

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF FORT WORTH, BEING ORDINANCE NO. 21653, AS AMENDED, CODIFIED AS APPENDIX "A" OF THE CODE OF THE CITY OF FORT WORTH, TO AMEND CHAPTER 2, "REVIEW BODIES," SECTION 2.101, "BOARD OF ADJUSTMENT" TO DECREASE THE MEMBERSHIP OF THE BOARD OF ADJUSTMENT TO ELEVEN MEMBERS AND FOUR ALTERNATE MEMBERS; TO REVISE MINIMUM QUALIFICATION OF MEMBERS; PROVIDING THAT A QUORUM CONSISTS OF NINE MEMBERS; REQUIRING AN AFFIRMATIVE VOTE OF NINE MEMBERS FOR ANY ACTION OF THE BOARD TO APPROVE A VARIANCE, SPECIAL EXCEPTION OR OVERTURN THE ZONING ADMINISTRATOR; TO AMEND SECTION 3.402, "NOTICE" TO REVISE THE NOTICE PROVISION; TO AMEND SECTION 3.403, "BOARD OF ADJUSTMENT ACTION" TO AMEND THE VARIANCE CRITERIA USED TO DETERMINE HARDSHIP; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND NAMING AN EFFECTIVE DATE.

WHEREAS, the current Zoning Ordinance provides for two panels of the Board of Adjustment ("Board") composed of eleven members each to exercise all the powers and duties of a Board in accordance with Section 211.008 to 211.011 of the Texas Local Government Code; and

WHEREAS, the Board members are composed of professional fields including law, property development, architecture, building design or mortgage and financing, as well as residents who demonstrated their civic interest, general knowledge of the community, independent judgment, understanding of zoning and planning, and availability to prepare for and attend meetings; and

WHEREAS, one of the most significant challenges the Board faces is meeting and maintaining quorum as required by State law, resulting in public hearings that are delayed or adjourned before hearing all scheduled cases due to lack of quorum; and

WHEREAS, the inability to meet or maintain quorum creates a substantial hurdle for an applicant/property owner to obtain the required number of affirmative votes for approval unless the request is continued to a future hearing in the hope of a complete panel of eleven members being present; and

WHEREAS, staff recommend the following changes, described below, to the Board to improve efficiency, improve the experience for the members and the applicants/property owners, and to remove obstacles to holding successful meetings; and

WHEREAS, additionally staff recommend amending the noticing provision and amending the criteria used by the Board to determine the grant of a variance to include additional hardship criteria added by House Bill 1475, as adopted by the State Legislature and enrolled in 2021.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS THAT:

SECTION 1.

Section 2.101, “Board of Adjustment” of Chapter 2, “Review Bodies” of Ordinance No. 21653, the Zoning Ordinance of the City of Fort Worth, is amended to revise the composition of the Board with regard to number of regular members and alternate members, revise the minimum qualifications of the regular members and alternates, provide for attendance reporting and other changes to conform to state law, to read as follows:

Sec. 2.101 BOARD OF ADJUSTMENT.

(a) *Creation and appointment.* There is hereby created a Board of Adjustment, consisting of ~~22~~ eleven regular members ~~and four alternate members to serve in the absence of one or more regular members, divided into two panels of 11 members each,~~ all of whom shall be residents of the City of Fort Worth. ~~Members of each panel shall serve as alternates of the other panel as needed. It is the declared policy that~~ The City Council will consider for appointment to the Board of Adjustment only those persons who have demonstrated their civic interest, general knowledge of the community, independent judgment, understanding of zoning and planning, and availability to prepare for and attend meetings. ~~Preference will be given, where feasible, to appointees who possess knowledge or background in one of the following fields: At least eight of the eleven regular members and four alternates must be a practicing or retired professional in of the following fields:~~

- 1) Law;
- 2) Property development;
- 3) Building design Engineering;
- 4) Mortgaging and financing;
- 5) Architecture; ~~with emphasis on historic preservation.~~
- 6) Real estate; or
- 7) Planning, urban design or landscape architecture

As nearly as is reasonably possible, the Board of Adjustment members as a whole shall fairly represent the geographic makeup of the City of Fort Worth.

(b) *Terms of office.* ~~Each panel of the~~ Members of the Board of Adjustment shall be identified by place numbers one through 11. The odd-numbered places shall expire on October 1 of each odd-numbered year, and the even-numbered places shall expire on October 1 of each even-numbered year. The terms of alternate members shall expire on

October 1 of odd-numbered years. Board of Adjustment members may be appointed to succeed themselves. Vacancies shall be filled for unexpired terms, but no member shall be appointed for a term in excess of two years. Members shall serve until their successors are appointed.

(c) *Organization.* The Board of Adjustment shall hold an organizational meeting in November of each year and shall elect a chairperson and vice-chairperson ~~for each panel~~ from among its members before proceeding to any other matters of business. The ~~Development Services Director~~ Zoning Administrator, or a designated representative, shall be the secretary of the Board of Adjustment. The ~~panels of the~~ Board of Adjustment shall meet regularly and shall designate the time and place of its meetings. The Board of Adjustment shall adopt its own rules of procedure as approved by the City Council and keep a record of its proceedings in accordance with the state statutes, this ordinance and the City Charter. Newly appointed members shall be installed at the first regular meeting after their appointment or at such time as determined by the City Council.

(d) *Meetings and quorum.* Nine members of ~~each panel~~ of the Board of Adjustment shall constitute a quorum for the conduct of business. The members ~~of each panel~~ of the Board of Adjustment shall regularly attend meetings and public hearings ~~of the board of adjustment~~ and shall serve without compensation, except for reimbursement for authorized expenses attendant to the performance of their duties.

(e) *Decision by Board of Adjustment.* The affirmative vote of nine members ~~of each panel~~ of the Board of Adjustment shall be required to reverse or modify any order, decision or interpretation of this ordinance by the Zoning Administrator or to grant a variance or special exception.

(f) *Review of zoning needs.* The Board of Adjustment shall keep itself informed with respect to requests for variances based on practical difficulty and unnecessary hardship, and shall recommend to the Zoning Commission when, in its opinion, requests for variances indicate a need for possible general zoning changes through the established legislative procedure.

(g) *Staff responsibility.* The ~~Development Services Director~~ Zoning Administrator and any designated representatives shall be the regular technical advisors to the Board of Adjustment.

(h) *Attendance reports.* Each month a report shall be submitted to the City Secretary ~~city council~~ showing the cumulative attendance of each member with a notation of members who have been absent from three consecutive meetings, and a notation of the non-availability of alternate members to attend meetings for which they are called. Any regular member with an unexcused absent from more than three consecutive meetings shall be deemed to have resigned their position from the Board of Adjustment. Vacancies shall be temporarily filled by an alternate member until such time as the City Council appoints a suitable person to serve out the unexpired term of the regular member being replaced.

(i) *Powers and duties.* The Board of Adjustment shall have the powers and exercise the duties of a Board of Adjustment in accordance with Texas Local Government Code §§ 211.008 through 211.011. ~~Board of Adjustment members are representatives of the city and shall have the right of inspection of premises where required in the discharge of their responsibilities under the laws of the State of Texas and the ordinances of the city.~~ The Board of Adjustment's jurisdiction shall extend to and include the hearing and deciding of the types of appeals and applications listed below, ~~and to that end shall have the necessary authority to ensure continuing compliance with its decisions. In addition, the Board of Adjustment shall have the authority to compel the attendance of witnesses necessary to its decision-making.~~

(1) *Appeal of interpretation of the zoning administrator to board of adjustment.* The Board of Adjustment shall decide an appeal of the interpretation by the Zoning ~~Administrator~~ ive official upon a properly submitted request made by the requestor, any person aggrieved by the interpretation, or any officer, department, board ~~or bureau~~ of the City affected by the interpretation (see Chapter 3, Article 2).

(2) *Special exception.* To decide upon applications for special exceptions when the use or development is specifically authorized under the Zoning Ordinance subject to the approval of the Board of Adjustment (see Chapter 3, Article 3). Special exceptions that may be permitted by the Board of Adjustment are specified in the use tables in Chapter 4, Articles 6, 8 and 12 or Chapter 6.

(3) *Split-zoned lot.* The Board of Adjustment may approve the extension of a use to the lot line or for a distance of not more than 100 feet where the boundary line of a district either divides a lot held in single ownership on October 1, 1940, or divides a lot held in single ownership as of the date of subsequent annexation of said lot.

(4) *Variance.* To authorize upon appeal in specific cases such variance from the terms of the Zoning Ordinance as will not be contrary to the public interest (see Chapter 3, Article 4).

(5) *Appeals.* To hear appeals for any action, other than actions relating to designation, from the Historic and Cultural Landmarks Commission, the Downtown Design Review Board and the Urban Design Commission.

(6) *Powers Strictly Construed.* Nothing herein shall be construed to empower the Board of Adjustment to grant a variance or special exception when the City Council has enacted a development standard to serve as a prohibition of a structure, material or other regulation.

SECTION 2.

Section 3.402, "Notice," of Article 4, "Variances" of Chapter 3, "Review Procedures" of Ordinance No. 21653, the Zoning Ordinance of the City of Fort Worth, is amended to revise the notice provision to read as follows:

Sec. 3.402 NOTICE.

Written notice of all public hearings before the board of adjustment on proposed variances shall be sent to owners of real property lying within 300 feet of the subject

property. Such notice shall be given not less than ten days before the date set for hearing to all such owners who have rendered their said property for city taxes, as the ownership appears on the last approved city tax roll. Such notice may be served by depositing the same, properly addressed and postage paid, in the United States mail. ~~When property lying within 300 feet of the subject property is located in territory which was annexed to the city after the final date for making the renditions which are included on the last approved city tax roll, at least 15 days' notice of the time and place of the public hearing shall be published in an official newspaper or a paper of general circulation in the city. See § 4.305(b)(1)-5.147 for additional notice requirements for halfway houses.~~

SECTION 3.

Section 3.403, "Board of Adjustment Action," of Article 4, "Variances" of Chapter 3, "Review Procedures" of Ordinance No. 21653, the Zoning Ordinance of the City of Fort Worth, is amended to revise the variance criteria used to determine unnecessary hardship read as follows:

Sec. 3.403 BOARD OF ADJUSTMENT ACTION.

(a) ~~In taking action on an application for a variance,~~ The Board of Adjustment ~~shall~~may grant the application for a variance only when the Board determines that:

- (1) ~~(a)~~ Literal enforcement of the regulations in this Zoning Ordinance will create an unnecessary hardship or practical difficulty in the development of the affected property;
- (2) ~~(b)~~ The situation causing the hardship or difficulty is unique to the affected property;
- (3) ~~(c)~~ The situation or hardship is not self-imposed;
- (4) ~~(d)~~ The relief sought will not injure the existing or permitted use of adjacent conforming property; and
- (5) ~~(e)~~ The granting of a variance will be in harmony with the spirit and purposes of this Zoning Ordinance.

(b) The Board of Adjustment may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the requested variance 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 of the Texas 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 is authorized to 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 structure is a nonconforming structure.

SECTION 4.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (2015), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 5.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 6.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of Ordinances No. 3011, 13896, 21653 and any other ordinances affecting zoning which have accrued at the time of the effective date of this ordinance, and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 7.

All other provisions of the Zoning Ordinance of the City of Fort Worth not herein amended shall remain in full force and effect.

SECTION 8.

This ordinance shall take effect upon adoption.

APPROVED AS TO FORM AND LEGALITY:

By: _____
Assistant City Attorney

Jannette S. Goodall,
City Secretary

ADOPTED: _____

EFFECTIVE: _____