~ be observed and
substantial justice done, ~~including the following:~~

~~(1) Permit a variance in yard requirements where there are unusual and
practical difficulties or unnecessary hardships in complying with such
requirements due to an irregular shape of the lot, or topographical or
other conditions.~~

~~(2) Permit a variance from the requirements of this division governing the
construction or alteration of buildings or structures, whenever a property
owner demonstrates that a strict application of such requirements will
impose upon him unusual and practical difficulties or particular hardship.~~

(b) Prior to granting a variance in a zoning district other than a residential district, the
board must find, in concert with the findings required in subsection (a), that:

(1) The variance is the minimum variance ~~that will make possible the
reasonable use of the land, building or structure~~ necessary to alleviate the
unnecessary hardship;

(2) Granting the variance will be in harmony with the general purpose and
intent of this ~~division~~ Chapter and will not be injurious to adjoining
properties or the neighborhood, or be otherwise detrimental to the public
welfare;

~~(3) Literal interpretation of the requirements of this division would deprive the applicant of rights commonly enjoyed by the owners of other properties in the same district under the terms of this division;~~

~~(4)~~(3) The special conditions with respect to which a variance is sought ~~do not~~are not the result ~~from of the an~~ action of the applicant;

~~(5)~~(4) Granting the variance will not confer on the applicant any special privilege that is denied by this ~~division~~Chapter to other land, buildings or structures in this same district;

~~(6)~~(5) If applicable, there is sufficient water and wastewater capacity and fire service available to serve the applicant's land as developed under the variance without detriment to the other property within the city; and

~~(7)~~(6) Granting the variance will not merely serve as a convenience to the applicant but will alleviate some demonstrable and ~~unusual unnecessary~~ hardship which is created by the literal enforcement of the provisions of this Chapter~~or difficulty so great as to warrant such variance.~~

(c) Prior to granting a variance in a residential district, in concert with the findings required in subsection (a), the board must find that:

(1) A special individual reason makes the ~~strict application of this division impractical~~literal enforcement of this Chapter result in an unnecessary hardship;

(2) Granting the variance will be in harmony with the general purpose and intent of this ~~division~~Chapter and will not be injurious to adjoining properties or the neighborhood, or be otherwise detrimental to the public welfare;

(3) The granting of the variance will not be detrimental to the public health, safety, or welfare or injurious to the property in the area;

(4) There are special circumstances or conditions such as topography, natural obstructions, aesthetic or environmental considerations affecting the land involved such that the strict application of the provisions of this ~~division~~

Chapter would impose an unnecessary hardship which is created by the literal enforcement of the provisions of this Chapter deprive the applicant of a reasonable use of his land;

(5) The granting of the variance will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of this ~~division~~Chapter;

(6) If applicable, there is sufficient water and wastewater capacity and fire service available to serve the applicant's land as developed under the variance without detriment to the other property within the city; and

(7) The circumstances or conditions from which relief is sought are not solely of an economic nature.

(d) In granting a variance, the board may prescribe appropriate conditions and safeguards in conformity with this ~~division~~Chapter.

(e) In considering a variance as applied to a structure, the board may, in addition to other relevant considerations, consider the following as grounds to determine whether an unnecessary hardship would result from compliance with the ordinance:

(1) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;

(2) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;

(3) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;

(4) compliance would result in the unreasonable encroachment on an adjacent property or easement; or

~~(4)~~(5) the municipality considers the structure to be a nonconforming structure.

Sec. 107-493. – Appeals based on error.

~~An appeal, a request for a variance, or an application for a special exception may be taken by any person to the board in accordance with the provisions of this division.~~

(a) Any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

(1) a person aggrieved by the decision; or

(2) any officer, department, board, or bureau of the municipality affected by the decision.

(b) Any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is related to a specific application, address, or project:

(1) a person who:

(A) filed the application that is the subject of the decision;

(B) is the owner or representative of the owner of the property that is the subject of the decision; or

(C) is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or

(2) any officer, department, board, or bureau of the municipality affected by the decision

(c) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed not later than the 20th day after the date the decision is made. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed. ~~An appeal by a person aggrieved by a decision of the building official must be filed with the building official within 15 days after the decision being complained of was rendered and~~ The appeal must be accompanied by payment of a filing fee in the amount established by the city council and set forth in the fee schedule on file with the city. ~~Upon filing of~~

216 ~~the appeal, the building official shall promptly transmit to the board all of the papers~~
217 ~~constituting the record upon which the action appealed from was taken.~~

218 (d) An appeal stays all proceedings in furtherance of the action that is appealed unless
219 the official from whom the appeal is taken certifies in writing to the board facts
220 supporting the official's opinion that a stay would cause imminent peril to life or
221 property.

222 ~~(a)~~(e) The board shall set a reasonable time for the appeal hearing and shall give public
223 notice of the hearing as provided in this Division and, in addition, give due notice to
224 the parties in interest. A party may appear at the appeal hearing in person or by agent
225 or attorney. The board shall decide the appeal at the next meeting for which notice
226 can be provided following the hearing and not later than the 60th day after the date
227 the appeal is filed.

228 ~~Sec. 107-494. — Stay of proceedings.~~

229 ~~— The filing of an appeal shall stay all proceedings in furtherance of the action appealed~~
230 ~~from, unless the building official certifies to the board, after the notice of appeal has been filed~~
231 ~~with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause~~
232 ~~imminent peril to life or property. In such case, proceedings shall not be stayed other than by a~~
233 ~~restraining order granted by the board or by a court of competent jurisdiction on application and~~
234 ~~notice to the building official and due cause shown.~~

235 Sec. 107-49~~5~~4. — Notice of hearing.

236 (a) The board shall fix a date and time to conduct a hearing on each appeal, request for a
237 variance, ~~or~~ application for a special exception filed with it, or other action authorized
238 under this Chapter and shall mail notices of such hearing at least 30 days before the
239 hearing.

240 (b) The notice must be mailed to the following persons at the address shown on the current
241 tax rolls of the city and deposit of the notices in the U.S. mail will be deemed compliance
242 with this requirement:

- (1) The petitioner;
- (2) The owners of the property located within 250 feet of any point of the lot, or portion thereof, with respect to which the appeal, request for a variance or application for special exception is taken;
- (3) If the appeal, request for a variance or application for a special exception relates to a lot that is not in a residential district, all owners of property located within the city shown on the current tax rolls of the city; and
- (4) All other persons deemed by the board to be affected thereby.

~~Sec. 107-496. — Hearings.~~

~~(a) At the hearing, any party may appear in person or by agent or by attorney. All testimony shall be given in a manner prescribed by the ruled of the board. The board may administer oaths, compel the attendance of witnesses and require the production of documents under such rules as the board may establish.~~

~~Hearings conducted by the board shall be open to the public; however, the board may meet in executive session pursuant to V.T.C.A., Government Code ch. 551. The board shall hear the intervention of any owner of property adjacent to, in the rear of, or across the street from a lot, with regard to which the grant of an appeal, variance or special exception is pending, and shall also hear any other parties of interest.~~

Sec. 107-49~~57~~⁵⁷. — Decision by board.

With the exception of a decision on an appeal based on an error, which decision shall be determined as provided for in Sec. 107-493, the board shall make a decision on each appeal, request for a variance or application for a special exception within 45 days of the hearing on such appeal, request or application related to said decision. ~~The board may make such order, requirement, decision or determination as, in its opinion, ought to be made under the circumstances on such appeal, request or application.~~

Sec. 107-49~~68~~⁶⁸. — Limitations.

- (a) No appeal, request for a variance nor application for a special exception or other previous application, may be filed by the same applicant within 180 days of the date upon which the board denied such appeal, request or application, 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 upon which the previous board action was based. Such change of circumstances shall permit the rehearing of an appeal, request or application by the board prior to the expiration of the 180-day period, but such conditions shall in no way have any force in law to compel the board to reconsider the appeal, request or application. Such subsequent rehearing shall be considered entirely on its merits and the peculiar and specific conditions related to the property with reference to which such proceeding is brought.
- (b) Any appeal, request or application approved by the board, either under the provisions of this division or under the authority granted to the board under the statutes of the state, shall authorize the issuance of a building permit or a certificate of occupancy, as the case may be, for a period of 90 days from the date of the favorable action on the part of the board, unless the board in its minutes shall, at the same time, approve a longer period. If an application for such building permit or certificate of occupant is not filed within the 90-day period or such extended period as the board may specifically approve, then the approval of the appeal, variance or special exception shall be deemed waived and all rights thereunder terminated. Such termination and waiver shall be without prejudice to a subsequent appeal, request or application to the board in accordance with the rules and regulations herein contained.

Sec. 107.49~~79~~. – Appeals from the board of adjustment.

- (a) Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:
- (1) a person aggrieved by a decision of the board;
 - (2) a taxpayer; or

297 (3) an officer, department, board, or bureau of the municipality.

298 (b) The petition must be presented within 10 days after the date the decision is filed in
299 the board's office.

300 ~~Any person, jointly or severally, aggrieved by any decision of the board, or any taxpayer, officer,~~
301 ~~department, or board of the city may present any such matter to a court of competent~~
302 ~~jurisdiction for review, after the final action of the board thereon, and in the manner and upon~~
303 ~~the terms provided by the laws of the state.~~

304 Sec. 107.500 – 107-515. – Reserved.