Zoning Board of Adjustment

City of West University Place, Texas

Rules of Procedure

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ARTICLE II
Applications Before the Board

Section 1. Jurisdiction.

A. Jurisdiction – Appeal of Administration Action. An appeal of an action of the City Manager, including the building officials, zoning officials and the Recording Secretary (each individually an "Administrative Official") regarding the enforcement of the City's Zoning Ordinance must be filed in writing with the Board and the Administrative Official from whom the appeal is taken not later than the 20th 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.

B. Jurisdiction – Special Exceptions, Variances and Other Matters. The Board may hear and decide requests for special exceptions, variances and other matters authorized by an ordinance.

C. Jurisdiction – Justiciability Required. No informal request for advice, or hypothetical questions, will be considered by the Board.

Section 2. Application.

A. Form; Fee. Each appeal of an action of an Administrative Official, application for a special exception, or application for variance (each called an "Application") to the Board shall be made on the standard City form and shall be filed with the designated secretary for the Board ("Recording Secretary") in the office of the Building Division, 3826 Amherst, West University Place, Texas. Every Application shall specify the grounds for the requested appeal or action. No Application is complete until all applicable fees are paid.

B-1. Appeal from Administrative Official's Action. An Application for an appeal from an action of the Administrative Official must include the street address and legal description of the property to which the action in question relates; the name, address, and contact information of the person filing the appeal; the nature and date of the action in question; the specific interest the person filing the appeal has in the action in question; a brief explanation as to why the applicant believes the action was incorrect; and any other information that the applicant believes relevant to the Board's consideration of the matter.

The Board may reverse, affirm, in whole or in part, or modify the Administrative Official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination.

B-2. Special Exceptions. An Application for a special exception must include: the street address and legal description of the property to which the requested special exception relates; the name, address, and contact information of the person filing the appeal; a citation to the provision(s) of the Zoning Ordinance that authorizes the special exception requested; a specific description of the special exception that the applicant seeks; a brief explanation why the applicant believes the Board should grant the special exception; and any information that the applicant believes relevant to the Board's consideration of the matter.

The Board may approve, deny, or approve with conditions a special exception authorized by the Zoning Ordinance.

B-3. Variances. An Application for a variance must include the street address and legal description of the property to which the requested variance relates; the name, address, and contact information of the person filing the appeal; the provision(s) of the Zoning Ordinance from which the applicant seeks relief; a brief explanation why the applicant believes that the Board should grant the requested variance; and any information that the applicant believes relevant to the Board's consideration of the matter.

The Board may authorize a variance from the terms of the Zoning Ordinance if (1) the variance is not contrary to the public interest and, (2) due to special conditions, a literal enforcement of the Zoning Ordinance would result in unnecessary hardship, and (3) so that the spirit of the Zoning Ordinance is observed and substantial justice is done.

Financial hardship may be considered if the Board determines that, as applied to a structure: (1) the financial cost of compliance with the Zoning Ordinance is greater than 50% of the appraised value of the structure as shown on the tax roll; (2) compliance with the Zoning Ordinance would result in a loss to the lot on which the structure is located of at least 25% of the area on which development may physically occur; (3) compliance with the Zoning Ordinance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement; (4) compliance with the Zoning Ordinance would result in the unreasonable encroachment on an adjacent property or easement; or (5) the structure is a nonconforming structure.

C. Combined Applications. A single Application may combine an appeal of the Administrative Official's action and one or more requests for special exceptions or variances if all the applicant's requests relate to a single property and contain the information required for each request.

D. Owner Approval. The owner or owners of the property involved in an Application must join in the Application.

Section 3. Rejection of Applications. The Recording Secretary is authorized to act for the Board to reject any Application that is: a) not filed by the applicable deadline; b) not substantially complete; or c) not accompanied by the required fee. An applicant who believes that the Recording Secretary wrongfully rejected an Application may appeal the Recording Secretary's decision to the Board by filing a written notice of appeal. The Recording Secretary shall place the matter on the agenda for the next regular Board meeting. The Board may reject any Application not made on the prescribed form properly filled out with all required data and fees attached.

Section 4. Other Communications. Any communication purporting to be an appeal, request for special exception or variance, or an Application shall be regarded as mere notice to seek relief until it is made in the form required by these rules, accompanied by the tender to the City of the applicable fees.

Section 5. Stays. An Application to appeal of an action of an Administrative Official stays all proceedings in furtherance of the action that is appealed (e.g., discontinuance of utility service by the Administrative Official) unless the Administrative Official from whom the appeal is taken certifies in writing to the Board facts supporting the Administrative Official's opinion that a stay would cause imminent peril to life or property. After notice to the Administrative Official, the Board may stay the Administrative Official's proceedings in furtherance of the Administrative Official's action for due cause shown.

ARTICLE III
The Docket; Minutes

Section 1. The Docket. The Recording Secretary shall number serially, docket, date and place upon the Board's agenda each Application filed in proper form. 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. Call of Docket. The Board will hear Applications in the order in which they are filed with the Recording Secretary, except that the Board may advance an Application for hearing for good cause shown.

Section 3. Minutes. The Recording Secretary shall keep minutes for approval by the Board that indicate the vote of each member on each question, or the fact that a member is absent or fails to vote. The minutes and records shall be filed immediately in the Board's office and are public records.

ARTICLE IV
Hearings

Section 1. Public Hearings Required. The Board shall hold a hearing on an Application to appeal an Administrative Official's action, an Application for special exception, or an Application for a variance. All hearings shall be open to the public.

Section 2. Time, Place and Manner of Hearing. The Recording Secretary is authorized by the Board to set the time for the hearing and to give notice as prescribed in the Zoning Ordinance to applicants or other interested parties. Notice may be posted on the property that is the subject of the hearing, rather than published in a newspaper. Hearings shall be held by the Board in the Municipal Building, or at such other place or in such other manner as set forth in the notice of hearing. Provided, however, the Board shall ensure that it sets a reasonable time for the hearing, gives the public notice of the hearing, and gives the parties in interest due notice.

Section 3. Parties.

A. Applicant. The applicant is automatically designated as a party to the case and may appear personally or by agent or attorney at the hearing. In the absence of any appearance on behalf of the applicant, the Board will decide 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.

B. Administrative Official. The Administrative Official is automatically designated as a party to the case.

C. Other Parties. Other persons may be designated as parties to a case, but only after filing a written motion: (i) requesting designation 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. Hearing Process.

Unless applicant makes a written motion for a formal proceeding under Section 5 below prior to the hearing, the normal order of proceedings for a hearing before the Board is as follows:

A. Before opening the hearing:

1) the Presiding Officer shall determine if there are any issues of notice, standing

(jurisdiction or ripeness), or timing (postponement) that should be resolved;

2) the Presiding Officer shall provide for designation of parties; and

3) the Presiding Officer shall determine the time periods of presentations. In the absence of a special determination, presentations should be limited to 10 minutes per party. Anyone may request additional time upon a showing of need for the additional time.

B. After opening the hearing:

1) The Presiding Officer shall call to the hearing to order and administer the oath to witnesses ("I do solemnly affirm that I will testify to the truth under penalty of perjury so help me God.").

2) The applicant shall present applicant's Application and case.

3) The Board will identify written comments and protests received. 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.

4) Other designated parties, if any, shall present their case.

5) The Board will hear public comments.

6) The Administrative Official will present the City's administrative report, if any.

7) The applicant may offer a response limited to issues raised by other written comments, presentations, public comments and evidence previously presented.

8) Prior to closing the public hearing, the Presiding Officer shall provide for the incorporation of testimony, exhibits, and other evidence into the record. Evidence relating to any matter before the Board shall be submitted only to the Board in a public meeting. Any written or physical evidence offered by a party shall be submitted through the Presiding Officer or Recording Secretary. Strict rules of evidence shall not be followed regarding physical or written evidence, but the Board may allow a party to point out questions of authenticity, reliability, relevance, bias, prejudice or other relative objections to evidence submitted.

Section 5. Cross-Examination. Upon written notice filed with the Board at least 72 hours prior to a hearing, a party will be permitted to cross-exam other parties and witnesses participating in the hearing. For each witness, reasonable, oral questioning is allowed, as follows: First, the applicant may ask direct questions. Next, the other parties (if any) may ask questions. Next, the Administrative Official may ask

questions. Next, the members of the Board may ask questions. 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.

Section 6. Deliberation. At the close of the hearing, the Presiding Officer shall call for deliberation of the Board on the question. During the deliberation, a member may call the applicant, the Administrative Official or any other individual that the board deems have relevant information for further questioning.

ARTICLE V
Final Disposition

Section 1. Time of Decision. The Board shall decide any Application at the meeting for hearing on the Application or at the next meeting for which notice can be provided following the hearing; provided, further, that the Board shall decide an Application to appeal the action of an Administrative Official following the hearing on the appeal, or at the next meeting for which notice can be provided following the hearing, but not later than the 60th day after the Application was filed.

Section 2. Scope of Decision.

A. Appeals. In exercising its authority to hear an appeal of an Administrative Official's action, the Board's decision may reverse or affirm, in whole or in part, or modify the Administrative Official's order, requirement, decision, or determination from which the appeal is taken and make the correct order, requirement, decision or determination.

B. Other Applications. In exercising its authority to hear and decide an Application for special exception or variance, the Board's decision may authorize, grant, modify or deny the special exception or variance, including approval with conditions.

Section 3. Vote Required to Make Decision on an Application. Every Application shall be deemed disallowed unless the concurring vote of four (4) members of the Board shall favor the Application. The vote, absence, or failure to vote of each member on each decision shall be recorded with the decision.

Section 4. Vote Required to Deny Application. An appeal or an Application for special exception or variance shall be deemed denied: (i) upon the vote of two (2) 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 unless, in either case, the Board makes a different disposition prior to adjournment of the meeting at which the Application is being considered.

Section 5. Amendment and Withdrawal of Application. An Application may be amended after notice has been given only by permission of the Board. Any applicant may, in writing or upon the record at a meeting, withdraw an Application prior to a final disposition by the Board.

Section 6. Written Decisions. Each decision on an Application shall be reduced to writing and shall set forth the action taken and the conditions, if any, imposed. If an Application for a special exception or variance 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, and (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. The Board may provide that the decision shall be recorded with Harris County Clerk's Office (Real Property Records - Variances).

Section 7. Extension of Time for Work Under a Variance or Special Exception. 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 8. Judicial Review of Board's Decision. The Presiding Officer shall file the Board's decision with the Recording Secretary in the Board's office, at which time the decision becomes final and subject to judicial review in accordance with Texas Local Government Code Section 211.011. The Recording Secretary shall notify the applicant, the Administrative Official, and any other person given party status by the Board of the decision in accordance with the information provided to the Board by such person prior to the decision.

Section 9. Reconsideration of Decision. No additional Application to the Board shall be allowed for substantially the same relief for substantially the same property unless there shall have been a substantial change in the circumstances affecting such property since the prior decision.

ARTICLE VI
Meeting Procedures-Generally

Section 1. Decorum Required. 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 speakers to keep comments brief and relevant to the question before the Board. All persons in the meeting should eschew abusive, rude or inappropriate conduct.

Section 2. Limitation on Public Comments. This Section applies to general comments in public sessions (but does not apply to comments regarding a pending case 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 Board will not consider a subject raised by a member of the public not on the agenda, except the Presiding Officer or the Board may direct that the matter be placed on the agenda for an upcoming meeting.

Section 3. *Ex parte* Communications; Quasi-judicial Body. The Board is a quasi-judicial body with authority to decide the rights of parties, subject to the requirements of state law and the city's ordinances. Members shall not individually investigate cases before the Board, other than routine site visits or reviewing publicly available information. 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 reasonable opportunity. A member may disqualify themself if an applicant, interested part, or agent has sought to influence the member's vote other than in a hearing or through documents made available at the hearing. This Section does not prohibit communications regarding uncontested administrative and uncontested procedural matters.

Section 4. Conflicts of Interest. A member who has a conflict of interest as defined by Chapter 171 of the Texas Local Government Code or who, because of personal circumstances, believes that he or she cannot render a fair and impartial decision in a matter, should inform the Recording Secretary of the conflict prior to the start of the meeting at which the matter will be considered. A member shall abstain from participation in any matter in which they have a conflict of interest.

ARTICLE VII
Precedents

Section 1. Precedents. 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 ordinances, no action of the Board shall set a precedent. Each case shall be decided upon its merits and upon the circumstances attendant thereto.

ARTICLE VIII
Officers

Section 1. Officers. 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 Board. Unless otherwise provided by Council, officers shall serve a one-year term ending December 31st of each year. Officers shall holdover until replaced.

Section 2. Presiding Officer. The Presiding Officer shall preside at all meetings 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, the members present shall elect a temporary Presiding Officer to preside over the meeting.

Section 3. Conduct of Meeting; Points of Order. 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. Reports. The Presiding Officer shall report at each meeting on all official transactions that have not otherwise come to the attention of the Board.

Section 5. Other Powers of Presiding Officer. 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. The Presiding Officer, unless otherwise directed by the Board, may appoint such committees as may be found necessary.

Section 6. Recording Secretary – Appointment; Duties. The Recording Secretary shall be such person as may be designated by the City Manager. 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 is authorized to reject incomplete applications as provided above.

ARTICLE IX
Required Number of Votes

Section 1. Vote Required. Action by the Board requires three votes in favor, except when state law, the Zoning Ordinance or these rules specify a different number.

ARTICLE X
Valid Action

Section 1. Validity. These Rules of Procedure shall govern the operations of the Board in fulfilling its duties; provided, however, in the event of a conflict between these rules and either a city ordinance or state statute, the ordinance or statute will prevail. Any action taken by the Board, 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 November 18, 2021, effective upon approval of the City Council.

Ross Fava, Presiding Officer (Chair)
Zoning Board of Adjustment
City of West University Place

Approved by the City Council of the City of West University Place on December 6, 2021.

Susan Sample, Mayor
City of West University Place

Attest:

Thelma Gilliam, City Secretary