

SECTION 18 BOARD OF ADJUSTMENT

Section 18.01 Organization

1. The City of Harlingen's Board of Adjustment shall consist of twelve (12) members, six of which will be regular members and six (6) of which will be alternate members. Each appointee to the Board shall be at least 18 years of age and must be a resident of the City. All appointees must be of good moral character and demonstrate an interest in the general welfare of the City. The terms of office of the current members of the Board of Adjustment shall expire on February 15, 1997. Thereafter the Mayor and each Commissioner shall appoint one (1) regular member and one (1) alternate member to the new Board. Lots will be drawn to determine which of the initial appointees serves a two (2) year term and which serves a three (3) year term. All subsequent appointments will be for a term of three (3) years. Each appointee shall continue to serve until a successor is appointed. The number of terms a member may serve shall not be limited. In the event a member of the Board vacates office during his or her term, the Mayor or Commissioner who appointed the vacating Board member shall appoint a replacement who shall serve the remaining term of the vacating Board member. The Board annually shall elect from its regular membership a chairman who shall preside at the meetings and vote as a regular member. The Board also annually shall elect a vice-chairman who shall preside in the absence of the Chairman. A quorum consists of a minimum of five (5) regular or alternate members. A regular Board member shall forfeit his or her office if such appointee fails to attend three (3) consecutive meetings. Members are removable for cause by majority of the City Commission upon written charges and after public hearing.
2. The Board shall adopt rules to govern its proceedings provided, however, that such rules are not inconsistent with this ordinance or statutes of the State of Texas. Meetings of the board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his absence, the Acting Chairman, may administer oath and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicate such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.
3. Appeals to the Board of Adjustment can be taken by any person aggrieved or by an officer, department or board of the municipality affected by the decision of the administrative officer. Such appeal shall be taken within fifteen (15) days after the decision has been rendered by the administrative officer, by filing with the officer from whom the appeal is taken and with the Board of Adjustment, a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

4. An appeal shall stay all proceedings of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate, a stay would in his option cause imminent peril to life or property. In such case, proceedings shall not be stayed, otherwise, than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.
5. The Board of Adjustment shall fix a reasonable time for the hearing of an appeal, given the public notice thereof by advertisement in a local newspaper not less than ten (10) days prior to the date of said hearing, as well as due notice to the parties in interest and all owners of property within two hundred (200) feet of said property and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by attorney or by agent.

Section 18.02 Jurisdiction

When in its judgment, public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially or permanently injured, the Board of Adjustment may in specific cases, after public notice and public hearing, and subject to appropriate conditions and safeguards, authorize the following special exceptions to the regulations herein established:

- (a) Permit the reconstruction, extension, or enlargement of a building occupied by non-conforming use on the lot or tract occupied by such building provided such reconstruction does not prevent the return of such property to a conforming use.
- (b) Permit such modifications to the height, yard, area, coverage and parking regulations as may be necessary to secure appropriate development of a parcel of land which differs from other parcels in the district by being of such restricted area, shape or slope that it cannot be appropriately developed without such modifications.
- (c) Require the discontinuance of non-conforming use of land or structure under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance. All actions to discontinue a non conforming use of land or structure shall be taken with due regard for the property rights of the persons affected when considered in a light of the public welfare and the character of the area surrounding the designated non conforming use and the conservation and preservation of property. The Board shall from time to time on its own motion or upon cause presented by interested property owners inquire into the existence, continuation of maintenance of any non-conforming use within the City.

- (d) Authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done.
- (e) No variance requests will be accepted or approved for height exceptions within the Airport Overlay Zones as established in Section 15.092 (B) 2 and 15.092 (B) 3. These zones are based on the elevation contour map in the vicinity of the Valley International Airport as established in 15.092 (C).
- (f) If a variance request for a particular tract for whatever reason, fails to be approved by the Zoning Board of Adjustments, such decision shall be final, subject to such remedy as any aggrieved party might have at law or in equity. A request may not be submitted for a second hearing by the Zoning Board of Adjustments unless a significant change has been made to the request.

Section 18.03 Action of the Board

- (a) In exercising its powers, the Board may, in conformity with the provisions of Articles 1011-A and including 1022-J of the 1925 Civil Statutes of Texas, as amended, revise or reform, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made and shall have all the powers of the officer from whom the appeal is taken including the power to impose reasonable conditions to be complied with by the applicant.
- (b) The concurring vote of five (5) regular or alternate members shall be necessary to revise any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to effect any variance in said ordinance.
- (c) Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustments or any taxpayer or any officer, department or board of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten (10) days hereafter the filing of the decision in the office of the Board and not thereafter.

Section 18.04 Variance Application Procedure

The first step in an application process is to sit down with a member of the Planning & Development Department and discuss your situation in detail. While a staff member cannot tell you for sure that an option will or will not work, they can give you their professional opinion and reasons why or why not one option is more feasible than another.

If it is determined that you will need to apply for a variance, fill out an application for a hearing with the Zoning Board of Adjustments (ZBA). There is a non-refundable charge to apply. If an item is held or tabled at the request of the applicant, there will be a renotification fee. You will also be required to provide copies of your latest tax receipts. Staff will mail a notice of application with the time, date, and location of the public meeting to be held on the subject. This notice goes to all property owners within 200' of the site in question and to the local newspaper. This occurs at least 10 days prior to the public hearing. The meeting agenda is also posted 72 hours in advance as required by Texas Local Government Code.

Staff members will visit the site and study other relevant information such as neighboring land uses, traffic characteristics, utility line capacities, the Comprehensive Plan, and planning and zoning principles and laws, to determine a recommendation for the board. An information package with the executive summary of staff recommendation and other pertinent information (maps, a copy of the application, any correspondence relevant to the matter, etc.) is provided to board members several days prior to the meeting.

Attend the Zoning Board of Adjustments meeting. Sometimes Board members will have questions regarding the request, or will seek input from the applicant. You may want to consider bringing your neighbors or any other support you may have. No one will be forced to speak, nor will they be denied the opportunity to speak during the public hearing portion of the meeting. There will be Spanish interpretation available upon request. The Chairman of the meeting will declare the public hearing closed once everyone who wishes to, has had the opportunity to speak. The Board members will then deliberate their course of action and take a vote. An application requires the consenting vote of a five members of the Board in order to be passed.

The entire process takes approximately 30 days to complete.

A copy of the variance process flowchart, application and information sheet is included in Appendix E.