

ARTICLE 3. BOARD OF ADJUSTMENT

Sec. 3-1. Creation.

The city council does hereby create a board of adjustment to be composed of five regular members and two alternate members who shall be qualified electors of the city and shall have resided in the city six months prior to appointment. It is the declared policy of the council that it will appoint only those persons who have demonstrated their civic interest, general knowledge of the community, independent judgment, and availability to prepare for and attend meetings.

Sec. 3-2. Terms of office.

The terms of three regular and one of the alternate members shall expire on June 30 in each odd numbered year, and the terms of two regular and of one of the alternate members shall expire on June 30 in each even numbered year. The regular members shall be identified by place numbers one through five. The odd numbered places shall expire in the odd numbered years and the even numbered places shall expire in the even numbered years. No member shall be appointed for a term in excess of two years. Board members may apply to be reappointed to succeed themselves.

Sec. 3-3. Vacancies.

Any vacancies, either of regular members, shall be filled for the unexpired term by appointment of the Chair. Vacancies for unexpired terms of Alternates shall be filled by appointment by the City Council.

Sec. 3-4. Removal from office.

Members shall be removed from office for cause after formal written charges and public hearing by the city council. If a regular member is absent in excess of two consecutive regular meetings or is inexcusably absent in excess of two regular meetings in any calendar year, the member may be removed and replaced with an alternate, without formal written charges and public hearing.

Sec. 3-5. Organization, Meeting and Quorum

The board shall hold an annual organizational meeting and shall elect a chair, vice-chair, and secretary from among its members before proceeding with any other matters of business. The enforcing officer shall be the director of community development or his designee. The board shall meet at least once every three months, and shall designate the time and place of its meetings. The board shall adopt its own rules of procedure and keep a record of its proceedings in accordance with the statutes and these regulations. Newly appointed members shall be installed at the first regular meeting after their appointment.

Members shall complete the statutorily mandated open government training within 90 days of having been sworn in to service or from the date by which the member otherwise assumes responsibilities for the board, whichever is sooner.

A quorum for the conduct of business shall consist of three members of the commission. The members of the commission shall regularly attend meetings and public hearings of the commission and shall serve without compensation, except for reimbursement of authorized expenses attendant to the performance of their duties.

The board shall post agendas, minutes and attendance on the board's webpage on the city's website.

The board shall provide an annual report to the city council and may be required to provide additional reports upon request of the city council.

Sec. 3-6. Duties and powers.

The board of adjustment shall have the powers and exercise the duties of a board in accordance with Texas Local Government Code Chapter 211.009(a) board members are representatives of the city and may:

1. 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 ordinance;
2. Hear and decide special exceptions to the terms of the zoning ordinance;
3. Authorize in specific cases a variance from the terms of the 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; and
4. Hear and decide other matters authorized by the council.

(Ord. No. 2003-03, § 1, 4-1-03)

Sec. 3-7. Appeals and variances.

- A. *Registering an appeal and variance.* A request for an appeal for variance from development controls or relief from administrative decision of the enforcing officer may be taken by any person aggrieved or by any officer, department, or board of the city affected by a decision of the enforcing officer. Such appeal shall be filed by filing with both the enforcing officer and the board of adjustment a notice of appeal specifying the grounds thereof. The enforcing officer shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.
- B. *Authorization of variance by BOA.* The board of adjustment shall authorize upon appeal in specific cases such variance from the development controls set forth in these regulations as will not be contrary to the public interest. In reaching its decision the board shall grant the variance appeal if it finds:
 1. That literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property, and
 2. That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district, and
 3. That the relief sought will not injure the permitted use of adjacent conforming property, and
 4. That the granting of the variance will be in harmony with the spirit and purposes of these regulations.

Any variance granted by the board shall terminate automatically when:

1. The specified period of use has expired;
2. The use ceases to be in full compliance with any condition imposed by the board;

-
3. Or when the use has been abandoned.

A variance may not be granted under this subsection "B" if the request consists of a final order of an administrative decision of the enforcing officer, including but not limited to, decisions that a use or structure has been determined to be nonconforming.

(Ord. No. 2003-03, § 1, 4-1-03)

Sec. 3-8. Authorized special exceptions.

The following uses may be permitted as special exceptions by the board of adjustment in the districts indicated below, subject to full and complete compliance with any and all conditions listed, together with such other conditions as the board may impose for protection of the public health or safety:

Special Exception	District Where Permitted
Reduction of off-street parking spaces (Section 8-9.A.1)	All districts
Additional height for parking lot light poles (Section 8-11.E.3)	All nonresidential districts and all nonresidential uses in residential districts
Exception for prohibited lighting elements (Section 8-11.G)	All districts
Exceed illumination of 20 footcandle for public and semi-public facilities (Section 8-11.F.1.a)	All districts
Building height may exceed maximum requirements (Section 8-2.A.3)	All districts

Antenna facilities which do not meet the requirements of Section 8-14 Wireless Communication Facilities	See Section 8-14
Additional wireless facility antenna height (Section 8-14.C&E)	Residential districts
Commercial antenna in a residentially zoned district (Section 8-14.D)	Residential districts
Reconstruction of a nonconforming structure (Section 4-6.2)	All districts
Change of nonconforming use (Section 4-7.3)	All districts
Change to lesser nonconformity (Section 4-10.)	All districts
Reduction of masonry or tilt wall construction by primary or secondary school to permit placement and use of temporary classroom with	"CF" (Community Facilities) zoning district

time limit set by board not to exceed 2 years.	
--	--

(Ord. No. 2007-11, § 1, 6-19-07)

Sec. 3-9. Stay of proceedings.

An appeal shall stay all proceedings of the action appealed from unless the enforcing officer, after the notice of appeal has been filed with him, certifies to the board that, by reason of facts stated in his certificate, a stay would in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed except by a restraining order which may be granted by the board or by a court of record on application and notice to the enforcing officer from whom the appeal is taken.

Sec. 3-10. Form of application.

The application for an appeal from an administrative interpretation, request for variance, or request for special exception shall be in such form and shall contain such information as the city may require and shall be accompanied by the required fee. An incomplete application shall be deemed only to give notice of intent to apply to the board and shall not be reviewed or scheduled for hearings until brought to completion.

Sec. 3-11. Notice of hearing.

Official written notice of public hearing on every application for a variance or special exception, or for an interpretation of regulations applying solely to an individual property, shall be sent to all owners of property, or the person rendering the same for taxes, which are affected by such application, located within 200 feet of any property affected thereby, and the City Council members within not less than ten days before such hearing is held. Such notice shall be served by using the last known address as listed on the city tax roll and depositing the notice, postage paid, in the United States mail. Notice of hearings on requests for interpretation of regulations applying to more than one property and ownership shall be given by means of a general notice as provided below.

Sec. 3-12. Hearing and decision.

The board shall fix a reasonable time for the hearing of an appeal, give public notice thereof and decide the same within a reasonable time. Upon the hearing any party may appear in person, by attorney, or agent. Evidence supporting the grant or denial of an appeal shall be submitted only through the enforcing officer or to the board in public meeting.

Any application may be withdrawn upon written notice to the enforcing officer but no appeal shall be withdrawn after posting of hearing notice and prior to board action thereon without formal consent of the board.

Sec. 3-13. Decision and voting.

1. Every decision of the board shall be based upon findings of fact and every finding of fact shall be supported in the record of proceedings. The enumerated conditions required to exist on any matter upon which the board is authorized to pass under these regulations shall be construed as limitations on the power of the board to act.

-
2. Nothing herein contained shall be construed to empower the board to change the terms of these regulations, or to effect changes in the zoning districts. The powers of the board shall be so applied that the terms of these regulations will be strictly enforced.
 3. In exercising its powers, the board of adjustment, in conformity with the revisions of the Texas Local Government Code Chapters 211.008; 211.013 and as authorized by city ordinance, may modify in whole or in part any order, requirement, decision, or determination as ought to be made and shall have all the powers of the officer from whom the variance is requested.
 4. The concurring vote of four members of the board shall be necessary to reverse, on request, any order, requirement, decision or determination of the forcing officer, or to approve any application upon which it is required to pass under these regulations or to effect any variance in said regulations.
 5. Member disqualification.
 - a. A member shall disqualify himself from voting whenever he has personal or monetary interest in the property under appeal, or will be directly affected by the decision of the board.
 - b. A member may disqualify himself from voting whenever any applicant, or his agent, has sought to influence the member's vote on the appeal, other than in the public hearing.

Sec. 3-15. Approval of request.

1. In approving any request the board may designate such conditions in connection therewith in order to secure substantially the objectives of the regulation or provision to which such variance is granted and to provide adequately for the maintenance of the integrity and character of the zone in which permit is granted.
2. When necessary the board may require guarantees, in such form as it deems proper, to insure that conditions designated in connection therewith are being or will be complied with. Where any condition under which a request has been granted appears to have been violated, the board may hold a public hearing thereon to determine whether or not the permit therefore granted shall be terminated.
3. Upon approval of an application for a variance appeal, the applicant shall apply for occupancy or construction permits with 60 days after the board's decision unless a greater time is requested in the application and is authorized by the board. Any approval may be granted one emergency extension of 60 days on written request filed with the board before expiration of the original approval. Failure of the applicant to apply for occupancy or construction permits within the authorized time period shall void the right to secure such permits except upon the filing of a new application or appeal.

Sec. 3-15. Denial of request.

No application that has been denied shall be further considered by the board under a subsequent request obtained by filing new plans and obtaining of a new decision from the enforcing officer unless:

1. The new plans materially change the nature of the request, or
2. The permitted development of other nearby property in the same zone has been substantially altered or changed by a ruling of the board so as to support an allegation of changed conditions.

Sec. 3-16. Appeal of board action.

Any person or persons, jointly or separately, aggrieved by any decision of the board, or any taxpayer, or any officer, department, or board of the city, may present to a district court of Tarrant County, Texas, a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of such illegality.

Such petition shall be filed in the court within ten days after the filing of the decision complained of in the offices of the board and not thereafter. Trial shall be conducted under substantial evidence rule.