

**RULES OF PROCEDURE
FOR THE
BOARD OF ADJUSTMENT AND SIGN REVIEW BOARD**

ARTICLE 1. GENERAL PROCEDURES.

(A) Refusal Required.

No appeal shall be taken until and unless the responsible city official has first determined that a permit requires a variance or has rendered an interpretation of the regulations in question.

(B) Application Requirements.

All appeals shall be filed on an application form provided by the staff liaison and shall be complete in all respects before being accepted for filing. The Board shall not act upon an application that is either substantially nonconforming or incomplete.

(C) Standing.

- (1) Appeals to the Board of Adjustment may be filed by the agent or owner of property subject to Chapter 25-2 or by any person aggrieved, or by any City officer, department, board (excluding the Board of Adjustment) or commission affected by a decision of the responsible city official.
- (2) Appeals to the Sign Review Board may be filed by the agent or owner of property subject to the City's sign regulations, or by a person aggrieved by a decision of the responsible city official under the sign regulations.
- (3) Appeals to the Board of Adjustment of the City's airport zoning regulations may be filed by the agent or owner of any property subject to the airport zoning regulations.
- (4) Appeals filed by the owner of property that is the subject the action in question shall be signed by the property owner or the owner's agent. If an agent signs the application, the agent shall indicate the name of the owner and in what capacity the agent serves and submit evidence sufficient to establish authority to act for the owner.
- (5) The burden of proof is on the applicant to demonstrate standing by clear and convincing evidence. If the Board, on hearing the evidence regarding the applicant's standing, dismisses the appeal for lack of standing, the Board's action shall constitute a final order disposing of the appeal.

(D) Time For Filing Application.

An application appealing an interpretation review shall be filed by the time required by the Land Development Code. An application requesting a variance may be filed at any time, except as provided in Section (H)(1).

(E) Notice.

- (1) Notice shall be as required by the Land Development Code. The required sign(s) indicating a request for variance, appeal of an interpretation, or another action of the Board must be posted on the subject property no less than ten (10) days prior to and including the public hearing date. If the subject property is adjacent to more than one public street, a sign shall be posted facing each street.
- (2) In accordance with the Land Development Code, the postponement or continuation of a public hearing does not require additional notice if such postponement or continuance is to a specific date and time no later than 60 days from the date of the hearing for which notice was given.
- (3) An applicant's failure to maintain a sign in accordance with this rule may result in a postponement of the consideration of the request at a public hearing until this rule has been complied with.

(F) Submission of Evidence.

Evidence supporting a request for variance or an appeal shall be submitted only through the staff liaison or to the Board in a public meeting.

(G) Withdrawal of Appeal.

An applicant may withdraw an appeal by filing written notice with the staff liaison. An applicant granted a variance may withdraw the appeal and the withdrawal shall have the same effect as a denial as of the date of withdrawal. The staff liaison shall announce at the Board meeting the withdrawal of any appeals if the withdrawal is filed after public notice has been made.

(H) Limitations on Variances and Appeals.

- (1) After denial of a variance, an application for the same or substantially same variance on the same or substantially same site shall not be filed within one year.
- (2) The Board shall not hear appeals concerning notice or procedure requirements of the Land Development Code, or matters in which jurisdiction is vested in another municipal board or commission.

ARTICLE 2. SUBSTANTIVE REQUIREMENTS FOR INTERPRETATION APPEALS.

(A) Basis for Filing.

An appeal for interpretation of the regulations may be filed when error is alleged in an order, requirement, decision, determination, or application by the responsible city official of the substantive requirements of Chapter 25-2.

(B) Evidentiary Requirements.

An interpretation appeal application shall include:

- (1) a statement describing the way the applicant alleges the regulations should be interpreted or applied, together with diagrams and charts illustrating the proper interpretation or application of the regulations; and
- (2) the responsible city official's statement of the interpretation or application of the regulations.

(C) Basis for Decision.

Before deciding an interpretation appeal, the Board shall consider:

- (1) the facts and statements in the application;
- (2) the testimony and other evidence presented at the public hearing;
- (3) the responsible city official's technical report on the appeal; and
- (4) the Board's consideration and evaluation of the language of the regulations and of related ordinances bearing thereon.

(D) Findings.

The Board shall make such interpretation as ought to be made. The Board may grant an appeal if it makes all of the following findings.

- (1) There is reasonable doubt or difference of interpretation as to the specific intent of the regulations.
- (2) The resulting interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated.
- (3) When use provisions are being appealed, granting the appeal would clearly permit a use in character with the uses enumerated for the various districts and with the objective of the district in question.

ARTICLE 3. SUBSTANTIVE REQUIREMENTS FOR VARIANCES.

(A) Information Required.

- (1) An application for a variance shall contain information addressing each of the factual elements upon which the Board must base the required findings.
- (2) When an appeal is submitted for variance from setback, side or rear yard requirements, the applicant shall provide the same information for properties adjoining the common lot line as may be applicable to the appealed requirements.

(B) Findings for General Zoning Variances.

(1) Basic Findings.

The Board may grant a variance if it makes all of the following findings.

- (a) The zoning regulations applicable to the property do not allow for a reasonable use.
- (b) The hardship for which the variance is requested is unique to the property and not general to the area in which the property is located.
- (c) The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of regulations to the zoning district in which the property is located.

(2) Additional Findings for Parking Variances.

If the requested variance involves a regulation addressing loading facility or off-street parking requirements, the Board must make all of the following findings in addition to the basic findings.

- (a) Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specified regulation.
 - (b) Granting the variance will not result in the parking or loading of vehicles on public streets in a manner that interferes with the free flow of traffic on the streets.
 - (c) Granting the variance will not create a safety hazard or any other condition inconsistent with the objective of the regulations.
- (3) A variance granted under Subsection (2) applies only to the use for which the variance was granted and does not run with the land on which the use is located.

(C) Findings For Sign Variances by Sign Review Board.

The Sign Review Board may grant a variance from the sign regulations of Chapter 25-10 if it finds that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated; and

- (1) the variance is necessary because strict enforcement of the provisions of the sign regulations prohibit any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site, such as its dimensions, landscaping or topography; or
- (2) granting the variance will not have a substantially adverse impact upon neighboring properties; or
- (3) granting the variance will not substantially conflict with the stated purposes of the sign regulations.

(D) Findings for Airport Zoning Variances.

The Board shall allow a variance from an airport zoning regulation if it finds that:

- (1) a literal application or enforcement of the regulation would result in practical difficulty or unnecessary hardship; and
- (2) the granting of the relief would:
 - (a) result in substantial justice being done;
 - (b) not be contrary to the public interest; and
 - (c) be in accordance with the spirit of the regulation and Chapter 241, Local Government Code.

(E) Conditions on Variances.

The Board may impose any reasonable condition on any variance that it considers necessary to accomplish the purposes of the applicable regulations and state law.

ARTICLE 4. HEARINGS AND DECISIONS

(A) Applicant.

The applicant may appear in person or be represented by counsel or an agent.

(B) Order of Business.

- (1) When matters are scheduled to be heard by the Sign Review Board and the Board of Adjustment at the same time, the Sign Review Board matters will be heard prior to the Board of Adjustment matters.
- (2) After the chair calls the meeting to order, the staff liaison shall call each matter in the order filed and shall announce the case number, the name of the applicant, and the location of the property. The staff liaison shall describe the nature of the case and advise the Board of any communications received. The chair shall administer an oath to all persons providing testimony or other evidence.

(C) Procedure for Hearing.

- (1) The chair shall call the applicant, who shall first address standing to appear before the Board by establishing status as:
 - (a) the agent or owner for the subject property; or
 - (b) an interested party under the notice provisions of the Land Development Code.

- (2) The applicant shall then present arguments. The chair shall then inquire if there are others affected who support the appeal, who may then speak, within the remaining time allotted.
- (3) The chair shall call next those opposed to the applicant's request to present arguments. The chair shall then call the applicant to rebut arguments presented by opposition. Following rebuttal, the chair shall order the hearing closed.
- (4) Each side shall proceed without interruption by the other and all arguments and pleadings shall be addressed to the Board. No argument between applicant and opponents is permitted. the chair may allow limited cross-examination between applicant and opponents.
- (5) The Board may continue a hearing on any matter for which the applicant fails to appear, unless the applicant has requested that the Board act without the applicant's being present.
- (6) The Board may dismiss any matter in which the applicant has failed to appear without cause for two meetings at which the appeal was set, provided the Board shall hear those persons appearing in response to the notice of hearing.
- (7) Time Limits for Presentations.

(a) Variances.

Presentations on behalf of an application for a variance shall be limited to a total of five minutes. Presentations on behalf of opponents shall be limited to a total of five minutes. The applicant shall have a total of two minutes to rebut the arguments of the opponents.

(b) Interpretations.

Presentations on behalf of an application for interpretation shall be limited to a total of ten minutes. Presentations on behalf of opponents shall be limited to a total of ten minutes. The applicant shall have a total of four minutes to rebut the arguments of the opponents.

(c) Increase of Time Limits.

By majority vote of the Board or ruling of the chair, time limits may be equitably extended. After the public hearing is closed, no further public comment shall be accepted unless requested by the Chair.

(D) Board Deliberation.

After closing the public hearing, the chair shall direct any question to the applicant or any person speaking to bring out all relevant facts, circumstances and conditions affecting the matter and then call for questions from other Board members or the responsible city official. During its deliberation, the Board may call on any party to the proceeding for further questioning.

(E) Disposition.

The Board may grant, modify, or deny an appeal or request. The Board may defer action on an appeal if it concludes that additional evidence is needed, alternate solutions need further

examination, or evidence presented at the hearing needs further examination. The Board may dismiss or postpone a matter if the Board finds that it was improperly filed.

(F) Vote Required.

- (1) If a motion in favor of an applicant fails to receive the minimum number of affirmative votes, it shall be regarded as a vote to deny.
- (2) If a member is absent and the vote of that member added to the number voting for the applicant would equal the minimum number of affirmative votes, the motion shall be regarded as a vote to continue consideration to the next meeting.
- (3) If a motion to deny an appeal to the Board of Adjustment receives at least two affirmative votes, it shall be regarded as a vote to deny. If a motion to deny an appeal to the Sign Review Board receives at least five affirmative votes, it shall be regarded as a vote to deny.

(G) Reconsideration.

- (1) A matter on which the Board has acted may be reconsidered once by the Board. A request to reconsider may be filed by any person having original standing. Requests for reconsideration shall be filed in writing with the staff liaison within 10 days after the Board's decision.
- (2) A request to reconsider shall state clearly how the Board erred in its determination, why the action should be reconsidered, and be supported by new or clarified evidence.
- (3) When a request to reconsider has been properly filed, the staff liaison shall place the matter on the agenda of the next regular meeting. The Board shall review the request and shall, on the basis of the written material submitted by the applicant in support of the request, determine whether to reconsider the matter because of an error in its original determination or on the basis of new evidence not presented to the Board at the original hearing that might affect its determination. The affirmative vote of four members of the Board shall be necessary to reconsider a matter, which shall then be heard immediately following the Board's decision to reconsider. Failure of a motion to reconsider shall constitute final action on the matter.

**ARTICLE 5. EX PARTE INFORMATION;
COMPELLING ATTENDANCE OF WITNESSES**

- (A) Members shall not individually investigate cases before the Board, other than routine site visits.
- (B) A member that receives material information regarding a case that is not made available to other Board members is disqualified from participating in the case unless the member publicly discloses the information and its source at the earliest reasonable opportunity.
- (C) A member may disqualify himself or herself if an applicant, interested party, or agent has sought to influence the member's vote other than in the public hearing.
- (D) The chair may compel the attendance of witnesses at public hearings of the Board.