

SECTION 21.1: BOARD OF ADJUSTMENT-APPEALS

21.1.A Creation

A Board of Adjustment is hereby established as provided in Chapter 211 of the Local Government Code.

21.1.B Appeals

- (1) Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the enforcing officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- (2) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceeding shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown.
- (3) No appeal shall be taken to the Board until and unless the Enforcing Officer has first refused a permit for plans submitted or has rendered an interpretation of the Zoning Ordinance.
- (4) Every appeal shall be filled 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 the owner of the property under appeal or shall be accompanied by a letter from the owner acknowledging taking of the appeal. An incomplete application or a communication purporting to be an application and not made in the form prescribed shall be regarded only as a notice of intent to appeal, and shall not be considered or acted upon by the Board.
- (5) Every appeal shall be prepared by the applicant and shall be considered by the Board according to the guidelines contained in this ordinance for the type of appeal under consideration. Where two or more different types of appeals are included in the same application, each set of guidelines shall apply to the consideration of the appeals.

Stephenville-Zoning Ordinance

- (6) An appeal shall be filed with the Board within ten days after the date of decision of the Enforcing Officer. Every appeal shall be filed with the Executive Secretary of the Board not later than 15 days prior to the regular meeting date of the board. Appeals filed after the deadline shall be scheduled for the next regular meeting. When the filing deadline falls on a City holiday the following workday shall be observed as the filing deadline.

21.1.C Notices

- (1) Public Notice of any appeal affecting a specific property shall be given as prescribed in the Zoning Ordinance by means of a written notice deposited in the United States Mail, postage prepaid, not less than ten days prior to the date of hearing. The notice shall identify the applicant, the location of the property in question, the nature of the request, and the applicable Zoning Ordinance requirements.
- (2) Public Notice of any appeal seeking an interpretation of Zoning Ordinance regulations which 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 days prior to the date of hearing. Written notice shall also be given to the applicant and his agent as provided in Paragraph A above. The notices shall identify the applicant, the nature of the question involved, and the affected provisions of the Zoning Ordinance.
- (3) Notice of any appeal seeking a special use or variance affecting a specific property shall be given to all persons within 200 feet of the property in question by means of a written notice deposited in the United States Mail, postage prepaid, not less than ten days prior to the date of the hearing.

21.1.D Withdrawal of Appeal

Any appeal may be withdrawn upon written notice to the Executive Secretary; but no appeal shall be withdrawn after giving of public notice and prior to Board action thereon without formal consent of the Board.

21.1.E Appeal After Board Denial

No appeal that has been denied shall be further considered in a new appeal resulting from the filing of new plans and the obtaining of a new decision from the Enforcing Officer, unless the new plans materially change the nature of the case.

Section 21.1: Board of Adjustment-Appeals

21.1.F Expiration of Granted Appeal

Approval of any appeal shall expire 90 days after the Board's decision unless authorized construction or occupancy permits have been obtained or unless a greater time is requested in the application and is authorized by the Board. Any approval may be granted one extension of an additional 90 days on written request filed with the Board before expiration of the original approval. The time limit for every granted appeal shall commence on the first day of the month succeeding the month in which the Board renders its decision.

21.1.G Interpretation

The Board of Adjustment shall have the following powers:

- (1) For interpretation of the meaning or intent of the zoning Ordinance. 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 this Ordinance.
 - (a) *Papers required.* An appeal shall include:
 - (1) A statement by the applicant describing the way it is alleged the Regulation should be interpreted, together with diagrams and charts illustrating the erroneous and the proper application of the may or text provisions.
 - (2) A statement by the Enforcing Officer giving his or her reasons for his or her interpretation of the Zoning Regulations.
 - (b) *Basis for action:*
 - (1) Before acting on an appeal for interpretation the Board shall consider:
 - a. The facts and statements filed in the application
 - b. The testimony presented at the public hearing,
 - c. The city staff's technical report on the appeal, and
 - d. The Board's independent investigation of the language of the Ordinance and of related ordinance bearing thereon.

Stephenville-Zoning Ordinance

- (2) The Board shall make such interpretation as should be made provided the applicant has demonstrated to the satisfaction of the Board that one or more of the following conditions exist and that the decision of the Board would be in the interest of the community and would carry out the spirit and intent of the Zoning Regulations:
 - a. That there is reasonable doubt of difference of interpretation as to the specific intent of the regulations or map;
 - b. That an appeal of use provisions would clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question; and
 - c. That the resulting interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated.

21.1.H Special Exceptions

(1) For a special exception for use or development of property. To hear and decide special exceptions to the terms of this Ordinance. Whenever Zoning Regulations require specific approval by the Board for the development or use of property, an application for a special exception shall be approved by the Board before the Enforcing Officer shall issue a permit for the proposed construction or use.

(2) When in, its judgement, the public convenience and welfare will not be substantially or permanently injured, the Board of Adjustment may in a specific case, after public notice and hearing and subject to appropriate conditions and safeguards, authorize special exceptions to the regulations herein established as follows:

- (a) Permit a transitional use between a business or industrial district and a dwelling district where the side of a lot in a one-family district or a two-family district abuts upon a lot zoned for business or industrial purposes as follows: On a lot in a single-family dwelling district whose sides abut a lot zoned for business or industrial purposes, the Board may permit a two-family dwelling.
- (b) Permit the extension of a building or use into a more restricted district, immediately adjacent thereto, but not more than 50 feet beyond the boundary line of the district in which such building or use is authorized.
- (c) Grant in undeveloped sections of the city temporary and conditional permits for not more than two years. The granting of such temporary or conditional permit shall not be reason or cause for extension of such permit.

Section 21.1: Board of Adjustment-Appeals

- (d) Permit such modification of yard, open space, lot area or lot width regulations as may be necessary to secure an appropriate improvement of a parcel of land if such parcel is separately owned at the time of the original passage of this ordinance or subsequent annexation of the City and is of such restricted area that it cannot be appropriately improved without such modification.
- (e) Permit the extension of a use, height, or area regulations into an adjoining district, where the boundary line of the district divided a lot in a single ownership at the time of the adoption of this ordinance.
- (f) Permit as an accessory use a parking area for passenger automobiles on a lot or lots in a single family, duplex, or apartment house district adjoining or across a street or not more than 50 feet in width from an R-1 District, subject, however to the following provisions:
 - 1. The area shall be properly enclosed with a hedge screen, fence, wall or other suitable enclosure having a height of not less than three feet nor more than six feet. Such fence or enclosure shall conform to the front yard regulations of the district in which it is located.
 - 2. The area shall be paved.
 - 3. No parking of vehicles shall be permitted within six feet of any adjoining lot on which is located a single-family residence, duplex, or multiple family dwelling.
 - 4. No charges may be made for parking and no other business use may be made of the lot.
 - 5. Any light used to illuminate said parking area shall be so arranged as to direct the light away from any adjoining premises used for residential purposes.
- (g) Permit the reconstruction of a building occupied by a non-conforming use, or permit the extension of a non-conforming use of a building upon the lot occupied by such use or building at the time of the passage of this ordinance.
- (h) Authorize the issuance of special use permits for conditional uses as listed in each zoning district.

(3) The Board of Adjustment may require compliance with such conditions as to operations, site development, parking, signs and time limit as may be deemed necessary in order that such use will not seriously injure the appropriate use of neighboring property, and will conform to the general intent and purpose of this ordinance. Such uses shall comply with the height and area regulations, and parking and green space regulations, or the district in which they may be located.

Stephenville-Zoning Ordinance

(4) A building permit or certificate of occupancy shall not be issued for any use to be located in a zoning district which permits that use only as a “Conditional Use” unless a special use permit has first been issued by the Board of Adjustment in accordance with the following provisions.

(5) A special use permit may be granted by the Board of Adjustment if the following conditions have been met:

- (a) That the specific use will be compatible with and not injurious to the use and enjoyment of other property and will not significantly diminish or impair property values within the vicinity.
 - (b) That the establishment of the specific use will not impede the normal and orderly development and improvement of surrounding property.
 - (c) That adequate utilities, access, drainage and other necessary supporting facilities have been or will be provided.
 - (d) The design, location, and arrangement of all driveways and parking spaces will provide for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments.
 - (e) That adequate safety and nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise, vibration and conditions and activities dangerous to persons or property.
 - (f) That directional lighting will be provided so as not to disturb or adversely affect neighboring property.
 - (g) That there is sufficient landscaping and/or screening to insure harmony and compatibility with adjacent property.
 - (h) Special use permits shall be for a period of time not to exceed two years. Upon reapplication, to the Board of Adjustment, the filing fee will be waived, and the time may be extended for successive periods of two years, provided there shall be new notice and public hearing before each extension.
- (6) An application for a special exception shall include:
- (a) A site plan, drawn to scale, showing all lot dimensions, and location and dimensions of all existing and proposed lot improvements;
 - (b) A statement by the enforcing officer citing the reason for referral of the proposal to the Board; and

Section 21.1: Board of Adjustment-Appeals

(c) A statement by the applicant describing the way in which all conditions as may be prescribed by Zoning Regulations and by these rules will be or have been met.

(7) Before acting on the application the Board shall consider:

- (a) The facts filed with the application;
- (b) The testimony presented at the public hearing;
- (c) The city staff's technical report on the application; and
- (d) The Board's findings in its field inspection of the property.

(8) The Board may grant the application, subject to such terms and conditions as it deems necessary to insure compatibility of the proposed use or development with adjacent properties, provided the applicant has demonstrated to the satisfaction of the Board:

- (a) That all conditions enumerated in the Regulations for the special exception use or development will be complied with;
- (b) That the proposed use will not be obnoxious, dangerous, or unnecessarily hazardous to persons or property at or near such location;
- (c) That, where the Board finds it necessary, provision will be made for the installation and maintenance of the best practical means known for the abatement of obnoxious or offensive fumes, gas, dust, smoke, odor, water carried waste, noise, vibration, or similar nuisance; and
- (d) That the granting of the exception will further the objectives, spirit and intent of the Zoning Regulations.

21.1.I Variance.

(1) A variance from the literal enforcement of the Zoning Ordinance in order to achieve a reasonable development of property. Whenever, owing to exceptional and extraordinary conditions, the literal enforcement of the zoning regulations will result in unnecessary hardship in the development of the property, an appeal for a variance may be filed with the Board of Adjustment.

(2) When a property owner can show that a strict application of the terms of this Ordinance relating to the use, construction or alteration of buildings or structures or the use of land will impose upon him or

Stephenville-Zoning Ordinance

her practical difficulties or particular hardship, the Board may consider and allow variations of the strict application of the terms of this Ordinance if the variations are in harmony with the general purpose and intent of this Ordinance, and the Board is satisfied, under the evidence heard by it, that a granting of the variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable hardship or difficulty so great as to warrant a variation from the Zoning Regulations.

(3) The Board may authorize a variance where by reason of exceptional narrowness, shallowness, or shape of specific piece of property of record at the time of the adoption of this ordinance, or by reason of exceptional situation or condition of a specific piece of property, the strict application of a provision of this ordinance would result in peculiar and exceptional practical difficulties and particular hardship upon the owner of the property and amount to a practical confiscation of the property as distinguished from a mere inconvenience to the owner, provided the variation can be granted without substantial detriment to the public good, and without substantially impairing the general purpose and intent of the comprehensive plan as established by the regulations and provisions contained in this ordinance.

(a) *Papers required.* An appeal for a variance shall include:

- (1) A site plan, drawn to scale, showing the location and dimension of the lot and of all existing and proposed improvements:
 - a. When an appeal 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 of surveys and profiles of the particular problem involved, including relationship to topographic features of adjoining properties.
 - b. When an appeal is submitted for variance of side yard or rear yard requirements, the applicant shall provide the same information for the properties adjoining the common lot line as may be applicable to the appealed requirements.
 - c. When an appeal is submitted for a variance from front yard setback, or for side yard setback on a side street, the applicant shall furnish a strip map showing the setback of main walls of all buildings on the same side of the street within a distance of 200 feet of the applicant's property.
- (2) A statement of facts and reasons why the Zoning Regulations should not be applied to the property in question and how the standards governing the Board's action would be satisfied; and
- (3) A STATEMENT BY THE ENFORCING OFFICER citing the reasons for refusing to issue a permit under the plans submitted.

(b) Basis for action.

- (1) Before acting on an appeal for variance the Board shall consider:

Section 21.1: Board of Adjustment-Appeals

- a. The facts filed with the application;
- b. The testimony presented at the public hearing on the appeal;
- c. The city staff's technical report on the appeal; and
- d. The Board's findings in its field inspection of the property.

(2) The Board may grant an appeal, subject to such terms and conditions as it may fix, provided the applicant has demonstrate to the satisfaction of the Board that the conditions governing the granting of a variance as set forth in the Zoning Regulations are satisfied and that the decisions of the Board would be in the interest of the community and would carry out the spirit and intent of the Zoning Regulations.

21.1. J Files – Retention.

All appeals and other matters coming before the Board shall be filed in the city's records. Original papers of all appeals shall be retained along with other special matter as the Executive Secretary deems essential for the permanent record.

Stephenville-Zoning Ordinance

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