

NORTH RICHLAND HILLS ZONING BOARD OF ADJUSTMENT RULES OF PROCEDURE

I. ORGANIZATION AND OFFICERS

101. Organization

The North Richland Hills Zoning Board of Adjustment shall consist of regular members and alternate members as created by ordinance, and shall be organized under the laws of the State of Texas and the City Charter and ordinances of the City of North Richland Hills.

102. Officers

- A. The Zoning Board of Adjustment members shall elect one member of the Board as Chairman and one member as Vice-Chairman annually and at such other times as these offices may become vacant.
- B. In the absence of the Chairman and the Vice-Chairman, the Board shall elect an Acting Chairman. The Vice-Chairman and Acting Chairman shall act in the Chairman's absence and shall have the same authority as the Chairman. The City Secretary, or a representative designated by the City Secretary, shall serve the Board as Executive Secretary.

103. Duties

- A. The Chairman shall preside at all meetings, shall decide all points of order or procedure, and, as necessary, shall swear in witnesses or compel their attendance.
- B. The Executive Secretary shall be custodian of the minutes and other official records and shall attend to the correspondence of the Board.

104. Orientation

The Executive Secretary shall prepare and present an orientation session to all newly appointed members of the Board within thirty (30) days of their appointment. The orientation session should include an explanation of the following subjects:

- 1. Comprehensive zoning ordinance;
- 2. Board of Adjustment rules of procedure;
- 3. Legal criteria for evaluating appeals;

4. Potential liability of board of adjustment members;
5. Attendance requirements for board of adjustment members; and
6. The role of the Board of Adjustment in the zoning and development process

105. Rules of Order

Roberts Rules of Order, latest revision, shall be the Board's final authority on all questions of procedure and parliamentary law not covered by applicable law, ordinance, provision of the City Charter, or these Rules of Procedure.

106. Substantial Compliance Sufficient

Where the Board substantially complies with these rules, no minor or technical failure to comply shall operate to void or render voidable any action of the Board, or otherwise to subject the Board's action to challenge.

II. MEETINGS

201. Quorum

A quorum shall consist of four members.

202. Voting and Participation of Alternates

If any regular member is absent from the meeting, or if any regular member is disqualified or recuses themselves, then the most senior alternate then present shall take the place of such regular member and participate and vote in such regular member's stead. Otherwise, alternate members may participate but shall not vote in any matter before the Board.

202. Agenda

An agenda shall be prepared by the Executive Secretary for each meeting of the Board. The agenda shall include appeals and other matters scheduled for consideration by the Board. There shall be attached to the agenda a list of matters pending further action by the Board.

203. Meetings

Meetings shall be held based on such regular schedule as is adopted by the Board, and on the call of the Chairman or on request of two members. The Executive

Secretary shall provide each member and alternate with notice of each such meeting at least 72 hours before the meeting, or as may be scheduled by a majority vote of the Board at any previous meeting. The time and place of the meeting shall be determined by the Board. All meetings shall be held in full compliance with the Texas Open Meetings Act and other state law, the Charter and ordinances of the City, and these Rules of Procedure.

III. OFFICIAL RECORDS

301. Definition

The official records shall include these Rules of Procedure and the minutes of the Board, together with all findings, decisions and other official actions. Stenographic notes of the Executive Secretary and taped recordings of the proceedings and discussions shall not constitute the official record of the Board.

302. Recording of Vote

The Executive Secretary shall keep minutes of the Board's proceedings, which shall show the vote of each member on each decision of the Board, or if absent or failing to vote, shall indicate that fact.

303. Files - Retention

All appeals and other matters coming before the Board shall be filed in the Department of Planning & Development in accordance with that department's general file system. Original papers of all appeals shall be retained for not less than the period required by state law.

304. Public Record

The official records, appeals accepted for filing and other matters presented to the Board in regular or special meetings shall be on file in the Department of Planning & Development and shall be open to public inspection during customary working hours.

IV. APPLICATION PROCEDURES

401. Application Required

Every appeal shall be filed on application forms provided by the City, shall be accompanied by the prescribed fee, and shall be complete in all respects before being accepted for filing. The application shall bear the signature of all owners of the property under appeal or shall be accompanied by a letter from the owners

authorizing taking of the appeal. All applications shall be filed with the Chief Planner within fifteen (15) days after the decision has been rendered by the Building Official. The Board may refuse to act on any incomplete application or a communication purporting to be an application which is not made in the form prescribed.

402. Filing Deadline

Every appeal shall be filed with the Executive Secretary of the Board not later than 30 days prior to the next regular meeting date of the Board. When the filing deadline falls on a City holiday, the following workday shall be observed as the filing deadline.

403. Notice

A. Notice of any appeal affecting a specific property shall be given as required by applicable law or ordinance, or, if no method is prescribed therein, by means of written notice deposited in the United States Mail, postage prepaid, not less than ten (10) days prior to the date of the hearing. Such notice shall be sent to the applicant or his agent, at a minimum, to the owners of all properties lying within 200 feet of the property in question as said ownership appears on the last approved City Tax Roll. The notice shall identify the applicant, the location of the property in question, the nature of the request, and the applicable Zoning Ordinance requirements.

B. Public notice of any appeal seeking an interpretation of the Zoning Ordinance, which interpretation would apply throughout the City, shall be given by means of a legal advertisement appearing in the official newspaper of the City not less than ten (10) days prior to the date of the hearing. Written notice shall also be given to the applicant or his agent as provided in paragraph A above. The notices shall identify the applicant, the nature of the question involved, and the affected provision of the Zoning Ordinance.

404. Submission of Evidence

Evidence supporting the granting or denial of an appeal shall be submitted only through the Executive Secretary or the Board at a public meeting.

405. Withdrawal of Appeal

Any appeal may be withdrawn upon written notice to the Executive Secretary; but no appeal shall be withdrawn after giving of notice and prior to Board action

thereon without formal consent of the Board.

V. POWERS AND DUTIES

501. Basis for Jurisdiction

The Board shall have the authority to act upon all matters which it is required or authorized to consider by ordinance or State law. The powers of the Board shall include consideration of the following matters:

- a) Interpretation and appeals of decisions of the Chief Planner or Building Official;
- b) Special exceptions;
- c) Variances;
- d) Authorization of nonconforming uses; and
- e) Other matters as provided by applicable law or ordinance.

502. Interpretation: Basis for Filing

Whenever it is alleged that there is an error by the Chief Planner or Building Official in any determination or application of the requirements of the Zoning Ordinance, an appeal for interpretation of the regulations or map designations may be filed with the Board.

503. Interpretation: Papers Required

An appeal shall include:

- 1) A Statement by the applicant describing the way it is alleged that the Zoning Ordinance should be interpreted, together with diagrams and charts illustrating the erroneous and the proper application of the map or text provisions of the ordinance;
- 2) A statement by the Chief Planner and/or Building Official giving the reasons for his interpretation of the Zoning Ordinance; and
- 3) Any other information required by the City or by applicable law or ordinance.

504. Interpretation: Basis for Action

A. Before action on an appeal for interpretation, the Board shall consider:

- 1) The facts and statements filed in the application;
- 2) The testimony presented at the public hearing;
- 3) The staff's technical report on the appeal and any opinion of the City Attorney;
- 4) The Board's independent investigation of the language of the Zoning Ordinance and of related ordinances bearing thereon; and
- 5) Any applicable laws and ordinances.

B. In reaching its decision the Board shall establish firm guidelines for future administrative actions on like matters.

505. Special Exception: Basis for Filing

Whenever the Zoning Ordinance requires specific approval by the Board for the development or use of property, an application for a special exception must first be approved by the Board before the City shall issue a permit for the proposed construction or use.

506. Special Exception: Papers Required

An application for a special exception shall include:

- 1) A site plan drawn to scale, showing all lot dimensions, and the location and dimensions of all existing and proposed improvements on the lot;
- 2) A statement by the applicant describing the way in which all conditions prescribed by the Zoning Ordinance and by these Rules of Procedure have been or will be met; and
- 3) All other information required by the Zoning Ordinance or other applicable law or ordinance.

507. Special Exception: Basis for Action

- A. Before action on the application, the Board shall consider:
- 1) The facts and statements filed in the application;
 - 2) The testimony presented at the public hearing;
 - 3) The staff's technical report on the application and any opinion of the City Attorney;
 - 4) The Board's independent investigation of the language of the Zoning Ordinance and of related ordinances bearing thereon; and
 - 5) Any applicable laws and ordinances.
- B. The Board shall not grant an application for special exception if the Board determines that the requested special exception is not authorized by applicable law and ordinance, that the application is not for a use permitted under the Ordinance; that the location of the proposed activities and improvements are not clearly defined on the site plan filed by the applicant; or that the special exception will not be wholly compatible with adjacent legal uses and permitted development of adjacent properties.
- C. The Board may limit the term of any approved special exception use to any period of time it deems appropriate under the circumstances. In addition, the Board may place other reasonable conditions on the special exception as it deems appropriate.

508. Variance

The Board may authorize upon appeal in specific cases variances from the terms of the Zoning Ordinance.

509. Variance: Papers Required

An application for a variance shall include:

- 1) A site plan, drawn to scale, showing all lot dimensions and the location and dimensions of all existing and proposed lot improvements; and
- 2) A statement of facts and reasons why the Zoning Ordinance regulations should not be applied to the property in question and how the standards

governing the Board's actions would be satisfied;

- 3) A statement by the Zoning Administrator citing the reasons for refusing to issue a permit under the plans submitted.

510. Variance: Special Information Required

- A. When a request for a variance is based upon hardship resulting from sharp changes in topography or unusual terrain features, the site plan shall include topographic information related to known base points or surveys, and profiles of the particular problem involved, including relationship to topographic features of adjoining properties.
- B. When a request for a variance from side or rear yard setbacks is submitted, the site plan shall include the setbacks on adjacent properties from the common lot line and such other information as may be relevant to the appeal.
- C. When a request for a variance from front yard setbacks, or for side yard setbacks on a side street is submitted, the applicant shall furnish a site plan showing the setback of all buildings on the same side of the street within a distance of 200 feet of the property and any projections into the yard space.

511. Variance: Basis for Action

- A. Before acting on an appeal for a variance, the Board shall consider:
 - 1) The facts and statements filed in the application;
 - 2) The testimony presented at the public hearing;
 - 3) The staff's technical report on the application and any opinion of the City Attorney;
 - 4) The Board's independent investigation of the language of the Zoning Ordinance and of related ordinances bearing thereon; and
 - 5) Any applicable laws and ordinances.
- B. The Board shall not grant a variance if it finds that a literal enforcement of the regulations will not create an unreasonable hardship or practical difficulty in the development of the affected property; that the situation

causing the unreasonable hardship or practical difficulty is not unique to the affected property or is not self-imposed; that the relief sought will injure the permitted use of an adjacent conforming property; or that granting of the variance will not be in harmony with the spirit and purposes of the Zoning Ordinance.

- C. The Board may limit the term of any variance to any period of time it deems appropriate under the circumstances. In addition, the Board may place other reasonable conditions or limitations on the variance as it deems appropriate. Any variance granted under the above powers of the Board shall terminate automatically when either of the following are met:
 - 1) When the time period for the use specified in the Board's order has expired; or
 - 2) When the use ceases to be in full compliance with any condition imposed by the Board.

VI. HEARINGS AND DECISIONS

601. Public Hearings

Hearings on all matters on which a decision of the Board is required by law shall be open to the public. The applicant may appear on his own behalf or may be represented by counsel or agent.

602. Order of Business

The Chairman shall call the Board to order, and the Executive Secretary shall record the members present and absent. The Board shall publicly advise those present of the procedures to be followed in the hearing and disposition of appeals. The Chairman shall call each appeal in the order filed and shall announce the name of the applicant, the location of the property involved, and the nature of the request, provided that the Board may reorder any agenda item for the convenience of the Board, the applicant, or the public, as determined by the Board. The Chairman shall publicly advise the Board of any communications received. Supporting evidence for and against each case shall be presented to the Board.

603. Procedure for Hearing

- A. The Chairman shall first call upon the applicant to present the applicant's case and all evidence supporting the application. The applicant must be fully prepared to present the applicant's case at the public hearing.

- B. The Chairman shall then inquire if there are others affected who support the appeal.
- C. The Chairman shall next call on those opposed to the granting of the appeal to present their arguments.
- D. The applicant shall then have the right of rebuttal to arguments presented by the opposition. When the Chairman is satisfied that discussions are complete, the Chairman shall order the hearing closed.
- E. Each side shall proceed without interruption by the other, and all arguments and pleadings shall be addressed to the Board. No arguments between individuals will be permitted.
- F. The Board may deny or continue any appeal for which the applicant or the applicant's representative fails to appear unless the applicant has requested that the Board act without the applicant being present at the hearing; provided, however, the Board shall hear those persons appearing in response to the notice of hearing.

604. Board Questions

The Chairman may at any time direct questions to the applicant or any person speaking in order to bring out all relevant facts, circumstances and conditions affecting the appeal and shall call for questions from other members of the Board and from the staff before closing the hearing on each appeal. During the voting session, no further testimony shall be permitted, however, the Board may direct questions to the applicant, staff or any person(s) in order to review or clarify any testimony or evidence presented during the hearing.

605. Decision

The Board shall vote on each case after it is presented and before the public hearing on the next case.

606. Vote Required

The concurring vote of four members of the Board is necessary to:

- A. Reverse an order, requirement, decision or determination of the Chief Planner or Building Official;

- B. Grant a special exception or decide in favor of an applicant on a matter on which the Board is required to pass under the Zoning Ordinance; or
- C. Authorize a variance from the terms of the Zoning Ordinance.

For any other Board action, a majority vote of the members present is required.

607. Disposition of Appeals

The Board may grant, modify or deny any appeal. The Board may also defer action on any appeal whenever it concludes that additional evidence is needed or that alternate solutions need further study. An appeal may be dismissed when the Board finds that the appeal has been improperly filed or upon notification by the Building Official that permits have been issued for a conforming use or development of the property.

608. Final Decisions

All decisions shall be filed by the Executive Secretary in the office of the Board on the date the decision is made or the day after. A record of the decision shall be mailed to the applicant or his agent within 48 hours of the date of the decision.

609. Disqualification

- A. A member of the Board shall recuse or disqualify himself/herself from voting whenever required by state statute or city ordinance. In addition, if the member has a substantial interest in the case as defined in Chapter 171 of the Texas Local Government Code, such member shall file the appropriate affidavit with the City Secretary prior to presentation of the case and the vote or decision on the matter. In the event a member does not discover any circumstances requiring such recusal or disqualification prior to the presentation of the case, such member shall announce such recusal or disqualification as soon as it is discovered.
- B. A member may disqualify himself/herself from voting whenever any applicant, or the applicant's agent, has sought to influence the vote of the member on the applicant's appeal, other than in the public hearing.
- C. A member who disqualifies himself/herself or who abstains from voting on any case shall announce such recusal or disqualification for the public record, prior to the presentation of the case, or as soon thereafter after the basis for such recusal or disqualification is discovered, and shall not take

part in any further deliberation or voting on the case.

610. Review of Action

The Board shall automatically review and take final action on any case which has been on its docket for two regular meetings.

VII. RULES AND AMENDMENTS

701. Amendment Procedure

Amendments to these Rules of Procedure may be made by the Board at any meeting, upon the affirmative vote of four members, provided any such amendment is proposed at a preceding meeting and spread on the minutes of such meeting. By unanimous consent of the Board membership, amendments may be adopted at the meeting at which introduced but shall not become effective until the next regular meeting.

702. Filing Copy of Rules of Procedure

A copy of these Rules of Procedure and of any amendments thereto will be placed of record in the office of the City Secretary within ten (10) days following their date of adoption.

703. Repealing Clause

All previously adopted rules and regulations of the Board shall be and the same are hereby expressly repealed.

Adopted by vote of the North Richland Hills Zoning Board of Adjustment on the 26th day of April, 2007.

Chairman

ATTESTED:

Executive Secretary

Approved:

City Attorney

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Filed in the Office of the City Secretary, City of North Richland Hills, Texas, this the _____
day of _____, 2007.

City Secretary