



May 15, 2025

ZONING BOARD OF ADJUSTMENT

Notice is hereby given of a Regular Meeting of the Zoning Board of Adjustment to be held at 4:00 p.m., for the purpose of considering the following agenda items. All agenda items are subject to action.

Some Board Members may attend via videoconference, but a quorum of the Board and the Presiding Officer will be present at the above-stated physical location. The meeting will be streamed live at <https://www.nactx.us/21>. There will be an opportunity for the public to comment on agenda items in person in Council Chambers.

**PLEASE LIMIT PRESENTATIONS TO THREE MINUTES
(UNLESS PRIOR APPROVAL IS OBTAINED)**

1. CALL TO ORDER.

2. PLEDGE OF ALLEGIANCE.

3. **CONSENT AGENDA**

- A. Approval of Minutes: Consider approval of minutes from the April 17, 2025, Zoning Board of Adjustment meeting.

4. **REGULAR AGENDA**

- A. Consider approval of the amended Zoning Board of Adjustment Rules of Procedure as directed by Section 118-98(z), "Zoning," Article II, "Administration", Division 3, "Board of Adjustment", "Procedures," of the City of Nacogdoches, Texas Code of Ordinances. (Executive Director of Development and Infrastructure)

5. Zoning Ordinance Subcommittee Report.

6. ADJOURN.

Aimee Cloutier, Planning Coordinator

CERTIFICATION

This meeting will be conducted pursuant to Chapter 551 of the Texas Government Code. The Board reserves the right to adjourn into Executive Session at any time during the meeting to discuss any of the above posted agenda, as authorized by Texas Government Code Section 551.071 [consultation with attorney]. The City of



Nacogdoches is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications may be provided upon request. Please contact the City Secretary at (936) 559-2506 for information. I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas 75961, on May 12, 2025, by 4:00 pm pursuant to Chapter 551 of the Texas Government Code.

Aimee Cloutier, Planning Coordinator



Zoning Board of Adjustments

Date: May 15, 2025

Case No:

PRESENTER:

ITEM/SUBJECT: Approval of Minutes: Consider approval of minutes from the April 17, 2025, Zoning Board of Adjustment meeting.

TYPE OF REQUEST:

BACKGROUND INFORMATION:

Attached are the minutes for the regular meeting held on April 17, 2025.

REVIEW CRITERIA & REQUIRED FINDINGS (STAFF COMMENTS UNDERLINED):

PUBLIC ENGAGEMENT:

ATTACHMENTS: 1. Minutes 04.17.2025

**MINUTES TO THE
ZONING BOARD OF ADJUSTMENT
April 17, 2025, 4:00 p.m.
Regular Meeting**

Board Members Present:

Rhonda Ward; Margaret Forbes; Larry King; Mary Ann Bentley; John Sloane (Alternate)

Other Board Members in Attendance:

Jacqueline Pierre

Staff Present:

Planning Coordinator Aimee Cloutier; Interim City Planner Juan Pollette; City Attorney Jerry Baker; Executive Director of Development & Infrastructure Mike Neu;

Call to Order:

Ward called the meeting to order at 4:00 p.m. and led the pledge of allegiance.

Consent Agenda:

Bentley moved to approve the consent agenda, and King seconded. Motion approved (5-0).

Regular Agenda:

4A. Consider rescheduling the Zoning Board of Adjustment meeting to be held on June 19, 2025.

Motion by Bentley to reschedule the meeting from June 19, 2025, to June 26, 2025, and seconded by Forbes.
Motion approved (5-0).

4.B. Consider approval of the amended Zoning Board of Adjustment Rules of Procedure as directed by Section 118-98(a), "Zoning," Article II, "Administration", Division 3, "Board of Adjustment", "Procedures," of the City of Nacogdoches, Texas Code of Ordinances.

Neu presented the proposed amendments stating the revisions were initiated by the Zoning Ordinance Subcommittee to clarify existing procedures and reflect recent updates adopted within the zoning code.

The Board discussed the inclusion of language allowing remote participation, as outlined in Section 2.4. All members were in favor of the addition with the exception of Member King, who opposed it. The Board requested that the references to the Local Government Code in Section 2.5 be expanded to include the actual statutory language within meeting agendas to enhance clarity for the public and board members.

Member King requested that staff implement more proactive updates to the City's website regarding plan approvals, due to the reduced timeframe to appeal decisions from 90 days to 20 days.

Member King also requested that the Rules of Procedure be amended to allow the Board to consult outside legal counsel. Staff clarified that this authority and associated funding would require approval from City Council. The Board asked staff to prepare a formal statement to be presented at the next meeting for consideration.

The Board reviewed section 5.8 and requested the addition of clearer language defining what constitutes a simple majority vote and specifying when such a vote is required. Additionally, the Board requested that all future agendas include a provision allowing the Board to enter executive session if needed be added to the Rule of Procedure.

No formal action was taken. Staff will incorporate the requested changes and present the revised Rules of Procedure at the next meeting for further review and consideration.

5. Zoning Ordinance Subcommittee Report.

Ward and Forbes provided an update on the Zoning Ordinance Subcommittee meetings held in January, February, and March 2025. Neu outlined the next steps in the ordinance review process, as well as the next proposed discussion topics.

Adjourn:

Ward adjourned the meeting at 5:29 p.m.

Rhonda Ward, Chair

Attest:

Aimee Cloutier, Planning Coordinator

PRESENTER: Mike Neu, Executive Director of Development and Infrastructure

ITEM/SUBJECT: Consider approval of the amended Zoning Board of Adjustment Rules of Procedure as directed by Section 118-98(z), "Zoning," Article II, "Administration", Division 3, "Board of Adjustment", "Procedures," of the City of Nacogdoches, Texas Code of Ordinances. (Executive Director of Development and Infrastructure)

TYPE OF REQUEST: Amendments to procedural rules.

BACKGROUND INFORMATION:

Staff may propose changes to local ordinances in response to Council direction, or to comply with current state or federal law, to address various needs within the municipality. In November 2024, a subcommittee consisting of Council, P&Z, and Zoning Board of Adjustment (ZBA) members was established to facilitate recommendations for zoning ordinance amendments. Following subcommittee recommendations, proposed changes will be presented to their respective governing bodies for action.

This agenda item proposes amendments to the ZBA rules of procedure, as authorized by Sec. 118-98(a) of the City code of ordinances, which was last adopted on February 15, 2024. It is recommended that the ZBA review its rules of procedure once every year. The Zoning Ordinance Subcommittee discussed changes to the ZBA Rules of Procedure on January 29 and February 25, 2025. Proposed amendments also reflect changes described in Ordinance 2021-11-24, effective on November 20, 2024, and Ordinance 2034-03-25, effective on April 2, 2025. Amended procedural items include:

- **Organization, Officers, and Staff** – Updated selection of Vice-Chair and Acting Chair; duties of City Planner and Secretary; and acknowledgment of Council approval authority.
- **Meetings and Official Records** – Updated attendance requirements; selection of alternate members; remote participation; open meetings; and written decision.
- **Application Procedures** – Updated application procedures and requirements for appeals, variances, and special exceptions; and filing and decision deadlines for appeals.
- **Hearings and Decisions** – Updated conflict of interest procedure; disposition of cases; participation; and votes required.
- **Exhibits** – Removes exhibit sections.

Document redlines (no highlights) show amendments proposed as of April 17, 2025. Document redlines with highlights are proposed as of May 9, 2025.

REVIEW CRITERIA & REQUIRED FINDINGS (STAFF COMMENTS UNDERLINED):

N/A

PUBLIC ENGAGEMENT:

N/A

- ATTACHMENTS:**
1. Rules of Procedure redlines
 2. Rules of Procedure clean

~~ZONING BOARD OF ADJUSTMENT RULES & PROCEDURES~~



February 15, 2024



CITY OF NACOGDOCHES
ZONING BOARD OF ADJUSTMENT
RULES ~~AND PROCEDURES~~ OF PROCEDURE

TABLE OF CONTENTS

1. ORGANIZATION, OFFICERS, AND STAFF	1
1.1. ORGANIZATION.....	1
1.2. OFFICERS.....	1
1.3. DUTIES.....	1
1.4. RULES OF PROCEDURE.....	1
1.5. PARLIAMENTARY PROCEDURE.....	1
1.6. CITY PLANNER.....	2
1.7. SECRETARY.....	2
1.8. CITY ATTORNEY.....	2
2. MEETINGS.....	2
2.1. ATTENDANCE.....	2
2.2. QUORUM.....	2
2.3. ALTERNATE MEMBERS	3
2.4. REMOTE PARTICIPATION.....	3
2.5. AGENDAS.....	3
2.6. SCHEDULED MEETINGS.....	3
2.7. OPEN MEETINGS	4
3. OFFICIAL RECORDS	4
3.1. DEFINITION	4
3.2. RECORDING OF VOTE.....	4
3.3. PUBLIC RECORDS.....	4
3.4. BOARD OFFICE.....	5
3.5. WRITTEN DECISION	5
4. APPLICATION PROCEDURES	5
4.1. TYPES OF APPLICATIONS	5
4.2. APPLICATION REQUIREMENTS	6
4.3. DEADLINE FOR FILING APPEAL APPLICATIONS.....	7
4.4. GUIDELINES FOR APPLICATION AND DECISION	7
4.5. DECISION ON APPEALS.....	7
4.6. NOTICE OF MEETINGS.....	8
4.7. CONSIDERATION OF EVIDENCE	8
4.8. WITHDRAWAL OF REQUEST	8
5. HEARINGS AND DECISIONS.....	8
5.1. PUBLIC HEARINGS	8
5.2. ORDER OF BUSINESS	9
5.3. PROCEDURES FOR HEARING.....	9

5.4.	BOARD REVIEW	10
5.5.	SUSPENSION OF RULES.....	10
5.6.	DISPOSITION OF CASES	10
5.7.	PARTICIPATION IN DELIBERATIONS AND VOTING	11
5.8.	VOTE OF FOUR (4) MEMBERS REQUIRED	11
5.9.	VOTE OF SIMPLE MAJORITY REQUIRED	11
6.	REAPPLICATION	11
6.1.	REAPPLICATION FOR DENIED REQUEST	11
7.	EXPIRATION OF GRANTED REQUEST.....	12
7.1.	EXPIRATION OF GRANTED REQUEST	12
8.	CERTIFICATION AND AMENDMENTS	12
8.1.	CERTIFIED COPY	12
8.2.	REPEALING CLAUSE.....	12
8.3.	AMENDMENT PROCEDURE	12
8.4.	INFORMAL ADVICE	13
<u>4455578899911121212121313</u>		
1.—	ORGANIZATION, OFFICERS, AND STAFF	1
1.1.—	ORGANIZATION	1
1.2.—	OFFICERS	1
1.3.—	DUTIES	1
1.4.—	RULES OF ORDER	1
1.5.—	CITY PLANNER	1
1.6.—	SECRETARY	2
1.7.—	CITY ATTORNEY	2
2.—	MEETINGS.....	2
2.1.—	QUORUM	2
2.2.—	AGENDA	2
2.3.—	BOARD MEETINGS.....	2
2.4.—	MEETINGS	3
3.—	OFFICIAL RECORDS	3
3.1.—	DEFINITION	3
3.2.—	RECORDING OF VOTE	3
3.3.—	PUBLIC RECORDS	3
3.4.—	BOARD OFFICE	4
3.5.—	WRITTEN DECISION.....	4
4.—	APPLICATION PROCEDURES.....	4
4.1.—	TYPES OF APPEALS.....	4
4.2.—	APPLICATION REQUIRED	4
4.3.—	DEADLINE FOR FILING APPLICATION	5
4.4.—	GUIDELINES FOR APPLICATION AND DECISION	5
4.5.—	NOTICE.....	5
4.6.—	CONSIDERATION OF EVIDENCE.....	5

4.7. —	WITHDRAWAL OF REQUEST	6
5. —	HEARINGS AND DECISIONS	6
5.1. —	PUBLIC HEARINGS	6
5.2. —	ORDER OF BUSINESS	6
5.3. —	PROCEDURES FOR HEARING	6
5.4. —	BOARD REVIEW	7
5.5. —	SUSPENSION OF RULES	7
5.6. —	DISPOSITION OF CASES	7
5.7. —	PARTICIPATION IN DELIBERATIONS AND VOTING	8
5.8. —	VOTE REQUIRED	8
6. —	REAPPLICATION	8
6.1. —	REAPPLICATION FOR DENIED REQUEST	8
7. —	EXPIRATION OF GRANTED REQUEST	9
7.1. —	EXPIRATION OF GRANTED REQUEST	9
8. —	CERTIFICATION AND AMENDMENTS	9
8.1. —	CERTIFIED COPY	9
8.2. —	REPEALING CLAUSE	9
8.3. —	AMENDMENT PROCEDURE	9
8.4. —	INFORMAL ADVICE	9
	<i>EXHIBIT “A” INTERPRETATIONS</i>	<i>11</i>
	<i>EXHIBIT “B” SPECIAL EXCEPTIONS</i>	<i>13</i>
	<i>EXHIBIT “C” VARIANCES</i>	<i>14</i>

CITY OF NACOGDOCHES
ZONING BOARD OF ADJUSTMENT
RULES ~~AND PROCEDURES~~ OF PROCEDURE

1. ORGANIZATION, OFFICERS, AND STAFF

1.1. Organization

The Zoning Board of Adjustment ("Board") shall consist of members appointed by the City Council and organized under the laws of the State of Texas and ~~Zoning Ordinance Sec. 118-96, as may be amended ("Zoning Ordinance"), of the City of Nacogdoches ("City"). Chapter 118 of the Code of Ordinances ("Zoning Ordinance") of the City of Nacogdoches ("City"), as may be amended.~~

1.2. Officers

A Chair ~~and Vice Chair~~ shall be ~~appointed~~ elected by the Board in accordance with the Zoning Ordinance ~~Sec. 118-97~~, as may be amended. The City Manager shall designate a member of City staff to serve the Board as Secretary.

1.3. Duties

- a. The Chair~~,~~ shall preside at all meetings, shall decide all points of order or procedure~~,~~ and shall swear in witnesses and, when necessary, compel their attendance.
- b. In the absence of the Chair, the Acting Vice Chair shall preside. In the absence of the Chair and Vice Chair, anThe Acting Chair shall preside. The Acting Chair shall be a regular member ~~(or if no regular member is present then an alternate member)~~ whose last name is closest to the beginning of the alphabet. If no regular member is present, the next ranking alternate member (see Sec. 2.2) shall serve as Acting Chair.
- c. The Secretary shall be the custodian of the minutes and other official records, shall attend to the correspondence of the Board, and shall cause notices to be given as are required and in the manner prescribed by law.

1.4. Rules of Procedure

Rules of procedure for the Board shall be adopted, in accordance with the laws of the State of Texas and the Zoning Ordinance, by a majority vote of the Board and by approval of the City Council.

~~1.4.1.5.~~Rules of OrderParliamentary Procedure

Robert's Rules of Order, Newly Revised, shall be the Board's final authority on all questions of procedures and parliamentary law not covered by these rules of procedure. A failure to strictly adhere to the procedures set forth in Robert's Rules of Order shall not constitute grounds for the invalidation of any motion or order made by the Board.

1.5.1.6.City Planner

The City Planner, or his/her designee, shall perform the duties authorized under the Zoning Ordinance of the City of Nacogdoches and shall provide assistance to the Board as directed by the City Manager. The City Planner shall make interpretations of the provisions of the ~~Comprehensive~~ Zoning Ordinance, ~~Chapter 118 of the Ordinances of the City of Nacogdoches,~~ as may be amended, and shall present to the City Council any revisions to the Zoning Ordinance-Board rules of procedure as recommended by the Board.

1.6.1.7.Secretary

The Secretary shall keep ~~an accurate record of all the meetings of the Board, shall file the final actions of the Board with the Office of the Board within twenty four (24) hours of the Board's meeting, shall prepare and submit minutes of all meetings of the Board in a timely manner, and shall support the Board in the manner directed by the City Manager or designee.~~ minutes of Board proceedings, indicating the vote of each member on each question or the fact that a member is absent or fails to vote, and shall keep records of its examinations and other official actions in accordance with City policies and procedures.

1.7.1.8.City Attorney

The City Attorney may provide to the Board an oral or written opinion regarding any question of law, interpretation or application of these rules of procedure, or parliamentary rules, and shall review as to law any amendment to these rules of procedure prior to the amendment becoming effective.

2. MEETINGS

2.1. Attendance

All appointed members of the Board shall be required to attend scheduled meetings in person. However, the presiding officer of a Board meeting may choose to dismiss nonparticipating alternate members when meeting attendance is not deemed necessary to constitute a five-member Board.

2.1.2.2.Quorum

~~A quorum of the board members shall be required to conduct a meeting of the board. A quorum shall consist of four (4) Members present. A quorum of not less than four (4) Board members shall be in-person at the designated meeting location when constituted as present.~~ No proxies shall be allowed to establish a quorum or to transact business of the Board. In the absence of a quorum, the following persons (in ~~the~~ noted order) shall call the meeting to order: ~~The~~ Chair, Vice Chair, ~~the~~ Acting Chair, or ~~(if no Member is present)~~ a City staff ~~member may call the meeting to order person (if no member is present);~~ and announce the absence of a ~~quorum, and~~ annoucequorum and the adjournment of the meeting until a specific date, time, and place when the scheduled agenda items/public hearings would be resumed. Should the absence of a quorum be known in advance of a scheduled meeting, the Chair authorizes the Secretary, City Planner, or other City staff member, to preside at the meeting by rescheduling the hearing to a date certain.

2.3. Alternate Members

Alternate members are subject to all Board rules of procedure and shall participate and vote in place of any absent or recused Board member in order to constitute five (5) members as present for the duration of each meeting. Selection of alternate members shall be by rank order, as determined by a drawing conducted by the Secretary prior to the start of each Board meeting, with the lowest number being the preferred order of selection.

2.4. Remote Participation

If a total of five (5) members are not present in person for the duration of a meeting, one (1) member may participate and vote remotely by virtual platform, if such platform is made available for meeting use. Remote participation is a measure of last resort and may not be used to establish a quorum of Board members.

2.2.2.5. Agendas

An agenda shall be prepared by the 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 action by the Board. The agenda shall be posted on the official bulletin boards at Nacogdoches City Hall, 202 East Pilar, 1st Floor, Nacogdoches, Texas, 75961, pursuant to the Texas Government Code, Chapter 551, at least 72 hours before the scheduled time of the meeting.

2.3.2.6. Board Scheduled Meetings

- a. Regular meetings – Regular meetings shall be held on the third (3rd) Thursday of each month at 4:00 p.m. in the City Council Chambers at City Hall unless otherwise posted. ~~Should no matters be~~ If no items are scheduled for

consideration by the Board, no meeting shall be held except as directed by the Chair of the Board.

- b. Special meetings – Special meetings may be called at any time by the Chair or the City Planner and shall be subject to the Open Meetings Act. The City Planner shall cause notice of the special meeting to be sent to each Board Member and shall provide any information necessary for consideration by the Board. Any case requiring a public hearing and being considered in a special meeting shall meet the notice requirements set forth in the state statutes and in the Zoning Ordinance of the City of Nacogdoches.
- c. Work sessions – The Board may schedule work sessions to address administrative matters or proposed ~~ordinance~~ revisions to the Board rules of procedure. These sessions are for discussion purposes only. No decisions on case-related matters shall be made.
- d. Executive sessions (closed meetings) – The Board may convene into executive session, pursuant to section 551.071 of the Texas Open Meetings Act, to seek the advice of the City Attorney about pending or contemplated litigation or to seek or receive the attorney’s advice with regard to legal issues relative to a case pending the Board’s consideration. Proper notice under the Texas Open Meetings Act is required in order for the Board to participate in executive session, and such notice shall be included in all Board agendas.

2.4.2.7. Open Meetings

All meetings of the ~~b~~Board, excluding executive sessions, shall be open to the public. Meetings shall be held in full compliance with the provisions of the Texas Open Meetings Act, the ~~City’s~~ Zoning Ordinance, and these rules of procedure.

3. OFFICIAL RECORDS

3.1. 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 Secretary and tape recordings of proceedings and discussions shall not constitute the official record of the Board.

3.2. Recording of Vote

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

3.3. Public Records

All requests and other matters coming before the Board shall be filed in the City's records and be available for public inspection during normal business hours. Original papers of all appeals shall be retained along with other special matters as the Secretary deems essential for permanent record.

3.4. Board Office

The office of the Planning and Zoning Department shall be designated as the Board Office.

3.5. Written Decision

All decisions of the Board shall be in writing, shall indicate the decision of the Board, and shall be filed in the Board's Office ~~no later than the following business day after such decision has been made~~ and, if applicable, the office of the Nacogdoches County Clerk. However, ~~the~~ failure to timely file ~~the~~ a decision in the Board Office shall not ~~have any effect on~~ affect the validity of ~~the~~ any decision.

4. APPLICATION PROCEDURES

4.1. Types of AppealsApplications

The Board shall only consider requests authorized under section 211.009 of the Texas Local Government Code, as may be amended, and under the Zoning Ordinance, as follows:

- a. Decide appeals of City Planner's decisions. The Board shall have the power to hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official the City Planner in the enforcement of any order or ordinance pertaining to zoning (Exhibit "A");the Zoning Ordinance.
- b. Variances to chapter. to hear and decide special exceptions to the terms of the zoning ordinance when the ordinance requires the board to do so (Exhibit "B");The Board may grant variances to the Zoning Ordinance upon finding that:
 - 1) Such variance is in harmony with the intent and purpose of the comprehensive plan and this chapter;
 - 2) Such variance will not substantially or permanently injure the appropriate use of adjacent property in the same district;
 - 3) Such variance will not adversely affect the health, safety or general welfare of the public;

4) Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located;

5) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, including but not limited to the area, shape or slope; and that the unique circumstances were not created by the owner of the property, and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located; and

6) The variance is not a self-created hardship.

b.

c. ~~Special exceptions to authorize in specific cases a variance from the terms of the zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done (Exhibit "C"); and The Board may hear and decide special exceptions to the terms of the Zoning Ordinance upon finding that:~~

1) Such special exception is specifically provided for and defined in the Zoning Ordinance;

2) Such special exception is ~~in~~ consistent with the general purpose and intent of the City's Comprehensive Plan and Zoning Ordinance;

3) Such special exception will not substantially or permanently injure the appropriate use of adjacent property in the same district; and

4) Such special exception will not adversely affect the health, safety or general welfare of the public.

c.—

d. ~~to hear and decide other matters authorized by the zoning ordinance.~~

4.2. Application ~~Required~~ Requirements

Every request for action of the Board shall be filed in the Board Office on the 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.

a. Appeal applications to be considered by the Board

i. if *not* related to a specific application, address, or project, may be initiated by:

- a person aggrieved by the decision; or
- any officer, department, board, or bureau of the municipality affected by the decision.

ii. if related to a specific application, address, or project, may be initiated by:

- a person who filed the application that is the subject of the decision;
- a person who is the owner or representative of the owner of the property that is the subject of the decision;
- a person who is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or
- any officer, department, board, or bureau of the municipality affected by the decision.

b. Variance applications to be considered by the Board may be initiated by the owner of the affected property or the owner's authorized representative.

c. Special exception applications to be considered by the Board may be initiated by the owner of the affected property or the owner's authorized representative.

~~The application shall bear the signature of the owner of the property which is the subject of the request or shall be accompanied by a letter of authorization from such owner. Any application submitted to the Board for consideration shall be reviewed by the Board Office and the Chair for completeness in all respects prior to posting a notice of meeting for Board consideration.~~ 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.

4.3. Deadline for Filing Appeal Applications

Every application for an appeal of a decision of the City Planner must be filed in accordance with these rules within a reasonable time, not to exceed ~~90-20~~ days, from the date of the decision ~~was made~~.

4.4. Guidelines for Application and Decision

Every application shall include a letter and site plan or other graphics and illustrations explaining the applicant's request, along with the required non-refundable application fee. Where two or more different types of requests are included in the same application, each set of regulations established by the Zoning Ordinance shall apply to the consideration of the requests.

4.5. Decision on Appeals

The Board shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and may authorize City staff to do such. The Board shall decide such appeal within a reasonable time, but no later than 60 days from the filing of the appeal. Upon hearing of such appeal, any interested party may appear in person or by an agent or attorney.

4.5.4.6. Notice of Meetings

- a. 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~~ before the fifteenth (15th) day 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 requirements.
- b. Public notice of any appeal seeking an interpretation of a Zoning Ordinance which would apply throughout the City, shall be given by means of a legal advertisement appearing in the official newspaper of the city, ~~not~~ before the fifteenth (15th) day prior to the date of the hearing. Written notice shall also be given to the applicant and his agent 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.

4.6.4.7. Consideration of Evidence

Decisions of the Board may be based on any credible evidence, including a member's own familiarity with a site. However, members of the Board should refrain from conducting independent investigations into any application and should consider only the evidence and testimony introduced at the meeting through the public hearing process and the background information presented by City staff through the information packet. Where deemed necessary, the Board may request City staff to obtain any additional relevant information for the Board's consideration.

4.7.4.8. Withdrawal of Request

Any request may be withdrawn by an applicant upon written notice to the City Planner, but no request shall be withdrawn after public notice has been given without formal consent of the Board.

5. HEARINGS AND DECISIONS

5.1. 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(s) may appear on their own behalf or be represented by the applicant's own counsel or agent.

5.2. Order of Business

The Chair shall call the meeting to order, and the Secretary shall record the members present and absent. The Chair shall publicly advise those present of the procedures followed in the hearing and disposition of appeals; he/she 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. The City Planner or designee shall publicly advise the board of any communications received. Supporting evidence for and against each case shall be presented to the board. Each case may be taken under advisement until all have been heard.

5.3. Procedures for Hearing

a. Any member of the Board should not vote on an item under Board consideration in which they have a direct personal or pecuniary interest not common to other Board members. Such conflict of interest must be declared before opening the public hearing, and any Board member whom has declared such conflict must remove themselves from the discussion and the meeting room, if possible, during item consideration.

~~a.b.~~ After opening the public hearing, the Chair shall first call upon the applicant, if present, to present the applicant's case and all evidence supporting the applicant's request. A true and correct copy of all written evidence, documents, photographs, and audio or videographic evidence presented at the hearing shall be included in the record of the case.

~~b.c.~~ The Chair shall then call upon those members of the public who wish to express support for the granting of the applicant's request. The Chair shall next call on those members of the public who wish to express opposition to the granting of the applicant's request. Each person who wishes to speak shall state their name and address for the record. The Chair may establish reasonable time-limits for the members of the public as deemed necessary by the Chair.

~~c.d.~~ The applicant shall then be given the opportunity to rebut the arguments presented by those in opposition.

~~d.e.~~ Each person speaking shall proceed without interruption by any other person, and all arguments and pleadings shall be addressed to the Board. It shall be the responsibility of the Chair to maintain order and proper decorum during the hearing. No questioning or arguments between individual witnesses will be permitted. During the hearing, no member shall argue an issue with the applicant, nor indicate the member's final vote on the applicant's request until such time as

the vote is called. Nothing herein shall be construed to prohibit a member from expressing his or her opinion as to the merits of the applicant's request or as to the existence of any hardship.

~~e.f.~~ Following the applicant's rebuttal, the Chair shall order the public hearing closed. After the hearing is closed, the members may deliberate regarding the merits of the applicant's request and may vote on a motion made and seconded with respect to the disposition of the request.

~~f.g.~~ The Board may act on any request for which the applicant fails to appear after conducting the pre-scheduled public hearing.

5.4. Board Review

The Chair may direct any question to the applicant or any persons speaking in order to bring out all relevant facts, circumstances, and conditions affecting the request, and may call for questions from other members of the Board and from the City staff. At any time prior to the time a vote is called for, the Board may call back any applicant or speaker or staff member for clarification of fact presented in the hearing or to answer one or more questions of the members of the Board.

5.5. Suspension of Rules

Any provision of these rules not governed by other law may be temporarily suspended by the affirmative votes of four (4) members or by unanimous consent.

5.6. Disposition of Cases

- a. ~~The~~ For any requests for variances or special exceptions, ~~the~~ Board may grant or deny the applicant's request as proposed. For special exceptions only, the Board may -unconditionally grant, conditionally grant, or deny an applicant's request.
- b. For any appeals of a decision of the City Planner, ~~T~~he Board may, in conformity with the provisions of state law, reverse or affirm, wholly or partly, or may modify an order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the City Planner from whose action an appeal is taken.
- c. The Board may also defer action on any request in response to ~~the-an~~ applicant's request for deferral of the action or whenever it concludes that additional evidence is needed or that alternate solutions need further study. However, a Board decision must occur no later than 60 days from the filing of the appeal.
- d. An applicant's request may be dismissed when the Board finds that the request has been improperly filed or, upon notification by the City, that permits have been issued for a conforming use or development of the property.

5.7. Participation in Deliberations and Voting

~~All members present may participate in the deliberations of each case and may directly question the applicant/agent or staff members.~~

Only the five (5) regular **Board** members shall vote on the case unless absence or conflict of interest prevents their participation. ~~Should any~~ If regular members ~~be are~~ unable to vote prior to consideration of an agenda item, the next ranking alternate members ~~(see Sec. 2.3)~~ shall ~~be selected by the Chair, in numerical order beginning with Alternate Member #1 and ending with Alternate Member #4, to participate and~~ vote in the regular members' absence for that item.

Should any member be unable to vote on any matter before the Board, he or she shall clearly acknowledge this for the record prior to the ~~vote~~start of the public hearing, and the Presiding Officer shall clearly designate, for the record and for the audience, which of the alternate members will be voting.

5.8. Vote of Four (4) Members Required

The concurring vote of at least four (4) members ~~of the five (5) members~~ shall be necessary to grant, or to grant conditionally as applicable, any request made to the Board. When a motion to approve a request fails to receive four (4) affirmative votes, the request is denied. ~~A motion to deny a request shall pass on the vote of a simple majority of the members. Should a motion to deny fail to receive a majority vote, another motion must be made (e.g., "motion to approve", "motion to postpone", etc.) to dispose of the case. Additionally, A simple majority vote of the members shall be required to approve an alternative motion. All motions must receive a second to be considered by the Board.~~

5.9. Vote of Simple Majority Required

A motion to deny a request shall pass on the vote of a simple majority of the members. Should a motion to deny fail to receive a majority vote, another motion must be made (e.g., "motion to approve", "motion to postpone", etc.) to dispose of the case. A simple majority vote of the members shall be required to approve an alternative motion. All motions must receive a second to be considered by the Board.

6. REAPPLICATION

6.1. Reapplication for Denied Request

No application for a request that has been denied shall be again filed earlier than one (1) year from the date of original denial unless other property in the immediate

vicinity has, within the one-year period, been changed or acted on by the Board or City Council so as to alter the facts and conditions on which the previous Board action was based. Such change of circumstances shall permit the rehearing of a request by the Board prior to the expiration of one (1) year period, but such conditions shall in no way have any force in law to compel the Board, after a hearing, to grant an applicant's subsequent request. Such subsequent request shall be considered entirely on its merits and the peculiar and specific conditions related to the property on which the request is brought.

7. EXPIRATION OF GRANTED REQUEST

7.1. Expiration of Granted Request

Any special exception or variance granted by the Board shall authorize the issuance of a building permit and/or a Certificate of Occupancy, as the case may be, for a period of ninety (90) days from the date of the favorable action of the Board unless said Board shall have in its action approved a different period of time and has so shown such specific period of time in the minutes of its action. In no event, however, shall such additional time granted exceed two (2) years. If the building permit and/or Certificate of Occupancy shall not have been applied for within said ninety (90) days, or such extended period as the Board may have specifically granted, then the special exception or variance shall be deemed to have been waived and all rights thereunder terminated. ~~All applications for a request that have been denied shall be deemed to be denied with prejudice unless stated otherwise in the Board's written decision.~~

8. CERTIFICATION AND AMENDMENTS

8.1. Certified Copy

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

8.2. Repealing Clause

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

8.3. Amendment Procedure

Amendments to these rules of procedure may be ~~made recommended for City Council approval~~ by the Board at any meeting upon the affirmative vote of four (4) members, provided any such amendment is proposed at a preceding meeting and recorded on the minutes of such meeting. ~~By unanimous consent of five (5) members present, amendments may be adopted at the meeting at which they are introduced but such a. If approved by the City Council, a~~ amendments shall not become effective until the

next regular Board meeting. It is recommended that the Board review these rules ~~and~~
of procedures at least once every year.

8.4. Informal Advice

The Board or its individual members shall not consider a request (formal or informal) for advice on theoretical or actual situations that potentially may come before the Board in the future as an appeal or application.

EXHIBIT “A” INTERPRETATIONS

APPLICATION PROCEDURES

Types of Requests

The Board shall only consider requests authorized under section 211.009 of the Texas Local Government Code, as may be amended, and under the Zoning Ordinance, as follows:

to hear and decide an appeal that alleges an error in an order, requirement, decision, or determination made by an administrative official in the enforcement of any order or ordinance pertaining to zoning

Application Required

Every request for an interpretation of the Board shall be filed at the City. The application forms shall be completed in full, which will include the section of the ordinance needing interpretation, what staff’s stance on the topic, then why that does not meet the ordinance, and the prescribed fee. The application shall bear the signature of the owner of the property which is the subject of the request or shall be accompanied by a letter of authorization from such owner. 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.

Deadline for Filing Application

Every application for an appeal of a decision of the City Planner must be filed in accordance with these rules within a reasonable time, not to exceed 90 days, from the date the decision was made.

Guidelines for Application and Decision

Every application shall include a letter and site plan or other graphics and illustrations explaining the applicant’s request, along with the required non-refundable application fee. Where two or more different types of requests are included in the same application, each set of regulations established by the Zoning Ordinance shall apply to the consideration of the requests.

Consideration of Evidence

Decisions of the Board may be based on any credible evidence, including a member’s own familiarity with a site. However, members of the Board should refrain from conducting independent investigations into any application and should consider only the evidence and testimony introduced at the meeting through the public hearing process and the background information presented by City staff through the information packet. Where deemed necessary, the Board may request City staff to obtain any additional relevant information for the Board’s consideration.

EXHIBIT “B” SPECIAL EXCEPTIONS

APPLICATION PROCEDURES

Types of Requests

The Board shall only consider requests authorized under section 211.009 of the Texas Local Government Code, as may be amended, and under the Zoning Ordinance, as follows:

to hear and decide special exceptions to the terms of the zoning ordinance when the ordinance requires the board to do so

Application Required

Every request for a special exception of the Board shall be filed at the City. The application forms shall be completed in full providing the reason for the request, applicant responses to the findings of the appeal ~~WE NEED TO CHANGE THE WORDING FOR THIS AS ZBA REQUESTED. HOW DO YOU WANT TO CLEAN IT UP?~~ and the prescribed fee. It is noteworthy that the special exception request do not need to argue a self-created hardship. The application shall bear the signature of the owner of the property which is the subject of the request or shall be accompanied by a letter of authorization from such owner. 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.

Guidelines for Application and Decision

Every application shall include a letter and site plan or other graphics and illustrations explaining the applicant's request, along with the required non-refundable application fee. Where two or more different types of requests are included in the same application, each set of regulations established by the Zoning Ordinance shall apply to the consideration of the requests.

Consideration of Evidence

Decisions of the Board may be based on any credible evidence, including a member's own familiarity with a site. However, members of the Board should refrain from conducting independent investigations into any application and should consider only the evidence and testimony introduced at the meeting through the public hearing process and the background information presented by City staff through the information packet. Where deemed necessary, the Board may request City staff to obtain any additional relevant information for the Board's consideration.

EXHIBIT “C” VARIANCES

APPLICATION PROCEDURES

Types of Requests

The Board shall only consider requests authorized under section 211.009 of the Texas Local Government Code, as may be amended, and under the Zoning Ordinance, as follows:

to authorize in specific cases a variance from the terms of the zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done

Application Required

Every request for a variance of the Board shall be filed at the City. The application forms shall be completed in full providing the reason for the request, the applicant's responses to the findings of the appeal (Sec 118-99), and the prescribed fee. The application shall bear the signature of the owner of the property which is the subject of the request or shall be accompanied by a letter of authorization from such owner. 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.

Guidelines for Application and Decision

Every application shall include a letter and site plan or other graphics and illustrations explaining the applicant's request, along with the required non-refundable application fee. Where two or more different types of requests are included in the same application, each set of regulations established by the Zoning Ordinance shall apply to the consideration of the requests.

Consideration of Evidence

Decisions of the Board may be based on any credible evidence, including a member's own familiarity with a site. However, members of the Board should refrain from conducting independent investigations into any application and should consider only the evidence and testimony introduced at the meeting through the public hearing process and the background information presented by City staff through the information packet. Where deemed necessary, the Board may request City staff to obtain any additional relevant information for the Board's consideration.

~~ADOPTED-RECOMMENDED~~ this ____ day of _____, 202~~4~~5.

Chair, Zoning Board of Adjustment

ADOPTED this ____ day of _____, 2025.

Mayor, City of Nacogdoches

ATTESTED:

~~Aimee Cloutier~~ Rhonda Lewis, ~~Board-City~~ Secretary

Filed in the Office of the City Secretary, City of Nacogdoches, Texas, this ____ day of _____, 202~~4~~5.

_____, Rhonda Lewis, Deputy City Secretary, City of Nacogdoches, Texas



**CITY OF NACOGDOCHES
ZONING BOARD OF ADJUSTMENT
RULES OF PROCEDURE**

TABLE OF CONTENTS

1. ORGANIZATION, OFFICERS, AND STAFF	1
1.1. ORGANIZATION	1
1.2. OFFICERS	1
1.3. DUTIES	1
1.4. RULES OF PROCEDURE	1
1.5. PARLIAMENTARY PROCEDURE	1
1.6. CITY PLANNER	2
1.7. SECRETARY	2
1.8. CITY ATTORNEY	2
2. MEETINGS	2
2.1. ATTENDANCE	2
2.2. QUORUM	2
2.3. ALTERNATE MEMBERS	3
2.4. REMOTE PARTICIPATION	3
2.5. AGENDAS	3
2.6. SCHEDULED MEETINGS	3
2.7. OPEN MEETINGS	4
3. OFFICIAL RECORDS	4
3.1. DEFINITION	4
3.2. RECORDING OF VOTE	4
3.3. PUBLIC RECORDS	4
3.4. BOARD OFFICE	4
3.5. WRITTEN DECISION	4
4. APPLICATION PROCEDURES	5
4.1. TYPES OF APPLICATIONS	5
4.2. APPLICATION REQUIREMENTS	6
4.3. DEADLINE FOR FILING APPEAL APPLICATIONS	7
4.4. GUIDELINES FOR APPLICATION AND DECISION	7
4.5. DECISION ON APPEALS	7
4.6. NOTICE OF MEETINGS	7
4.7. CONSIDERATION OF EVIDENCE	7
4.8. WITHDRAWAL OF REQUEST	8
5. HEARINGS AND DECISIONS	8
5.1. PUBLIC HEARINGS	8
5.2. ORDER OF BUSINESS	8

5.3.	PROCEDURES FOR HEARING	8
5.4.	BOARD REVIEW	9
5.5.	SUSPENSION OF RULES.....	9
5.6.	DISPOSITION OF CASES	9
5.7.	PARTICIPATION IN DELIBERATIONS AND VOTING	10
5.8.	VOTE OF FOUR (4) MEMBERS REQUIRED	10
5.9.	VOTE OF SIMPLE MAJORITY REQUIRED	10
6.	REAPPLICATION	10
6.1.	REAPPLICATION FOR DENIED REQUEST	10
7.	EXPIRATION OF GRANTED REQUEST.....	11
7.1.	EXPIRATION OF GRANTED REQUEST	11
8.	CERTIFICATION AND AMENDMENTS	11
8.1.	CERTIFIED COPY	11
8.2.	REPEALING CLAUSE.....	11
8.3.	AMENDMENT PROCEDURE	11
8.4.	INFORMAL ADVICE	12

**CITY OF NACOGDOCHES
ZONING BOARD OF ADJUSTMENT
RULES OF PROCEDURE**

1. ORGANIZATION, OFFICERS, AND STAFF

1.1. Organization

The Zoning Board of Adjustment (“Board”) shall consist of members appointed by the City Council and organized under the laws of the State of Texas and Chapter 118 of the Code of Ordinances (“Zoning Ordinance”) of the City of Nacogdoches (“City”), as may be amended.

1.2. Officers

A Chair and Vice Chair shall be elected by the Board in accordance with the Zoning Ordinance-, as may be amended. The City Manager shall designate a member of City staff to serve the Board as Secretary.

1.3. Duties

- a. The Chair shall preside at all meetings, shall decide all points of order or procedure, and shall swear in witnesses and, when necessary, compel their attendance.
- b. In the absence of the Chair, the Vice Chair shall preside. In the absence of the Chair and Vice Chair, an Acting Chair shall preside. The Acting Chair shall be a regular member whose last name is closest to the beginning of the alphabet. If no regular member is present, the next ranking alternate member (see Sec. 2.2) shall serve as Acting Chair.
- c. The Secretary shall be the custodian of the minutes and other official records, shall attend to the correspondence of the Board, and shall cause notices to be given as are required and in the manner prescribed by law.

1.4. Rules of Procedure

Rules of procedure for the Board shall be adopted, in accordance with the laws of the State of Texas and the Zoning Ordinance, by a majority vote of the Board and by approval of the City Council.

1.5. Parliamentary Procedure

Robert’s Rules of Order, Newly Revised, shall be the Board’s final authority on all questions of procedures and parliamentary law not covered by these rules of procedure. A failure to strictly adhere to the procedures set forth in Robert’s Rules of

Order shall not constitute grounds for the invalidation of any motion or order made by the Board.

1.6. City Planner

The City Planner or his/her designee shall perform the duties authorized under the Zoning Ordinance of the City of Nacogdoches and shall provide assistance to the Board as directed by the City Manager. The City Planner shall make interpretations of the provisions of the Zoning Ordinance, as may be amended, and shall present to the City Council any revisions to the Board rules of procedure as recommended by the Board.

1.7. Secretary

The Secretary shall keep minutes of Board proceedings, indicating the vote of each member on each question or the fact that a member is absent or fails to vote, and shall keep records of its examinations and other official actions in accordance with City policies and procedures.

1.8. City Attorney

The City Attorney may provide to the Board an oral or written opinion regarding any question of law, interpretation or application of these rules of procedure, or parliamentary rules, and shall review as to law any amendment to these rules of procedure prior to the amendment becoming effective.

2. MEETINGS

2.1. Attendance

All appointed members of the Board shall be required to attend scheduled meetings in person. However, the presiding officer of a Board meeting may choose to dismiss nonparticipating alternate members when meeting attendance is not deemed necessary to constitute a five-member Board.

2.2. Quorum

A quorum of not less than four (4) Board members shall be in-person at the designated meeting location when constituted as present. No proxies shall be allowed to establish a quorum or to transact business of the Board. In the absence of a quorum, the following persons (in noted order) shall call the meeting to order: Chair, Vice Chair, Acting Chair, or a City staff person (if no member is present); and announce the absence of a quorum and the adjournment of the meeting until a specific date, time, and place when the scheduled agenda items/public hearings would be resumed. Should the absence of a quorum be known in advance of a scheduled meeting, the Chair authorizes the Secretary, City Planner, or other City staff member, to preside at the meeting by rescheduling the hearing to a date certain.

2.3. Alternate Members

Alternate members are subject to all Board rules of procedure and shall participate and vote in place of any absent or recused Board member in order to constitute five (5) members as present for the duration of each meeting. Selection of alternate members shall be by rank order, as determined by a drawing conducted by the Secretary prior to the start of each Board meeting, with the lowest number being the preferred order of selection.

2.4. Remote Participation

If a total of five (5) members are not present in person for the duration of a meeting, one (1) member may participate and vote remotely by virtual platform, if such platform is made available for meeting use. Remote participation is a measure of last resort and may not be used to establish a quorum of Board members.

2.5. Agendas

An agenda shall be prepared by the 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 action by the Board. The agenda shall be posted on the official bulletin boards at Nacogdoches City Hall, 202 East Pilar, 1st Floor, Nacogdoches, Texas, 75961, pursuant to the Texas Government Code, Chapter 551, at least 72 hours before the scheduled time of the meeting.

2.6. Scheduled Meetings

- a. Regular meetings – Regular meetings shall be held on the third (3rd) Thursday of each month at 4:00 p.m. in the City Council Chambers at City Hall unless otherwise posted. If no items are scheduled for consideration by the Board, no meeting shall be held except as directed by the Chair of the Board.
- b. Special meetings – Special meetings may be called at any time by the Chair or the City Planner and shall be subject to the Open Meetings Act. The City Planner shall cause notice of the special meeting to be sent to each Board Member and shall provide any information necessary for consideration by the Board. Any case requiring a public hearing and being considered in a special meeting shall meet the notice requirements set forth in the state statutes and in the Zoning Ordinance of the City of Nacogdoches.
- c. Work sessions – The Board may schedule work sessions to address administrative matters or proposed revisions to the Board rules of procedure. These sessions are for discussion purposes only. No decisions on case-related matters shall be made.

- d. Executive sessions (closed meetings) – The Board may convene into executive session, pursuant to section 551.071 of the Texas Open Meetings Act, to seek the advice of the City Attorney about pending or contemplated litigation or to seek or receive the attorney’s advice with regard to legal issues relative to a case pending the Board’s consideration. Proper notice under the Texas Open Meetings Act is required in order for the Board to participate in executive session, and such notice shall be included in all Board agendas.

2.7. Open Meetings

All meetings of the Board, excluding executive sessions, shall be open to the public. Meetings shall be held in full compliance with the provisions of the Texas Open Meetings Act, the Zoning Ordinance, and these rules of procedure.

3. OFFICIAL RECORDS

3.1. 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 Secretary and tape recordings of proceedings and discussions shall not constitute the official record of the Board.

3.2. Recording of Vote

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

3.3. Public Records

All requests and other matters coming before the Board shall be filed in the City’s records and be available for public inspection during normal business hours. Original papers of all appeals shall be retained along with other special matters as the Secretary deems essential for permanent record.

3.4. Board Office

The office of the Planning and Zoning Department shall be designated as the Board Office.

3.5. Written Decision

All decisions of the Board shall be in writing, shall indicate the decision of the Board, and shall be filed in the Board Office and, if applicable, the office of the Nacogdoches County Clerk. However, failure to timely file a decision in the Board Office shall not affect the validity of any decision.

4. APPLICATION PROCEDURES

4.1. Types of Applications

The Board shall only consider requests authorized under section 211.009 of the Texas Local Government Code, as may be amended, and under the Zoning Ordinance, as follows:

- a. *Decide appeals of City Planner's decisions.* The Board shall have the power to hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by the City Planner in the enforcement of the Zoning Ordinance.
- b. *Variances to chapter.* The Board may grant variances to the Zoning Ordinance upon finding that:
 - 1) Such variance is in harmony with the intent and purpose of the comprehensive plan and this chapter;
 - 2) Such variance will not substantially or permanently injure the appropriate use of adjacent property in the same district;
 - 3) Such variance will not adversely affect the health, safety or general welfare of the public;
 - 4) Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located;
 - 5) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, including but not limited to the area, shape or slope; and that the unique circumstances were not created by the owner of the property, and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located; and
 - 6) The variance is not a self-created hardship.
- c. *Special exceptions.* The Board may hear and decide special exceptions to the terms of the Zoning Ordinance upon finding that:
 - 1) Such special exception is specifically provided for and defined in the Zoning Ordinance;

- 2) Such special exception is **in** consistent with the general purpose and intent of the City's Comprehensive Plan and Zoning Ordinance;
- 3) Such special exception will not substantially or permanently injure the appropriate use of adjacent property in the same district; and
- 4) Such special exception will not adversely affect the health, safety or general welfare of the public.

4.2. Application Requirements

Every request for action of the Board shall be filed in the Board Office on the 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.

a. Appeal applications to be considered by the Board

- i. if not related to a specific application, address, or project, may be initiated by:
 - a person aggrieved by the decision; or
 - any officer, department, board, or bureau of the municipality affected by the decision.
- ii. if related to a specific application, address, or project, may be initiated by:
 - a person who filed the application that is the subject of the decision;
 - a person who is the owner or representative of the owner of the property that is the subject of the decision;
 - a person who is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or
 - any officer, department, board, or bureau of the municipality affected by the decision.

b. Variance applications to be considered by the Board may be initiated by the owner of the affected property or the owner's authorized representative.

c. Special exception applications to be considered by the Board may be initiated by the owner of the affected property or the owner's authorized representative.

Any application submitted to the Board for consideration shall be reviewed by the Board Office and the Chair for completeness in all respects prior to posting a notice of meeting for Board consideration. 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.

4.3. Deadline for Filing Appeal Applications

Every application for an appeal of a decision of the City Planner must be filed in accordance with these rules within a reasonable time, not to exceed -20 days from the date of the decision.

4.4. Guidelines for Application and Decision

Every application shall include a letter and site plan or other graphics and illustrations explaining the applicant's request, along with the required non-refundable application fee. Where two or more different types of requests are included in the same application, each set of regulations established by the Zoning Ordinance shall apply to the consideration of the requests.

4.5. Decision on Appeals

The Board shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and may authorize City staff to do such. The Board shall decide such appeal within a reasonable time, but no later than 60 days from the filing of the appeal. Upon hearing of such appeal, any interested party may appear in person or by an agent or attorney.

4.6. Notice of Meetings

- a. 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, before the fifteenth (15th) day 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 requirements.
- b. Public notice of any appeal seeking an interpretation of a Zoning Ordinance which would apply throughout the City, shall be given by means of a legal advertisement appearing in the official newspaper of the city, before the fifteenth (15th) day prior to the date of the hearing. Written notice shall also be given to the applicant and his agent 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.

4.7. Consideration of Evidence

Decisions of the Board may be based on any credible evidence, including a member's own familiarity with a site. However, members of the Board should refrain from conducting independent investigations into any application and should consider only the evidence and testimony introduced at the meeting through the public hearing process and the background information presented by City staff through the

information packet. Where deemed necessary, the Board may request City staff to obtain any additional relevant information for the Board's consideration.

4.8. Withdrawal of Request

Any request may be withdrawn by an applicant upon written notice to the City Planner, but no request shall be withdrawn after public notice has been given without formal consent of the Board.

5. HEARINGS AND DECISIONS

5.1. 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(s) may appear on their own behalf or be represented by the applicant's own counsel or agent.

5.2. Order of Business

The Chair shall call the meeting to order, and the Secretary shall record the members present and absent. The Chair shall publicly advise those present of the procedures followed in the hearing and disposition of appeals; he/she 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. The City Planner or designee shall publicly advise the board of any communications received. Supporting evidence for and against each case shall be presented to the board. Each case may be taken under advisement until all have been heard.

5.3. Procedures for Hearing

- a. Any member of the Board should not vote on an item under Board consideration in which they have a direct personal or pecuniary interest not common to other Board members. Such conflict of interest must be declared before opening the public hearing, and any Board member whom has declared such conflict must remove themselves from the discussion and the meeting room, if possible, during item consideration.
- b. After opening the public hearing, the Chair shall first call upon the applicant, if present, to present the applicant's case and all evidence supporting the applicant's request. A true and correct copy of all written evidence, documents, photographs, and audio or videographic evidence presented at the hearing shall be included in the record of the case.
- c. The Chair shall then call upon those members of the public who wish to express support for the granting of the applicant's request. The Chair shall next call on

those members of the public who wish to express opposition to the granting of the applicant's request. Each person who wishes to speak shall state their name and address for the record. The Chair may establish reasonable time-limits for the members of the public as deemed necessary by the Chair.

- d. The applicant shall then be given the opportunity to rebut the arguments presented by those in opposition.
- e. Each person speaking shall proceed without interruption by any other person, and all arguments and pleadings shall be addressed to the Board. It shall be the responsibility of the Chair to maintain order and proper decorum during the hearing. No questioning or arguments between individual witnesses will be permitted. During the hearing, no member shall argue an issue with the applicant, nor indicate the member's final vote on the applicant's request until such time as the vote is called. Nothing herein shall be construed to prohibit a member from expressing his or her opinion as to the merits of the applicant's request or as to the existence of any hardship.
- f. Following the applicant's rebuttal, the Chair shall order the public hearing closed. After the hearing is closed, the members may deliberate regarding the merits of the applicant's request and may vote on a motion made and seconded with respect to the disposition of the request.
- g. The Board may act on any request for which the applicant fails to appear after conducting the pre-scheduled public hearing.

5.4. Board Review

The Chair may direct any question to the applicant or any persons speaking in order to bring out all relevant facts, circumstances, and conditions affecting the request, and may call for questions from other members of the Board and from the City staff. At any time prior to the time a vote is called for, the Board may call back any applicant or speaker or staff member for clarification of fact presented in the hearing or to answer one or more questions of the members of the Board.

5.5. Suspension of Rules

Any provision of these rules not governed by other law may be temporarily suspended by the affirmative votes of four (4) members or by unanimous consent.

5.6. Disposition of Cases

- a. For any requests for variances or special exceptions, the Board may grant or deny the applicant's request as proposed. For special exceptions only, the Board may unconditionally grant, conditionally grant, or deny an applicant's request.

- b. For any appeals of a decision of the City Planner, the Board may, in conformity with the provisions of state law, reverse or affirm, wholly or partly, or may modify an order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the City Planner from whose action an appeal is taken.
- c. The Board may also defer action on any request in response to an applicant's request for deferral of the action or whenever it concludes that additional evidence is needed or that alternate solutions need further study. However, a Board decision must occur no later than 60 days from the filing of the appeal.
- d. An applicant's request may be dismissed when the Board finds that the request has been improperly filed or, upon notification by the City, that permits have been issued for a conforming use or development of the property.

5.7. Participation in Deliberations and Voting

Only the five (5) regular Board members shall vote on the case unless absence or conflict of interest prevents their participation. If regular members are unable to vote prior to consideration of an agenda item, the next ranking alternate members (see Sec. 2.3) shall participate and vote in the regular members' absence for that item.

Should any member be unable to vote on any matter before the Board, he or she shall clearly acknowledge this for the record prior to the start of the public hearing, and the Presiding Officer shall clearly designate, for the record and for the audience, which of the alternate members will be voting.

5.8. Vote of Four (4) Members Required

The concurring vote of at least four (4) members shall be necessary to grant, or to grant conditionally as applicable, any request made to the Board. When a motion to approve a request fails to receive four (4) affirmative votes, the request is denied.

5.9. Vote of Simple Majority Required

A motion to deny a request shall pass on the vote of a simple majority of the members. Should a motion to deny fail to receive a majority vote, another motion must be made (e.g., "motion to approve", "motion to postpone", etc.) to dispose of the case. A simple majority vote of the members shall be required to approve an alternative motion. All motions must receive a second to be considered by the Board.

6. REAPPLICATION

6.1. Reapplication for Denied Request

No application for a request that has been denied shall be again filed earlier than one (1) year from the date of original denial unless other property in the immediate vicinity has, within the one-year period, been changed or acted on by the Board or City Council so as to alter the facts and conditions on which the previous Board action was based. Such change of circumstances shall permit the rehearing of a request by the Board prior to the expiration of one (1) year period, but such conditions shall in no way have any force in law to compel the Board, after a hearing, to grant an applicant's subsequent request. Such subsequent request shall be considered entirely on its merits and the peculiar and specific conditions related to the property on which the request is brought.

7. EXPIRATION OF GRANTED REQUEST

7.1. Expiration of Granted Request

Any special exception or variance granted by the Board shall authorize the issuance of a building permit and/or a Certificate of Occupancy, as the case may be, for a period of ninety (90) days from the date of the favorable action of the Board unless said Board shall have in its action approved a different period of time and has so shown such specific period of time in the minutes of its action. In no event, however, shall such additional time granted exceed two (2) years. If the building permit and/or Certificate of Occupancy shall not have been applied for within said ninety (90) days, or such extended period as the Board may have specifically granted, then the special exception or variance shall be deemed to have been waived and all rights thereunder terminated.

8. CERTIFICATION AND AMENDMENTS

8.1. Certified Copy

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

8.2. Repealing Clause

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

8.3. Amendment Procedure

Amendments to these rules of procedure may be recommended for City Council approval by the Board at any meeting upon the affirmative vote of four (4) members, provided any such amendment is proposed at a preceding meeting and recorded on the minutes of such meeting. . If approved by the City Council, amendments shall not

become effective until the next regular Board meeting. It is recommended that the Board review these rules of procedure at least once every year.

8.4. Informal Advice

The Board or its individual members shall not consider a request (formal or informal) for advice on theoretical or actual situations that potentially may come before the Board in the future as an appeal or application.

RECOMMENDED this _____ day of _____, 2025.

Chair, Zoning Board of Adjustment

ADOPTED this _____ day of _____, 2025.

Mayor, City of Nacogdoches

ATTESTED:

Rhonda Lewis, City Secretary

Filed in the Office of the City Secretary, City of Nacogdoches, Texas, this _____ day of _____, 2025.