

Sec. 20.12. - Board of adjustment.

1. *Organization.* There is hereby created a board of adjustment consisting of five members, each to be appointed by the mayor, and subject to confirmation by the city council for a term of two years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose place becomes vacant for any cause, in the same manner as the original appointment was made. Two members heretofore appointed shall serve for one year, or until his successor is appointed, and three members as heretofore appointed, shall serve for two years, or until their successors are appointed, and thereafter each member reappointed or each new appointee shall serve for a full term of two years unless removed as hereinabove provided. Provided, however, that the mayor and city council may appoint three alternate members of the board of adjustment who shall serve in the absence of one of the regular members when requested to by the mayor or city manager, as the case may be, so that all cases to be heard by the board of adjustment will always be heard by a minimum number of the four members. The alternate member, when appointed, shall serve for the same period as the regular members, which is for a term of two years, and any vacancy shall be filled in the same manner and he shall be subject to removal in the same manner as the regular members.

2. *Procedure.* The board shall adopt rules to govern its proceedings, provided, however, that such rules are not inconsistent with the ordinance or statutes of the State of Texas. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicate such fact, and shall keep records of its examinations and other official actions, all which shall be immediately filed in the office of the board and shall be a public record.

Cross reference— Boards, committees, commissions, § 2-86 et seq.

Sec. 20.13. - Appeals to board of adjustment.

1. *Appeals process involving zoning ordinance decisions.* Appeals to the board of adjustment may be taken by any person, officer, bureau, or agency of any public body affected by any decision of the building inspector. Such appeal may be made within 60 days after a decision by the building inspector by filing with the building inspector a notice of appeal to the board of adjustment and specifying the ground thereof. The building inspector shall forthwith transmit to the board of adjustment all of the papers constituting the record upon which the action appealed from was taken.

2. *Appeals process involving zoning ordinance violations.* The board of adjustment of the city shall serve and perform the duties of such appeals board under the procedure herein set forth:

a. Meetings of the board of adjustment shall be at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the vice-chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The board shall keep minutes of its proceedings, including a summary of testimony of each person appearing before it; it shall keep records of its findings and decisions. The vote of each member on each question shall be recorded, or if absent or failing to vote, the circumstance shall be noted. The concurrence of four members of the board shall be necessary to a decision of any question which the board has the power to determine. All such records shall be public records and same shall be filed in the office of the board, which shall, for the purpose of this ordinance, be the office of the building inspector.

b. Appeals to the board of adjustment may be taken by any person aggrieved by any notice which has been issued in connection with the enforcement of this ordinance or any officer or bureau or the governing body of the city affected by any decision of the building inspector. Such shall be taken within 14 days after the notice of violation was served or action taken by filing in the office of the building inspector written petition to the board setting forth the grounds therefor. Upon the receipt of such petition, the board shall set a time and place for hearing the appeal, but in no case shall such hearing be less than ten days nor more than 40 days following the receipt of the petition. The building inspector shall promptly transmit to the board all papers constituting the record upon which the notice of violation was issued or action taken. Written notice of the time and place of hearing shall be sent by certified mail, return receipt requested, to the person taking such appeal and all owners of real property located within 200 feet of the property on which the appeal is made at least ten days prior to the date of such hearing and public notice of each hearing shall be published at least once ten days prior to the hearing in a newspaper of general circulation in the city. At the hearing any party may appear in person or by agent or attorney.

c. After public notice and public hearing, the appeals board shall have the power to sustain, modify, or withdraw the notice of violation. The board shall make findings in writing justifying the exercise of its authority and the same shall be a part of the permanent record of the case.

d. If the board of adjustment sustains the building inspector, it shall find:

1. That the facts as stated in the written notice of violation are correct and that the situation covered by the notice is, in fact, a violation of this ordinance; and
2. That the remedy stated by the building inspector in the written notice of violation is the minimum remedial action which will bring the premises cited into compliance with this ordinance.

e. If the board of adjustment shall modify or withdraw the notice of violation, it shall find the following, as may be applicable to the specific cases:

1. That the facts as stated in the written notice of violation are not correct and that the situation as covered by the notice is not, in fact a violation of this ordinance, or that the procedures required of the building inspector in this ordinance have not

been complied with; and/or

2. That the remedial action required by the building inspector is not the minimum remedial action necessary to bring the premises into compliance with this ordinance and that some other remedial action, to be stated by the board as a part of the record of the case, is the minimum action necessary to secure compliance with this ordinance.

f. If the person or persons to whom the order is given fail to comply with the same within the time allowed, the enforcing official shall promptly proceed with all means of enforcement in order to seek compliance with the provisions of this ordinance. The building inspector shall likewise place a notice on the premises in the form and manner prescribed in section 20.1(3) [20.1.2] above.

g. An extension of time to comply with a notice of violation shall proceed in the following matter:

1. In addition to the authority herein before given to the board of adjustment, such board shall have the authority upon good cause shown therefor in writing to grant an extension of time within which such person may be required to comply with a notice of violation which has been issued by the building inspector, provided such written request for the extension of time is presented to the board prior to the expiration of time originally stated in the written notice of violation.

2. The building inspector shall be furnished immediately with a copy of such written request of all extensions and shall immediately file a written report regarding the request which shall be considered by the board at the same time the requested extension shall be considered.

3. The authority of the board in hearing requests for extension of time as herein given shall be in each instance limited to either granting or denying the request for such extension, and shall not be considered as an appeal from the terms of the notice of violation, and the board shall not have the authority to modify or vary the terms of the notice of violation except as to the time of performance.

4. In granting or denying the request for extension of time, the board shall consider such factors as are appropriate, including the good faith effort to comply, with availability of materials and workmen necessary, and such other factors as the board may deem appropriate and consistent with the intent of this ordinance.

5. All requests for extension of time shall be considered at the next meeting of the board occurring not less than three days after the filing of such request, and the person seeking the extension of time as well as the building inspector shall be notified of the time and place of such hearing.

6. In granting or denying the request, the board shall, in each instance, state its reasons therefor and state the length of time it is extended, during this [time] the acts required to be done shall be completed, which time, in no instance, may be greater than 90 days after the time period stated in the original notice of violation.

- a. An appeal or request for extension of time properly filed within the time and in the manner as herein provided shall stay all action or enforcement appealed from or sought to be extended until final disposition therefor by the board of adjustment.

Sec. 20.14. - Jurisdiction [of board of adjustment].

1. The board of adjustment 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, after public notice and public hearing, and subject to appropriate conditions and safeguards, may:

- a. Hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;

- b. Hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;

- c. Authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done;

- d. Permit the reconstruction, extension or enlargement of a building occupied by a nonconforming use on the lot or tract occupied by such building provided such reconstruction does not prevent the return of such property to a conforming use and permit the expansion of off-street parking or off-street loading for a nonconforming use;

- d[1]. Permit such 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 such restricted area, shape, or slope that it cannot be appropriately developed without such modification; and

- e. Require the discontinuance of nonconforming uses of land or structure under any plan whereby the full value of the structure and facilities 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 ordinance. All actions to discontinue a nonconforming use of land and structure shall be taken with due regard for the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated nonconforming use and preservation of property. The board shall, from time to time, on its own motion or upon cause presented by interested property owners, inquire into the existence, continuation or maintenance of any nonconforming use within the city.

2. In exercising its authority under subsection 1.a, the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or

determination, and for that purpose the board has the same authority as the administrative official.

3. The concurring vote of four members of the board is necessary to:
 - a. Reverse an order, requirement, decision, or determination of an administrative official;
 - b. Decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance;
 - c. Authorize a variation from the terms of a zoning ordinance.

Sec. 20.15. - Status of board of adjustment action; judicial review.

1. In exercising its powers, the board may, in conformity with the provisions of V.T.C.A., Local Government Code § 211.001 et seq., as amended, revise or reform, wholly or partly, or may modify the order, requirement, decisions, or determination as ought to be made and shall have all the powers of the officer from whom the appeal is taken including the power to impose reasonable conditions to be complied with by the applicant.
2. The concurring vote of four members of the board shall be necessary to revise any order, requirement, decision or determination of any such building inspector, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to affect any variance in said ordinance.
3. Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, or board of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the board and not thereafter.