

## **PUBLIC NOTICE**

**City of Lockhart  
Zoning Board of Adjustment  
6:30 PM, Monday, May 4, 2026  
Municipal Building — Glosserman Room  
308 W. San Antonio St.**

### **AGENDA**

1. Call meeting to order.
2. Election of officers for 2026.
3. Citizen comments not related to a public hearing item.
4. Consider the minutes of the November 3, 2025 meeting.
5. Training session with the City Attorney in applying the variance review criteria and the Board's role in criteria consideration and decision-making.
6. Discuss the date and agenda of the next meeting.
7. Adjournment.

**Posted on the bulletin board in the Municipal Building, 308 West San Antonio Street, Lockhart, Texas at 9:00 a.m. on the 29<sup>th</sup> day of April, 2026.**

**CITY OF LOCKHART  
ZONING BOARD OF ADJUSTMENT  
NOVEMBER 3, 2025**

**MINUTES**

**Members Present:** Laura Cline, Wayne Reeder, Mike Annas, Lori Rangel, Patrick Stroka, Arnold Proctor, Lucy Knight

**Member Absent:** Shawn Martinez

**Staff Present:** Kevin Waller, David Fowler, Betzy Torres, Fatema Akter

**Others Present:** Dori Zapata (applicant, Agenda Item 4)

1. Call meeting to order. Chairwoman Cline called the meeting to order at 6:30 p.m.
2. Citizen comments not related to a public hearing item. None
3. Consider the minutes of the October 6, 2025 meeting.

*Member Stroka moved to approve the October 6, 2025, minutes. Member Annas seconded, and the motion passed by a vote of 7-0.*

4. FV-25-04. Hold a PUBLIC HEARING and consider a request by Dori Zapata for a Variance to the Lockhart Code of Ordinances, Chapter 12 "Buildings and Building Regulations", Article VIII "Fences", Section 12-486(a), to allow corrugated sheet-metal which is not an approved material for fencing to be used within a gate and side panels, in order to enclose the rear yard of the residence, on Lot 1 and parts of Lots 2, 7, 8, and 16, Block 1, Original Town of Lockhart, consisting of 0.29 acre, zoned RMD (Residential Medium Density), and located at 422 South Blanco St.

Planning Staff Kevin Waller presented the staff report, which included case maps and photos of the subject property. He explained that a citizen had reported the fence, and that the proposal of the variance today is to allow sheet-metal material to be approved since it is not an approved material under our current code for fences, it is a prohibited material. Mr. Waller stated that Staff recommends denial, due to the variance request not meeting all 6 of the variance review criteria. There are no unique physical conditions of the property that necessitate the sheet metal material.

Chairwoman Cline asked the Commission if there were any questions for Staff.

Vice-Chair Rangel asked what happens if a homeowner receives a letter for a violation and does not address or rectify the issue.

Mr. Waller replied that the issue would then be escalated to the Code Enforcement division.

Commissioner Stroka asked why we have seen an influx of sheet-metal fencing cases as of late.

Mr. Waller replied that the sheet-metal material is not an allowed material per the code.

Chairwoman Cline opened the public hearing and asked for anyone in favor of the application to come forward.

Applicant Dori Zapata of 422 South Blanco Street explained that in 2020 she submitted a permit application for her carport on the existing slab. The carport was not allowed at her desired location, which resulted in the removal of the previous gate and placement of the carport at the rear of the property in an allowed location. Ms. Zapata was unaware that she needed a permit for a replacement gate and fence, and subsequently gathered signatures from her neighbors as a petition to allow her to keep the new gate. The applicant then circulated the written support from neighbors with the Commission at the meeting.

Member Reeder asked Ms. Zapata if she included the new gate in her plans on the permit request when she did the carport.

Ms. Zapata replied that she did not include the gate in the plans and skipped requesting a fence permit. Since the gate location was preexisting, she did not think she had to.

Chairwoman Cline asked Ms. Zapata if she had considered any other gate/fence material.

Ms. Zapata replied that she had considered other materials, but liked the privacy the sheet metal brings.

Chairwoman Cline asked for any other speakers for or against; seeing none, she closed the public hearing and asked for Board discussion.

Discussion ensued amongst Board members.

Member Knight stated that this is the 3<sup>rd</sup> sheet-metal fence application the Board has recently considered, and believes that the ordinance needs to be updated due to the attractiveness of the gate on the subject property. She finds it hard to vote against the gate because it is so attractive.

Member Stroka stated that it is important to consider when neighbors say positive or negative things regardless of how the complaint came in. He went by the property address and does not see it being a glare hazard. Mr. Stroka also asked about the fees for the applications.

Mr. Waller asked if the intent is to reduce fees for applications submitted as a result of a violation.

Chairwoman Cline replied that perhaps fees could be reduced or waived.

Mr. Waller stated that either reducing or waiving fees would have to come from the City Manager.

The Board suggested future agenda items to include adjusting the variance application fee for fence variances, as well as a possible Code update for approved fence materials.

Mr. Waller stated that he will need to discuss these topics with Planning Director David Fowler.

Member Proctor explained that he has lived in Lockhart a long time, and sees the changes in the town. He likes the idea of a Code update, finds the gate attractive, and does not see the material as inappropriate. Mr. Proctor will have a hard time denying the application, based on these factors.

*Member Proctor moved to approve FV-25-04. Member Knight seconded, and the motion passed unanimously with a vote of 7-0.*

5. Discuss the date and agenda of the next meeting.

Mr. Waller stated that the next regularly scheduled meeting would be held on December 1, 2025. No applications have yet been received, and the deadline for applications is Monday, November 10, 2025.

6. Adjournment.

*Vice-Chair Rangel moved to adjourn the meeting, and Member Stroka seconded. The motion passed unanimously with a vote of 7-0, and the meeting adjourned at 7:13 p.m.*

Approved: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
*Betsy Torres, Recording Secretary*

\_\_\_\_\_  
*Laura Cline, Chairwoman*

**TO:** Lockhart Zoning Board of Adjustment  
**FROM:** Kevin Waller, Senior Planner *KW*  
**SUBJECT:** Training Session with City Attorney (Agenda Item 5)  
**DATE:** April 29, 2026

The regularly scheduled meeting of May 4, 2026 will include a training session for Board members, as there is a new member and training has not been held in at least the past 10 years. The training, which should be held periodically, will be conducted by City Attorney Brad Bullock of Messer Fort, and will focus on the application of the 6 variance review criteria as they relate to the Zoning Ordinance, Sign Ordinance, and Fence Regulations, as well as the four review criteria for Special Exceptions. The training will also assess the Board's role in consideration of these criteria and decision-making. Attached with your packet materials for this item include the following:

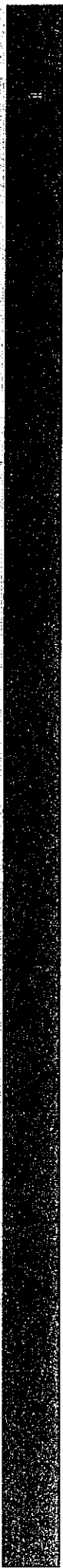
- City Attorney's slideshow presentation
- Legal Q&A by TML Legal Counsel
- Zoning Ordinance Section 64-95 (Board of Adjustment), Section 64-129 (Variances), and Section 64-130 (Special Exceptions)
- Texas Constitution and Statutes, Section 211.008 (Board of Adjustment), Section 211.009 (Authority of Board), Section 211.010 (Appeal to Board), and Section 211.011 (Judicial Review of Board Decision)

City of Lockhart

Board of Adjustment & Appeals  
Procedures Training Work Session

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BRADFORD BULLOCK  
PARTNER



# BOA Orientation

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- Introduction
- What is the BOA?
- Enabling Legislation/Authority/Powers
- Meeting Procedure
- Appeal from Board Decision
- Open Meetings Governance



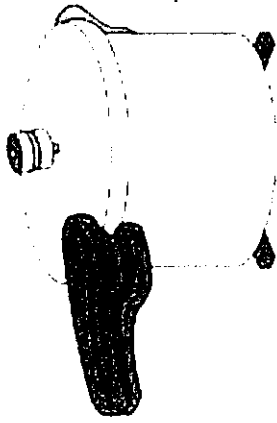
# The Basics



# Board of Adjustment – What Is It?

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- The Board of Adjustment acts as a “safety valve” to prevent the unconstitutional or unlawful application of City Ordinances
- The Board is a quasi-judicial body
  - Fact finder
  - Makes final decisions
  - No appeal to the City Council
- The Board is subject to the Texas Open Meetings Act



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# Enabling Legislation





## Creation

- Texas Local Govt. Code (TLGC) – Sections 211.008 – 211.011
  - Authorizes cities to create a Board of Adjustment
  - Establishes the authority of the Board
  - Establishes procedure for appeal to the Board
  - Establishes judicial review of Board decisions
- Code of Ordinances, Chapter 64, Sec. 64-95

# ***Board Creation and Membership***

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## ***City of Lockhart Code of Ordinances – Chapter 15 Zoning, Division 13 Organization and Enforcement, Section 15.02.722***

- Created pursuant to Section 211.008
- Board consists of seven members, residing in city limits, and up to four alternates
- Mayor and city councilmembers each nominate an individual, and confirmed by a simple majority of the entire city council
- The term for board members is two years, and expire November of alternating years
- A minimum of 4 members (or alternates) must be present to conduct a meeting
- Alternates serve at request of Chair in the absence of a Board member

# *Board Creation and Membership*

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*City of Lockhart Code of Ordinances – Charter, Sec. 8.04; Code Ch. 64, Sec. 64-95*

- At the first meeting the Board elects a chairman, vice-chairman and second vice-chairman
- Composed of seven members
- The zoning administrator serves as the administrator for the Board (ex officio/non-voting)
- All meetings of the Board are special meetings held at Lockhart City Hall, unless otherwise designated by the Board
- Meetings are subject to Open Meetings Act



# ***Powers & Duties***

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## ***Local Government Code Section 211.009***

- To hear and decide appeals where it is alleged there is an error in any order, requirements, decision or determination made by an administrative official in enforcement of the zoning ordinance, i.e., permit denial
- To hear and decide special exceptions to the Zoning Ordinance when specified in the Zoning Ordinance to do so
- To authorize variances from the Zoning Ordinance when not contrary to public interest, where due to special conditions the literal enforcement of the provisions of the Zoning Ordinance create unnecessary hardship, and so the spirit of the zoning ordinances are observed, and substantial justice is done
- The Board does not have the authority to change or amend any provision of the Code of Ordinances
- The Board's jurisdiction is limited to hardship and borderline cases
- Concurring vote of six members required to reverse any decision of any administrative official; or to decide in favor of an applicant on a matter on which the board is required to pass under this zoning chapter; or to authorize a variation from the terms of this zoning chapter.

# *Appeal of Administrative Decision*

## Sec. 65-95(d) Authority

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### **Authority of Board:**

1. Hear and decide appeals where the applicant alleges that there is an error in any order, requirement, decision, or determination made by the city staff, the commission, or the city council in the enforcement of the zoning chapter.
2. Hear and decide variances and special exceptions as provided in section 64-129 and in section 64-130 to any provision of the zoning chapter.
3. Act as the appeal board as specified in section 22-68, flood hazard areas, Code of Ordinances.

### **Appeal.**

Any person, taxpayer, city staff member, or the commission, or city council, jointly or severally, aggrieved by any decision of the board may present to a court of competent jurisdiction a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision. Attestation by the zoning administrator of the minutes of the board meeting in which such decision was rendered shall constitute such filing.

# *Special Exceptions*

## **Sec. 64-130**

- (a) A special exception is permission given in special cases for an applicant to use their property in a manner contrary to the provisions of this chapter, provided that such use shall serve the general welfare and preserve the community interest.
- (b) Special exceptions **shall not** be granted if such exception:
- (1) Is contrary to the public interest.
  - (2) Will adversely affect public health and safety.
  - (3) Will substantially or permanently injure the appropriate use of adjacent conforming property in the same district.
  - (4) Will alter the essential character of the zoning district within which the property is located.

# *Special Exceptions*

## *Sec. 64-130*

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Special exceptions may be granted only in the following instances:

- (1) To permit a nonconforming use to be changed to another nonconforming use provided that the new use complies with all other applicable requirements of this chapter.
- (2) To permit resumption of a nonconforming use that has been discontinued for a consecutive period exceeding six months.
- (3) To permit the use of a tract or tracts in any dwelling district adjacent to any other district, even if separated therefrom by an alley or a street, for the parking of passenger vehicles under such safeguards and conditions of the more restricted property, provided that no other use is made of such tract or tracts.

# *Special Exceptions*

## *Sec. 64-130*

- (4) To reduce the off-street parking and loading requirements in an amount not exceeding 33 percent of the normal requirement in any of the districts for one or more of the situations listed below, whenever the character or use of a building is such as to make unnecessary the full provisions of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the property:
- a. Housing specifically designed and intended for use by the elderly, disabled, or other occupants typically having a lower expectation of automobile ownership and use.
  - b. Adaptive reuse or restoration of an historically or architecturally significant building.
  - c. Expansion of a nonprofit, public, or social-service use on an existing site.
  - d. Conversion of a nonconforming use to what would otherwise be a conforming use except for the parking and loading requirements.
  - e. Structural alteration of a nonconforming building to eliminate its nonconformity.
- (5) To preclude an essentially inadvertent taking of property when the circumstances are such that they have not been caused by any action on the part of the property owner.

# Variances

## Sec. 64-129

(a) A variance is an appeal by the applicant that a grant of relief be made from a specific requirement of the zoning chapter where strict enforcement would prohibit any practical or reasonable use of the property in accordance with its zoning classification. **The board of adjustment may grant a variance upon making findings that the evidence submitted by the applicant demonstrates that all of the following conditions exist:**

- (1) The variance arises from such condition that is unique to the property in question, where such condition was not created by an action of the property owner, occupant, or applicant.
- (2) The particular physical surroundings, shape, or topographical condition within or adjacent to the property would result in a practical difficulty or unnecessary hardship or inequity upon or for the owner or occupant, as distinguished from a mere inconvenience, if the provision in question were literally enforced.
- (3) The request for a variance is not based exclusively upon a desire of the owner or occupant for increased financial gain from the use of the property, or to reduce a personal financial hardship.
- (4) The variance will not alter the essential character of the zoning district within which the property is located, and is in harmony with the intent and purposes of this chapter.
- (5) The granting of the variance will not adversely affect the public health or safety, and will not substantially or permanently interfere with the appropriate use of adjacent conforming property in the same zoning district.
- (6) The degree of variance requested is the minimum amount necessary to allow a reasonable use of the property.

# Variances

## Sec. 64-129

(b) Variances may be granted **only** in the following instances:

- (1) To vary the applicable lot area, lot width or frontage, and lot depth requirements, provided that such reduction shall not exceed 30 percent of the standard minimum for the zoning district within which the tract is located.
- (2) To vary the minimum building setback requirements, lot coverage, or maximum permitted building height.
- (3) To vary the regulations pertaining to required off-street parking or loading.
- (4) To vary the requirements pertaining to the restoration of damaged or destroyed nonconforming buildings.
- (5) To vary the standards for manufactured homes.
- (6) To vary the standards for sexually-oriented businesses.
- (7) To vary the standards for wireless telecommunication facilities.
- (8) To vary the nonresidential appearance standards.
- (9) To vary the standards for portable food service establishments.

## *What is “unnecessary hardship”?*

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- Whether “unnecessary hardship” exists is a question of fact for BOA
- Must be evidence that shows literal enforcement of the ordinance would cause unnecessary hardship
- Texas cases:
  - Financial hardship not unnecessary hardship
  - Self-imposed hardship not unnecessary hardship
  - Variance not authorized merely to accommodate the highest and best use

# HB 1475 (Effective 9/1/21)

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Amends TLGC §211.09 to add:

(b-1) In exercising its authority under Subsection (a)(3), the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

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

## Unnecessary hardship continued

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- Financial cost of compliance > 50% of appraised value of the structure
- Variance applicant would provide the financial information regarding compliance and the structure value is determined by the “most recent appraisal roll” certified to the City.

## Unnecessary hardship continued

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- Compliance with zoning requirement would result in 25% loss of buildable area
- Variance applicant would provide this calculation

## Unnecessary hardship continued

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- Compliance would result in structure not complying with another ordinance, building code, or other requirement
  - *E.g.*, If the structure complied with maximum building height, then construction on the site would violate the maximum building coverage allowed on the lot.

## Unnecessary hardship continued

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- Compliance would result in unreasonable encroachment on an adjacent property or easement
  - *E.g.*, If the building complied with maximum building square footage or height, then structure would be too close to the property line or an easement.

## Unnecessary hardship continued

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- The City considers the structure to be a nonconforming structure
- *E.g.*, If the structure does not meet setback or is too tall (because it is nonconforming), compliance with other zoning regulations would constitute an undue hardship.

## BOA Duty

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- Keep in mind that to grant a variance, the variance must not be contrary to the public interest, and the spirit of the zoning ordinance must be observed.
- So even if a proposed structure fits an “unnecessary hardship” category above, granting the variance is not automatic.
- The facts surrounding each variance request still have to be analyzed.

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# Meeting Procedure



# ***BOA Procedure***

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- The Board is a quasi-judicial body
- Board serves as “judge” therefore no outside information
  - Don’t go visit the site before hearing commenced
  - Don’t talk to the applicant
  - Don’t talk to the staff
- Proceeding looks like a trial (without the rules of evidence)
- The person appealing has the burden of proof to establish the necessary facts on appeal

## ***BOA Procedure (continued)***

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- Notice & Hearing
  - Staff will provide the public notices required
  - Must hold public hearing on all applications
  - All hearing must be open to the public
  - Must hear appeals no later than 60 days from date appeal is filed (LGC 211.010(d))
- Variances are recorded in deed records

## ***BOA Procedure (continued)***

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- Determine Board has jurisdiction to hear case
- Opening Statements
- Presentation of Evidence
  - Board (Chair may decide who goes first—usually applicant) (Burden of Proof is on the Applicant = Applicant usually first to present evidence and testimony.)
  - Chair swears in witnesses
  - Cross-examination of witnesses
  - Closing Statements
- Ask if any other member of public wishes to speak (in a public hearing)
- Board may ask questions at any point (probably not during opening or closing statements)

# BOA Procedure (continued)

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- Case is called to order.
- Chair should ask the following question:
  - *“Before we open the public hearing, are there any requests for postponement or jurisdictional issues that anyone would like to raise?”*
  - 1. If no objections are raised, move on to next step of administering oaths.
  - 2. If objections are raised, the Board should resolve them before proceeding to the public hearing. The chair should limit testimony to only those issues, not the merits of the case.
- Chair to administer oath to all persons intending to speak.
  1. Chair should explain that the oath is being administered to all persons intending to speak at the beginning of the procedure, instead of swearing in each person at the time they speak.
  2. Ask that all persons intending to speak stand.
  3. Chair to read the following:
    - *“Do you swear that the testimony and evidence you shall give to the Board in this action shall be the truth, the whole truth, and nothing but the truth, so help you God?”*
    - *Witnesses should all respond, “I do”, “yes”, or similar.*
  4. Proceed to Opening Statements followed by presentation of testimony and evidence.
  5. At close of testimony, ask if other members of the public wish to speak at the public hearing on the case.

## ***BOA Procedure (continued)***

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- Board may meet with its attorney in executive session to ask legal questions
- Takes 4 votes to grant appeal/reverse administrative order, grant variance or provide any other relief under Board's authority. TLGC Section 211.009(c)
- Decision of Board must be reduced to writing and filed in Board's office. Recommend including findings of fact as part of the written decision. Entire record of proceedings should be preserved in case of an appeal to district court.
- The minutes must indicate the vote of each member on each question or the fact that a member is absent or fails to vote.
- Records are kept of the Board's examinations and other official actions. The minutes and records are immediately filed in the Board's office and are public records.

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# Appeal of Board Decision



## ***Appeal Procedure after BOA ruling***

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- ONLY appeal is to District Court –TLGC Section 211.011
- City, any person aggrieved by the decision, applicant or taxpayer can appeal
- Appeal to Court must be made within 10 days of the filing of the Board's decision in the Board's office

# *Appeal Procedure*

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- Standard of review is abuse of discretion
  - Board's decision carries presumption of validity and party attacking it bears the burden of establishing its illegality
  - The party attacking the Board's order must present a very clear showing of abuse of discretion
  - Contesting party must demonstrate that the Board acted arbitrarily and unreasonably
  - Party attacking the Board's decision must establish that the Board could reasonably have reached only one decision, and not the decision it made

# Open Meetings Act

# *Open Meetings Act*

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- Meetings are open to the public
- No meeting of a quorum except in a public meeting
- No deliberation outside of a public meeting
- Quorum
  - Telephone calls
  - Texts
  - Emails
  - Social media posts
- May meet in executive session to consult with its attorney

# Motions

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- A motion is the method to initiate the consideration of an item. There are two practices:
  - A motion is made before any type of discussion between the Members occurs; or
  - Discussion occurs after the Chair has opened an item, and when the debate on the item has ended, a member of the Body proposes a motion for consideration. Additional discussion may occur after the motion is made.
- A main motion requires a second to be considered by the Body, and if a second is not received the motion dies.
- Prior to receiving a second to a motion, the person making the motion may withdraw or make changes to the motion.
- Once a second is received, if the person making the motion wishes to withdraw or change it, the person making the second must agree to the change or withdrawal.

# Motions - Continued

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- A motion may be amended by either the consent of the person making the second and the maker of the main motion or by a new motion to amend receiving a second.
- A new main motion may not be made before a vote is taken on a pending main motion that has been properly seconded.
- A motion to table is a superseding motion, so if a motion to table is made and seconded, then the discussion should be limited to the merits of the tabling of the item, and discussion of the main motion is suspended pending the decision on the motion to table.
- The Chair repeats the motion and the names of the person making and seconding the motion. (*For example, Motion made by Board Member Smith, seconded by Board Member Jones, to approve a variance to Section \_\_\_\_\_ of the Zoning Ordinance to allow a side yard setback of ten (10) feet on the east side of the property located at 102 North Main Street, Lockhart, Texas, the side yard is adjacent to First Street and to deny the variance to Section \_\_\_\_\_ of the Zoning Ordinance requesting a reduction in the setback for the front yard of the property at 102 North Main Street, Lockhart, Texas.*)
- The Chair calls for the vote. When calling for the vote, the Chair should always ask for those in favor and those opposed, even if the vote in favor is unanimous.

# QUESTIONS?



## Legal Q&A

By **Stephanie Huser**, TML Legal Counsel

### **Q What is a Zoning Board of Adjustment?**

**A** A Zoning Board of Adjustment (ZBA), sometimes referred to as a “Board of Adjustment” or “BOA” is a quasi-judicial body established under Chapter 211 of the Texas Local Government Code that is authorized, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of the city’s zoning ordinance that are consistent with the general purpose and intent of the ordinance. *See City of Dallas v. Vanesko*, 189 S.W.3d 769, 771 (Tex. 2006); Tex. Loc. Gov’t Code § 211.008.

State law authorizes a city to establish a ZBA. *Id.* However, the governing body of a Type A general-law city, by ordinance, may serve as the city’s board of adjustment. *Id.* § 211.008(g).

### **Q What is the composition of the Zoning Board of Adjustment?**

**A** A ZBA board consists of at least five members who are appointed by the city council and serve two-year terms. *Id.* § 211.008(b). The city council must provide the procedure for appointing members and may authorize each city councilmember, including the mayor, to appoint one member to the board. *Id.* The ZBA must adopt rules governing the board with the approval of the city council. *Id.* § 211.008(e). The presiding officer or acting presiding officer may administer oaths and compel attendance of witnesses. *Id.*

Cities with a population of 500,000 or more may appoint multiple panels of at least five members to the ZBA, each of which may exercise the authority of the ZBA. *Id.* § 211.014. If more than one panel of the ZBA is appointed, the board consists of the regular members of all the panels. The board may adopt rules for the assignment of appeals to each panel provided that only one panel may hear, handle, or render a decision in a particular case. *Id.* § 211.014(b). A decision of a panel of the board constitutes a decision of the board. *Id.* § 211.014(c).

### **Q What if there is a vacancy on the ZBA?**

**A** The city council must fill a vacancy on the ZBA board for the unexpired term. *Id.* § 211.008(b). The city council may also provide for the appointment of alternate board members to serve in the absence of one or more regular members when requested to do so by the mayor or city manager. *Id.* § 211.008(c). An alternate member serves for the same period and is subject to removal in the same manner as a regular member. A vacancy among the alternate members is filled in the same manner as a vacancy among the regular members. *Id.* § 211.008(c).

### **Q Can a board member be removed?**

**A** Yes, but ZBA board members may only be removed by the appointing authority (usually the city council) for cause as found by the city council on a written charge after a public hearing. *Id.* § 211.008(b).

**Q What authority does a ZBA exercise?**

**A** As provided in Chapter 211 of the Local Government Code, the ZBA has the authority to:

- (1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official . . . ; *Id.* § 211.009(a)(1).
- (2) hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so; *Id.* § 211.009(a)(2).
- (3) 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; *Id.* § 211.009(a)(3)
- (4) hear and decide other matters authorized by an ordinance . . . *Id.* § 211.019(a)(4).

**Q How is a ZBA’s authority limited?**

**A** When making decisions, the Zoning Board of Adjustment may not deviate from its specifically granted authority. *See Abbott v. City of Paris, Tex.*, 429 S.W.3d 99, 106 (Tex. App.—Texarkana 2014, no pet.). The attorney general has also concluded that the ZBA “has no power to grant exceptions or variances that amount to an ordinance amendment.” *See Op. Tex. Att’y Gen. No. JM-0493* (1986). Therefore, “if a use is prohibited under a zoning ordinance, either explicitly or impliedly, any special exception allowing it is void and subject to collateral attack.” *See Swain v. Bd. of Adjustment of City of Univ. Park*, 433 S.W.2d 727, 731-732 (Tex. App.—Dallas 1968, writ ref’d n.r.e.).

**Q What is a “special exception” to a zoning ordinance?**

**A** A special exception is a site-specific special permission that is outlined in a city’s zoning ordinance. *See W. Tex. Water Refiners, Inc. v. S & B Beverage Co., Inc.*, 915 S.W.2d 623, 627 (Tex. App.—El Paso 1996, no writ). The ZBA may not grant a special exception unless that authority is specifically provided in the applicable zoning ordinance. *Id.* An ordinance providing a special exception should expressly set out the permissible criteria and standards. *Id.*

**Q What is a “variance”?**

**A** A variance is a site-specific approval for a particular property to vary from the city’s zoning requirements. A variance permits a person to violate the city’s zoning requirements on a finding of hardship. The ZBA has the authority to grant a variance under state law. *Id.* § 211.009(a)(3).

**Q What may the board consider when reviewing a request for a variance?**

**A** Because a variance requires a finding of an “unnecessary hardship” the board may consider the following grounds when determining whether a variance is appropriate:

- (1) whether 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 city under the Tax Code;
- (2) whether 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) whether compliance would result in the structure not being in compliance with a requirement of a city ordinance, building code, or other requirement;
- (4) whether compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (5) whether the city considers the structure to be a nonconforming structure.

*Id.* § 211.019(b)(1).

**Q When are ZBA meetings held?**

A Meetings of the board are held at the call of the presiding officer and at other times determined by the board. *Id.* § 211.008(e).

**Q Is the ZBA subject to the Texas Open Meetings Act and the Public Information Act?**

A Yes, the board is subject to the Open Meetings Act, so its meetings must be public and must otherwise comply with the requirements of the Act. *Id.* § 211.0075. In addition, the board is required to keep minutes of its proceedings indicating the vote of each member on each question or that a member is absent or fails to vote. The board must also keep records of its examinations and other official actions. The minutes and records must be filed immediately in the board's office and are public records subject to the Public Information Act. *Id.* § 211.008(f).

**Q Are there quorum requirements for a ZBA meeting?**

A Yes. Each case brought before the ZBA must be heard by at least 75 percent of the members. *Id.* § 211.008(d). In other words, if the board consists of five members, the minimum required by state law, four of the five members must be present. *Id.*

**Q What are the voting requirements for a ZBA decision?**

- A A supermajority vote of 75 percent of the members of the board is required to:
- (1) reverse an order, requirement, decision, or determination of an administrative official;
  - (2) decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or
  - (3) authorize a variation from the terms of a zoning ordinance.

*Id.* § 211.009(c).

In other words, if the board consists of five members, the minimum required by state law, and all five members are present, a vote of four out of the five members is required to reverse an order, in (1) above, rule on a special exception, in (2) above, or approve a variance, in (3) above. However, if only four of the five members are present at the meeting, the vote of all four members must be unanimous. *Id.*

Because decisions by the ZBA may be appealed to a court, the board's decisions should be in writing and contain sufficient information to disclose the intention of the board. *See Tejas Motel, L.L.C. v. City of Mesquite by & Through Bd. of Adjustment*, No. 05-19-00667-CV, 2020 WL 2988566, at \*4 (Tex. App.—Dallas June 4, 2020, pet. denied). A decision or order is sufficient if it: (1) summarizes the hearing; (2) explains the board's findings; (3) states a clear conclusion or course of action; (4) is signed by the board chairman and its custodian of records; and (5) is signed by the parties' attorneys, if applicable. *Id.* at \*4.

### **Q Who may appeal an administrative official's decision to the ZBA?**

A The following persons may appeal to the ZBA 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 city affected by the decision.

*Id.* § 211.010(a).

The following persons may appeal to the ZBA 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 city affected by the decision.

*Id.* § 211.010(a-1).

### **Q How can a person appeal an administrative official's decision to the ZBA?**

A A person appealing an administrative official's decision must file a notice of appeal specifying the grounds for the appeal with the ZBA and the administrative official from whom the appeal is taken not later than the 20th day after the date the decision is made. *Id.* § 211.010(b). The administrative official must then immediately provide the ZBA with all the documents constituting the record of the action being appealed. *Id.*

An appeal stays (puts on hold) all proceedings in furtherance of the action that is appealed unless the administrative official certifies in writing to the ZBA facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, if due cause is shown, the proceedings may be stayed only by a restraining order granted by the ZBA or a court of record on application, after notice to the administrative official. *Id.* § 211.010(c).

The ZBA is required to set a reasonable time for the appeal hearing and provide public notice of the hearing and notice to the parties involved. Each party may appear at the appeal hearing in person or by an agent or attorney. The ZBA must make a decision on the appeal at the next meeting for which notice can be provided following the hearing but not later than the 60th day

after the date the appeal is filed. *Id.* § 211.010(d). The board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination. For that purpose, the board has the same authority as the administrative official. *Id.* § 211.009(b).

**Q Can a ZBA decision be appealed to a court?**

**A** Yes. An appeal may be filed by a taxpayer, a person aggrieved by a decision of the ZBA, or an officer, department, board, or bureau of the city. *Id.* § 211.011(a). The appeal may be presented to a state district court, county court, or a county court at law. *Id.* The petition to the court must state that the board's decision was illegal in whole or in part and specifically identify the grounds of the illegality. *Id.* The petition must be filed within 10 days after the date the board's decision is filed with the board's office. *Id.* § 211.011(b).

Costs may not be assessed against the board unless the court determines the board acted with gross negligence, in bad faith, or with malice in making its decision. *Id.* The reviewing court may reverse or affirm, in whole or in part, or modify a decision in an appeal. *Id.* § 211.011(f).

## Sec. 64-95. - Board of adjustment.

(a) *Composition and method of appointment.*

- (1) The board shall consist of seven members, appointed in accordance with chapter 2, article IV of the Code of Ordinances, to serve two-year terms, such terms to expire in November of alternating years. Each member shall reside within the city limits.
- (2) The council may also appoint up to four alternate members, to serve for the same period as regular members, who shall serve in the absence of one or more of the regular members when requested to do so by the mayor or city manager. Each alternate member must reside in the city limits.
- (3) Pursuant to V.T.C.A., Local Government Code § 211.008(b), as amended from time to time, the city council may remove a board member for cause as found by the city council, on a written charge after a public hearing.
- (4) Vacancies shall be filled for the unexpired term of any member whose position becomes vacant.
- (5) The chairman and vice-chairman of the board shall be elected from the regular membership by a majority vote of those members present at the first meeting of a year. In the absence of the chairman and the vice-chairman at any meeting, an acting chairman shall be elected by a majority vote of all members present.
- (6) The zoning administrator shall be a nonvoting ex officio member of the board, shall serve as secretary of the board, and shall maintain the records of the board.
- (7) A quorum of the board shall consist of a minimum of four members. Each case before the board must be heard by at least four members.
- (8) The concurring vote of six members of the board shall be required to reverse any order, requirement, decision or determination of any administrative official; or to decide in favor of an applicant on a matter on which the board is required to pass under this zoning chapter; or to authorize a variation from the terms of this zoning chapter.

(b) *City council as board.* When the city council elects to be the board, the membership of the board shall be determined and composed in the following manner:

- (1) The term of each member of the board shall begin at the time of the council term and shall end at the time of the council term, resignation, or recall.
- (2) The mayor shall serve as chairman of the board and the mayor pro tem shall serve as the vice-chairman of the board.
- (3) The remaining three members of the board shall be selected by the council and the other two council members shall be alternates.

(c) *Meetings.*

- (1) The board shall meet upon call of the chairman when there is a case to be heard by the board.
- (2) All meetings of the board shall be open to the public.
- (3) Minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, shall be kept. Records of its examinations and other official actions shall be maintained in the office of the board and shall be a public record.

(d) *Authority.* The board shall have the following powers:

- (1) To hear and decide appeals where the applicant alleges that there is an error in any order, requirement, decision, or determination made by the city staff, the commission, or the city council in the enforcement of the zoning chapter.
- (2) To hear and decide variances and special exceptions as provided in section 64-129 and in section 64-130 to any provision of the zoning chapter.
- (3) To act as the appeal board as specified in section 22-68, flood hazard areas, Code of Ordinances.

(e) *Appeal.* Any person, taxpayer, city staff member, or the commission, or city council, jointly or severally, aggrieved by any decision of the board may present to a court of competent jurisdiction a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision. Attestation by the zoning administrator of the minutes of the board meeting in which such decision was rendered shall constitute such filing.

(Ord. No. 90-03, pt. 2, 3-6-90; Code 1982, § 28-4-5; Ord. No. 97-12, § I(F)(2), 6-18-97; Ord. No. 2012-17, § IV, 9-4-12)

**Cross reference—** Boards, commissions and committees, § 2-206 et seq.

## Sec. 64-129. - Variances.

- (a) A variance is an appeal by the applicant that a grant of relief be made from a specific requirement of the zoning chapter where strict enforcement would prohibit any practical or reasonable use of the property in accordance with its zoning classification. The board of adjustment may grant a variance upon making findings that the evidence submitted by the applicant demonstrates that all of the following conditions exist:
- (1) The variance arises from such condition that is unique to the property in question, where such condition was not created by an action of the property owner, occupant, or applicant.
  - (2) The particular physical surroundings, shape, or topographical condition within or adjacent to the property would result in a practical difficulty or unnecessary hardship or inequity upon or for the owner or occupant, as distinguished from a mere inconvenience, if the provision in question were literally enforced.
  - (3) The request for a variance is not based exclusively upon a desire of the owner or occupant for increased financial gain from the use of the property, or to reduce a personal financial hardship.
  - (4) The variance will not alter the essential character of the zoning district within which the property is located, and is in harmony with the intent and purposes of this chapter.
  - (5) The granting of the variance will not adversely affect the public health or safety, and will not substantially or permanently interfere with the appropriate use of adjacent conforming property in the same zoning district.
  - (6) The degree of variance requested is the minimum amount necessary to allow a reasonable use of the property.
- (b) Variances may be granted only in the following instances:
- (1) To vary the applicable lot area, lot width or frontage, and lot depth requirements, provided that such reduction shall not exceed 30 percent of the standard minimum for the zoning district within which the tract is located.
  - (2) To vary the minimum building setback requirements, lot coverage, or maximum permitted building height.
  - (3) To vary the regulations pertaining to required off-street parking or loading.
  - (4) To vary the requirements pertaining to the restoration of damaged or destroyed nonconforming buildings.
  - (5) To vary the standards for manufactured homes.
  - (6) To vary the standards for sexually-oriented businesses.
  - (7) To vary the standards for wireless telecommunication facilities.
  - (8) To vary the nonresidential appearance standards.

(9) To vary the standards for portable food service establishments.

(c) Procedures.

(1) *Application.*

- a. The application for a variance must be made by the property owner or their authorized agent.
- b. The application will contain the same minimum information as in subsection 64-126(a)(1) for a building permit application.
- c. The application will include the specific variance requested and the reason as to why adhering to the zoning ordinance and/or building codes will constitute an exceptional difficulty or hardship upon the owner of the property.

(2) *Processing.*

- a. After consultation with the city staff, the application, accompanying information, and the nonrefundable filing fee shall be submitted.
- b. The zoning administrator shall review the application for completeness and for compliance with this chapter. Should additional information or modification to the application be necessary to provide compliance, the zoning administrator shall assist the applicant to make changes.
- c. Upon completion of review of the application and finding the application to be correct, the following actions shall be initiated:
  1. The building official shall prepare a list, using the current tax appraisal map and the current city tax roll, of all owners of any portion of a tract that is within 200 feet of any portion of the property for which the variation is requested.
  2. The zoning administrator shall determine the date of the next meeting of the board, not less than three full weeks and not more than seven full weeks from the date of the application, place such request on the agenda of the board, and schedule a public hearing.
  3. The city secretary shall send a letter to each of the property owners, as above and including the applicant, stating the purpose of the request; street address of the property for which a variance is requested; date, time, and place of the public hearing before the board; and that comment about the request must be made in writing or verbally before the board. The notification letters, deposited at the post office as ordinary mail, not less than two weeks prior to the meeting of the board, shall constitute constructive notice.
  - 4.

The city secretary shall cause to appear in the public notice section of a local newspaper a notice of a meeting of the board. This notice shall appear not less than ten calendar days prior to the meeting date. The notice shall contain date, time, and place of the public hearing; street address of the property for which the variance is requested; purpose of the request; and a statement that any comment about the request must be made in writing or verbally before the board.

5. The agenda of the board which includes such public hearings shall be posted in a public location at city hall in accordance with the Texas Open Meetings Act (V.T.C.A., Government Code ch. 551).
- d. The city staff shall prepare a statement for presentation at the public hearing before the board. The statement shall contain as a minimum:
  1. Any pertinent information bearing upon the application that may not be evident from the application.
  2. Compliance of the request with subsections (b) and (c) above, and impact of approval of the request upon utility service, streets and parking in the local area.
  3. Any recommendations for modifications or any stipulations should the request be approved.
- e. The board, upon completion of the public hearing and after deliberation, shall make a determination for approval, approval with modifications, any stipulations upon approval, or for denial. See subsections 64-95(c) and (d).
- f. The board may condition approval of a variance upon compliance with reasonable stipulations including but not limited to provisions for increased open space, vehicular access, off-street parking and loading, landscaping, screening, signage, curbing, sidewalks, hours of operation, and/or a temporary time ending on a date after which the variance expires and is no longer valid. Failure to meet such stipulations shall constitute a violation of this chapter.
- g. Any person aggrieved by the action of the board may appeal such action as provided by subsection 64-95(e).
- h. Should such request be denied or should the applicant reject any modifications or stipulations attached to the approval of the request, another request for the same or a similar variance for the same property or a portion of the same property shall not be submitted for a full six months. Further, if the permitted variance is not accepted and used within 12 full months of approval, such variance becomes automatically void.
- i. No application for a variance may be submitted when some other zoning action concerning the subject tract is pending. However, a request for a zoning variance may be submitted concurrently with a subdivision plat.

(Ord. No. 90-03, pt. 2, 3-6-90; Code 1982, § 28-5-4; Ord. No. 99-03, § III, 2-16-99; Ord. No. 2013-15, § I, 6-18-13)

Sec. 64-130. - Special exceptions.

- (a) A special exception is permission given in special cases for an applicant to use their property in a manner contrary to the provisions of this chapter, provided that such use shall serve the general welfare and preserve the community interest.
- (b) Special exceptions shall not be granted if such exception:
  - (1) Is contrary to the public interest.
  - (2) Will adversely affect public health and safety.
  - (3) Will substantially or permanently injure the appropriate use of adjacent conforming property in the same district.
  - (4) Will alter the essential character of the zoning district within which the property is located.
- (c) Special exceptions may be granted only in the following instances:
  - (1) To permit a nonconforming use to be changed to another nonconforming use provided that the new use complies with all other applicable requirements of this chapter.
  - (2) To permit resumption of a nonconforming use that has been discontinued for a consecutive period exceeding six months.
  - (3) To permit the use of a tract or tracts in any dwelling district adjacent to any other district, even if separated therefrom by an alley or a street, for the parking of passenger vehicles under such safeguards and conditions of the more restricted property, provided that no other use is made of such tract or tracts.
  - (4) To reduce the off-street parking and loading requirements in an amount not exceeding 33 percent of the normal requirement in any of the districts for one or more of the situations listed below, whenever the character or use of a building is such as to make unnecessary the full provisions of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the property:
    - a. Housing specifically designed and intended for use by the elderly, disabled, or other occupants typically having a lower expectation of automobile ownership and use.
    - b. Adaptive reuse or restoration of an historically or architecturally significant building.
    - c. Expansion of a nonprofit, public, or social-service use on an existing site.
    - d. Conversion of a nonconforming use to what would otherwise be a conforming use except for the parking and loading requirements.
    - e. Structural alteration of a nonconforming building to eliminate its nonconformity.

(5) To preclude an essentially inadvertent taking of property when the circumstances are such that they have not been caused by any action on the part of the property owner.

(d) The procedures for special exceptions are the same as the procedures for variances in subsection 64-129(c).

(Ord. No. 90-03, pt. 2, 3-6-90; Code 1982, § 28-5-5; Ord. No. 99-03, § IV, 2-16-99; Ord. No. 04-23, § III, 9-21-04)

Added by Acts 2025, 89th Leg., R.S., Ch. 909 (H.B. 24), Sec. 6, eff. September 1, 2025.

**Sec. 211.0075. COMPLIANCE WITH OPEN MEETINGS LAW.** A board or commission established by an ordinance or resolution adopted by the governing body of a municipality to assist the governing body in developing an initial comprehensive zoning plan or initial zoning regulations for the municipality, or a committee of the board or commission that includes one or more members of the board or commission, is subject to Chapter 551, Government Code, regardless of whether the board, commission, or committee has rulemaking or quasi-judicial powers or functions only in an advisory capacity.

Added by Acts 1993, 73rd Leg., ch. 381, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

**Sec. 211.008. BOARD OF ADJUSTMENT.** (a) The governing body of a municipality may provide for the appointment of a board of adjustment. In the regulations adopted under this subchapter, the governing body may authorize the board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance and in accordance with any applicable rules contained in the ordinance.

(b) A board of adjustment must consist of at least five members to be appointed for terms of two years. The governing body must provide the procedure for appointment. The governing body may authorize each member of the governing body, including the mayor, to appoint one member to the board. The appointing authority may remove a board member for cause, as found by the appointing authority, on a written charge after a public hearing. A vacancy on the board shall be filled for the unexpired term.

(c) The governing body, by charter or ordinance, may provide for the appointment of alternate board members to serve in the absence of one or more regular members when requested to do so by the mayor or city manager. An alternate member serves for the same period as a regular member and is subject to removal in the same manner as a

regular member. A vacancy among the alternate members is filled in the same manner as a vacancy among the regular members.

(d) Each case before the board of adjustment must be heard by at least 75 percent of the members.

(e) The board by majority vote shall adopt rules in accordance with any ordinance adopted under this subchapter and with the approval of the governing body. Meetings of the board are held at the call of the presiding officer and at other times as determined by the board. The presiding officer or acting presiding officer may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public.

(f) The board shall keep minutes of its proceedings that 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. The minutes and records shall be filed immediately in the board's office and are public records.

(g) The governing body of a Type A general-law municipality by ordinance may grant the members of the governing body the authority to act as a board of adjustment under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 363, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. 2497), Sec. 1, eff. September 1, 2019.

**Sec. 211.009. AUTHORITY OF BOARD.** (a) The board of adjustment 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 subchapter or an ordinance adopted under this subchapter;

(2) hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;

(3) 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; and

(4) hear and decide other matters authorized by an ordinance adopted under this subchapter.

(b) In exercising its authority under Subsection (a)(1), 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.

(b-1) In exercising its authority under Subsection (a)(3), the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

(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

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

(c) The concurring vote of 75 percent of the members of the board is necessary to:

(1) reverse an order, requirement, decision, or determination of an administrative official;

(2) decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or

(3) authorize a variation from the terms of a zoning ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 2, eff. Aug. 28, 1995.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 318 (H.B. 1475), Sec. 1, eff. September 1, 2021.

**Sec. 211.010. APPEAL TO BOARD.** (a) Except as provided by Subsection (e), 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.

(a-1) Except as provided by Subsection (e), 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.

(b) 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.

(c) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in

person or by agent or attorney. The board shall decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.

(e) A member of the governing body of the municipality who serves on the board of adjustment under Section 211.008(g) may not bring an appeal under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. 2497), Sec. 2, eff. September 1, 2019.

**Sec. 211.011. JUDICIAL REVIEW OF BOARD DECISION.** (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
- (3) an officer, department, board, or bureau of the municipality.

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

(c) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

(d) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take

evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(f) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

(g) The court may not apply a different standard of review to a decision of a board of adjustment that is composed of members of the governing body of the municipality under Section 211.008(g) than is applied to a decision of a board of adjustment that does not contain members of the governing body of a municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 646, Sec. 1, eff. Aug. 30, 1999.

**Sec. 211.012. ENFORCEMENT; PENALTY; REMEDIES.** (a) The governing body of a municipality may adopt ordinances to enforce this subchapter or any ordinance or regulation adopted under this subchapter.

(b) A person commits an offense if the person violates this subchapter or an ordinance or regulation adopted under this subchapter. An offense under this subsection is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the governing body. The governing body may also provide civil penalties for a violation.

(c) If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter or an ordinance or regulation adopted under this subchapter, the appropriate municipal authority, in addition to other remedies, may institute appropriate action to:

- (1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
- (2) restrain, correct, or abate the violation;
- (3) prevent the occupancy of the building, structure, or land; or