

BOARD OF ADJUSTMENT RULES OF PROCEDURE

I. Organization

The Board of Adjustment ("Board") shall consist of eleven regular members and four alternates appointed by the City Council and shall be organized under the laws of the State of Texas and the Zoning Ordinance of the City of Fort Worth.

II. General Rules

- A. Under authority of the Texas Local Government Code, Chapter 211 and the Zoning Ordinance Ordinance of the City of Fort Worth, Texas, Chapter 2, Section 2.102, the City of Fort Worth Board of Adjustment ("Board") hereby adopts these general rules for the hearing of matters coming before the Board.
- B. The Board's specific approval authority is established in Section 2.102 of the Zoning Ordinance, and it shall not have power to vary requirements of any other section of the Code of Ordinances for the City of Fort Worth, or other local laws or the General Statutes of Texas.
- C. Roberts Rules of Order, at latest revision, shall be the Board's final authority on all questions of procedure and parliamentary law not covered by these Rules of Procedure. A failure to strictly adhere to the procedures set forth in Robert's Rules of Order shall not constitute grounds for the invalidation of any motion or order made by the Board.

III. Officers; Duties of Officers and Staff

- A. The officers of the Board shall consist of a Chairperson and a Vice-chairperson. Elections for Chairperson and Vice Chairperson will be held annually from the Board's membership at the first meeting in November and at such other time as these offices may become vacant. The Director of Development Services, or a representative designated by the Director, shall serve the Board as Executive Secretary.
- B. Chairperson - The Chairperson shall be elected by a majority vote of the membership of the Board from among its regular members. The term of office shall be for one year and until a successor is elected and the Chairperson shall be eligible for re-election. Subject to these rules, the Chairperson shall maintain order of the public hearing; decide on all points of order or procedure; as necessary swearing in witnesses or compelling attendance; and dispense the business of the Board in a just and orderly manner.

- C. Vice Chairperson - The Vice Chairperson shall be elected by the Board from among its regular members in the same manner and for the same term as the Chairperson. The Vice-Chairperson shall serve as acting Chairperson in the absence of the Chairperson, and at such times they shall have the same powers and duties of the Chairperson.
- D. In the absence of the Chairperson and Vice Chairperson, the Board shall elect a temporary Chair. This election does not survive the meeting in which it has occurred.
- E. Executive Secretary - The Director of Development Services, or a representative designated by the Director, shall serve the Board as Executive Secretary. The Secretary shall keep all records, conduct all correspondence of the Board, arrange for all public notices required to be given, and generally supervise the clerical work of the Board, including the preparation of the minutes to be reviewed and approved by the Board. The minutes of the Board's proceedings shall show the vote of each member on each decision of the Board, or if absent or recusing to vote shall indicate that action.
- F. City Attorney - The City Attorney may provide to the Board with an oral or written opinion regarding any question of law, interpretation or application of these rules of procedure, parliamentary rules and shall review as to law any amendment of these rules of procedure prior to the amendment becoming effective.

III. Members

- A. Membership of regular and alternate members on the Board shall be by appointment by the Fort Worth City Council.
- B. Members of the Board may be removed for cause by the appointing authority, on a written charge after a public hearing.
- C. Faithful and prompt attendance at all meetings of the Board and conscientious performance of the duties required as members of the Board shall be considered a prerequisite of continuing membership on the Board. Board members may obtain excused absences from the Executive Secretary, and unexcused absences by a Board member for three (3) consecutive meetings shall be deemed to be a resignation from their position.
- D. No Board member shall take part in the hearing, consideration, or determination of any case in which he/she is personally or financially interested.

- E. No Board member shall vote on any matter deciding an application or appeal unless he/she attends the public hearing on that application or appeal. If a matter is continued to a subsequent date following a public hearing, a Board member who was not present at the public hearing may vote on the matter if the member has reviewed the minutes or video of the proceeding.
- F. Members of the Board will not express individual opinions on the proper judgment of any case with any parties thereto prior to its determination of that case.
- G. The Board is a quasi-judicial body with authority to decide the rights of individual parties, subject to the requirements of state law and the Zoning Ordinance. In deference to its decision-making role, no one other than City staff may contact a member outside of a public hearing regarding a matter that is pending or may in the future be pending before the Board. All communications to the Board outside of a public hearing should be directed to the Board Administrator
- H. Members of the Board shall not individually investigate cases before the Board, other than reviewing publicly available information.
- I. A Member that receives material information regarding a case that is not made available to other members is disqualified from participating in the case unless the member publicly discloses the information and its source at the earliest opportunity. A member may disqualify themselves if an applicant, interested party or agent has sought to influence the member's vote other than in a public hearing or through documents made available at the public hearing.
- J. Prior to the public hearing, Members should discuss recusal or disqualification or recusal questions with the City Attorney's Office. Staff should direct all questions related to recusal or disqualification to the City Attorney's Office.

IV. Meetings

- A. Meetings to be Public. Every regular or special meeting of the Board shall be open to the public in compliance with the Texas Open Meetings Act, subject to Texas Government Code, Section 551.071, pertaining to closed session of public bodies in consultation with their attorney.
- B. Agendas. An agenda shall be prepared by the Executive Secretary and city staff for each meeting of the Board. The agenda shall include variances, special exceptions and appeals and other matters scheduled for consideration by the Board.
- C. Regular Meetings. Regular meetings of the Board shall be held on the third Wednesday of each month at 10:00 a.m., in the Council Chambers of the Fort

Worth City Hall; provided, however, meetings may be held at some other convenient place and time in the City if directed by the Chairperson in advance of the meeting.

- D. Special Meetings. Special meetings of the Board may be called at any time by the Chairperson or the Executive Secretary. Notice in conformance with the Texas Open Meetings Act of the time and place of special meetings shall be given by the Secretary or the Chairperson to each member of the Board, to anyone who is required to receive notice under these rules or the Zoning Ordinance. The Executive Secretary shall notify each member of the special meeting and shall provide any information necessary for consideration by the Board.
- E. Work sessions. The Executive Secretary may schedule work sessions to address administrative matters or proposed ordinance revisions. These sessions are for discussion purposes only. No decisions on case-related matters shall be discussion or decisions made.
- F. Executive Sessions (Closed Meetings). The Board may convene into executive session pursuant to Section 551.07 of the Texas Government Code to see the advice of the City Attorney with regard to a case pending the Board's Consideration.
- G. Quorum. A quorum shall consist of nine members of the Board. In the case of an absence or recusal of a regular member, staff shall contact an alternate or alternates to service in the place of the absent or recused member.

V. Appeals and Applications

- A. Procedure for Filing Applications or Appeals.
 - 1. Refusal Required for Interpretation. No appeal from the Zoning Administrative Official shall be heard by the Board unless the written appeal is in conformance with section 3.201 of the Zoning Ordinance. A member of the Board may not bring an appeal under this section.
 - 2. Application Required. Every request for a variance or special exception shall be filed on application forms provided by the City and shall be complete in all respects before being accepted for filing. The application shall bear the signature of the owner of the property under appeal or shall be accompanied by a letter from the owner acknowledging taking of the appeal. An incomplete application or communication purporting to be an application and not made in the form prescribed shall be regarded only as a notice of intent to appeal and may not be acted on by the Board in its discretion.
 - 3. Filing Deadline. Every appeal or application for a variance or special exception shall be filed with the Executive Secretary in accordance with the

applicable sections of the Zoning Ordinance. When the filing deadline falls on a City holiday, the following workday shall be observed as the filing deadline.

4. Submission of Evidence. Evidence supporting the granting of denial of an appeal shall be submitted only through the Executive Secretary or the Board prior to the Public Meeting.
- B. Fees. No application for a variance or special exception or notice of appeal shall be considered as having been completed until the prescribed fee has been paid to the City of Fort Worth to cover the cost of providing notice and such further investigation or verification of the application as is necessary.
- C. Withdrawal of Appeal or Application. Any appeal or application may be withdrawn upon written notice to the Executive Secretary, but no appeal shall be withdrawn after giving of notice and prior to Board action thereon without formal consent of the Board.

VI. **Hearings.**

- A. Public Hearings. Hearings on all matters on which a decision of the Board is required by law shall be open to the public in accordance with the Texas Open Meetings Act. The applicant may appear in his own behalf or may be represented by duly authorized counsel or agent. Any party in interest may appear to speak on a matter before the Board.
- B. Time. After receipt of the completed notice of appeal or application, the Executive Secretary to the Board shall schedule the time for a hearing, which shall be either at the next regularly scheduled meeting or at a special meeting.
- C. Notice. The Board shall give public notice of the hearings for variances, special exceptions and appeals in accordance with applicable sections of the Zoning Ordinance, including but not limited to, Chapter 3, Review Bodies, Articles 2, 3 and 4 and Chapter 4, District Regulations and the Texas Open Meetings Act.
- D. Order of Business. The Chairperson in their discretion may modify the order of business at a particular hearing. The Chair shall call the Board to order, and the Executive Secretary shall record the members present and absent. The Chair shall publicly advise those present of the procedures followed in the hearing and disposition of appeals. The Chair or Board Administrator shall call each case in the order listed on the agenda and shall announce the name of the applicant, the location of the property involved, and the nature of the request. The Board Administrator shall publicly advise the Board of any communications received. Communications received for and against each case shall be presented to the Board prior to the commencement of the public hearing.

- E. Conduct of Hearing. Any party with standing may appear in person or by attorney at the hearing. The order of business for each hearing shall be as follows:
1. The Secretary or such person as the Chairperson shall direct and shall call the case as advertised on the official agenda.
 2. Staff shall make a statement regarding the manner in which the application relates to the Zoning Ordinance and provide an explanation of the facts of the case.
 3. The Chairperson shall call upon the applicant or the applicant's attorney or agent to present the arguments and evidence in support of the case or application. The Chair shall then inquire if there are others who support the appeal.
 4. The Chairperson shall next call on persons with standing opposed to granting the application, or their attorneys shall present the argument against the application.
 5. The applicant shall then have the right of rebuttal to the arguments presented by the opposition. Following the rebuttal, the Chairperson shall order the hearing closed.
 6. Each side shall proceed without interruption by the other, and all arguments and pleadings shall be addressed to the Board. Cross-examination is permissible between speakers at the direction and discretion of the Chair.
 7. Unless an extension of time is granted by majority vote of the Board, the following time limits for presentation shall be observed:
 - a. Applicant's presentation and support – seven (7) minutes
 - b. Opposition presentation – seven (7) minutes
 - c. Applicant rebuttal – three (3) minutes
- It is the responsibility of the applicant and the opposition to allocate their respective time among persons speaking on the case.
- F. Subpoena Authority. The Chairperson may issue subpoenas to compel the attendance of witnesses at the request of the Board or a party to the appeal. Any party requesting the issuance of a subpoena shall provide the name and address of the witness and a brief statement of the relevance of the witness testimony to the Chairperson and Executive Secretary at least ten days before the scheduled hearing date.
- G. Board Questions. The Chairperson may at any time direct questions to the Applicant or any person speaking in order to bring out all relevant facts,

circumstances, and conditions affecting the appeal; and, shall call for questions from other members of the Board and from the staff before closing the Hearing on each case. During the voting session, no further testimony shall be permitted, however, the Board may direct questions to the Applicant (or any persons) in order to review or clarify any testimony or evidence presented during the hearing. Provided however, the public hearing may be required to be reopened for any additional testimony or rebuttal not previously presented to the Board.

- H. Continuance. Requests for continuing the hearing for good cause on a particular appeal or application may be made to the Chairperson or to the Board. The Board may also defer action on any case to a certain time, whenever the Board concludes that additional evidence is needed or that alternate solutions need further study. When action is deferred, (1) the Board shall specify in its motion to continue the additional information or action required of the applicant, and (2) the applicant shall deliver the required information to the Development Services Department at least fifteen (15) days before the date to which the hearing has been continued.
- I. Non-appearance of Applicant. The Board may deny or continue a public hearing on any appeal for which the applicant fails to appear unless the Applicant has requested that the Board act without his being present at the hearing; provided, however, the Board shall hear those persons appearing in response to the notice of the public hearing.
- J. Withdrawal. An application or appeal may be withdrawn under the following circumstances: (a) The applicant submits a written request to withdraw the application or appeal; (b) Without prior notification to the Chairperson or Executive Secretary to the Board, applicant does not appear at the scheduled hearing to testify regarding the merits of the application and does not request that the Board act without the applicant being present at the hearing; or (c) The applicant appears at the scheduled hearing and requests that the application or appeal be withdrawn.

VII. Decisions.

- A. Time. The Board shall vote on each case after it is presented and announce its decision at the same meeting at which the hearing takes place.
- B. Disposition of Cases. The Board may grant, modify, or deny any case (either with or without prejudice as to refilling). A case may be dismissed when the Board finds that the case has been improperly filed or upon notification by a City Official that permits have been issued for a conforming use or development of the property.

C. Consideration of Cases.

1. *Interpretations.* A case for an appeal of the Zoning Administrative Official's interpretation shall be conducted in conformance with Chapter 3, Article 2 of the Zoning Ordinance. Additionally, the Board shall consider:
 - i. Statements of the applicant and the Zoning Administrative Official regarding the interpretation.
 - ii. Testimony at public hearing.
 - iii. Any applicable laws.
2. *Special Exceptions.* A case for a special exception shall be conducted in conformance with Chapter 3, Article 3 of the Zoning Ordinance. Additionally, the Board shall consider:
 - i. The facts filed with the application;
 - ii. The testimony at the public hearing;
 - iii. The staff's report on the application; and
 - iv. The Board's own knowledge of the facts and conditions relative to the application.

The Board may limit the term of any approved special exception to any period of time it deems appropriate under the circumstances.

3. *Variances.* A case for a variance shall be conducted in conformance with Chapter 3, Article 4 of the Zoning Ordinance. Additionally, the Board shall consider:
 - i. The facts filed with the application;
 - ii. The testimony presented at the public hearing;
 - iii. The staff's report on the application; and
 - iv. The Board's own knowledge of the facts and conditions relative to the application.

The Board may limit the term of any variance to any period of time it deems appropriate under the circumstances.

D. Vote Required.

1. The concurring vote of nine members of the Board shall be necessary to:
 - i. grant a variance;
 - ii. grant a special exception; or
 - iii. reverse an order, requirement, decision, or determination of an administrative official
2. The vote of a majority of members is necessary to:
 - i. continue a case to a date certain;
 - ii. deny a variance or special exception; or
 - iii. appeals from the design review commission or board (see Appendix).

- E. Form. All decisions of the Board shall be in writing, shall indicate the decision of the Board and shall be filed in the Board's office no later than the Friday following such decision has been made. However, failure to timely file the decision in the Board's Office shall not have any effect on the validity of the decision.
1. Variances. Where a variance is granted, the record shall state any unnecessary hardship upon which the variance request was based and which the Board finds to exist. The record shall state what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a variance.
 2. Special Exceptions. Where a special exception is granted, the record shall state any facts supporting findings required to be made prior to the issuance of a special exception. The record shall also show any conditions imposed on the issuance of the special exception by the Board. If a special exception is denied by the Board, the record shall show the reasons for denial of the permit.
 3. Interpretations. The decision may reverse or affirm wholly or partly or modify the order, requirements, decision, or determination appealed from.
- F. Appeal After Board Denial. When a case has been denied by the Board a new appeal shall not be considered by the Board within two years after the date of denial or withdrawal unless the application was denied without prejudice or the new plans materially changed the nature of the case.
- G. Expiration of Approval. Unless otherwise specified, any order or decision of the Board granting a variance or a special exception shall expire if a building permit or certificate of occupancy is not issued within 180 days after the Board's decision. Any approval may be granted a one-time extension by the Director of Development Services, or designee for an additional 180-day period on written request filed with the Department of Development Services at least 10 days prior to the date of expiration of the approval. The time limit for every approval shall commence on the day after the Board renders its decision. No subsequent appeal for extension of commencement shall be granted.

VIII. Public Records and Retention.

- A. Public Records. The official record, appeals accepted for filing and other matters presented to the Board in regular or special meetings, shall be on file in the Development Services Department and shall be open to public inspection during customary working hours.
- B. Retention. All requests, appeals and other matters coming before the Board shall be filed in the Development Services Department in accordance with the department's filing system. Original papers of all appeals shall be retained for not less than five

years after the date of the application. Thereafter, those original papers shall be prepared for permanent retention in accordance with the provisions of State Law and the procedure adopted by the City of Fort Worth, along with other special matters, as the Board Administrator deems essential, for permanent record.

IX. Rules and Amendments

- A. Amendment Procedure. These Rules of Procedure may be amended by a majority vote of the entire Board provided that previous notice is given at one meeting in advance of any such consideration. The amendment will take effect upon approval by the City Council in accordance with section 211.008(e) of the Texas Local Government Code.
- B. Certified Copy. A certified copy of these Rules of Procedure and of any amendments thereto will be placed on record in the office of the City Secretary within ten (10) days and with the Executive Secretary following their date of adoption and approval by the City Council.
- C. Repealing Clause. All previously adopted Rules and Regulations shall be and the same are hereby expressly repealed.

ADOPTION OF RULES OF PROCEDURE

Adopted by the Board of Adjustment of the City of Fort Worth, Texas on the ____ day of _____ 2025.

Attest:

Signature of Chair

Approved by the City Council of the City of Fort Worth, Texas on the ____ day of ____ 2025.

APPENDIX

Board of Adjustment Rules of Procedure- Appeals from Design Review Commission or Board

1. Hearing Procedures for Appeals of Design Review Commission and Board Decisions

The City Council has authorized the Board of Adjustment to hear appeals from the Downtown Design Review Board, the Historic and Cultural Landmarks Commission and the Urban Design Commission (collectively the “design review commission or board.”)

- A. The Chairperson shall call each case listed on the Board’s agenda.
- B. The Chairperson shall call the Planning and Development administrator or designee to present an overview of the case, including previous recommendations from city staff and the decision of the design review commission or board under appeal. This overview is not the administrator or designee’s opportunity to present arguments related to the record under review. The Board may ask questions during the presentation of the overview.
- C. The Chairperson shall then call upon the appealing party to present arguments related to the record made before the design review commission or board. Specifically, the appealing party has the burden of proof to establish that the record reflects the lack of substantial evidence in support of the design review board or commission’s decision. The appealing party may have 7 minutes to present its case. The Board may ask questions during the presentation of the case.
- D. The Chairperson shall next call on the planning and development administrator or designee to present arguments related to the record made before the design review commission or board, demonstrating the presence of substantial evidence to support the commission or board’s decision. The officer or his designee may have 7 minutes to present its case. The Board may ask questions during the presentation of the case.
- E. Finally, each party may have 3 minutes to present final arguments concerning his/her position on the appeal.
- F. The Chairperson shall close the public hearing and call for a motion.
- G. Approval of every motion shall require the affirmative vote of a majority of members present. In the event of a tie vote on any motion, the motion shall be considered lost.

NOTE: In hearing an appeal brought under this section, the Board shall not consider any new evidence outside of the record made before the design review commission or board. If testimony and evidence is presented that was not previously available at the time of the hearing before the design review commission or board, the Board shall remand the matter back to the commission or board.

2. Motions Related to Design Review Commission or Board Appeals

A. If the Board is considering an appeal from a decision of the design review commission or board, the Chairperson will take any of the following actions:

1) The Chairperson may call for a motion and vote on:

- a) Whether the decision of the design review commission or board was reasonably supported by substantial evidence.
- b) If the Board determines that the decision of the design review commission or board was reasonably supported by substantial evidence, the Board shall move to:
 - i) Affirm the decision of the design review commission or board.
- c) If the Board determines that the decision of the design review commission or board was not reasonably supported by substantial evidence, the Board shall move to:
 - i. Reverse or Remand the decision of the design review commission or board.