

**Zoning Board of Adjustment**  
**City of West University Place, Texas**

**Rules of Procedure**



**ARTICLE I**  
**Meetings**

- Section 1. Regular meetings of the Zoning Board of Adjustment (ZBA) shall be held at 6:30 PM, on the fourth Thursday of each month, except the November and December meetings, which will be held on the third Thursday so no conflict with holidays will occur. The City Manager, with concurrence from the Presiding Officer, may reschedule any meeting of the ZBA.
- Section 2. Special meetings may be called by the Presiding Officer of the ZBA.
- Section 3. Notice of all meetings shall be posted as required by the Texas Open Meetings Act, Chapter 211 of the *Texas Local Government Code*, and any applicable local ordinance. Each regular member of the ZBA shall be notified in writing at least 72 hours prior to the meeting except in the case of emergency meetings, which can be called with two hours notice.
- Section 4. A quorum for hearing by the Board shall consist of four members. A lesser number may meet and reschedule, recess or adjourn a meeting or hearing.
- Section 5. If fewer than five regular members of the Board are present at a meeting, the alternate(s) to serve and vote at that meeting shall be as designated by the Mayor or City Manager. Each alternate may participate in the discussions and deliberations for each matter heard; however only the designated voting alternate(s) may vote on any matter before the board.

**ARTICLE II**  
**Applications Before the Board**

- Section 1. Each application to the Board shall be made on the standard City forms and shall be filed in the office of the Building Division, 3826 Amherst, West University Place, Texas.
- Section 2. To be considered for placement on the agenda of the next regular meeting, all required data must be received and docketed by 12 noon on the 20<sup>th</sup> day prior to the next regular meeting. The Board may reject any application not made on the prescribed form properly filled out with all required data attached.
- Section 3. Every appeal must be filed on or before the tenth regular City business day following the date the Administrative Official refuses to issue a permit, or the date the Administrative Official enters an order, ruling, decision, or determination, that

is the subject of the appeal, and the Administrative Official shall so advise the applicant in writing. Upon written motion and a showing of good cause, the Board may allow an appeal to be late-filed (after the ten-day period specified above).

Section 4. Any communication purporting to be an appeal shall be regarded as mere notice to seek relief until it is made in the form required by these rules.

### **ARTICLE III The Docket; Notices of Hearings, Etc.**

Section 1. Each application filed in proper form with the required data shall be numbered serially, docketed, dated, and placed upon the agenda of the board by the Recording Secretary. The docket numbers shall begin anew on January first of each year and shall be hyphenated with the number of the year in which the application is filed.

Section 2. All cases docketed more than 20 days preceding a regular meeting day, and for which the notice requirement can be met, shall be set for hearing on the succeeding regular meeting day. Cases docketed within 19 or fewer days of the regular meeting day, for which the notice requirements cannot be met, shall be set for hearing no later than the second regular meeting day after docketing of the application.

Section 3. Applications shall be heard in the order in which they appear on the agenda, unless the Board changes the order by motion. Action or further proceedings on an application may be suspended at any time as determined by the Board upon motion. Where all applications cannot be disposed of on the day set, the Board may adjourn from day to day, or until the next regular meeting, as it may order.

Section 4. Notice as prescribed in the Zoning Ordinance will be given to applicants or other interested parties by the Board; provided however, notice may be posted on the site of the property which is the subject of the hearing, rather than published in a newspaper.

Section 5. No informal request for advice, or hypothetical questions, will be considered by the Board. (However, the Administrative Official may seek advice or guidance from the Board by formally presenting matters to the Board at a meeting.)

### **ARTICLE IV Hearings**

Section 1. Hearings shall be held by the ZBA in the Municipal Building, or at such other place as set forth in the notice of hearing.

Section 2. All hearings shall be open to the public.

Section 3. a. The applicant is automatically designated as a party to the case and may appear personally or be represented by agent or attorney at the hearing. 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 future hearing. If required by state law or city ordinance, additional notices shall be given.

b. Other persons may be designated as parties to case, but only after filing a written motion: (i) requesting to be designated as a party, (ii) explaining how the person is affected differently from the public at large, and (iii) identifying any special statutory right to appeal. Such a motion must be filed before the start of the public hearing. 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. Designated parties may appear personally or by agent or attorney at the hearing.

Section 4. The normal order of proceedings for hearings before the ZBA is as follows:

1. Call to order and administration of oaths to witnesses  
("I do solemnly affirm that I will testify to the truth under penalty of perjury so help me God.")

2. Procedural Matters (designation of parties, determination of time periods of presentations, etc.).

*Note:* The Presiding Officer may determine reasonable time limits for presentations (before questions by others). Anyone may request additional time upon a showing of need for the additional time.

3. Presentation by the applicant

4. Receipt of written comments, protests, etc.

*Note:* These will be normally received for limited purposes (for example, to indicate the opinion of the writer) but not to establish facts that may be in dispute. If an objection is raised by a designated party or the Administrative Official, the Board may refuse to receive an item or receive it for other purposes.

5. Presentations by other interested persons and other designated parties (if any)

6. Presentation by the Administrative Official

7. Response by the applicant (limited to issues raised by other presentations, written comments, etc.)

8. Incorporation of testimony, exhibits, etc. into the record (followed by deliberation, decision, etc.)

Section 5. For each witness, reasonable, oral questioning is allowed, as follows: (i) First, the presenting party may ask direct questions. (ii) Next, the other parties (if any) may ask questions. (iii) Next, the Administrative Official may ask questions. (iv) Next, the members of the Board may ask questions. (v) Finally, the presenting party may ask re-direct questions (limited to matters raised by other questions). Non-parties may submit written questions to be asked by the Presiding Officer, at the Presiding Officer's discretion.

**ARTICLE V**  
**Meeting Procedures**

- Section 1. Except as otherwise prescribed by these rules, the ZBA meetings may be conducted in accordance with *Robert's Rules of Order Newly Revised*, [10th ed.], p. 15, 1. 17-25; p. 561-62, 569; at the Presiding Officer's discretion or at the discretion of two board members.
- Section 2. Informal voice voting shall be used, unless a ZBA member requests a roll call vote. Where there is a single vote on a group of items, under circumstances where no member requests a separate vote, the vote on the group is deemed the same as a separate, identical vote on each item.
- Section 3. The Presiding Officer will preserve order and decorum, preventing the impugning of any member's motives or other personal comments not relevant to the orderly conduct of business. The Presiding Officer shall request all speakers to keep comments brief and relevant to the question before the ZBA. All persons present in the meeting room should eschew abusive, rude or inappropriate conduct.
- Section 4. This paragraph applies to general comments in public sessions (but does not apply to comments regarding a pending case, which may only be received during the public hearing on that case). Speakers should limit their presentations to three minutes each or other such limitations as may be decided by the Presiding Officer. Speakers should direct all remarks and questions to the presiding officer, who may refer them for investigation, response or other action. The *Texas Open Meetings Act* requires the City to post a notice, in advance, listing every topic or subject to be considered by the ZBA. This law may prevent the ZBA from considering a subject raised by a member of the public. In this case, the presiding officer may refer the matter and the ZBA may direct that the matter be placed on the agenda for an upcoming meeting.

**ARTICLE VI**  
**Final Disposition**

- Section 1. The Board's decision shall: (i) affirm, modify or reverse the refusal of a permit by, or any order or decision of, the Administrative Official, (ii) grant, modify or deny a special exception or variance, or (iii) include two or more of these actions. 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 members of the Board shall favor the application prior to adjournment, 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 with the decision. An appeal or an application for variance or special exception shall be deemed denied: (i) upon the vote of two or more voting members supporting a motion to deny; or (ii) upon the vote of one or more voting members supporting a motion to deny if only four members are present (Note: Neither the motion nor a second to the motion is a vote to deny),

unless, in either case, the Board makes a different disposition prior to adjournment.

- Section 2. Any applicant may, in writing, or upon the record at a meeting withdraw his application prior to a final disposition by the Board.
- Section 3. If an application is granted by the Board, the written decision shall contain conditions as follows: (i) that all permits necessary for the prosecution of work shall be applied for within 180 days, or such other period determined by the Board, (ii) that construction shall be commenced and completed within two years from the date of granting by the Board, unless otherwise prescribed in the decision itself, or unless an extension of time is granted by the Board and (iii) the decision shall be recorded with Harris County Clerk's Office (Real Property Records). The Administrative Official may extend the time to apply for a permit for one additional 180 day period. Time to complete the permitted work may not be extended by anyone other than the Board. Neither additional notice nor hearing is required for granting a time extension. 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.
- Section 4. The applicant and the Administrative Official will be notified of the decision of the ZBA.

## **ARTICLE VII Rehearing & Reconsideration**

- Section 1. No decision by the Board shall be reheard or reconsidered except on written motion filed by a member of the Board with the Recording Secretary on or before the tenth day following the date the decision is filed in the Board's office. The motion shall be acted upon within 30 days after the decision has been filed, or at the next regular meeting of the ZBA (whichever comes later). Granting the motion requires at least four votes. The Board may grant either rehearing or reconsideration only (without rehearing).
- Section 2. The Board may not grant rehearing unless there is a suggestion that new evidence will be submitted, which was not presented at the meeting at which the hearing was originally heard. The Board may require the offer of new evidence and may deny a rehearing upon a finding that no substantial new evidence has been offered.
- Section 3. If a rehearing is granted, the case shall be put on the calendar for a rehearing and new notice shall be given in accordance with these rules. New notice is not necessary if the Board grants reconsideration only, without rehearing. Reconsideration may be immediate or deferred to a later time.
- Section 4. After a decision of the Board is final (that is, when no motion for rehearing or reconsideration or appeal to the District Court is pending), the Board will not

conduct a hearing on an issue that was resolved in that decision, unless there has been a substantial change in the circumstances of the case. The Board may first hear evidence on the issue of substantial change in the circumstances before deciding to conduct a full hearing. If there is no substantial change, the Board may dismiss the application.

### **ARTICLE VIII Precedents**

- Section 1. Recognizing that each parcel of real property is unique, that the facts presented in each case are almost always unique and that the applicant may not always meet the heavy burden of proof imposed by state law and city ordinance, no action of the Zoning Board of Adjustment shall set a precedent. Each case shall be decided upon its merits and upon the circumstances attendant thereto.

### **ARTICLE IX Officers**

- Section 1. The City Council may provide for appointments of the Presiding Officer and the Vice-Presiding Officer, and may allow one or both such officers to be selected by the ZBA.
- Section 2. The Presiding Officer shall preside at all meetings and hearings of the Board. In the event of the absence or disability of the Presiding Officer, the Vice-Presiding Officer shall preside. In the event of the absence or disability of both the Presiding Officer and Vice-Presiding Officer, a temporary Presiding Officer shall be elected to preside.
- Section 3. The Presiding Officer, subject to these rules, shall decide all points of procedure. The Board may reverse, affirm or modify any ruling by the Presiding Officer, whether on a point of procedure or otherwise.
- Section 4. The Presiding Officer, unless otherwise directed by the Board, shall appoint such committees as may be found necessary.
- Section 5. The Presiding Officer shall report at each meeting on all official transactions that have not otherwise come to the attention of the Board.
- Section 6. The Presiding Officer shall, subject to these rules and further instructions from the Board, transact the official business of the Board and exercise general disciplinary power.
- Section 7. The Recording Secretary shall be such person as may be designated by the City Manager.
- Section 8. The Recording Secretary, subject to the provisions of the Zoning Ordinance, these rules, and the direction of the Board and Presiding Officer, shall conduct all correspondence of the Board; shall attend all meetings of the Board and all

hearings; shall scrutinize all applications to see that these rules are complied with; shall keep all dockets and minutes of the Board's proceedings; shall maintain the necessary files and indexes and generally supervise all clerical work of the Board.

The Recording Secretary shall, upon docketing any application notify any property owner or other person required to be notified under the provisions of the Zoning Ordinance and State Law.

Section 9. The Recording Secretary shall require from the applicant such additional information and data as may be required to fully advise the Board with reference to the application, whether or not such information and data is called for by the official forms or not. Any failure or refusal on the part of the applicant to furnish such additional information or data shall be grounds for the dismissal of the application by the Board.

**ARTICLE X  
Minute Book**

Section 1. The Recording Secretary shall keep a permanent Minute Book which shall record all applications docketed, disposition of action of the ZBA by individual vote and in the case of denial of an application considered by the ZBA, state the reason or reasons given by the Board for such denial.

**ARTICLE XI  
Required Number of Votes**

Section 1. Action by the Board requires three votes in favor, except when state law, the Zoning Ordinance or these rules specify a different number. *See*, for example, the provisions requiring: (i) four votes to grant applications, (ii) four votes to grant a motion for rehearing or reconsideration, and (iii) four votes to suspend these rules.

**ARTICLE XII  
Amendments; Suspension**

Section 1. These Rules of Procedures may be amended by the Board, provided that such amendment is presented in writing at a regular meeting as a special agenda item. Any of the rules may be suspended, for any single meeting or proceeding, by motion receiving at least four favorable votes.

**ARTICLE XIII**  
**Valid Action**

Any action taken by the ZBA, in compliance with applicable law, shall be deemed to have waived these Rules of Procedure as to the action taken. Such action shall be valid despite any technical noncompliance with these Rules of Procedure or their predecessors.

Adopted by the Zoning Board of Adjustment of the City of West University Place, on March 20, 2014, effective immediately.

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Samantha Brantley, Presiding Officer  
Zoning Board of Adjustment  
City of West University Place