

I. ORGANIZATION AND OFFICERS

101. Purpose.

The purpose of the Board of Adjustment is to resolve problems of interpretation and application in the enforcement of land use controls.

102. Organization.

The Board of Adjustment, hereinafter referred to as "the Board", shall consist of five (5) members, each to be appointed in July of odd-numbered years by the City Council for a term of two (2) years. The City Council shall also appoint four (4) alternate members to the Board who shall serve in the absence of regular members when requested to do so by the Mayor or City Manager. Alternate members shall serve terms for the same period as regular members.

Vacancies may occur either by member resignation or for cause by the City Council upon written charges and a public hearing. Unexpired terms of six (6) months or more shall be filled as soon as possible by City Council.

103. Officers.

A Chairman and a Vice-Chairman shall be appointed by the Mayor annually from among the Board's membership not later than July 31st of each year. The City Manager, or his designated representative, shall serve the Board as Executive Secretary.

104. Duties.

- A. The Chairman, or in his absence the Vice-Chairman, shall preside at all meetings, decide all points of order and procedure, and as necessary swear in witnesses or compel their attendance.
- B. The Executive Secretary shall be custodian of the records, tend to the official correspondence, and supervise the clerical work of the Board.

II. MEETINGS

201. Regular Meetings.

Meetings normally shall be held on call on the third Wednesday of the month at 3:00 p.m. in City Council chambers. All meetings shall be open to the public.

202. Special Meetings.

- A. On the request of the Executive Secretary and approval of any three (3) members, or alternate members in case regular members are not available, the Chairman shall call a special meeting.
- B. A special meeting may be called for any lawful purpose. Notice of a special meeting shall be mailed to every member and alternate member at least ten (10) days prior to the day of the meeting. All special meetings shall be open to the public.

203. Number of Cases to be Heard.

No more than four (4) cases shall be heard at any regular meeting, except that additional cases may be heard if the Chairman, or in his absence, the Vice-Chairman, determines that because of an emergency, injury or loss would result to a petitioner if his or her case could not be heard until the next regular meeting.

204. Quorum.

A quorum shall consist of four (4) sitting members or alternates.

205. Agenda.

An agenda shall be prepared by the Executive Secretary for each meeting of the Board. The agenda shall include appeals and other matters scheduled for consideration by the Board. There shall be attached to the agenda a list of matters pending further action by the Board and pending report of disposition by the Executive Secretary. The agenda and all attachments shall be delivered to Board members and alternates seven (7) days before each meeting.

III. OFFICIAL RECORDS

301. Definition

The official records of the Board of Adjustment shall consist of these Rules and Regulations, all material submitted by petitioners in support of a case, all material provided by City staff to the Board related to cases, the official Minutes of Board meetings, and all findings, decisions, and other official actions taken by the Board.

302. Recording of Votes

The official Minutes of Board meetings shall record the vote of each sitting member on every question on which the Board is required to act. The Minutes shall also record which members and alternates are absent, and which members and alternates, if present and sitting, failed to vote.

303. Records Retention

All official records of matters brought before the Board, and the Board's actions on these matters, shall be filed in the City's general file system. Original documents of all requests for Board action shall be retained for a period consistent with the City's Records Management and Retention Manual.

304. Open Records

The official records of the Board, including all matters brought before it and all actions taken, shall be open for inspection by the general public at Lakeway City Hall during normal working hours.

IV. APPEALS TO THE BOARD

401. Who Can Appeal

Any of the following persons may appeal to the Board a decision made by an Administrative Official of the City of Lakeway. An Administrative Official is deemed to be any individual, board, commission, committee, or bureau authorized by City ordinance or City Council action to make or enforce decisions relating to applying, interpreting, or enforcing land use controls:

- A. A person aggrieved by the decision; or
- B. Any officer, board, commission, committee, or bureau of the City affected by the decision.

402. Types of Appeals

- A. Alleged Error

The Board may hear and decide an appeal that alleges error in any order, requirement, decision, or determination made by an administrative official in the enforcement or interpretation of the Zoning, Building, Sign, or Development Ordinance(s).

- B. Other Matters

The Board may hear and decide other matters authorized by an ordinance adopted by the City under Chapter 211 of the Local Government Code, as documented in Vernon's Texas Code, Annotated (VTCA). A copy of VTCA is available for reference use at City Hall.

403. Appealing an Alleged Error in Order or Interpretation

- A. Time Limits

An appeal shall be filed with the Board within thirty (30) days after the date of the decision of an Administrative Official being appealed. The Board shall hold a hearing on each appeal received within sixty (60) days of receipt of the appeal.

- B. Application Package

Every appeal of an alleged error must be filed on an application form provided by the City. The form shall be completed in all respects and the requisite fee

paid before it is accepted for filing. Appeals may be filed by the owner or agent of any property subject to the City's Zoning, Building, Sign, or Development Ordinances, or by any person aggrieved, or by any officer, department, board, committee, or commission of the City who is affected by the decision of the official. If an appeal is filed by the owner of the property which is the subject of an action of an official, the application must be signed by the property owner or his designated agent. If the application is signed by an agent, the agent must indicate the name of the principal appellant and the agent's capacity and authority to serve that appellant. All applications shall be filed with the Board's Executive Secretary or his/her designated representative.

C. Basis for Filing an Appeal

In any appeal, whether brought by the affected property owner, a "person aggrieved" other than the property owner, or by an administrative official or board of the City, the appellant must state the nature of the injury or damage to him or her caused by the appealed order or interpretation, other than as a member of the general public. A person owning property within two hundred (200) feet of the property that is the subject of the appeal shall be presumed to be a "person aggrieved". If it is alleged that an error has been made in determining or applying the requirements of an ordinance, the appeal shall include:

- 1) A statement by the appellant describing his or her interpretation of the ordinance upon which the appeal is being made, together with diagrams and charts illustrating the alleged proper application of the provisions of the ordinance.
- 2) A statement by the affected City administrative official giving reasons for the interpretation of the provisions of the ordinance upon which the appeal is being made. The City statement will be obtained after proper submittal of the otherwise complete application by the appellant.

D. Burden of Proof of Standing

In all appeals the burden of proof shall be on the appellant to demonstrate standing before the Board by clear and convincing evidence. If the Board, on hearing the evidence supporting the appellant's standing, dismisses the appeal for lack of standing, the Board's action shall constitute a final order disposing of the appeal.

E. Submission of Evidence

An appellant must present evidence to show how he or she has been injured or damaged, other than as a member of the general public, in order to rightfully appeal an administrative official's action to the Board. Evidence supporting the grant or denial of an appeal shall be submitted with the application. Any

supplementary documentation shall be submitted to the Board's Executive Secretary no later than seven (7) working days prior to the meeting. Consideration of material filed later than this will require approval of the majority of the sitting members of the Board.

F. Basis for Board Action

Before acting on an appeal the Board shall consider:

- 1) The facts and statements submitted with the application;
- 2) The City Administrative Official's written statement;
- 3) The testimony presented at the public hearing;
- 4) The City staff's technical report on the appeal;
- 5) Results of its own independent investigation of the language of the ordinance and related ordinances bearing thereon; and
- 6) Results of each Board Member's site visits.

G. Withdrawal of Appeal

Any appeal may be withdrawn by the original Appellant upon written notice to the Board's Executive Secretary at any time prior to the Board's vote on the appeal. Fees are non-refundable.

H. Appeals on Previously Rejected Appeals

No appeal that has been denied shall be further considered in a new appeal resulting from the filing of new plans and the obtaining of a new decision from an administrative official, unless the new plans materially change the nature of the case.

V. VARIANCES OF ORDINANCES

501. Definition

A variance authorizes an ad hoc standard in lieu of that established by the Ordinance.

502. Requesting a Variance

A. Application Package

Every request for a variance must be filed on an application form provided by the City. The form shall be completed in all respects and the requisite fee paid, before it is accepted for filing. All applications shall be filed with the Board's Executive Secretary or his/her designated representative. The applicant must demonstrate what unnecessary hardship would be caused without the variance.

Exception: For those variances which require prior action by an Administrative Official, the application package submitted to the Administrative Official having original jurisdiction will be transmitted to the Board directly by the Executive Secretary.

B. Submission of Evidence

Evidence supporting the granting of a variance shall be submitted only with the application to the Board's Executive Secretary. Supplemental, documentary evidence may be submitted to the Secretary up to seven (7) working days before the scheduled hearing. Consideration of material filed later than this will require approval of the majority of the sitting members of the Board.

Any props, photographs, graphs, etc. introduced during the public hearing will remain in the possession of the Board's Executive Secretary.

C. Basis for Board Action

Before acting on a request for a variance, the Board shall consider:

- 1) The facts and statements submitted with the request;
- 2) The written City Staff position on the request;
- 3) The recommendation, if any, from the Administrative Official;
- 4) Testimony presented at the public hearing on the request;
- 5) Its own independent investigation of the content and intent of the ordinance(s); and
- 6) The results of each Board Member's site visits.

D. Withdrawal of Request

Any request for a variance of one of the ordinances covered by this section may be withdrawn by the original Applicant upon written notice to the Board's Executive Secretary, at any time prior to the Board's vote on the variance. Fees are non-refundable.

VI. HEARINGS

601. Notification Required

- A. Written notice of all hearings shall be given to the owners of all real property located within two hundred (200) feet in all directions of the property that is the subject of the hearing. Notice shall be given not less than ten (10) days prior to the date of the first hearing either by personal service or by depositing a copy of the notice in the mail addressed to each owner at his address shown on the last approved City tax roll, with postage pre-paid.
- B. Such notice shall state the purpose, date, time, and place of the hearings and shall contain a brief description of the appeal or variance including its nature, scope, and location. The notice shall also state the location and times at which the applications and supporting documents are available for public inspection. A telephone number shall be provided where information on the hearing(s) is or will be available at a later date.

602. Convening the Board

The Chairman shall open each public meeting at the stated time by calling the meeting to order and noting to the Executive Secretary the presence or absence of each member and alternate, and the presence of a quorum as described in Section 204 above. The Chairman shall call each application to be heard at the meeting in the order in which the applications were filed. The name of the Petitioner, the location of the affected property, and the nature of the application shall be stated. The Executive Secretary shall notify the Board of any additional written material not already distributed to Board members.

603. Board Member Disqualification

Under certain circumstances Board members or alternates should excuse themselves from participating in a given hearing:

- A. Whenever a member or alternate has a personal or monetary interest in the property under appeal, or will be directly affected by the Board's decision other than as a member of the general public.
- B. Whenever a member or alternate has been subjected to an attempt to influence his or her vote by a Petitioner, or by someone on behalf of a Petitioner, other than contact with members or alternates through filings or proceedings authorized by these rules.

Whenever a member or alternate has engaged in ex parte or other private communications about the matter under appeal.

604. Public Hearings

Hearings on all matters on which a Board decision is required shall be open to the public. Any Petitioner may appear in his or her own behalf or may be represented by counsel or agent. City staff shall post the public notice of each meeting as required by law, and shall provide a complete package containing the written appeal, the administrative official's response, a City staff position paper, and all related written material to each Board member and alternate at least seven (7) working days prior to the scheduled meeting. Copies of the administrative official's response and the City staff position paper shall also be provided to the Petitioner.

605. Hearing Procedure - Appeals

A. Time Limits:

Presentations shall be as brief and to the point as possible to cover the necessary points, with a target time for the primary Petitioner of fifteen (15) minutes and supporters at five minutes each. Opponents shall also have about twenty (20) minutes to present their case. Rebuttal by the Petitioner should require no more than five (5) minutes.

B. Debate Limits:

Each side in a hearing shall proceed without interruption by the other side. All information, arguments, and pleadings shall be addressed to the Board only. No questioning or arguments among the parties shall be permitted. The hearing shall be conducted per Sections 605.C. through 605.J. ad seriatum.

C. Petitioner's Case:

The Chairman shall call upon the Petitioner to present his or her case. The Petitioner shall begin by stating his or her standing to appear before the Board, by asserting that he or she is:

- 1) The property owner or agent of the property under appeal, or
- 2) A person aggrieved who owns real property within 200 feet of the property under appeal, or
- 3) Any person or legal entity proving that he, she, or it is directly affected by the Board's action other than as a member of the general public.

D. Others Supporting the Petitioner:

The Chairman shall inquire if there are others affected who wish to speak in support of the Petitioner. The Board may limit the number of individual presentations in support of the Petitioner.

E. Those Opposed to the Appeal:

Those opposed to granting the appeal shall then present their case to the Board. The Board may limit the number of individual presentations opposed to the Petition.

F. Rebuttal:

The Petitioner shall be allowed a brief rebuttal to the arguments presented against the appeal.

G. Administrative Official Comments:

The Chairman shall request comments from the affected City administrative official or a representative.

H. City Staff Comments:

The Chairman shall request comments from the City Staff.

I. Public Comments:

The Chairman shall open the floor to brief comments from the general public.

J. Questions by the Board:

The Chairman shall question the Petitioner or any person speaking during the hearing, to bring out all relevant facts, circumstances, and conditions affecting the appeal or request, and shall call for questions from sitting Board members as each feels necessary, to clarify the situation. During this period, the Board may call on any party to the proceedings for further questioning. When the Board has completed this information gathering, the Chairman shall declare the public hearing portion of the meeting closed.

606. Hearing Procedure -Variances:

A. Time Limits:

Presentations shall be as brief and to the point as possible to cover the necessary points, with a target time for the Petitioner of fifteen (15) minutes.

B. Petitioner's Variance Request:

The Chairman shall call upon the Petitioner to present his or her request. The Petitioner shall begin by stating his or her name and relationship to the property for which the variance is requested.

C. Others Supporting the Petitioner:

The Chairman shall inquire if there are others affected who wish to speak in support of the Petitioner. The Board may limit the number of individual presentations in support of the Petition.

D. Those Opposed to the Variance:

Those opposed to granting the variance shall then present their case to the Board. The Board may limit the number of individual presentations opposed to the variance.

E. Rebuttal:

The Petitioner shall be allowed a brief rebuttal to the arguments presented against the variance.

F. Administrative Official Recommendation:

The City administrative official or a representative shall advise the Board of the Official's recommendation regarding the granting of the variance.

G. City Staff Comments:

The Chairman shall request comments from the City Staff.

H. Public Comments:

The Chairman shall open the floor to brief comments from the general public.

I. Questions by the Board:

The Chairman shall question the Petitioner or any person speaking during the hearing, to bring out all relevant facts, circumstances, and conditions affecting the request, and shall call for questions from sitting Board members as each feels necessary, to clarify the situation. During this period, the Board may call on any party to the proceedings for further questioning. When the Board has completed this information gathering, the Chairman shall declare the public hearing portion of the meeting closed.

VII. DISPOSITION OF PETITIONS

701. Disposition of Appeals

- A. The Board shall make such decision or interpretation based on the Board's findings on the following issues:
 - 1. Whether there was an error in interpretation regarding the specific intent of the regulation involved.
 - 2. Whether there was an error in interpretation regarding the specific use(s) allowed for the established zoning district within which the affected property is located.
 - 3. Whether the decision or interpretation granted a special privilege to one property that is inconsistent with other properties or uses similarly situated.
 - 4. Whether the decision or interpretation was significantly affected by an error in following the procedure established in the applicable ordinance for processing, [evaluating](#) and hearing the case.
- B. The Board may affirm wholly or partly, may reverse, or may modify the order, requirement, decision, or determination being appealed, and may make such order, requirement, decision, or determination it feels ought to be made under the circumstances. To that end it shall have all the powers of the administrative official against whose decision the appeal is being made.
- C. The Board may also defer action on any appeal whenever it concludes that additional evidence is needed or that alternative solutions need further study.
- D. An appeal may be dismissed when the Board finds that the appeal has been improperly filed, or upon notification by an administrative official that permits have been issued for a conforming use or development of the property in question, and therefore no Board action is required.

702. Disposition of Variances

- A. The Board may grant the variance if it finds that all of the following situations apply:
 - 1. A special individual reason makes the strict application of the ordinance impractical;
 - 2. There are special circumstances or conditions affecting the land involved

such that the strict application of the provisions of the ordinance would deprive the applicant of the reasonable use of his land;

3. The applicant will incur specific hardships should the variance not be granted;
 4. The modification is in conformity with the intent and purpose of the Ordinance;
 5. The granting of the variance will not be detrimental to the public health, safety, or welfare, or injurious to the property in the area;
 6. The granting of the variance will not create the probability of harmful environmental consequences;
 7. The variance will not negatively impact traffic conditions;
 8. The granting of the variance will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of the ordinance.
- B. The Board may affirm wholly or partly, may reverse, or may modify the recommendation of the Administrative Official and may make such order, requirement, decision, or determination it feels ought to be made under the circumstances.
- C. The Board may also defer action on any variance whenever it concludes that additional evidence is needed or that alternative solutions need further study.

703. Voting

Sitting members shall be individually polled on all substantive motions brought before the Board. The concurring vote of four sitting members shall be necessary to approve any motion. When a motion in favor of a Petitioner fails to receive four affirmative votes, it shall be entered in the official Minutes as a vote to deny. If a Board member is absent at the vote, and if the vote of the absent member when added to the number voting to approve would equal or exceed four, the vote shall be recorded as a vote to continue consideration to the next Board meeting.

704. Continuation

The Board shall continue any hearing for which the Petitioner fails to appear, unless the Petitioner has requested that the Board act without his or her being present at the hearing.

However, the Board shall dismiss for want of prosecution any petition in which the Petitioner has failed to appear for two meetings at which the petition has been legally set for hearing. Furthermore, at the second such meeting the Board shall hear any persons appearing in response to the notice of hearing. Fees are non-refundable.

705. Review of Action

The Board shall automatically review and take final action on any appeal or variance request which has been on its docket more than ninety (90) days after the original hearing thereon.

Any Board member or alternate may request a review of a past action or actions of the Board in order to consider broad policy direction of the Board. But no changes may be made to the previous action taken by the Board unless at least three members sign a request asking the Executive Secretary, or his/her designee, to post the appeal or variance for reconsideration at the Board's next meeting, within seven (7) days of the Board's action.

706. Reconsideration

In addition to the Board's own internal review described in Section 705, any action on an appeal or variance may be reconsidered by the Board, if a request to reconsider is initiated, in the form prescribed, by any person or legal entity having standing to bring the original petition. Such a request shall be filed with the Executive Secretary within seven (7) days of the Board's original decision on the petition. On receipt of a properly filed request to reconsider, the Executive Secretary, or his/her designated representative, shall give notice to each Board member and alternate, distribute copies of the request, and place the matter on the agenda of the next monthly meeting of the Board.

A request to reconsider shall state clearly how the Board erred in its original determination, and why the action should be reconsidered. It shall be supported by such new evidence as was not available at the original consideration hearing.

Whenever a petitioner files a request to reconsider, the use or development of the property in conflict under the request shall be stopped, as in the original petition. Whenever an affected property owner files a request to reconsider, no work complying with the Board's original determination need be stopped.

At its next monthly meeting the Board shall review the written material submitted with the request for reconsideration and shall, on the basis of the written material, decide whether the matter should be reconsidered, either because of an error in its original determination, or on the basis of new evidence presented which might have affected its original determination if presented at the original hearing. The affirmative vote of three sitting members shall be necessary to grant the petitioner a reconsideration hearing, which shall begin immediately following the Board's affirmative vote on the request for reconsideration.

707. Relief from Board Decisions

Relief from Board decisions can be obtained only through judicial process.

VIII. RULES AND AMENDMENTS

801. Amendment Procedure

Amendments to these Rules and Regulations may be made by the Board at any meeting, upon the affirmative vote of four members, provided any such amendment is proposed at a preceding meeting and spread upon the Minutes of that meeting. By unanimous consent of the Board membership, amendments may be adopted at the meeting at which they are introduced, but in that case they shall not become effective until the next regular meeting.

802. Certified Copy

A certified copy of these Rules and Regulations and of any amendments thereto shall be placed on record in the office of the City Secretary within ten (10) days following their date of adoption.

803. Repealing Clause

All previously adopted Rules and Regulations of the Board shall be, and the same are hereby, expressly repealed.

PASSED AND APPROVED BY THE FOLLOWING MEMBERS OF THE CITY OF LAKEWAY BOARD OF ADJUSTMENT:

Bill Dickson, Chairman
Jim Hord, Vice Chairman
Jerry Cooper, Member
Barbara Beebe, Member
Pat Wendland, Member
Dan Hall, Alternate Member
Bill Gilbert, Alternate Member

ADOPTED: This 21st day of April, 2010.

ATTEST:

EXECUTIVE SECRETARY

Filed in the Office of the City Secretary this 21st day of April, 2010.

City Secretary
City of Lakeway, Texas