



February 15, 2024

Notice is hereby given of a Regular Meeting of the Zoning Board of Adjustments to be held on February 15, 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 teleconference or 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. There will be an opportunity for the public to comment on agenda items by teleconference or in person in Council Chambers.

Members of the public who wish to submit comments by telephone on a listed agenda item must contact the Planning and 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 telephone must be received by 12:00 p.m. on Thursday, February 15, 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 January 18, 2024, Zoning Board of Adjustment meeting.

4. **REGULAR AGENDA**

A. Consider approval of the amended Zoning Board of Adjustment Rules and Procedures 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.

5. ADJOURN.

Aimee Cloutier

City of Nacogdoches Planning Department
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Aimee Cloutier, Planning Coordinator

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 the notice of the meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on February 9, 2024, at 3:00 p.m. and remained posted until the meeting convened.

Aimee Cloutier, Planning Coordinator



**MINUTES TO THE
ZONING BOARD OF ADJUSTMENT
January 18, 2024, 4:00 p.m. Hybrid Meeting**

All Present: Ed Pool; Mary Ann Bentley; Olivia Kiritsy; David Shofner; Larry King;

Members Absent: None

Staff Present: Planning Coordinator, Aimee Cloutier; Planning Consultant, Nathan Dietrich; Assistant City Planner, Juan Pollette; City Attorney, Jerry Baker; Assistant City Engineer, Jason Vickery; City Engineer, Case Opperman;

Guests: None.

Call to Order: Chairwoman Olivia Kiritsy called the meeting to order at 4:05 p.m.

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

Consent Agenda: Approval of the Minutes: December 21, 2023, Regular Meeting.

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

Regular Agenda:

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

Planning Consultant (PC), Nathan Dietrich addressed the Board stating the Zoning Board of Adjustment Rules and Procedures have not been updated since 2006. PC Dietrich expressed they were outdated and needed to reflect recent ordinance and local government code changes as well clarifying intent.

After much discussion between the Board and Staff, there were recommendations to add definitions for staff and positions, change the word "chairman" to chair throughout the document, a table of contents and page numbers to be added, updated terminology, and change the wording in the document to match what the ordinance and the local government states.

PC, Dietrich stated he would like to recommend the Board review the document once a year and make any necessary changes to reflect the ordinance and any local government code changes.

PC, Nathan Dietrich stated he would have all changes ready for the Board to vote on at the next meeting.

Adjourn: Chairwoman Kiritsy adjourned the meeting at 4:53 p.m.

Chairwoman, Olivia Kiritsy

Attest: Aimee Cloutier, Planning Coordinator

PRESENTER: Nathan Dietrich, Planning Consultant

ITEM/SUBJECT: Consider approval of the amended Zoning Board of Adjustment Rules and Procedures 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.

TYPE OF REQUEST: To discuss and potentially adopt changes made to the Zoning Board of Adjustment (ZBA) Policies and Procedures that were last reviewed on January 18, 2024.

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. After presenting to the board the updates made to the ZBA rules and procedures, staff made the requested changes for the adoption of the revised ZBA Rules and Procedures.

BACKGROUND INFORMATION:

In an effort 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.

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 approval:

- 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 the 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.
- created a cover page
- Created a table of contents

REVIEW CRITERIA & REQUIRED FINDINGS (STAFF COMMENTS UNDERLINED):

STAFF RECOMMENDATION:

NOTICES:

N/A

- ATTACHMENTS:**
1. ZBA Rules & Procedures - To be Voted On
 2. ZBA Rules & Procedures- Showing Tracked Changes



ZONING BOARD OF ADJUSTMENT RULES & PROCEDURES

February 15, 2024

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

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

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.

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.

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 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. 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. 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

3. OFFICIAL RECORDS

3.1. Definition

The official records shall include these Rules of Procedures, 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.

4. APPLICATION PROCEDURES

4.1. Types of Appeals

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");
- 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"); and
- d. to 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 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. 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.

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. 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. 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. 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 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

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

- 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 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.

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 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 an interpretation of the Board shall be filed at the City on the application forms completed 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 action 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 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 action 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 (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 this ____ day of _____, 2024.

Chair, Zoning Board of Adjustment

ATTESTED:

Aimee Cloutier, Board Secretary

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

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

ZONING BOARD OF ADJUSTMENT RULES & PROCEDURES



Adopted February 15, 2024

CITY OF NACOGDOCHES
ZONING BOARD OF ADJUSTMENT
RULES AND PROCEDURES

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CITY OF NACOGDOCHES
ZONING BOARD OF ADJUSTMENT
RULES AND PROCEDURES

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.

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 Chair~~man~~ 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~~^{ef} 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. 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

3. OFFICIAL RECORDS

3.1. Definition

The official records shall include these Rules of Procedures, 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.

4. APPLICATION PROCEDURES

4.1. Types of ~~Appeals~~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");
- 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"); and
- d. to 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 ~~before the fifteenth (15th) 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.
- 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 less than sixteen fifteenth~~ (15th6) 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.

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 from the same request for 12 months from the date of the denial, unless the new plans materially change the nature of the case.~~

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 ~~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 Chair ~~man~~ 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 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

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

- b. 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 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.
- 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 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.

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 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 ~~an interpretation action~~ of the Board shall be filed ~~at~~ in the ~~City Board's Office~~ on the application forms ~~completed 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 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 ~~at the City in the Board's Office on T~~ the application forms ~~shall be completed in full providing the reason for the request, applicant responses to the findings of the appeal provided by the City, shall be accompanied by the and the~~ prescribed fee. ~~It is noteworthy that the special exception request do not need to argue a self-created hardship, 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

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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 ~~at the City in the Board's Office on~~ the application forms provided by the City, shall be completed in full providing the reason for the request, applicant responses to the findings of the appeal (Sec 118-99) and 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.

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ADOPTED this ____ day of _____, 2024.

Chair, Zoning Board of Adjustment

ATTESTED:

Aimee Cloutier, Board Secretary

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

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