

CITY OF DALLAS BOARD OF ADJUSTMENT WORKING RULES OF PROCEDURE

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CITY OF DALLAS BOARD OF ADJUSTMENT

RULES OF PROCEDURE

Section 1. Powers of the Board.

- (a) The powers of the board of adjustment, referred to as the board conferred upon it in Section 7, Chapter 282, Page 424, 40th Legislature, Acts 1927, and as thereafter amended, being codified in Chapter 211 of the Local Government Code, Chapter 8 of the Dallas City Code, as amended and in Sections 51A-3.102, 51A-4.703, and 51A-4.704 of the Dallas Development Code, as amended, include, but are not limited to, the following:
 - (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any order or ordinance pertaining to zoning.
 - (2) To hear and decide special exceptions to the terms of the zoning ordinance in the manner provided.
 - (3) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the zoning ordinance will result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice done.
 - (4) To regulate and discontinue nonconforming uses and structures.
- (b) In exercising its powers, the board and panels of the board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision, or determination appealed from and may make an order, requirement, decision, or determination as ought to be made, and to that end the board and panels of the board shall have all the powers of the officer from whom an appeal is taken.

Section 2. Composition of the Board.

- (a) The board shall consist of fifteen members and six alternates appointed by the city council for a term of two years. All members shall be removable for cause by the city council upon written charges and after a public hearing.
- (b) The officers of the board shall consist of a chair, two vice-chairs, appointed by the mayor, a board administrator, a board secretary, a board attorney, and any other officers the board may elect or the chair may appoint. The board administrator, ~~[and]~~ board secretary, and board attorney shall have no voting rights.
- (c) The board shall be divided into three panels of five members. A board member may serve only on the panel to which the member is assigned. The chair and vice-chair shall each be the presiding officer of one of the panels.
- (d) The board and panels of the board shall be provided the staff employees necessary to conduct its proceedings, as provided by the budget. The services of an accountant and abstract research company may be retained as needed for the preparation of compliance cases.

Section 3. Quorum.

At the beginning of each regular or special meeting, the presiding officer shall determine whether a quorum exists. A quorum exists if 75 percent of the members (four members for a panel or 12 members for the fully appointed board), either regular or alternate, are present. If a quorum exists, the presiding officer shall announce that a quorum is present. If a quorum does not exist 30 minutes after the time the meeting was called, the presiding officer shall adjourn the meeting.

Section 4. Duties of the Chair.

- (a) ~~[The chair shall appoint a panel vice chair for each of the three panels of the board.~~
- ~~(b)]~~ The chair shall preside over all meetings of the entire board. In the

absence of the chair, the chair shall appoint a vice-chair to preside and fulfill all the duties of the chair.

~~[(c) The chair shall compel the attendance of witnesses when necessary.]~~

(b[~~d~~]) The chair shall approve a rotational schedule for attendance of alternate members at panel meetings.

(c) The chair may consult with the board administrator to review the prepared board and panel agendas.

(d) The chair may call and cancel meetings of the full board or of a panel.

(e) The chair may create ad hoc committees and working groups from time to time to study and make recommendations on specific issues. Ad hoc committees must be made of only members of the board of adjustment and cannot have more than six-members.

Section 5 [4]. Duties of the Presiding Officers.

(a) The chair and vice-chairs shall act as presiding officers of their respective panels. The duties of the presiding officers of a panel are to preside at all meetings of the panel to which they are assigned, to maintain order at all times, to administer oaths, and to rule on all points of procedure, and to dispense the business of the panel in a just and orderly manner. The presiding officer may impose a reasonable time limit for speakers in order to dispense the business of the board or panel in a just and orderly manner.

(b) The presiding officer shall question all witnesses and/or staff, and request other members of the panel to ask any questions which may assist the board and panels of the board in arriving at a just and fair decision.

(c) The presiding officer shall sign the minutes of the panel meetings over which he or she presides and each case decided upon in accordance with the decision of the panel.

(d) In the absence of the presiding officer, ~~[the panel vice-chair shall preside and fulfill all of the duties of the presiding officer. In the absence of the presiding officer and panel vice-chair,]~~ the panel shall elect a temporary

presiding officer ~~[chair]~~. This election does not survive the meeting in which it is had.

- (e) The presiding officer shall compel the attendance of witnesses when necessary.

Section 6 ~~[5]~~. Duties of the Board Administrator.

~~[*—For purposes of this section, reference to the board includes panels of the board.]~~

- (a) The board administrator shall:
- (1) receive all complete applications to the board for processing;
 - (2) receive all evidence submitted for the board's review;
 - (3) provide technical assistance to the board;
 - (4) assist the general public with information, procedures, policies, case status, and site plans;
 - (5) gather needed information from outside sources and confer with all sections and departments of the city for case analysis;
 - (6) provide research on cases;
 - (7) prepare board documents, dockets, notices, and advertisements, and write necessary letters to the property owners;
 - (8) direct, conduct, and supervise all administrative functions of the board operation as may be deemed necessary;
 - (9) coordinate the work of the board in support of the chair and vice-chair in their leadership of the board;
 - (10) serve as liaison between the board and the city plan commission, city manager, and various other officers of the City of Dallas, including, but not limited to, the building official, the director of transportation, the city attorney, and the director of planning;

[and]

- (11) after conferring with the chair, propose and maintain an annual calendar for the board and panel meeting dates, which are subject to initial board approval; [investigate complaints made by citizens by reason of any ruling or decision of the board or of an administrative official]
 - (12) balance the caseload among the panels;
 - (13) prepare the board and panel agendas with consultation by the chair and vice-chairs;
 - (14) initiate a comprehensive review of the request based on the current zoning, conduct a site visit of the subject property and the surrounding 200 feet, and consult relevant city departments;
 - (15) prepare a staff recommendation or technical review for pending cases when appropriate and state all staff members and their roles who participated in making the recommendation or technical review;
 - (16) no later than seven calendar days prior to each board or panel meeting, distribute to each member and make available to the public the complete agenda and case docket materials. The board or panel, by majority vote, can still hear the noticed cases even if the agenda and case docket materials were not disseminated in accordance with this paragraph;
 - (17) review all forms and intake handling procedures for board applications for accuracy, equity, and efficiency;
 - (18) publish all board meeting dates and times, and list all pending cases filed with the board; and
 - (19) conduct an orientation training for new members and alternate members upon appointment.
- (b) The board administrator shall also administer oaths and compel the attendance of witnesses when requested by the chair or other presiding officers to do so.

- (c) For purposes of this section, BOARD means the full board or panels of the board.

Section 7 [6]. Duties of the board Secretary.

- (a) The board secretary shall be generally responsible for the clerical work of the board and panels of the board, under the direction and supervision of the board administrator. The board secretary shall:
- (1) keep the minutes of all meetings and proceedings in a substantially bound book showing the vote and motion of each member upon each question, or if absent, or failing to vote, indicating that fact, and attesting the minutes;
 - (2) compile the required records, log appeals and applications to the board, prepare case folders, type notices and envelopes, prepare route sheets, log favor and opposition letters, prepare certified mail to applicants, type letters and memoranda; and
 - (3) call board and panel members for meetings, maintain index files, number each case, and furnish each member of the board and each member of panel of the board with a copy of each petition, together with the building official's refusal.
 - (4) randomly and independently assign and reassign cases to the panels and balance the workloads of the panels.
 - (5) no later than seven calendar days prior to each board or panel meeting, distribute to each member and make available to the public the complete agenda and case docket materials. The board or panel, by majority vote, can still hear the noticed cases even if the agenda and case docket materials were not disseminated in accordance with this paragraph.
 - (6) publish all board meetings dates and times, and list all pending cases filed with the board.
- (b) For purposes of this section, BOARD means the full board or panels of the board.

Section 8 [7]. Alternate Members.

- (a) In the absence of one or more regular members, alternate members shall attend panel meetings when requested to do so by the board chair, the presiding officer of a board panel, or by the city manager. The presiding officer of a panel may dismiss an alternate member when attendance is not necessary to complete a five-member panel.
- (b) The alternate members are subject to the same attendance and general rules as all other board members.
- (c) Alternate members who are not on the panel scheduled to attend will be called to serve only when one or more regular members are absent from the meeting.

Section 9 [8]. Attendance and General Rules.

- (a) The board shall be governed by the rules of procedure and decorum for city boards and commissions contained in Chapter 8 of the Dallas City Code, as amended, and applicable provisions of the City Charter.
- (b) All members shall comply with the attendance rules set forth in Chapter XXIV, Section 17 of the City of Dallas Charter and Chapter 8 of the Dallas City Code, as amended. No member may be excused from attendance at a board or panel meeting, except for medical reasons certified to by his or her physician or unless excused by the board and the city council. A member shall forfeit his or her office if the member misses more than three regular meetings in succession or misses more than 25 percent of the regular meeting during any 12-month period ~~[, unless excused by the board and the city council]~~.

Section 10 [9]. Requests for Board Action.

- (a) All requests to the board must be made on the prescribed form provided by the director. The facts alleged must be attested to by a notary public.
- (b) The fee as provided by ordinance must accompany each request to

defray the cost of advertising the public hearing.

- (c) The board or panel of the board may waive the filing fee if the board or panel of the board finds that payment of the fee would result in substantial financial hardship to the applicant. The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's or panel's miscellaneous docket for predetermination. If the issue is placed on the miscellaneous docket for predetermination, the applicant may not file the application until the merits of the request for waiver have been determined by the board or panel of the board.
- (d) Evidence submitted for the board's consideration on a request must be submitted to the board administrator or the board secretary. Evidence submitted is part of the public record and will not be returned. The board and panels are quasi-judicial bodies; therefore, no evidence may be submitted to and no contact may be made with individual members regarding a pending request. All communications, oral or written, should be directed to the board administrator. Failure to comply with this rule may result in criminal prosecution for improper influence, which is a Class A misdemeanor under Texas Penal Code Section 36.04.
- (e) Unless expressly authorized by the concurring vote of 75 percent of the members of a panel when an extreme hardship is shown, no request may be heard at a regular panel meeting until the expiration of 21 days after it is filed with the building official.
- (f) The director shall schedule cases within a reasonable time from the receipt of a complete application.
- (g) An item may be placed on the [a] board[~~'s or panel's~~] agenda by the director, the chair, or a written request of at least one-third of the members of the board. An item may be placed on a panel agenda by the director, the chair, the vice-chair of that panel, or a written request of at least two members of that panel [~~or a member of that board or panel~~].
- (h) The director may authorize the withdrawal of all applications except those to establish a compliance date, which must be authorized by the panel assigned the case. No request for withdrawal of an application may be considered by the director or a panel unless it is in writing. A

request to the director for withdrawal must be received before 5:00 p.m. of the day that will leave five full working days (excluding Saturdays, Sundays, and official city holidays) before the date of the hearing. A request for withdrawal must be received in sufficient time to notify all interested parties before the hearing date. If the director or the panel finds in the consideration of such a request that there is an objection to the withdrawal and that allowing the withdrawal over the objection will unduly prejudice the objector, the director or panel shall deny the request. If the director denies a request for withdrawal, the applicant may appeal the withdrawal request to the panel assigned the case provided the appeal satisfies all of the requirements of this subsection for an application for withdrawal.

- (i) The director may authorize the amendment of all applications, except those to establish a compliance date and appeals from the decision of an administrative official, which must be authorized by the panel to which the case is assigned. A request to the director for an amendment must be received before 5:00 p.m. of the day that will leave five full working days (excluding Saturdays, Sundays, and official city holidays) before the date of the hearing. If the director or panel finds in the consideration of such a request that there is an objection to the amendment, and that allowing the amendment over the objection will unduly prejudice the objector, the director or panel shall deny the request. If the director denies a request for amendment, the applicant may appeal to the panel assigned the case. If an amendment is authorized which requires newspaper advertisement and/or written notice to surrounding property owners, the amendment constitutes a new application and the requesting party must pay an additional filing fee to defray the cost of re-advertising.
- (j) A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property. The person requesting the time extension shall have the burden of establishing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the panel extend the time period beyond 18 months from the date of its favorable action.

- (k) Only one panel may hear, handle, or render a decision in a particular case. If any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action. If a case is dismissed or withdrawn and subsequently re-filed, it must be returned to the panel to which it was originally assigned. If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.

~~[(l) If the time for reconsideration of a case has expired, the board or panel of the board may not change or modify its decision unless a new application is filed or the board or panel of the board authorizes a public hearing to review the case.]~~

Section 11 [0]. Public Testimony and Public Hearings.

- (a) All meetings of the board and panels of the board are open to the public and must be held at a time and place determined by the board.
- (b) The chair shall have the authority to call special meetings of the board. The presiding officer of a panel acts as the panel's chair pursuant to Section 8-3 of the Dallas City Code, and shall have the authority to call special meetings of that panel. The officer calling a special meeting shall designate the time and the place of the meeting subject to availability. Special meetings must be called by the chair at the request of at least one-third of the board.
- (c) The board secretary shall notify all affected members of the date, time, and place of either a regular or special meeting.
- (d) The applicant has the burden of proof to establish the necessary facts to warrant favorable action of the board ~~[No regular or special meeting may be held unless 75 percent of the panel members, either regular or alternate, are in attendance].~~
- (e) Any interested party may appear in person or by agent or attorney at the public hearing.
- (f) Members of the public may speak at regular and special meetings of the board regarding any item on the board's posted agenda before or during

the board's consideration of the item (e.g. minutes, appeals, compliance cases). Each speaker will have a maximum of three minutes to speak unless the time is shortened or extended by the presiding officer ~~[a majority vote of the board]~~. Any member of the public requiring the use of a translator to relay public comments shall be afforded twice the amount of time as a member of the public who does not require a translator.

- (g) After a case is called, the applicant shall have up to five minutes to state his or her case. ~~[, a]~~ Anyone in favor shall be heard next for up to five minutes, then anyone in opposition shall be heard for up to five minutes. ~~[, and t]~~ The applicant shall have up to five minutes [the opportunity] to make a reply. Before the applicant begins, the presiding officer can limit the applicant's time, equally limit the time of the speakers in favor or opposition, or both.
- (h) All applicants, members of the public, or witnesses who wish to address the board during a public hearing, shall be sworn in.
- (i) The director shall provide sufficient staff at hearings to ensure that the board can make a fair determination.
- (j [i]) If a case is called for hearing in due order on the docket and the applicant or anyone [i] on his or her behalf does not appear, the panel may hold ~~[continue]~~ the case over to the following hearing at which time it will be called again. The panel may also approve a case or deny a case for lack of appearance at the first call at its discretion. If no one appears the second time, the case must be denied with prejudice.
- (k [j]) If, after a public hearing on a request, the presiding officer duly calls for, but does not receive a motion, the request is deemed denied with prejudice.
- (l [k]) A public hearing must be conducted for compliance proceedings on a nonconforming use. Prior to the hearing, the presiding officer may direct that a subpoena duces tecum and interrogatories be served on the owner(s) and/or operators of the use requesting that certain information and documents be produced to the board administrator within a reasonable time. The owner(s) and/or operators may supply the board administrator with any additional information or documents that are necessary for the panel to make its decision. At the hearing, the panel

shall review the information and documents and set a date by which the nonconforming use must come into compliance with the current zoning regulations.

(m) Notwithstanding subsection (f), the following rules apply to appeals of decision of administrative officials.

- (1) After the case is called, the appellant shall have up to 20 minutes to present his or her case, during which time the appellant may give an opening statement, call witnesses, and offer evidence. If the appellant calls a witness, the administrative official may cross-examine that witness for up to five minutes and that time shall not count towards either party's time limit. The appellant can redirect his or her witness for up to five minutes, which shall not count towards the appellant's initial 20-minute time period.
- (2) After the appellant's 20 minutes has expired, the administrative official shall have up to 20 minutes to present his or her case, during which time the administrative official may give an opening statement, call witnesses, and offer evidence. If the administrative official calls a witness, the appellant may cross-examine that witness for up to five minutes and that time shall not count towards either party's time limit. The administrative official can redirect his or her witness for up to five minutes, which shall not count towards the appellant's initial 20-minute time period.
- (3) After the administrative official's 20 minutes have expired, the appellant shall have up to three minutes for a rebuttal and three minutes for a closing statement. The administrative official shall also have up to three minutes for a closing statement.
- (4) The panel may ask questions at any time. The panel members' questions shall not count towards either party's time limitation.

(n) Notwithstanding subsection (f), the following rules apply to compliance cases.

- (1) After the case is called, the applicant shall have up to 20 minutes to present his or her case, during which time the applicant may give an opening statement, call witnesses, and offer evidence. If the applicant calls a witness, the property owner may cross-

examine that witness for up to five minutes and that time shall not count towards either party's time limit. The applicant may redirect his or her witness for up to five minutes, which shall not count towards the applicant's initial 20-minute time period.

- (2) After the applicant's 20 minutes has expired, the property owner shall have up to 20 minutes to present his or her case, during which time the property owner may give an opening statement, call witnesses, and offer evidence. If the property owner calls a witness, the applicant may cross-examine that witness for up to five minutes and that time shall not count towards either party's time limit. The property owner can redirect his or her witness for up to five minutes, which shall not count towards the property owner's initial 20-minute time period.
- (3) After the property owner's 20 minutes has expired, the applicant shall have up to five minutes for a rebuttal and a closing statement. The property owner shall also have up to five minutes for a closing statement.
- (4) The panel may ask questions at any time. The panel member questions shall not count towards either party's time limitation.

(o [m])The board administrator may place cases which are recommended for approval without opposition on an uncontested docket. When the board administrator calls the uncontested docket, he or she shall state the case number, the applicant, the location, the nature of the case and the staff recommendation, and shall ask if there is anyone in favor or opposition. A case on the uncontested docket must be considered individually as a regular docket item if there is any opposition or a panel member so requests. Any cases remaining on the uncontested docket shall be approved as a group without the need for testimony from the applicants.

(p [n])Documentary evidence.

- (1) All typewritten documentary evidence including reduced-size copies of conceptual plans, development plans, landscape plans, and site plans must conform to the standard 8.5 x 11-inch letter-

sized pages on a size 12 font or larger. Each page must be serially numbered and double-spaced.

- (2) All printed and typewritten documentary evidence in excess of five pages tendered by a party shall not be considered by the board unless such documentary evidence is submitted to the board administrator no later than 10 days prior to the scheduled hearing date at which the matter is to be considered. Upon oral request made by the party at the scheduled hearing, a panel of the board may, for good cause, suspend the operation of this rule and consider the excluded evidence or postpone the hearing on the application to a date certain to allow the panel sufficient time to consider the tendered evidence prior to the next scheduled hearing date.
- (3) For purposes of this subsection, DOCUMENTARY EVIDENCE means anything printed, or written on paper, or digital document and relied upon to record or prove something. ~~[, but]~~ This term does not include signed petitions, or PowerPoint or slide shows offered during a presentation ~~[shall not be considered documentary evidence]~~.
- (4) For purposes of this subsection, PARTY means the applicant or any person or entity that appears in favor of or against the request.

Section 12 [4]. Executive Sessions.

- (a) The board or a panel may remove itself from an open meeting by moving to go into an executive session. Only matters authorized under the Texas Open Meetings Act to be discussed in executive session may be addressed in the executive session. All communication in an executive session is privileged information. The privilege can only be waived by a member by formal waiver. Members are cautioned that discussing the privileged communication with a member of the public, the media, or any other person not privy to the executive session may damage the privilege. The board or a panel shall not hold an executive session except when discussing complaints about or evaluations of individual staff members, or seeking the advice of its attorney on the following matters:

- (1) Pending or contemplated litigation.
 - (2) Settlement offers.
 - (3) Risk or liability of the board, a panel or individual members thereof for taking an action.
 - (4) Any matter where the duty of the board's counsel to his client, pursuant to the Code of Professional Responsibility of the State Bar of Texas, conflicts with the Open Meetings Law.
- (b) A motion to go into an executive session must be seconded and requires a majority vote. If the motion passes, the board or panel shall follow the following procedure:
- (1) The presiding officer shall announce that the board or panel is going into an executive session, stating the category under the Texas Open Meetings Act that permits the executive session.
 - (2) The presiding officer shall announce the time.
 - (3) Members shall move quickly to the location of the executive session with no discussion among themselves or with members of the public or media.
 - (4) The executive session must be tape recorded.
 - (5) At the end of the executive session, members shall return quickly to the meeting room with no discussion among themselves or with members of the public or media.
 - (6) The presiding officer shall announce the time when the board or panel resumes the open meeting.

Section 13 [2]. Decisions of a Panel.

- (a) No action of a panel sets a precedent. Each case must be decided upon its own merits and upon the circumstances of the case.
- (b) The concurring vote of 75 percent of the members of a panel (at least

four members) is necessary to reverse any decision of an administrative official, or to decide in favor of an applicant on any matter which the board is required to pass under a zoning ordinance. If such an application does not receive the concurring vote of 75 percent of the members of a panel, the case is construed as denied with prejudice.

(c) Reconsideration. The following rules apply for a motion to reconsider.

(1) ~~A [decision of a panel may be reconsidered only by the same makeup of the panel that made the decision. The]~~ motion to reconsider may be made at the same meeting ~~only on the same day]~~ the vote was taken, and only by the same makeup of the panel that made the decision ~~[a member who voted with the prevailing side]~~.

(2) A motion to reconsider may be made and second by any member of the panel regardless of their initial vote on the time and requires a simple majority vote. If the time for reconsideration of a case has expired, the panel may not change or modify its decision unless a new application is filed or the case is referred back to the panel.

(3) An item may not be twice reconsidered, except by unanimous consent.

(d) Once a decision of a panel is appealed to district court, it may not be reconsidered or rescinded, unless the case is remanded by the district court.

(e) The decisions and official records of the board and panels are public records.

Section 14 [3]. Two-Year Limitation.

(a) Except as provided in Subsections (b) and (c), after a final decision is reached by a panel, no further applications may be considered on the matter decided for that property for two years from the date of the final decision.

(b) If a panel renders a final decision of denial without prejudice, the two-year limitation is waived.

- (c) A property owner may apply for a waiver of the two-year limitation in the following manner:
 - (1) The applicant shall submit his request in writing to the board administrator. The board administrator shall inform the applicant of the date on which his request shall be considered and shall advise the applicant of his right to appear before the panel to which the matter has been assigned.
 - (2) A panel may waive the time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote is required to grant the request. If a rehearing is granted, the applicant shall follow the appeal procedure.

Section 15 [4]. Amendments to Rules of Procedure.

These rules may be amended by a simple majority vote of the members present at a meeting of the entire board, or by a majority vote of the members of all three panels at separate meetings [~~of all three panels~~]. Amendments approved by the entire board or by the panels sitting separately shall not become effective once approved by the city council [~~until they are approved by the third panel~~].