

Rollingwood Zoning Board of Adjustment

Rules of Procedure.

- 1) Preface. The Rollingwood Board of Adjustment (the “Board”) is appointed by the Mayor and confirmed by the City Council to fulfill the duties prescribed in Texas Local Government Code Sections 211.008 through 221.011 and Part II Land Development Code, Article V. – Administration and Enforcement, Division 3. – Board of Adjustment of the City’s Code of Ordinances. In the event of a conflict between these rules and the applicable statutory authority or city code, the statute or code shall prevail.
- 2) Purpose and scope. These rules of procedure shall govern the operations of the Board in conducting the business authorized by state statute and the city code, which includes deciding appeals of administrative decisions and/or interpretations made in the enforcement of the City’s zoning regulations (“appeal”); authorizing variances from the City’s zoning regulations in particular cases (“zoning variance”), and deciding special exceptions to the terms of the City’s regulations (“special exception”).
- 3) Election of officers.
 - a. The Board shall consist of five regular members and four alternates.
 - b. Members of the City Council or Planning and Zoning Commission are not eligible for appointment to the Board.
 - c. The officer of the Board shall be a chairperson. There is no limit on the number of terms an officer may serve. The chairperson shall serve for a term of 1 year, commencing on January 1 and ending on December 31, except that upon expiration of the term the chairperson shall continue to serve until his or her successor is elected.
 - d. At the first meeting of the board following January 1 of each year, the chairperson shall ask for nominations for chairperson and close the nominations after all members have had an opportunity make a nomination. If there is only one nominee, the nominee shall be appointed unless an objection is raised, and the objection is supported by a majority of the members. If there are multiple nominees, the vote shall be by written ballot; and by runoff ballot in the case of a tie between two or more nominees or other means approved by the Board.
- 4) Presiding Officer and Secretary. The Chairperson shall preside over all meetings of the Board. If a question over meeting procedures shall arise, Robert’s Rules of Order, Newly Revised, shall apply. The City Secretary shall serve as Secretary to the Board.
- 5) Minutes and Records. The minutes of each proceeding shall indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The Board shall keep records of its examinations and other official actions. These minutes and records shall be prepared as soon as practicable after each meeting and upon approval by the Board shall be filed immediately in the Office of the City Secretary, which shall serve as the office of the Board.

- 6) Meetings. Meetings shall be convened as necessary to hear appeals or consider variances and special exceptions as filed. All meetings shall be open to the public.
- 7) Voting. The concurring vote of at least 75% of the members of Board is required (i) on an appeal to reverse an order, requirement, decision or determination of an administrative officer; (ii) to decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; (iii) to authorize a zoning variance from the terms of the zoning ordinance; or (iv) to hear and decide on special exceptions to this chapter. The concurring vote of a majority of the members of the Board is required to approve any other matter. All votes shall be by roll call.

8) Application forms. An application for an appeal of an order, requirement, determination, or decision of an administrative official, special exception, or variance shall be submitted on a form approved by the City. An application shall include all evidence the applicant intends to submit in support of the requested action. The application shall include the appropriate fee as set out in the City's fee schedule.

8)9) Oaths and sworn testimony. A person who gives evidence and/or testifies before the board in any proceeding or meeting held by the board, shall be properly and duly sworn in and placed under oath by the presiding officer prior to presenting any testimony or evidence before the board in accordance with Texas Local Government Code Sec. 211.008(e).

9)10) Hearing required. The Board shall hold a hearing on an administrative appeal, special exception, or a variance. These hearings should generally adhere to the following format, but the Board may modify the format for particular cases as deemed appropriate:

- a. Standing to Submit an Application & Requests for Postponement.
 1. The chair should begin by stating: "Before we open the hearing, are there any requests for postponement or issues of standing that anyone would like to raise?"
 2. If objections to standing (which include issues of timeliness, jurisdiction, or ripeness) or requests for postponement are raised, the chair should resolve them before proceeding to the hearing. The chair should limit testimony and discussion to only those issues, not the merits of the case. If no objections are raised, the chair should open the hearing and follow the format below.
- b. Presentation by staff. Time limit 20 minutes.
- c. Presentation by applicant. Time limit 20 minutes
- d. Neighboring Party. Comments by any neighboring party which is located within 250 feet of the subject property in support of or in opposition to the application. Time limit of 10 minutes each.
- e. Interested Party. Comments by Interested Parties in support of or in opposition to the application (3 minutes each), subject to reasonable limits imposed by chair to save time and avoid redundant or irrelevant testimony.
- f. Rebuttal by applicant. Time limit 10 minutes.

- g. Rebuttal by staff. Time limit 10 minutes.
- h. After the close of the presentations, Members may ask questions of the applicant, staff, Neighboring parties, or Interested Parties. There shall be no time limit for members' questions.
- i. By majority vote of the Board additional time may be given for the hearing of testimony.

~~10~~11) Deliberation, Voting and Findings.

- a. Board Deliberation. At the close of the hearing the chairperson may call for deliberation of the Board on the question. During deliberation a board member may call upon any staff, the applicant, Interested Parties, or other individuals the board deems also have relevance to the case for further questioning.
- b. Disposition.
 - i. Administrative Appeal. Please refer to Part II Land Development Code, Article V. – Administration and Enforcement, Division 3. – Board of Adjustment of the City's Code of Ordinances for regulations regarding Administrative Appeals.
 - ii. Zoning Variance. Please refer to Part II Land Development Code, Article V. – Administration and Enforcement, Division 3. – Board of Adjustment of the City's Code of Ordinances for regulations regarding Zoning Variances.
 - iii. Special Exceptions. Please refer to Part II Land Development Code, Article V. – Administration and Enforcement, Division 3. – Board of Adjustment of the City's Code of Ordinances for regulations regarding Special Exceptions.
 - iv. The Board may defer action on an application, for not more than the time frame allowed by law, if it concludes additional evidence is needed, alternative solutions require further examination, or the evidence presented requires further review.
 - v. The Board may dismiss or postpone consideration of an application if it is found the matter was improperly filed.

~~11~~12) Board Decisions.

- a. The Board shall make a decision on each appeal, request for a variance or application for a special exception. 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.
- b. The Boards decisions shall be recorded by order, signed by the Presiding Officer, on a form as approved by the Board.
- c. A Board decision is considered filed in its office upon execution of an order on the matter by the Presiding Officer. The order will be filed on a form as approved by the Board.

~~12~~13) Prohibition on Ex Parte Communications.

- a. Quasi-Judicial Body. The Board is a quasi-judicial body with authority to decide the rights of individual parties, subject to the requirements of state law and the City's code of ordinances. In deference to its decision-making role, no one other than City staff may contact a board member outside of a hearing regarding a matter that is pending, or may in the future be pending, before the Board. All communications directed to a Board member outside of a hearing should be directed to the City Secretary.
- b. Limitations on Outside Investigations. Members shall not individually investigate cases before the Board, other than routine site visits or reviewing publicly available information.
- c. Disqualification. A Board member that receives material information regarding a case other than the publicly filed documents and presentation at the hearing is disqualified from participating in the case unless the member publicly discloses the information and its source at the earliest reasonable opportunity. A Board member may disqualify him or herself if an applicant, interested party, or agent has sought to influence the member's vote other than in a hearing.

14) Limitations on Authority of Zoning Board of Adjustment:

- a. The Board may not grant a variance authorizing a use other than those permitted in the district for which the variance is sought.
- b. The Board shall have no power to grant or modify Special Use Permits.
- c. The Board shall have no power to grant a zoning amendment. If a written request for a zoning amendment is pending before the Planning and Zoning Commission or the City Council, the Board shall neither hear nor grant any variances with respect to the subject property until final disposition of the zoning amendment.
- d. The Board shall not grant a variance for any parcel of property or portion thereof upon which a site plan, preliminary plat or final plat, where required, is pending on the agenda of the commission and, where applicable, by the City Council. All administrative and procedural remedies available to the applicant shall have been exhausted prior to hearing by the Board.