



January 18, 2024

Zoning Board of Adjustment

Notice is hereby given of a Special Meeting of the Zoning Board of Adjustment to be held on January 18, 2024 at 4:00 p.m., via videoconference, with the opportunity to appear in person in the **Council Chambers, Room 119 of City Hall, 202 E. Pilar Street, Nacogdoches, Texas**, for the purpose of considering the following agenda items. All agenda items are subject to action.

The City of Nacogdoches Zoning Board of Adjustment meeting will be deemed as being conducted via videoconference. However, some Board Members may attend virtually, while others may be present in the above stated physical location. Regardless, the meeting will be streamed live at www.nactx.us/1200/Channel-21. There will be an opportunity for the public to comment on agenda items either by teleconference or in person in Council Chambers.

Members of the public who wish to submit comments on a listed agenda item in writing or via teleconference must contact the Planning & Zoning office by email at pz@nactx.us or by calling 936-559-2574 and providing their name, telephone number and relevant agenda item upon which they wish to speak. All requests to make comments via teleconference must be received by 12:00 p.m. on Thursday, January 18, 2024. For all timely requests received, staff will call the submitted phone numbers directly during the meeting when the corresponding item comes up for comment. NOTE: The incoming phone call from City staff will be an unfamiliar number.

**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 December 21, 2023, Zoning Board of Adjustment meeting.

4. **REGULAR AGENDA**

A. Discussion and possible consideration of the amended Zoning Board of Adjustment Rules and Procedures.

5. ADJOURN.

Aimee Cloutier, Planning Coordinator

City of Nacogdoches Planning Department
202 E. Pilar – PO Box 635030 – Nacogdoches, TX 75963
936-559-2574 □ Fax 936-559-2912 □ www.nactx.us
Home of Stephen F. Austin State University □ www.sfasu.edu



The City Council Chambers is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Planning Department at (936) 559-2574 or FAX (936) 559-2910 for further information.

This agenda is posted as required under G. C. Section 551.041. For more information or a copy of the Open Meetings Act, please contact Attorney General of Texas at 1-800-252-8011; City Secretary at (936) 559-2506 or visit City of Nacogdoches web site at www.nactx.us.

CERTIFICATION

I certify that the above notice was posted on the public notice board at City Hall, 202 East Pilar Street, on Friday, January 12, 2024 at 4:00 p.m. I further certify that the News Media were properly notified of this meeting as stated above.

Aimee Cloutier, Planning Coordinator



**MINUTES TO THE
ZONING BOARD OF ADJUSTMENT
December 21, 2023, 4:00 p.m. Hybrid Meeting**

All Present: Rhonda Ward; Mary Ann Bentley; Olivia Kiritsy; David Shofner; Larry King;

Members Absent: None

Staff Present: Planning Coordinator, Aimee Cloutier; Planning Consultant, Nathan Dietrich;

Guests: Applicant, Suzanne Patterson; Brad Maule; Julie Layton; Sam Patterson; Phillip Blackburn;

Call to Order: Chairwoman Olivia Kiritsy called the meeting to order at 4:00 p.m.

Pledge of Allegiance: Chairwoman Kiritsy led the pledge of allegiance.

Consent Agenda: Approval of the Minutes: October 19, 2023, Regular Meeting.

Chairwoman Kiritsy called for a motion to approve the minutes as written. Board Member Shofner moved to approve the minutes as written with Board Member Bentley seconding. The minutes were approved as presented unanimously (5-0).

Regular Agenda:

- A. Public Hearing:** Consider a request for a variance to the Zoning Ordinance Section 118-427. (a), for a reduction in the minimum lot dimension requirements for Lot 12, City Block 41, located at 1102 Logansport Street. This request has been submitted by RJ Bohac, Case File ZBA2023-12.

Planning Consultant (PC), Nathan Dietrich addressed the Board and advised them the applicant withdrew the application. There was no action.

- B. Public Hearing:** Consider the request for a variance to the Zoning Ordinance Section 118-466, to reduce the required number of off-street parking spaces for a tract of land, being Lots 13-A and 13-B, City Block 59, located at 2912 Rayburn Drive. This request has been submitted by Suzanne Patterson of Cal-Tex Lumber Co. Case File ZBA2023-13.

PC Dietrich presented the request to the Board stating the applicant is requesting a reduction in the off-street parking requirements from 20 spaces to zero (0) spaces. PC Dietrich stated the applicant is proposing to build two (2), ten thousand (10,000) sq ft storage warehouses. PC Dietrich stated the property has 150 employee parking spaces as well as 20/25 on-site parking spaces for administration staff for the business. PC Dietrich informed the Board that the two additional buildings will not require additional employees and will only be used to store dry lumbar and outdoor storage from the elements. PC Dietrich stated staff recommends approval of the parking variance.

Board Member Ward asked for clarification on the type of building to be built.

PC Dietrich stated the buildings were going to be pole barns and would not be enclosed and not airconditioned.

Board Member King asked if the variance went with the property and if the property changed hands, would the variance still apply if the buildings were being used for a different use.

PC Dietrich stated if the buildings were to be enclosed and air-conditioned, the new owner would be required to get a building permit which would make a new request for a variance possible.

There was discussion regarding where the buildings were going to be placed on the property.

Chairwoman Kiritsy opened the meeting for public comments. There were no comments made.

Board Member King moved to approve the variance for a reduction in off-street parking requirements from 20 spaces to 0 spaces with Board Member Shofner seconding. The variance was approved unanimously (5-0).

Adjourn: Chairwoman Kiritsy adjourned the meeting at 4:23 p.m.

Chairwoman, Olivia Kiritsy

Attest: Aimee Cloutier, Planning Coordinator

PRESENTER: Nathan Dietrich, Planning Consultant

ITEM/SUBJECT: Discussion and possible consideration of the amended Zoning Board of Adjustment Rules and Procedures.

TYPE OF REQUEST: To discuss and potentially adopt changes made to the Zoning Board of Adjustment (ZBA) Policies and Procedures that were last reviewed in 2006.

The ZBA rules and procedures state that this current amendment procedure as laid out in Section IX of Certification and Amendments states that these rules and regulations can be amended at any meeting with an affirmative vote of four members, however, this item is really just held for a discussion purpose.

BACKGROUND INFORMATION:

In efforts to ensure that all procedures and policies are followed correctly, these policies and procedures need to be reviewed on a more regular basis. The goal of this discussion is to make sure that all ordinances, policies, and procedures are being followed, and that the Board understands the “why” these policies and procedures are in place.

Additionally, this discussion and review is to make sure that the ordinance and the procedures are in concert. Furthermore, the review is to confirm that we are following the minimum requirements as set forth through the Texas Local Government Code and are reflected correctly within this document.

FINDINGS (Changes / Adjustments and Additions)

These changes, adjustments, and additions were noticed in the staff’s review of the current Zoning Board of Adjustment policies and procedures. The following findings are being presented for discussion:

- Adding a revised date and time to the policies document;
- adjusted naming conventions for the City Manager, Secretary of the board, and chairman;
- additional definitions of staff in the process (confirming the use of the City Attorney);
- Robert Rules of order invalidation statement;
- reworking the types of meetings, including executive sessions;
- updated language for official records, recording votes, public records requests, and written decisions to current date proceedings;
- clarified dates and deadlines for appeals and posting;
- clarification of terminology for appeals/requests;
- referring back to the ordinance on specific public hearing requirements, so the policy would not need to be changed if timing ever changed;
- changed withdrawal requirements for flexibility;

- clarified procedures for hearing, board voting, and review;
- create a recommended biannual review time to review documents to ensure consistency; and
- provided Exhibits for the board and interested parties to know how to apply for any of the types of requests.

REVIEW CRITERIA & REQUIRED FINDINGS (STAFF COMMENTS UNDERLINED):

N/A

STAFF RECOMMENDATION:

This is only a discussion item, but if the board agrees staff has added a decision making agenda item following this discussion in case they feel strongly and would like to approve as presented.

NOTICES:

N/A

- ATTACHMENTS:**
1. ZBA Rules and Procedures-Adopted 2006
 2. ZBA Rules & Procedures Showing Tracked Changes
 3. ZBA Rules & Procedures- Amended (2024)

CITY OF NACOGDOCHES
ZONING BOARD OF ADJUSTMENT
RULES AND PROCEEDURES

I. ZONING BOARD OF ADJUSTMENTS

101. ORGANIZATION

The Board of Adjustment shall consist of those members appointed by the City Commission and shall be organized under the laws of the State of Texas and the ordinances of the City of Nacogdoches.

102. OFFICERS

A chairperson and vice-chairperson shall be elected from among the board's membership at the annual meeting of the board and at such other times as these offices may become vacant. The city's chief executive officer shall designate an employee of the city to serve the board as executive secretary.

103. DUTIES

- (a) The chairperson, or in his/her absence the vice-chairperson, shall preside at all meetings, shall decide all points of order or procedure, and as necessary shall swear in witnesses or compel their attendance.
- (b) The executive secretary shall be custodian of the minutes of other official records, shall attend to the correspondence of the board, and shall cause to be given such notices as are requested in the manner prescribed by law.

104. RULES OF ORDER

Roberts Rules of Order, latest revision, shall be the board's final authority on all questions of procedure and parliamentary law not covered by these rules of procedure.

II. MEETINGS

201. QUORUM

A quorum shall consist of four members.

202. AGENDA

An agenda shall be prepared by the executive secretary for each meeting of the board. The agenda shall include appeals and other matters scheduled for consideration by the board. There shall be attached to the agenda a list of matters pending further action by the board and pending report of disposition by the executive secretary. A copy of the agenda shall be posted in the City Hall as required by law.

203. SPECIAL MEETINGS

Special meetings for any purpose may be held (1) on the call of the chair, or (2) as may be scheduled by a majority of the board.

204. PUBLIC MEETINGS

All meetings shall be held in full compliance with the provisions of state law, the zoning ordinance of the city and these rules of procedure. Any party interested may appear on his own behalf or be represented by counsel or agent.

III. OFFICIAL RECORDS

301. DEFINITION

The official records shall include these rules and regulations, and the minutes of the board together with all findings, decisions, and other official actions. Stenographic notes of the recording secretary and tape recordings of the proceedings and discussions shall not constitute the official record of the board.

302. RECORD OF VOTES

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.

303. 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 permanent record.

304. PUBLIC RECORD

The official record, appeals accepted for filing, and other matters presented to the board in regular or special meeting shall be on the file in the City Hall and shall be open to public inspection during working hours.

305. THE FILING OF BOARD ACTION

All actions taken by the board shall be filed with the office of the County Clerk.

IV. APPEAL AND PROCEDURES

401. TYPES OF APPEAL

The board shall consider only four types of appeals as are authorized under Texas Local Government Code § 211.

- (a) for interpretation of the meaning or intent of the zoning ordinance,
- (b) for special exception for use or development of property on which the board is required to act, or
- (c) for a variance from the literal enforcement of the zoning ordinance in order to achieve a reasonable development of property.
- (d) hear and decide other matters authorized by ordinance

402. REFUSAL REQUIRED

No appeals 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.

403. APPLICATION REQUIRED

Every appeal shall be filed on application forms provided by the city, shall be accompanied by the prescribed fee, and shall be complete in all respects before being accepted for filing. The application shall bear the signature of 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.

404. GUIDELINES FOR APPLICATION AND DECISION

Every appeal shall be prepared by the applicant and shall be considered by the board according to the guidelines established by the board 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.

405. FILING DEADLINE

An appeal shall be filed with the board within 10 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.

406. NOTICE

- (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 less than 10 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 requirements.
- (b) 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 10 days 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.

407. SUBMISSION OF EVIDENCE

Evidence supporting the grant or denial of an appeal shall be submitted only through the executive secretary or to the board in public meeting.

408. 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.

409. 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.

410. 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.

V. HEARINGS AND DECISIONS

501. PUBLIC HEARINGS

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

502. ORDER OF BUSINESS

The chairperson shall call the board to order and the executive secretary shall record the members present and absent. The chairperson shall publicly advise those present of the procedures followed in the hearings 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 executive secretary 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.

503. PROCEDURES FOR HEARING

- (a) The chairperson shall first call upon the applicant to present his case and all evidence supporting his plea. The chairperson shall then inquire of the applicant if there are others who support the appeal.
- (b) The chairperson shall next call on those opposed to the granting of the appeal to present their arguments. The applicant shall then have the right of rebuttal to arguments presented by the opposition. Following the rebuttal the chairperson shall order the hearing closed.
- (c) Each side shall proceed without interruption by the other, and all arguments and pleadings shall be addressed to the board. No questioning or arguments between individuals will be permitted. During the hearing no member shall discuss, debate or argue an issue with the applicant, nor indicate his probable vote on the appeal.

- (d) The board may not continue hearing on any appeal for which the applicant fails to appear unless the applicant has requested that the board act without his being present at the hearing; provided however, the board shall hear those persons appearing in response to the notice of hearing.

504. BOARD'S QUESTIONS

The chairperson may direct any question to the applicant or any persons speaking in order to bring out all relevant facts, circumstances and conditions affecting the appeal, and shall call for questions from other members of the board and from the staff before closing the hearing on each appeal.

505. DECISION

After all appeals have been heard each appeal shall be reviewed and acted upon. During its review the board may call back any applicant for clarification of facts presented by him in the hearing.

506. DISPOSITION OF APPEALS

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

507. VOTE REQUIRED

The concurring vote of four members shall be necessary to grant, or to grant conditionally, any matter appealed to the board. When a motion in favor of an applicant fails to receive four affirmative votes, the executive secretary shall record that fact and he/she shall spread on the minutes an entry stating that the board has denied the appeal.

VI. INTERPRETATIONS

601. INTERPRETATION: BASIS FOR FILING

Whenever it is alleged that there is an error in any determination or application of the requirements of the zoning regulations an appeal for the interpretation of the regulations or map designations may be filed with the board.

602. INTERPRETATION: PAPERS REQUIRED

An appeal shall include:

- (a) 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 map or text provisions.
- (b) a statement by the enforcing officer giving his reasons for his interpretation of the zoning regulations.

603. INTERPRETATION: BASIS FOR ACTION

- (1) Before acting on an appeal for interpretation the board shall consider:
 - (a) facts and statements filed in the application,
 - (b) 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 ordinances bearing thereon.
- (2) The board will make such interpretation as ought to 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 or 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 interpretations will not grant a special privilege to one property inconsistent with other properties or similarly situated.

VII. SPECIAL EXCEPTIONS

701. SPECIAL EXCEPTION: BASIS FOR FILING

Whenever zoning regulations require specific approval by the board for that development or use of property, an applicant for a special exception shall be approved by the board before the enforcing officer shall issue a permit for the proposed construction or use.

702. SPECIAL EXCEPTION: PAPERS REQUIRED

An application for a special exception shall include:

- (a) A site plan, drawn to scale, showing all lot dimensions, and the 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
- (c) a statement by the applicant describing the way in which all conditions prescribed by zoning regulations and by these rules will be or have met.

703. SPECIAL EXCEPTION: BASIS FOR ACTION

- (1) 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,
 - (d) the board's filings in its field inspection of the property.
- (2) The board will grant the application, subject to such special 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.

VIII. VARIANCES

801. VARIANCES: BASIS FOR FILING

Whenever, owing, to exceptional and extraordinary conditions, the literal enforcement of the provisions 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.

802. VARIANCE: PAPERS REQUIRED

An appeal for variance, shall include:

- (a) a site plan, drawn to scale, showing the location and dimension of the lot and all existing and proposed improvements;
- (b) a statement of facts and reasons why the zoning regulations should not be applied to the property in question and how standards governing the board's actions would be satisfied; and
- (c) a statement by the enforcing officer citing the reasons for refusing to issue a permit under the plans submitted.

803. VARIANCE: BASIS FOR ACTION

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

- (a) facts filed with the application,
 - (b) 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 shall grant the appeal, subject to such terms and conditions as it may fix, provided the applicant has demonstrated to the satisfaction of the board 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.

804. VARIANCE: SPECIAL INFORMATION REQUIRED

- (1) 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 or surveys, and profiles of the particular problem involved, including relationship to topographic features of adjoining properties.
- (2) When an appeal is submitted for variance of side 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.

IX. CERTIFICATION AND AMENDMENTS

901. CERTIFIED COPY

A certified copy of these rules and regulations and of any amendments thereto will be placed on record in the office of the city secretary within ten days following their date of adoption.

902. REPEALING CLAUSE

All previous adopted rules and regulations of the board shall be and the same are hereby expressly repealed.

903. AMENDMENT PROCEDURE

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

Adopted this _____ day of _____ 2006.

Paul Smith, Chairperson

ATTEST:

Renee Young, Board Secretary

Filed in the office of the City Secretary this _____day of _____2006.

Lila Fuller, City Secretary
City of Nacogdoches, Texas

CITY OF NACOGDOCHES
ZONING BOARD OF ADJUSTMENT
RULES AND PROCEDURE
I. ZONING BOARD OF ADJUSTMENTS
II. HEARINGS AND DECISIONS

501. PUBLIC HEARINGS

Hearings on all matters on which a decision of the board is required by law
SECTION 1. ORGANIZATION, OFFICERS, AND STAFF

1.1 Organization

The 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").

1.2 Officers

A Chair shall be appointed 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 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.
- 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 Order

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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 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 recommended by the Board. The City Planner shall set the agenda for the Board's meetings and shall maintain all permanent records of the Board (including the official minutes).

1.6 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.

1.7 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.

SECTION 2. MEETINGS

2.1 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. 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, the Acting Chair, or (if no Member is present) a staff member may call the meeting to order, announce the absence of a quorum, and announce 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

City Planner, or other staff member, to preside at the meeting by rescheduling the hearing to a date certain.

2.2 Agenda

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.

2.3 Board 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 scheduled for consideration by the Board, no meeting shall be held except as directed by the Chairman 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 of 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. 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.

2.4 Public Meetings

All meetings of the board shall be open to the public. ~~The Meetings shall be held in full compliance with the provisions of the Texas Open Meetings Act, the City's Zoning Ordinances, and these Rules of Procedure~~

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SECTION 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's 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. However, the failure to timely file the decision in the Board's Office shall not have any effect on the validity of the decision.

SECTION 4. APPLICATION PROCEDURES

4.1 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:

- a. to hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of any order or ordinance pertaining to zoning; (Exhibit "A")

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b. to hear and decide special exceptions to the terms of the zoning ordinance when the ordinance requires the board to do so; (Exhibit "B")

c. 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")

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

4.2 Application Required

Every request for action of the Board shall be filed in the Board's 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. 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.

4.3 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.

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 Notice

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 less than sixteen (16) 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 requirements.

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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 less than

sixteen (16) days 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.

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4.6 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 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.

4.8 Appeal after Board Denial

No appeal that has been denied shall be further considered in a new appeal resulting for the same request for 12 months from the date of denial, unless the new plans materially change the nature of the case.

SECTION 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 his/her own behalf or be represented by their own counsel or agent.

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502. ORDER OF BUSINESS

5.2 Order of Business

The chairpersonChair shall call the boardmeeting to order, and the executive secretarySecretary shall record the members present and absent. —The chairpersonChair shall publicly advise those present of the procedures followed

in the ~~hearings an~~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 ~~executive secretary~~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

503. ~~After~~ PROCEDURES FOR HEARING

a. ~~The chairperson~~opening the public hearing, the Chairman shall first call upon the applicant ~~to, if~~ present ~~his, to present the applicant's~~ case and all evidence supporting ~~his plea, 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.

(a)b. ~~The chairperson~~Chair shall then ~~inquire~~call upon those members of the applicant if there are others public who wish to express their support ~~the appeal~~for the granting of the applicant's request. The Chair shall next call on those members of the public who wish to express their 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.

(b)c. ~~The chairperson shall next call on those opposed to the granting of the appeal to present their arguments.~~The applicant shall then ~~have been given~~ the right of rebuttal opportunity to rebut the arguments presented by ~~the~~those in opposition. ~~Following the rebuttal the chairperson shall order the hearing closed.~~

(c)d. Each ~~side~~person speaking shall proceed without interruption by ~~the any~~ other person, and all arguments and pleadings shall be addressed to the ~~board.~~ Board. It shall be the responsibility of the Chair, in the Chair's absence, to maintain order and proper decorum during the hearing. No questioning or arguments between ~~individuals~~individual witnesses will be permitted. ~~During the hearing, no member shall discuss, debate or~~ argue an issue with the applicant, nor indicate ~~his probable vote on the appeal~~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

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from expressing his or her opinion as to the merits of the applicant's request or as to the existence of any hardship.

e. The board may not continue hearing. 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.

(d)f. The Board may act on any appeal request for which the applicant fails to appear unless the applicant has requested that the board act without his being present at the hearing; provided however, the board shall hear those persons appearing in response to the notice of after conducting the pre-scheduled public hearing.

504. BOARD'S QUESTIONS

5.4 Board Review

The chairperson 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 appeal request, and shall may call for questions from other members of the board Board and from the City staff before closing. 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 on each appeal or to answer one or more questions of the members of the Board.

505. DECISION

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

After all appeals have been heard each appeal shall be reviewed and acted upon. During its review the board may call back any applicant for clarification of facts presented by him in the hearing.

506. DISPOSITION OF APPEALS

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~~The boardBoard may unconditionally grant, may conditionally grant with modifications, or may deny an appeal. applicant's request.~~

~~The boardBoard 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.~~

~~The Board may also defer action on any appealrequest in response to the applicant's request for deferral of the action or, whenever it concludes that additional evidence is needed or that alternate solutions need further study. An appeal may be dismissed when the board finds that the appeal has been improperly filed, or upon notification by the enforcing officer that permits have been issued for a conforming use or development of the property.~~

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~~507. VOTE REQUIRED~~

~~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 members shall vote on the case unless absence or conflict of interest prevents their participation. Should any regular member be unable to vote, the alternate members shall be selected by the Chair, in numerical order beginning with Alternate Member #1 and ending with Alternate Member #4, to vote in the regular members' absence.~~

~~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, 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 Required~~

~~The concurring vote of four (4) members of the five (5) members shall be necessary to grant, or to grant conditionally, any matter appealedrequest made to the board. Board. When a motion in favor of an applicantto approve a request fails to receive four (4) affirmative votes, the executive secretary shall record that~~

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~~fact and he/she shall spread on 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.

SECTION 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.

SECTION 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 ~~an entry stating that the board has denied the~~ 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.

SECTION 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

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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 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 amendments shall not become effective until the next regular meeting. It is recommended that the Board review these rules and 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.

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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 action of the Board shall be filed in the Board’s 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. 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

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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 action of the Board shall be filed in the Board's 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. 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-

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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 action of the Board shall be filed in the Board's 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. 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

**CITY OF NACOGDOCHES
BOARD OF ADJUSTMENT
RULES AND PROCEDURES**

SECTION 1. ORGANIZATION, OFFICERS, AND STAFF

1.1 Organization

The 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”).

1.2 Officers

A Chair shall be appointed 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 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.
- 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 Order

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 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 recommended by the Board. The City Planner shall set the agenda for the Board's meetings and shall maintain all permanent records of the Board (including the official minutes).

1.6 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.

1.7 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.

SECTION 2. MEETINGS

2.1 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. 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, the Acting Chair, or (if no Member is present) a staff member may call the meeting to order, announce the absence of a quorum, and announce 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 City Planner, or other staff member, to preside at the meeting by rescheduling the hearing to a date certain.

2.2 Agenda

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.

2.3 Board 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 scheduled for consideration by the Board, no meeting shall be held except as directed by the Chairman 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 of 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. 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.

2.4 Public Meetings

All meetings of the board 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 Ordinances, and these Rules of Procedure

SECTION 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's 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. However, the failure to timely file the decision in the Board's Office shall not have any effect on the validity of the decision.

SECTION 4. APPLICATION PROCEDURES

4.1 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:

- a. to hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of any order or ordinance pertaining to zoning; (Exhibit "A")
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- d. hear and decide other matters authorized by the zoning ordinance.

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- 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 less than sixteen (16) 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 requirements.
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No appeal that has been denied shall be further considered in a new appeal resulting for the same request for 12 months from the date of denial, unless the new plans materially change the nature of the case.

SECTION 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 their 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. After opening the public hearing, the Chairman 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. The Chair shall then call upon those members of the public who wish to express their support for the granting of the applicant's request. The Chair shall next call on those members of the public who wish to express their 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. The applicant shall then be given the opportunity to rebut the arguments presented by those in opposition.
- d. 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, in the Chair's absence, 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. 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. 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

The Board may unconditionally grant, conditionally grant, or deny an applicant's request.

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.

The Board may also defer action on any request in response to the applicant's request for deferral of the action or whenever it concludes that additional evidence is needed or that alternate solutions need further study.

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 members shall vote on the case unless absence or conflict of interest prevents their participation. Should any regular member be unable to vote, the alternate members shall be selected by the Chair, in numerical order beginning with Alternate Member #1 and ending with Alternate Member #4, to vote in the regular members' absence.

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, 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 Required

The concurring vote of four (4) members of the five (5) members shall be necessary to grant, or to grant conditionally, 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.

SECTION 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.

SECTION 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.

SECTION 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 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 amendments shall not become effective until the next regular meeting. It is recommended that the Board review these rules and 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 action of the Board shall be filed in the Board’s 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. 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 action of the Board shall be filed in the Board's 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. 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 action of the Board shall be filed in the Board's 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. 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 this ____ day of _____, 2024

Chairman, Board of Adjustment

ATTESTED:

Board Secretary

Filed in the Office of the City Secretary this ____ day of _____, 2024.

_____, Deputy City Secretary, City of Nacogdoches, Texas