

BY-LAWS OF THE ZONING BOARD OF ADJUSTMENT OF THE CITY OF SAN ANGELO

**Article 1. General Governing Statutes, Ordinances and Rules**

The Zoning Board of Adjustment, hereinafter referred to as the “Board,” shall be governed by the following statutes and rules, to the extent that they remain in force and effect, as they are amended, and as they may be added to:

- 1.01 ~~Chapter 211 in the~~ The State of Texas Local Government Code, ~~concerning municipal zoning authority.~~
- 1.02 ~~Article 6252-17 in~~ Vernon’s Annotated Revised Civil Statutes (V.A.R.C.S.) of the State of Texas, ~~concerning the open conduct of meetings and posting of meeting agendas.~~
- 1.03 ~~Chapter 171 in the~~ State of Texas Local Government Code, ~~regulating conflicts of interest of officers of municipalities.~~
- 1.04 ~~Chapter 1 in Title II (Commissions and Boards) of the~~ The Official Code of the City of San Angelo.
- 1.05 ~~Chapter 1 in Title II (Zoning) of the Official Code of the City of San Angelo.~~
- 1.061.04 The By-laws of the Zoning Board of Adjustment, as set forth herein.

**Article 2. Authority of the Board**

The Zoning Board of Adjustment shall:

- 2.01 Hear and decide an appeal which alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of the City of San Angelo Zoning Chapter.
- 2.02 Hear and decide special exceptions to the terms of the Zoning Chapter, when that ordinance requires the Board to do so.
- 2.03 Authorize in specific cases and subject to appropriate conditions and safeguards, a variance from the terms of the Zoning Chapter, if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the regulation will result in unnecessary hardship, and so that the spirit of the regulation is observed and substantial justice is done.

### Article 3. Membership of the Board

The Zoning Board of Adjustment shall consist of ~~five (5) members appointed by the City Council. The City Council may also appoint four (4) alternate board members to serve in the absence of one or more absent regular members.~~ seven (7) regular board member seats and two alternate board member seats to be filled by nomination and appointment by the City Council. All board members and alternates shall be residents within City limits of San Angelo. The following additional rules shall apply to the board:

- 3.01 The term of each member shall be (2) years.
- 3.02 The City Council may remove a regular board member or alternate board member for cause, on a written charge and after a public hearing on the matter.
- 3.03 When members proposed to resign, they shall give notice of their intent to the chairman and secretary. When any member resigns or a position otherwise becomes vacant for other causes, the secretary shall promptly indicate to the City Council that a vacancy exists.
- 3.04 Any vacancy ~~occurring on the Board shall be filled by the appointment of an interim member by the City Council, under such procedures as it prescribes~~ on the board in a regular board member seat or in an alternate board member seat shall be filled for the unexpired term in the same manner as provided for nomination and appointment of a member to fill such member seat. Such interim appointment shall be for the unexpired term of the member whose position is vacated; provided, however, that a person serving such an interim appointment shall nevertheless be eligible to serve two full consecutive terms after completion of his or her appointment.
- 3.05 No board member shall serve more than three (3) consecutive two-year terms, either as a regular and/or an alternate member. However, in the event that a successor is not named (by City Council) to serve in place of a member whose term has expired, said member shall continue to serve as board member until the City Council duly appoints a successor.
- 3.06 Any member who fails to attend at least two-thirds (2/3) of the meetings in any one year period shall be deemed to have automatically resigned from office, unless such absences were excused as set forth as follows: The absence shall be termed unexcused by notification to the Board Secretary no later than 12:00 noon on the Friday before the regularly scheduled Zoning Board of Adjustment meeting. The Director of the Planning & Development Services Department, or his/her designee, shall make periodic attendance reports to the Zoning Board of Adjustment, and a replacement shall be appointed in the manner provided above for any Zoning Board of Adjustment member who has automatically resigned.
- 3.07 Member Seats to be filled by nomination and appointment by the city council shall be as follows:

- a. One (1) regular board member seat shall be designated to be filled by a nomination of the mayor
- b. Two (2) alternate board member seats shall be designated to be filled by nominations of the mayor;
- c. Each of six regular board member seats shall be designated for a single member district one through six respectively, to be filled by nomination of the council member representing the designated single member district;
- d. The appointment of any regular board member or alternate board member nominated pursuant to this section shall be made by vote of the City Council. Should any nominee not secure at least four affirmative votes of council members, the mayor or single member district city council member having made the nomination shall make a new nomination for vote of the council.
- e. The City Clerk shall maintain a record of board members that includes the board member's designation as regular board member or as alternate board member, whether the nomination is by mayor or single member district council member, including the designated single member district, the date of appointment by city council, and the date of expiration of the term of appointment.
- f. For purposes of expanding the regular board membership from five regular members to seven regular members after the effective date of this ordinance, the City Clerk shall, based on the record of current appointments to the board, designate each current regular member of the board as representative of mayor or specific single council member district. Each of the two additional regular board member seats shall be designated by the City Clerk for nomination by the mayor or specific single member district council member so as to provide the mayor and each single member district council member with a designated regular board member seat and the right to make nominations for vacancies or expired terms for such designated regular board member seat.

**Article 4. Meeting date, time and place.**

One regular meeting date of the Zoning Board of Adjustment shall be on the first Monday of each month, beginning at 1:30 p.m. in the City Council chambers of City Hall or other appropriate location in San Angelo, Texas.

- 4.01 The number of meetings per month and schedule of meeting dates, as well as the place of meetings, may be altered or changed at any regularly scheduled meeting or upon call of the

Chairman or Secretary.

- 4.02 Additional special meetings may be held at any time, upon the call of the board chairman or upon written request of three other members, following at least seventy-two hours notice to each member of the board. Call of special meeting (at a specified time and place and for specified purposes) at a regular meeting shall be notice thereof to members in attendance at such regular meeting, but other members shall receive written notice thereof. If a special meeting is called on a case or cases subject to notice of hearing, the required notice provisions for the hearing shall be met.

#### **Article 5. Conduct of Meetings**

- 5.01 Each case heard before the Zoning Board of Adjustment must be heard by at least four (4) but no more than five (5) members, regular or alternate.
- 5.02 The concurring vote of at least four members is necessary to:
- a. reverse an order, requirement, decision or determination of an administrative official;
  - b. decide in favor of an applicant on a matter which the Board is required to pass, under the terms of the Zoning Chapter, including requests for special exception as set forth in the Zoning Chapter;
  - c. authorize a variation from the terms of the Zoning Chapter.

The concurring vote of a simple majority of members present (and constituting a quorum) is required to approve any motion on a matter other than specified directly above and herein this paragraph 5.02.

- 5.03 It shall be customary for the chairman to vote on all matters pending before the Zoning Board of Adjustment, except whereas he or she may otherwise be disqualified from voting.
- 5.04 All meetings of the board shall be open to the public and in compliance with the open meeting requirements of ~~Article 6252-17~~ in Vernon's Annotated Revised Civil Statutes (V.A.R.C.S.) of the State of Texas. This requirement for open meetings does not prevent the board from convening in executive session, under the limitations of said Statutes Article 6252-17.
- 5.05 Robert's Rules of Order, Newly Revised shall be adopted as the regular rule for the conduct of meetings, provided such rules do not conflict with the bylaws adopted herein, in which case these bylaws shall supersede Robert's Rules of Order. Furthermore, such rules of order are accepted to be advisory and shall not be binding should the board, by its determination, vary or change such rules of conduct for its meeting.

5.06 Order for consideration of each agenda item, except appeals. The following procedure shall generally be observed for the presentation of relevant evidence and information; however, it may be rearranged by the chairman for individual items, if necessary for the expeditious conduct of business:

- a. The chair introduces the item to be considered, summarizing the nature of the request and its location, as described on the meeting agenda.
- b. The City staff describes in more detail the nature of the request and its relation to applicable ordinances and regulations of the City. Other relevant evidence available is presented by the staff and a recommendation is provided. If the staff recommends approval of a variance, then one or more criteria listed in subsection 11.01 of these by-laws shall be identified as the basis for its recommendation.
- c. The board may ask questions of the staff, concerning its presentation and report.
- d. The applicant or appellant outlines the nature of the request and presents supporting evidence including witnesses, if so desired.
- e. Board members may ask questions of the applicant (appellant) and supporting witnesses.
- f. Members of the public, in attendance at the meeting, are given an opportunity to speak and present evidence in favor or in opposition to the request.
- g. Applicant (appellant) makes rebuttal or adds points not previously covered. The applicant (appellant) may also cross-examine any witness or member of the staff.
- h. Objectors are also given an opportunity to make rebuttal or add points not previously covered.
- i. Board members may ask any final questions it may have of the applicants, appellants, opponents or staff, and then make a decision on the matter.

~~5.07 Orderly procedure requires that each side shall proceed without interruption by the other.~~

5.07 Prior to the public hearing in which the zoning board of adjustment shall hear an appeal, the following actions shall be made by the board at a separate public hearing:

- a. Designating of the parties in interest;
- b. Setting of a reasonable time and date for the appeal hearing;
- c. Giving of due notice of the appeal hearing to parties in interest;

- d. Giving of public notice of the appeal hearing; and
- e. Establishing of protocol for conducting the appeal hearing.

~~5.08~~ During the hearing, the chairman, board members and the staff may ask questions and make appropriate comment pertinent to the case; however, no member should debate or argue an issue with the applicant.

5.08 The public hearing for any appeal shall follow the following procedural order:

- a. Identification of Parties
- b. Identification of documents constituting the record on appeal to the Board
- c. Identification and admission as evidence of pre-filed documents and any additional documents offered into evidence
- d. Presentation by City staff
- e. Presentations by identified Parties in Interest
- f. Public comment
- g. Rebuttals by identified Parties in Interest
- h. Discussion and deliberation by Board members
- i. Motion and decision to affirm, modify, or reverse the decision of the administrative official, with supporting findings of fact applicable under the Zoning Ordinance

~~5.07~~ 5.09 Orderly procedure requires that each side shall proceed without interruption by the other.

~~5.08~~ 5.10 During the hearing, the chairman, board members and the staff may ask questions and make appropriate comment pertinent to the case; however, no member should debate or argue an issue with the applicant.

~~5.09~~ 5.11 The chairman and board members may direct any questions to the applicant or to any person speaking, in order to bring out all relevant facts, and may call for questions from members of the staff.

~~5.10~~ 5.12 The board shall not be bound by strict rules of evidence, not limited to consideration of such evidence as would be admissible in a court of law, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The chairman shall rule on all questions relating to admissibility of evidence, but may be overruled by a majority of board members present.

~~5.11~~ 5.13 All decisions of the board shall be made at a public meeting by a motion made and seconded, and by a show of hands.

~~5.12~~ 5.14 The chair may elect, subject to being overruled by a majority of the board members in attendance, on a motion duly passed, to:

- a. proceed immediately to determination and decision, on conclusion of the hearing on the particular case; or
- b. defer determination and decision until later in the same meeting; or
- c. defer determination and decision until another specified regular or special meeting of the Board, in order to obtain additional information or for other good cause.

~~5.13~~ 5.15 Recess. Any regular or special meeting may be recessed or adjourned from day to day, or to the time of any previously announced regular or special meeting.

~~5.14~~ 5.16 Cancellation. If no business is scheduled before the board, or if it is apparent that a quorum will not be available, any meeting may be canceled by the chairman.

## **Article 6. Minutes**

6.01 The board shall maintain a minute book which shall be kept posted to date. In the minute book shall be recorded the board's proceedings, showing attendance and all absences, any disqualifications of members, the records of its examinations and all other official actions, as well as the vote of each member voting on every question.

6.02 The draft minute record of a board meeting shall be presented for approval at any subsequent meeting of the Zoning Board of Adjustment. This minute record must be approved by a majority of the members who were present at the meeting applicable to the subject minutes. If this not possible due to resignations, deaths, or the fact that alternate members were present at the applicable meeting and not present at the current meeting, then a majority of the members present and voting shall be all that is necessary to approve the minutes.

6.03 The minutes shall be considered filed after each of the following has occurred: a) the minutes have been approved by the Board, b) the Chairman or Vice Chairman has signed the minutes, and c) the Secretary has posted the minutes in the record book contained in the office of the Planning & Development Services Department. The minutes of the board shall be a public

record, kept in the offices of the Planning & Development Services Department.

**Article 7. Requests to Withdraw, to Defer or Continue Hearings, or to Amend Applications and Appeals**

- 7.01 On written request from the applicant (appellant) or authorized agent, an application or appeal may be withdrawn at any time before the board makes its decision in the case.
- 7.02 On its own motion, or on approval of requests by applicants (appellants) or their authorized agents, the board may defer the hearing of cases or provide for later continuance of cases on which hearings have begun. Such deferrals or continuances shall be permitted only for good cause, stated in the motion and shall require new public notice, with fees paid by applicants or appellants if deferrals or continuances are at their request or result from their actions. No such additional fees shall be required of applicants, if their request to defer a public hearing results from there being less than five (5) board members attending the meeting at which said hearing is scheduled.
- 7.03 Applicants (appellants) or their authorized agents may amend any previously-accepted application or appeal, on written request delivered to the secretary of the board, not less than fifteen days prior to the scheduled hearing date. As an alternative, an applicant (appellant) or authorized agent may request an amendment to an application or appeal to the board at the hearing, and shall include a written description of the nature and purpose of the proposed amendment.

In the latter circumstances described immediately above, the board shall make a finding as to: (1) whether there is a substantial difference between the case as it has been described in public notice and the case as amended, and (2) whether the amended request is seeking more restrictive conditions than the request described in public notice. If substantial difference is found and/or the amended request seeks less restrictive conditions than the request described in public notice, a new public notice shall be requested, with additional fees paid by the applicant or appellant, before the hearing on the case may proceed. The board shall also determine whether the nature of the proposed amendment is such as to require referral for re-examination by counsel or staff members having made reports on the original application or appeal. If such referral is found necessary, the board may proceed with the hearing or may defer it to a time and place specified, but the board shall not decide the case until it has considered the response from counsel or staff. If the proposed amendment involves no substantial change and seeks more restrictive conditions than the request initially publicized, then no new public notice or referral is necessary, and the board may proceed with a hearing and decision on the amended request.

**Article 8. Rules for Rehearings**

A request for rehearing of an application or appeal denied by the Zoning Board of Adjustment shall not be allowed on the same piece of property, prior to the expiration of six (6) months from the

initial ruling of the board, unless other property in the same district shall have been (within the same six-month period) altered or changed by a ruling of the Zoning Board of Adjustment. Such circumstances shall allow a second hearing, but in no way have any force n law to compel the Zoning Board of Adjustment, after a hearing, to grant the application or appeal; such request shall be considered on its individual merits. The Director of the Planning & Development Services Department, or his/her designee, shall determine whether a new application is substantially different from an application or appeal which has been denied during the previous six months and which affects the same piece of property. If said application or appeal is determined to be substantially different, then it may be heard and decided by the board.

## **Article 9. Officers of the Zoning Board of Adjustment**

- 9.01 Election of Chairman and Vice-Chairman. Annually, as the first item of new business at the regular meeting of the board in the month of January, the board shall elect a chairman and vice-chairman. The election shall be determined by a majority of those members present and constituting a quorum at said meeting. If such regular meeting is canceled or a quorum is lacking, the election shall be held within 36 days thereafter at a regular or special meeting. If no quorum can be obtained within 36 days, the secretary shall notify the City Council which shall appoint a chairman and vice-chairman to serve until the next regular election in the month of January.
- 9.02 Succession of Vice-Chairman to office of Chairman. If the chairman resigns his office or becomes no longer a member of the board, the vice-chairman shall succeed him in office for the remainder of the term. If the vice-chairman resigns his office, becomes no longer a member of the board, or succeeds to the chairman's office, a special election shall be held at the next regular meeting of the board to select a vice-chairman to complete the term.
- 9.03 Presiding at Meetings. If present and able, the chairman shall preside at all meetings and hearings. If the chairman is absent or unable to preside, the vice-chairman shall preside. If both are absent or unable to preside, the members present shall appoint a temporary chairman to preside.

In accordance with these and other applicable rules, the presiding officer shall decide all points of procedure or order, unless otherwise directed by a majority of the members in attendance on motion duly made and passed. The presiding officer shall maintain order and decorum, and to that end, may order removal of disorderly or disruptive persons. The presiding officer shall administer oaths to all witnesses, if so desired by the board, or arrange for such oaths to be administered.

- 9.04 Other Responsibilities and Duties of Chairman. The chairman shall have further duties and responsibilities, as indicated below:
- a. The chairman may designate members of the board to make personal inspections, when necessary for the proper consideration of cases.

- b. The chairman shall assign alternates to serve in the absence or disability of regular board members, or the chairman shall assign this duty to the secretary of the board.
  - c. The chairman shall appoint such committees as may be found necessary.
- 9.05 Delegation to Vice-Chairman. The chairman may delegate specific duties generally to the vice-chairman or may authorize the vice-chairman to perform specific duties, during the chairman's absence or in case of his other disability, so that necessary board functions are performed in a timely manner. The vice-chairman shall perform all duties so delegated. In case of absence or incapacity of the chairman, and on approval by a majority of the board, the vice-chairman shall perform any or all duties of the chairman, whether or not so delegated.
- 9.06 Appointment of Secretary; Duties. The Director of Planning or his designee shall serve as secretary to the Zoning Board of Adjustment. The secretary shall in general attend to all correspondence of the board, send out or cause to be published all notices required; attend all meetings of the board and all hearings (except when excused by the chairman and with temporary services arranged); prepare staff reports and make recommendations on individual cases to be heard by the board (including reasons for recommending approval of a variance, based on criteria contained in subsection 11.01 of these by-laws); scrutinize all matters to assure compliance with the Zoning Chapter and these rules; compile all required records; maintain the necessary scheduled, files and indexes; and generally perform or supervise all clerical work of the board.

#### **Article 10. Conduct of Board Members**

- 10.01 Conflict of Interest. No member of the board shall participate in any case in which he or she has financial or personal interest in the property concerned, or will be directly affected by the decision, or has any other conflict of interest as defined by applicable law. The determination of a substantial interest in a business entity, as well as rules affecting participation of board members in cases affected thereby, are described in ~~Chapter 171~~ in the State of Texas Local Government Code.
- 10.02 Influence Other Than at Public Hearing. A member may disqualify himself from voting whenever any applicant, or his agent, has sought to influence the vote of the member on his appeal or application, other than in the public hearing.
- 10.03 Expressions of Bias, Prior to Hearing. Board members may seek information from other members, the Secretary, counsel to the board or staff serving the board, as well as from applicants or appellants, prior to public hearing, but no member shall express any bias, prejudice or individual opinion on proper judgment of the case prior to its hearing.
- 10.04 No member of the board shall represent applicants or appellants on matters for which the board is to make determinations. This provision does not limit the right of a board member

to represent himself or herself, on his or her own application or appeal to the Zoning Board of Adjustment.

- 10.05 Members Not to Vote Unless Present at Hearing. No board member shall vote on any matter deciding an application or appeal, except after attending the public hearing on the application or appeal.

**Article 11. Criteria, Required Findings and Other Considerations for Approval of Variances From Zoning Regulations**

11.01 Criteria. In exercising its power to grant a variance in accordance with zoning regulations, the Zoning Board of Adjustment, in making its findings, shall show in its minute record that one or more of the following circumstances exist:

- a. Special Conditions Resulting in Unnecessary Hardship. A variance may be granted if there are special circumstances existing on the property (for which the application is made) related to size, shape, area, topography, surrounding conditions or location that do not apply generally to other property in the same zoning district, and that said circumstances or conditions are such that the strict application of the zoning regulations will deprive the application of reasonable use of such land or building.
- b. Special Reasons of Public Interest or Concern. A variance may be granted if such variance will further an identifiable public interest of concern, such as:
  - 1) saving trees,
  - 2) promoting maintenance and reuse of older urban or historic buildings,
  - 3) helping to eliminate a nonconforming use at another location.
- c. Equity. A variance may be granted to permit modifications of height or yard regulations as may be necessary to secure equity in the development of a parcel of land where it has been demonstrated that, due to the existence of nonconforming structures, a substantial proportion of the other properties in the same area and zoning district are legally enjoying the conditions which the applicant is requesting.
- d. Minor encroachment. A variance may be granted to:
  - 1) permit the placement of air conditioners and other similar equipment and machinery within minimum side yard areas contrary to the setback regulations of the zoning regulations, where circumstances would render such placement unobjectionable;
  - 2) permit architectural or other projections of a minor extent beyond a height limit or into required front, side or rear yard areas, provided the board determines that the variance will not be contrary to the intent of the zoning

code.

- 3) **Literal Enforcement.** A variance may be granted if it is found that the literal enforcement and strict application of this provision of the zoning ordinance will result in extraordinary circumstances or conditions inconsistent with the general provisions and intent of this ordinance and that, in granting such variance, the spirit of the ordinance will be preserved and substantial justice done. The board shall state in the minute record the nature of the circumstance or condition which justifies the variance.

11.02 **Considerations.** In exercising its authority, the board shall be mindful that a variance shall not be granted where:

- a. the effect of this variance on the specific property will adversely affect the land use pattern as outlined by any City land use plan or policy; or
- b. the variance, if granted, will be a material detriment to the public welfare or injury to the use, enjoyment or value of property in the vicinity; or
- c. the variance to be granted is not the minimum variance that will relieve the proven hardship.
- d. the variance will operate to relieve the applicant of conditions or circumstances:
  - 1) which are caused by the illegal subdivision of land after the effective date of subdivision regulations, which subdivision of land caused the property to be unusable for any reasonable development under the existing regulations, or
  - 2) which otherwise self-imposed;
- e. the variance is grounded solely upon the opportunity to make the property more profitable or to reduce expense to the owner; or
- f. the variance will modify any provision of a special permit; or
- g. the variance will not only affect a specific parcel of property, but would be of such general nature as to constitute, in effect, a change in zoning of said parcel or a larger area, or would merit consideration or an amendment to the zoning regulations.

## **Article 12. Miscellaneous**

12.01 The deadline for submission of a complete application for consideration of an appeal, variance or special exception (by the Zoning Board of Adjustment) shall be no less than 21 days before the regular scheduled meeting of the Zoning Board of Adjustment. A complete

application fee, as determined by City Council.

- 12.02 All maps, plats, site plans, photographs or any other exhibits (or copies thereof) shown to the board for presentation purposes shall become the property of the City and par of the file record for that case.
- 12.03 If a majority of regular board members elect to do so, the City staff may routinely assign pending cases to individual board members on a rotating basis. Board members assigned to a case are strongly encouraged to visit the subject site and become especially familiar with details of that pending request, so they may share their special insight with other board members at the hearing on that matter. The board member assigned to any particular case, however, is not under any obligation to introduce a motion to decide the matter.

### **Article 13. Amending or Waiving These By-laws**

- 13.01 Amending By-Laws. These rules may be amended at any regular or special called meeting of the Zoning Board of Adjustment, by a majority of a quorum of board members present, provided that each of the following conditions is met:
- a. Such amendment will not be contrary to any requirement or limitation set by State law or City ordinance.
  - b. Notice of said proposed amendment is furnished to each member, in writing, at least seven (7) days prior to said meeting.
- 13.02 Waiving By-Laws. A rule of procedure may be suspended at any meeting by a majority vote of all board members present, unless such rule is set by State law or City ordinance.