

# **ZONING BOARD OF ADJUSTMENT**

## **Rules of Procedure**

### **Article 1: Meetings**

Rule 1.1 Meetings. Meetings of the Zoning Board of Adjustment shall be held on such dates and at such times as called by the Chairman, or, in their absence, the Vice Chairman. Public notice of all meetings of the Zoning Board of Adjustment shall be given as required by the Texas Open Meetings Act, Section 551.001 *et seq.* of the Texas Government Code, as amended.

Rule 1.2 Joint Meetings, Work Sessions, and Retreats/Seminars. The Zoning Board of Adjustment may hold joint meetings with the City Council or other City boards, commissions, committees, and task forces; hold work sessions as deemed necessary to review ordinances, policies, or other informative materials that will assist in the fulfillment of responsibilities of the Board; and attend or hold retreats/seminars. Joint meetings, work sessions, and retreats/seminars may coincide with regular meetings of the Zoning Board of Adjustment; however, each may be held at such other times as may be necessary or beneficial. Public notice of all Zoning Board of Adjustment joint meetings, work sessions, and retreats/seminars shall be given as required by the Texas Open Meetings Act, Section 551.001, *et seq.* of the Texas Government Code, as amended.

Rule 1.3 Location of Meetings, Joint Meetings, Work Sessions, and Retreats/Seminars. All meetings, joint meetings, work sessions, and retreats/seminars of the Zoning Board of Adjustment shall be held at the Cedar Park City Council Chambers, unless the Chairman (a) determines that an irresolvable scheduling conflict exists in the use of the Cedar Park City Council Chambers; and (b) promptly notifies the Zoning Board of Adjustment members, interested parties, and public of the alternate location. In the case of an irresolvable scheduling conflict, the Board meeting, joint meeting, work session, or retreat/seminar shall be held at the Cedar Park City Hall, Public Library, or Recreation Center.

Rule 1.4 Attendance. A member unable to attend a scheduled meeting, joint meeting, work session, or retreat/seminar should notify the Recording Secretary at the earliest possible opportunity. A Zoning Board of Adjustment member may be removed by a majority vote of the Board if the member fails to attend either: (a) three (3) consecutive; or (b) more than fifty percent (50%) of the previous four (4) Zoning Board of Adjustment meetings from appointment or reappointment without being excused by vote of the Board. Absence from any Board meeting shall be excused only for reasons of personal illness or immediate family emergencies. Attendance shall be taken and noted by the Recording Secretary at the beginning of all meetings with notations as to whether a member's absence is excused or not. No absence shall be considered by the Board to be excused unless, prior to the meeting, the member contacts either the Recording Secretary or the Chairman and indicates such request and the reason for such request.

## **Article 2: Officers**

Rule 2.1        **Officers.** The Officers of the Zoning Board of Adjustment shall consist of a Chairman, Vice-Chairman, and Secretary. The Officers shall be elected on an annual basis by majority vote of the members in August of each year, or at the first meeting occurring thereafter. Terms of office shall be one (1) year. An officer may be reelected for an additional one (1) year term but no individual shall serve for more than two (2) consecutive terms. All officers shall be subject to removal from office at any time by a vote of the majority of the entire Board. A vacant office shall be filled by a vote of a majority of the Board.

Rule 2.2        **Chairman.** The Chairman shall preside at all meetings, joint meetings, work sessions, and retreats/seminars of the Zoning Board of Adjustment. He or she shall have the power to sign and execute all appropriate documents as the Chairman of the Zoning Board of Adjustment. He or she shall have general and active management of the business of the Board and shall perform all the duties usually incident to the office of the Chairman. If the Secretary is unable to attend any meeting, the Chairman or Vice Chairman may appoint an acting Secretary for purposes of such meeting.

Rule 2.3        **Vice-Chairman.** In the Chairman's absence or disability, the Vice-Chairman shall have such powers and duties as may be prescribed by the Board and shall exercise the powers of the Chairman during the Chairman's absence or disability. Any action taken by the Vice-Chairman in the performance of the duties of the Chairman shall be conclusive evidence of the absence or inability to act of the Chair at the time such action was taken.

Rule 2.4        **Secretary.** The Secretary shall attest to the minutes of all meetings, joint meetings, work sessions, and retreats/seminars of the Zoning Board of Adjustment and cause such minutes to be maintained in books provided for that purpose; shall provide all notices; may sign with the Chairman, or Vice-Chairman, in the name of the Board, all appropriate documents; and shall in general perform all the duties incident to the office of Secretary. Copies of the executed minutes of the Board shall be filed with the city secretary of the City. Official Records of the Board, including agenda and minutes of all Zoning Board of Adjustment meetings, joint meetings, work sessions, and retreats/seminars shall be maintained and on file in the office of the Zoning Board of Adjustment.

Rule 2.5        **Recording Secretary.** The City Manager shall designate a member of City staff to serve as Recording Secretary for the Zoning Board of Adjustment. The Recording Secretary, subject to these Rules, the Zoning Ordinance, and the direction of the Chairman, shall conduct all correspondence of the Board; attend all meetings, joint meetings, work sessions, and retreats/seminars; shall receive and review all applications for compliance; shall prepare all agendas, minutes, and files of the Board; shall post and forward all required notices; shall maintain the Boards files and indexes; and shall generally supervise all administrative and clerical work of the Board.

### **Article 3: Applications for Hearing, Agendas, and Notice**

Rule 3.1 Application; Filing and Placement on the Agenda. Each application to the Board shall be made on the forms provided by the City. Any communication purporting to be an appeal or application which is incomplete, unsigned, or not made on the prescribed form shall be deemed rejected upon receipt. The Recording Secretary may require from the applicant such additional information as may be required to fully advise the Board with respect to the application, whether such information is required by the City's application form or not. An applicant's failure or refusal to provide any such requested additional information shall be grounds for dismissal of the application by the Board.

Rule 3.2 Filing of Application; Placement on Agenda. All applications shall be filed with the Recording Secretary at City Hall, at 600 N. Bell Blvd., Cedar Park, Texas 78613, or its current address (the "Zoning Board of Adjustment Office"). Upon filing, each complete and signed application shall be serially numbered, docketed, dated, and placed on the next available agenda by the Recording Secretary. To be considered for placement on the agenda, a completed application, including all required information and signed by the applicant or their representative, shall be filed with the Recording Secretary no later than 12:00 p.m. on the 20<sup>th</sup> day prior to the next scheduled meeting.

Rule 3.3 Preparation of the Agenda. The Chairman or, in their absence, the Vice Chairman is responsible for preparing or ensuring the preparation of the agenda for each meeting, joint meeting, work session, or retreat/seminar.

Rule 3.4 Agenda Categories for Board Meetings: For each Zoning Board of Adjustment meeting, the agenda may contain any of the following categories:

- a. Call to Order;
- b. Roll Call;
- c. Approval of Minutes;
- d. Citizen Communication;
- e. Board Members' Opening Comments;
- f. Staff Presentations and General Discussion;
- g. Consent Agenda;
- h. Discussion and Possible Action;
- i. Executive Session;
- j. Possible Action on Executive Session Matters;
- k. Members and Staff Closing Comments; and
- l. Adjournment.

The categories listed above are demonstrative and are not meant or intended to be exclusive.

Rule 3.6 Public Presentation. During any public hearing on any matter before the Zoning Board of Adjustment, and after any presentation by the Applicant, or his/her

agent, and City staff, any other member of the public who desires to address the Board may do so, provided that (a) he/she limits such presentation to three (3) minutes, and (b) he/she fills out and presents a registration card for each Agenda item prior to addressing the Zoning Board of Adjustment.

Rule 3.7 Citizen Communications. Citizen Communications are to provide an opportunity for any individual in attendance to speak on an item that is not on the posted agenda. Since this is a “non-posted item” no discussion or dialog on the part of the Board may occur. Any member of the public who desires to address the Zoning Board of Adjustment during Citizen Communication may do so, provided that (a) he/she limits such presentation to three (3) minutes, and (b) he/she fills out and presents a registration card identifying the topic on which he/she desires to address the Zoning Board of Adjustment. There shall be no further discussion of matters not posted on the agenda, but Board members and/or City staff may respond with factual information. Requests for advice or hypothetical questions are improper and shall not be considered.

Rule 3.8 Registration Card. The registration card referred to in Rules 3.6 and 3.7 shall include the following information: (a) full name; (b) business or residential address; (c) business or residential telephone number; (d) representation; (e) Agenda item or topic; and (f) brief statement of position [e.g. for or against an Agenda item or summary of communication].

Rule 3.9 Expansion of Time for Public Presentation and Citizen Communications. The Chairman may expand the time limit set forth in Rules 3.6 and 3.7 for up to an additional three (3) minutes if the presenter requests an extension unless a Board member objects. In the event of a Board member’s objection to a request for extension, the Board shall vote to approve or disapprove the request for extension.

Rule 3.10 Time Keeper. The Recording Secretary, City Attorney, or their designee shall serve as time keeper for any public presentation made to the Zoning Board of Adjustment.

Rule 3.11 Repetitive Presentations. The Chairman may deny any presenter the opportunity to address the Board if the presentation made or offered is repetitive of a presentation previously made.

Rule 3.12 Consent Agenda. At any member’s request, any item on the Consent Agenda shall be removed to Discussion and Possible Action. A request for removal from the Consent Agenda may be made (a) in writing directed to the Chair and distributed to the Zoning Board of Adjustment; or (b) verbally during Board Members’ Opening Comments. Any item removed from the Consent Agenda shall be considered as a separate action item at the meeting on which such item appears on the Consent Agenda.

Rule 3.13 Placement of Agenda Items by Board Members. Any Zoning Board of Adjustment member may request the placement of any item on the agenda. Any agenda item so requested shall bear the requesting members name on each occasion at which the

item appears on the agenda. A member may request the placement of any item on the agenda: (a) during Board Members' Opening Comments or Members and Staff Closing Comments; or (b) in writing directed to the Chairman.

Rule 3.14 Public Availability of Agenda. Pursuant to the Texas Open Meetings Act, Section 551.001, *et seq.* of the Texas Government Code, as amended, and the Texas Public Information Act, Section 552.001, *et seq.* of the Texas Government Code, as amended, the Zoning Board of Adjustment agenda and supporting materials shall be made available to any member of the public who requests same; however, any member of the public requesting the Zoning Board of Adjustment agenda and supporting materials shall pay all costs associated with the reproduction of the Zoning Board of Adjustment agenda and/or supporting materials. The Zoning Board of Adjustment agenda shall also be made available to the public on the City's internet website.

Rule 3.15 Description of Certain Agenda Items. For each Agenda item requiring consideration and/or possible action by the Zoning Board of Adjustment, excluding Executive Session items, the agenda shall (a) reflect a brief substantive description of the matter for consideration and/or action, (b) identify the staff resource person(s) responsible for the item, and (c) if appropriate, provide a staff recommendation or proposal for action.

Rule 3.16 Notice of Hearings. The Recording Secretary shall forward written notice to the applicant (or their designated representative, if any) and all interested parties of the time, date, and place for each meeting at which the applicant's matter is to be considered no later than 72 hours before such meeting.

#### **Article 4: Meeting Procedures**

Rule 4.1 Quorum; Voting. Seventy-five percent (75%) of the members of the Zoning Board Adjustment shall constitute a quorum. If fewer than five (5) appointed members of the Zoning Board of Adjustment are present at a meeting, the Chairman may select an appointed alternate member or members (for a total of five (5) voting members) to serve and vote at that meeting, with such selection to alternate from each appointed alternate member on a rolling basis. Each appointed alternate member may participate in the discussions and deliberations for each matter heard; however, only the appointed members and selected alternate member(s) may vote on any matter.

Rule 4.2 Parties. The applicant is automatically designated as a party to the case. Other persons may be designated as parties to the case, but only upon written motion filed prior to the commencement of proceedings requesting to be designated as a party, explaining how the person is affected differently from the public at large, and identifying any special statutory right to appeal. If the person will be affected differently from the public at large, or if the person has a special statutory right to appeal, the Board may designate the person as a party. All designated parties may appear personally or by agent or attorney at the hearing.

Rule 4.3 Proceedings; Rescheduling and Continuance. In the absence of any appearance on behalf of the applicant, the Board will proceed to dispose of the matter on the record before it, or the Board may provide for a hearing at a future date, in which event it shall give verbal notice at the hearing, so that all present will be on notice of the date set for the future hearing. Additional notices shall be provided if required by state law or City ordinance. The City Manager, with concurrence from the Chairman, may reschedule any meeting, joint meeting, work session, or retreat/seminar.

Rule 4.4 Format. Hearings before the Zoning Board of Adjustment shall proceed as follows:

1. Administrative/procedural matters: designation of parties, identification of witnesses, determination of time periods of presentations, administration of oaths to witnesses, etc.
2. Presentation by the Applicant  
Note: The Chairman may determine reasonable time limits for presentations and allow additional time for questions; any Board member or witness may request additional time if necessary to allow for sufficient presentation of probative evidence
3. Presentations by other interested persons, other designated parties, and members of the public, if any
4. Presentation by the Administrative Official
5. Rebuttal by the Applicant (limited to issues raised by other presentations, written comments, etc.)
6. Additional questions by the Board
7. Discussion, deliberation, and vote
8. Pronouncement of decision or intent to deliberate further
9. Upon pronouncement of decision, announcement re: right to appeal  
Note: Following pronouncement of each Board decision, the Chairman shall advise the applicant and all designated parties as follows: "Any interested person wishing to appeal this decision is required to file a petition for Writ of Certiorari in a district court, county court or county court at law within ten (10) days of the date this decision is filed in the Board's office in accordance with section 211.011 of the Texas Local Government Code, as amended."

Rule 4.5 Parliamentarian. The City Attorney or Assistant City Attorney shall serve as parliamentarian for the Zoning Board of Adjustment, and shall construe all applicable procedural rules liberally.

Rule 4.6 Written Presentation by City Staff. For each request submitted to the Zoning Board of Adjustment for consideration and action, the following material shall be provided to the Board: applicant's documents, staff report, and any written citizen communications received by City staff.

Rule 4.7 Applicant Discussions. Zoning Board of Adjustment members shall not meet with or discuss with any Applicant issues subject to the regulation or authority of the Zoning Board of Adjustment except within the confines of properly posted and noticed meetings.

Rule 4.8 Applicant Presentation. With the exception of the Consent Agenda, Applicant, or his/her agent, shall make any presentation necessary for a public hearing or before consideration of a possible action item. Unless modified by the Chairman, such presentation shall precede any presentation made by City staff.

Rule 4.9 Presentation by City Staff. With the exception of the Consent Agenda, City staff shall make any presentation necessary for a public hearing or before consideration of a possible action item. Unless modified by the Chairman, such presentation shall follow any presentation by the Applicant, other interested persons, other designated parties, and members of the public, if any.

Rule 4.10 Questioning of Witnesses. For each witness, reasonable questioning is allowed as follows: (a) first, the presenting party may ask direct questions; (b) next, the other designated parties (if any) may ask questions; (c) next, the Administrative Official may ask questions; and (d) finally, the presenting party may ask any re-direct questions limited to matters raised by other questions. At the Chairman's discretion, the Board may question any witness at any time during the proceedings. Non-parties may submit written questions to be asked by the Chairman, at the Chairman's discretion.

Rule 4.11 Board Vote. Informal group voice voting shall be used, unless a Board member, City Staff member, or designated party thereafter requests an individual roll call vote. Where there is a single vote on multiple items, under circumstances where no member requests a separate vote, the collective vote on the multiple items is deemed the same as a separate, identical vote on each item. The Recording Secretary or their designee shall maintain, and the minutes shall reflect, the votes made by the Zoning Board of Adjustment in open meeting.

- (a) Consent Agenda. The Zoning Board of Adjustment shall vote on the Consent Agenda by voice vote or by a show of hands as directed by the Chairman.
- (b) Separate Action Items. All votes shall be by show of hands, unless a motion for a division of the assembly is approved by the Zoning Board of Adjustment. In the event of a division of the assembly, the Board Secretary or his/her assignee shall poll the Zoning Board of Adjustment as directed by the Chairman.
- (c) An affirmative vote of four (4) Board members is required for approval of an item and/or any Board recommendation to City Council.

Rule 4.12 Executive Session; Certified Agenda. At any time during the course of a meeting, joint meeting, work session, or retreat/seminar, the Zoning Board of Adjustment may recess the proceedings and convene into executive session pursuant to Chapter 551,

Subchapter D, of the Texas Government Code, as amended. Upon conclusion of executive session, the Board shall reconvene into regular session to deliberate and take action, if any. All executive sessions shall be recorded by certified agenda in conformity with Section 551.001, *et seq.* of the Texas Government Code, as amended.

Rule 4.13 Minutes. The Recording Secretary shall keep and maintain all minutes of meetings, joint meetings, work sessions, and retreats/seminars upon approval thereof in accordance with the City's document retention policies and local, state, and federal law.

### **Article 5: Final Disposition, Rehearing and Reconsideration, and Appeal**

Rule 5.1 Final Disposition. After deliberation, the Board's determination shall: (a) affirm, modify, or reverse the refusal of a permit by, or any order or decision of, the Administrative Official; and/or (ii) grant, modify, or deny a special exception or variance. Each decision shall be reduced to writing and shall set forth the action taken and the conditions, if any, imposed. Every application shall be deemed disallowed, unless the concurring vote of four (4) members of the Board shall favor the application upon a vote, or unless another disposition is expressly made by the Board, such as, for example, taking the matter under advisement or postponing action to the next meeting. The vote of each member present on each decision shall be recorded in the minutes. An appeal or application for variance or special exception shall be deemed denied: (a) upon the vote of two (2) or more voting members supporting a motion to deny; or (b) upon the vote of one (1) or more voting members supporting a motion to deny if only four (4) members are present.

Rule 5.2 Grant of Application; Conditions. Upon a decision to grant an application, the Board may impose such conditions for commencement or completion of a project as it may deem reasonable appropriate under the circumstances. If any such condition is not fulfilled within the prescribed time, the decision remains in effect but is subject to reversal or modification by the Board without additional notice or hearing.

Rule 5.3 Withdrawal. An Applicant may, in writing or upon the record at a meeting, withdraw their application prior to the Board's final disposition of the matter.

Rule 5.4 Decision; Notice of Final Disposition. Each final determination by the Board shall be reduced to writing, shall set forth the action taken and the conditions imposed, if any, and shall be signed by the Chairman. The Board's written decision shall substantially follow the "Decision of the Zoning Board of Adjustment" attached hereto as Exhibit A. The Recording Secretary shall file the Decision at the Zoning Board of Adjustment Office, and shall forward a copy of the Decision to the Applicant, Administrative Official, and other designated parties.

Rule 5.5 Rehearing and Reconsideration. There shall be no rehearing or reconsideration (without rehearing) of any Board decision except upon written motion filed by a member of the Board with the Recording Secretary on or before the third (3<sup>rd</sup>) day following the date the Board's Decision is filed at the Zoning Board of Adjustment

Office. All designated parties shall promptly be noticed of any such motion for rehearing or reconsideration, and any such motion for rehearing or reconsideration shall be scheduled and acted upon at the next meeting of the Board. Granting the motion requires at least four (4) votes. The Board may not allow a rehearing unless there is a suggestion that new evidence will be submitted, which was not presented at the initial hearing. The Board may require presentation of the new evidence and may deny a rehearing upon a finding that no substantial new evidence has been offered.

Rule 5.6 Hearing on Motion for Rehearing or Reconsideration; Effect on Appeal. Upon grant of a motion for rehearing, the case shall be scheduled for rehearing at the next meeting and new notice shall be given in accordance with these Rules. New notice is not required if the Board allows reconsideration only, without rehearing. Upon grant of a motion for reconsideration, the case shall be reconsidered at the same meeting, or if the Chairman determines appropriate, deferred to a later time. No Decision of the Board shall be final until the Board disposes of any filed motion for rehearing or reconsideration.

Rule 5.7 Precedent. Each case shall be decided upon its merits and upon the circumstances attendant thereto and no action of the Zoning Board of Adjustment shall be deemed to set a precedent.

Rule 5.8 Appeal. Any interested person wishing to appeal a decision of the Zoning Board of Adjustment is required to file a petition for Writ of Certiorari in a district court, county court or county court at law within ten (10) days of the date this decision is filed in the Board's office in accordance with section 211.011 of the Texas Local Government Code, as amended.

#### **Article 6: Amendment; Suspension**

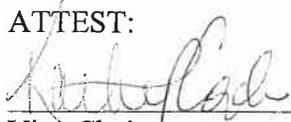
Rule 6.1 Amendment. These Rules of Procedure may be amended by the affirmative vote of four (4) members, provided that such amendment is presented in writing at a meeting, joint meeting, or work session.

Rule 6.2 Suspension. Any of these Rules may be suspended, for any single meeting or matter, by the affirmative vote of four (4) members.

PASSED AND APPROVED this 29<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
Chairman

ATTEST:

  
\_\_\_\_\_  
Vice Chair

**ZONING BOARD OF ADJUSTMENT**  
**Rules of Procedure**

**Exhibit A**

**DECISION OF THE ZONING BOARD OF ADJUSTMENT**

RE: [Insert ZBA Case #]  
[Insert Name of Applicant]  
[Insert Address of Applicant]

SUBJECT: [Insert nature and description of Applicant's Request]

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the above-referenced matter was heard by the Cedar Park Zoning Board of Adjustment in a meeting duly noticed, posted, and held in compliance with the Texas Open Meetings Act, Section 551.001, *et seq.* of the Texas Government Code, as amended, and the Cedar Park Charter and Code of Ordinances. In consideration of the presented evidence, authority, and arguments of the respective parties to this matter, the Board hereby [GRANTS/DENIES] the Applicant's Request by a vote of \_\_\_\_ members in favor and \_\_\_\_ members against, with \_\_\_\_ members abstaining, subject to the following conditions:

[Insert conditions, if any]

Any interested person wishing to appeal this decision is required to file a petition for Writ of Certiorari in a district court, county court or county court at law within ten (10) days of the date this decision is filed in the Board's office in accordance with section 211.011 of the Texas Local Government Code, as amended.

\_\_\_\_\_  
[Print name], Chairman

\_\_\_\_\_  
Date

RECEIVED FOR FILING:

\_\_\_\_\_  
[Print name], Recording Secretary

\_\_\_\_\_  
Date