

City of Alvarado
County of Johnson
State of Texas
Zoning Board of Adjustment
June 17, 2024
6:20 p.m.

AGENDA

The City of Alvarado Zoning Board of Adjustment will meet in Regular Session on Monday, June 17, 2024 at 6:20 p.m. in the Council Chambers at City Hall located at 104 W. College Street in Alvarado, Texas, for the following agenda:

CALL TO ORDER

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

PUBLIC HEARING AND ACTION (NONE)

PRESENTATION OF ZBA MEMBERSHIP, ROLL, AND PROCEDURES

ADJOURNMENT

ACCESSIBILITY STATEMENT

City Hall is wheelchair accessible. The exit and parking ramp are located in the front of the building. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are request to contact the Community Development Office at 817-790-3351, or by e-mail frenchj@cityofalvarado.org. Please contact the city at least two (2) working days prior to the meeting so that appropriate arrangements can be made.

NON-DISCRIMINATION STATEMENT

The City of Alvarado does not discriminate based on race, color, national origin, sex, religion, or disability in the employment or the provision of services.

I, the undersigned authority do hereby certify that the above agenda was posted on the bulletin board in the City Hall of the City of Alvarado, Texas, at a place that is convenient and readily accessible to the general public at all times and said Agenda was posted on June 14, 2012 by 4:30 p.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Justin French, AICP
Community Development Director

**CITY OF ALVARADO
ZONING BOARD OF ADJUSTMENTS
Regular Called Meeting
County of Johnson
State of Texas
July 18, 2022
MINUTES**

The Zoning Board of Adjustments of the City of Alvarado met in Regular Called Session on Monday, July 18, 2022 at 6:25 p.m. in the Council Chambers at City Hall. The following were present for roll call:

Scott Arthur	*	Member
Cherry Bryant	*	Member
Beverly Short	*	Member
Lydia Moon	*	Member
Michael Bennet	*	Member
Jacob Wheat	*	Chairperson (Alternate)

The following were absent for roll call:

Kevin Thomas	*	Member (Alternate)
--------------	---	--------------------

Others Present:

Emile Moline	*	Economic Development Director
--------------	---	-------------------------------

Chairperson Jacob Wheat called this regular called meeting to order at 6:25 P.M. and gave the invocation.

PLEDGE OF ALLEGIANCE

CONSIDERATION AND ACTION REGARDING APPROVAL OF MINUTES FROM PRIOR MEETING.

Motion was made by Member Lydia Moon, duly seconded by Member Beverly Short to approve the minutes of the prior meeting. This motion was supported by five votes of approval and zero votes opposed. Motion carried.

PUBLIC HEARING, CONSIDERATION AND ACTION REGARDING A REQUEST FOR A VARIANCE FROM THE REQUIREMENTS OF SECTION 42-22 OF THE CODE OF ORDINANCES: SINGLE-FAMILY RESIDENTIAL DISTRICT, SPECIFICALLY A REDUCTION OF THE MINIMUM REAR SETBACK TO ALLOW MINIMUM FRONT SETBACK OF TWENTY (20) FEET, AND REDUCTION OF THE MINIMUM SIDE SETBACK TO ALLOW MINIMUM SIDE SETBACK OF FIVE (5) FEET FOR PROPERTY KNOWN AS

LOT 4, BLOCK 1 OF THE BROWN ADDITION SECTION 1, ALSO KNOWN AS 208 COTTON STREET, ALVARADO, JOHNSON COUNTY, TEXAS, AS REQUESTED BY FREDERICK MOORE.

Chairperson Jacob Wheat opened the public hearing at 6:25 p.m. Chairperson Jacob Wheat then closed this public hearing at 6:45 p.m. Motion was made by Member Lydia Moon, duly seconded by Member Scott Arthur to approve this request. This motion supported five votes in approval and zero votes opposed. Motion carried.

Chairperson Jacob Wheat then adjourned this regular meeting at 6:50 p.m.

Passed and approved this 17th day of June, 2024.

Jacob Wheat, Chairperson

ATTEST:

Justin French, AICP
Community Development Director

REGULAR MEETING OF THE CITY OF ALVARADO BOARD OF ADJUSTMENTS
104 W. COLLEGE
JULY 18, 2022
6:25 PM

AGENDA

The Zoning Board of Adjustments of the City of Alvarado will meet in a Regular Called Session on Monday, July 18, 2022 at 6:25 p.m. in the Council Chambers at City Hall for the following agenda items.

CALL TO ORDER - Roll Call

INVOCATION

PLEDGE OF ALLEGIANCE

CITIZEN PARTICIPATION AND PUBLIC INPUT:

This is an opportunity for citizens to address the convened board of this meeting on any matter. The presiding officer may ask for the citizen to hold his or her comment on an agenda item until that agenda item is reached. The convened board has no obligation to respond in any matter to comments or questions from the public. Any response from a member of the convened Board to comments related to items not on the agenda is limited to a statement of specific factual information, a recitation of existing policy, or direction to staff to place the subject on the agenda for a future meeting.

CONSENT AGENDA:

1. Minutes from the Regular Meeting held on May 16, 2022.

NEW BUSINESS:

2. Public Hearing, consideration and action regarding a request for a variance from the requirements of Section 42-22 of the Code of Ordinances: SF-2 Single-Family Residential District, specifically a reduction of the minimum rear setback to allow minimum rear setback of fifteen (15) feet, reduction of the minimum front setback to allow minimum front setback of twenty (20) feet, and reduction of the minimum side setback to allow minimum side setback of five (5) feet for property known as Lot 4, Block 1, Brown Section 1 Addition, also known as 208 Cotton Street, Alvarado, Johnson County, Texas, as requested by Frederick Moore."

EXECUTIVE SESSION:

Pursuant to the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, the City Council or other Board may convene in closed session to deliberate regarding the following matters:

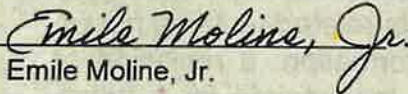
ACCESSIBILITY STATEMENT

The Alvarado City Hall and Council Chamber are wheelchair accessible. The exit and parking ramps are located in the front of the building. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at 817-790-3351, FAX: 817-783-7925, e-mail: wallsb@cityofalvarado.org Please call at least two (2) working days prior to the meeting so that appropriate arrangements can be made.

NON-DISCRIMINATION STATEMENT

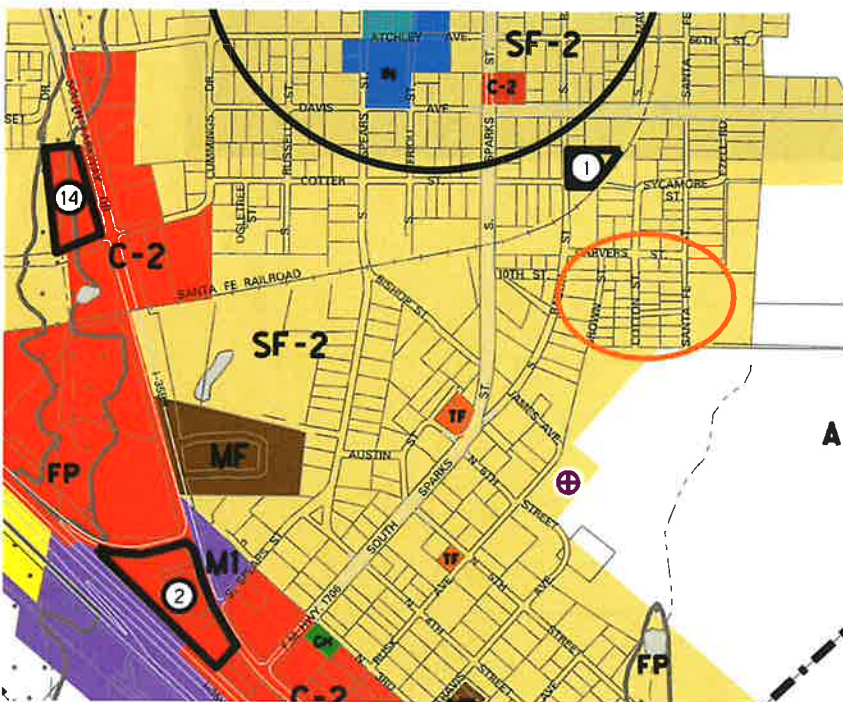
The City of Alvarado does not discriminate on the basis of race, color, national origin, sex, religion, or disability in the employment or the provision of services.

I, the undersigned authority do hereby certify that the above Agenda was posted on the bulletin board in the City Hall of the City of Alvarado, Texas, a place convenient and readily accessible to the general public at all times and said Agenda was posted on July 15, 2022 at 4:30 p.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.


Emile Moline, Jr.

Planning and Development/Economic Development Director

Comparison Chart for Reference	Single Family 2 (SF-2)	Setbacks Requested
Minimum lot area:	6,000 square feet ¹	N/A
Minimum lot width:	50 linear feet	N/A
Minimum lot depth:	120 linear feet	N/A
Minimum front yard:	25/35 linear feet ²	20 Linear Feet
Minimum side yard:	8/10/15 linear feet ³	5 Linear Feet
Minimum rear yard:	25 linear feet ⁴	15 Linear Feet
Maximum ground coverage:	45/55 ⁵	N/A
Maximum density per acre:	6.00 DU	N/A
Height:	35 linear feet	N/A



CITY OF ALVARADO

REQUEST FOR A VARIANCE

DATE: June 8, 2022 CLERK: _____ FEE: \$200 CASE NO: _____

NAME OF APPLICANT: Moore Developments & Holdings, LLC. PH: (214) 708-0561

MAILING ADDRESS: 1515 Shady Tree Place Duncanville, TX 75137

APPLICANT IS THE: OWNER / LEASER / PURCHASER OF THE PROPERTY.
circle one

NAME OF OWNER: Moore Developments & Holdings, LLC. PH: (214) 708-0561

MAILING ADDRESS: 1515 Shady Tree Place Duncanville, TX 75137

STREET ADDRESS OF PROPERTY: 208 Cotton Street, Alvarado TX ACREAGE: 0.107 (4,691 sq ft)

LEGAL DESCRIPTION: LOT 4 BLK 1 BROWN SECTION 1 Addition

PRESENT USE: Vacant Lot PROPOSED USE: Single-family Residence Home

REASON FOR NEEDING A VARIANCE: For the purpose of building a 2-car garage home. Requesting a setback variance of 20 feet in the front, 5 feet on the sides and 15 feet in the back.

USAGE OF ADJACENT PROPERTY NORTH: Vacant Lot

SOUTH: Single Family Residence

EAST: Single Family Residence

WEST: Single Family Residence

NOTE: If the property can be identified by the subdivision or addition please include that with the lot and block numbers as the legal description. You must also attach a copy of the appropriate portion of the subdivision or addition plat with the subject property clearly indicated on it. If property is not part of a subdivision or addition plat, give the complete metes and bounds discription of the property and indicate the location of said property by indentifying one or more adjacent tracts and/or rights-of-way or attach a surveyor's plat of the property.

SIGNED: 

APPLICANT

SIGNED:  

OWNER

Chapter 42 ZONING¹

ARTICLE I. APPLICABILITY OF ORDINANCE

Sec. 42-1. Interpretation, purposes, and administration.

- (a) *Purpose.* In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals and welfare. The zoning regulations and districts as herein established have been made in accordance with a comprehensive plan, for the purpose of promoting the health, safety, morals and welfare of the city. This chapter has been designed, among other things, to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to provide adequate light and air; to prevent the overcrowding of the land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, open spaces, and to protect and enhance historical, cultural and environmental qualities, and other public requirements. They have been made with reasonable consideration, among other things; of the right to use the land subject to reasonable regulations; of the character of the district and its peculiar suitability for the particular uses specified; and with a view of conserving the value of land and buildings and encouraging the most appropriate use of land throughout the city consistent with the comprehensive plan.
- (b) *Zoning administration.* The zoning administrator is charged with the administration and interpretation of this chapter. In the event that this chapter or any provision hereof is unclear as to its applicability to any property or person, the zoning administrator shall render an interpretation of the ordinance or provision after taking into consideration the purpose and intent of the ordinance as a whole. The decision of the zoning administrator shall be subject to review by the board of adjustment as provided in section 42-95.

(Ord. No. 2015-005, § 1, 4-20-2015)

Sec. 42-2. Scope of chapter.

The provisions of this zoning chapter and the regulations in the districts established herein constitute minimum requirements for the promotion of the public health, safety, morals and general welfare of the city. Wherever higher or more restrictive standards are established by provisions of any other applicable statute, ordinance or regulation than is established by the provisions of this chapter, the provisions of such other statute, ordinance or regulation shall govern.

(Ord. No. 2015-005, § 1, 4-20-2015)

¹Editor's note(s)—Ord. No. 2015-005 , § 1, adopted April 20, 2015, set out provisions for use herein as arts. I—VII, §§ 42-1—42-10, 42-20—42-36, 42-45, 42-55—42-59, 42-70—42-73, 42-80—42-85, 42-95—42-99. Inasmuch as provisions with similar numbering existed at the time of codification, and at the direction of the city, the existing provisions numbered arts. III—VII were maintained by renumbering as new arts. VIII—XII.

State law reference(s)—Regulation of land use, structures, businesses, and related activities, V.T.C.A., Local Government Code ch. 211 et seq.; planning and development, V.T.C.A., Local Government Code ch. 371 et seq.

Secs. 42-87—42-94. Reserved.

ARTICLE VII. ADMINISTRATION AND ENFORCEMENT

Sec. 42-95. Board of adjustment.

(a) *Creation, membership and procedures.*

- (1) *Zoning board of adjustment established.* A board of adjustment is hereby established in accordance with the provisions of V.T.C.A., Local Government Code § 211.008 and shall have the powers and duties as provided in said statute and this chapter.
- (2) *Membership.*
 - a. The zoning board of adjustment shall consist of five members, each to be appointed by the city council for a term of two years and removable for cause by the city council upon written charges and after public hearing. If a member is absent for three consecutive meetings, or if the member misses more than 50 percent of the meetings in a calendar year, reasonable cause exists for the removal of the member unless the board has granted the member a leave of absence at a meeting due to illness or other good cause.
 - b. Vacancies shall be filled for the unexpired term of any member whose place becomes vacant for any cause, in the same manner as the original appointment was made. Three members shall serve until January 1 of odd-numbered years, as heretofore appointed, and two members, as heretofore appointed, shall serve until January 1 of even-numbered years. Thereafter each member reappointed or each new appointee shall serve for a full term of two years unless removed as hereinabove provided.
 - c. The city council may also appoint up to four alternate members of the board who shall serve in the absence of one or more of the regular members when requested to do so by the chairperson of the board, so that all cases to be heard by the board will always be heard by a minimum number of four members. These alternate members, when appointed, shall serve for the same period as the regular members, which is for a term of two years, and any vacancy shall be filled in the same manner and they shall be subject to removal by the same means and under the same procedures as the regular members.
- (3) *Hearings.* The hearings of the board shall be public. The board shall hear the intervention of any owner of property adjacent to, in the rear of, or across the street from a lot as to which the granting of any permit is pending, and shall also hear any other parties in interest. All hearings are to be heard by at least four members of the board.
- (4) *Meetings.* Regular meetings of the board shall be held at such times as the board may determine. Special meetings of the board shall be held at the call of the chairperson or at the written request of two regular members of the board, said request to be submitted to the chairperson.
- (5) *Rules and regulations.* The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating 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 city secretary and shall be public record. The board shall adopt from time to time such additional rules and regulations as it may deem necessary to carry into effect the provisions of this chapter, and shall furnish a copy of the same to the zoning administrator, all of which rules and regulations shall operate uniformly in all cases. All of its orders shall be in accordance therewith.

-
- (b) *Jurisdiction and powers.* The board of adjustment shall have all powers granted by the provisions of V.T.C.A., Local Government Code §§ 211.008—211.011. The board may, in specific cases, after public notice and public hearing and subject to appropriate conditions and safeguards, take the following actions:
- (1) Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the zoning administrator or other city officer or department in the enforcement of this chapter;
 - (2) Hear appeals on zoning boundary disputes;
 - (3) Hear requests by a city officer, board, commission or city council to abate, remove, limit or terminate a nonconforming use or building through expedited compliance procedures to require the discontinuance of a nonconforming use or building under a reasonable plan whereby the owner's investment in the nonconforming use or building can be recouped through amortization over 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 chapter.
 - (4) Permit the expansion or extension of a nonconforming use in accordance with the provisions of section 42-83.
 - (5) Within the limits prescribed in section 42-82, the board may review nonconforming uses which have been abandoned or discontinued to determine whether such uses should be allowed to resume operation. Such action by the board shall consider any unnecessary hardship on the property owner if the use is discontinued and shall have due regard for the public welfare, the character of the area surrounding such use, and the conservation, preservation and protection of surrounding properties and their values;
 - (6) Permit the repair or reconstruction and occupancy of a nonconforming building or a building containing a nonconforming use where the building has been destroyed in excess of 50 percent, but less than the total value as provided in section 42-83, provided such reconstruction does not, in the judgment of the board, prevent the return of such property to a conforming use or increase the nonconformity of a nonconforming building beyond what is permitted by article VI. Such action by the board of adjustment shall have due regard for the property rights of the person or persons affected, when considered in light of the public welfare, the character of the area surrounding such structure, and the conservation, preservation and protection of surrounding properties and their values;
 - (7) Require the vacation and demolition of a nonconforming structure which is deemed to be obsolete, dilapidated or substandard;
 - (8) Permit variances to the development regulations in this chapter such as front yard, side yard, rear yard, lot width, lot depth, lot coverage, minimum setback, off-street parking, off-street loading, lot area, maximum height, or other development regulations where such variance is necessary to permit the reasonable development of a specific parcel of land which differs from other parcels of land in the same zoning district by being of such area, shape, topography, slope or condition that it cannot be developed in a manner commensurate with the development permitted upon other parcels of land in the same zoning district, or where, due to special conditions:
 - a. The literal enforcement of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district and would result in an unnecessary and/or unreasonable hardship;
 - b. The special conditions are not the result of the applicant's actions, but are peculiar to the land, structure or building involved;
 - c. The variance requested is the minimum necessary; and
 - d. No special privilege is granted which is denied to other similarly situated uses.

Any variance granted shall not adversely affect adjoining property, shall not be contrary to the public interest and shall insure that the spirit of the ordinance is observed and substantial justice is done.

- (9) Approve special exception uses which are specifically authorized by this chapter. A site plan meeting the requirements of section 42-56, shall be required to be submitted with each application for a special exception. Any special exceptions authorized by the board, either under the provisions of this chapter, or under the authority granted to the board under the statutes of the state, shall authorize the issuance of a building permit for a period of 90 days from the date of the favorable action on the part of the board of adjustment, unless the board in its minutes shall, at the same time, grant a longer period. If a building permit shall not have been issued within said 90-day period or such other period as the board of adjustment may specifically grant, the special exceptions shall be deemed waived, and all rights thereunder terminated. Such termination and waiver shall be without prejudice to a subsequent appeal to said board of adjustment in accordance with the rules and regulations regarding appeals.

(c) *Appeals.*

- (1) Except as limited for specific appeals, appeals to the board of adjustment can be taken by any person aggrieved or by any officer, department, or board of the municipality affected by any decision of the zoning administrator or any official authorized to make a decision under this chapter. Such appeal shall be taken within 15 days after the decision has been rendered by the zoning administrator or other official by filing with the official from whom the appeal is taken and with the city secretary a notice of appeal specifying the grounds thereof. The official from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.
- (2) A written application for appeal shall be submitted together with the required fee, accompanied by an accurate legal description, maps, site plans, drawings, and other data or information relevant to the appeal.
- (3) An appeal shall stay all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case proceedings may be stayed only by a restraining order granted by the board of adjustment or by a court of record on application after notice to the official and upon a showing of due cause.
- (4) Limitation on reapplications. When the board has denied an appeal, no new applications of similar nature shall be accepted by the board or scheduled for 12 months after the date of board denial. Applications which have been withdrawn at or before the board meeting or that have been expired after approval by the board, may be resubmitted at any time for hearing before the board.
- (d) *Hearing.* The board of adjustment shall fix a reasonable time for the hearing of an appeal, give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. At the hearing any party may appear in person or by attorney or agent. The notice provided in this section shall be given by publication in the official city publication stating the time and place of such hearing, which shall not be earlier than ten days from the day of such publication, and in addition, the board of adjustment shall mail notices of such hearing to the petitioner and the owners of property lying within 200 feet of any point of the lot or portion thereof, on which an appeal is taken, and to all persons deemed by the board of adjustment to be affected. Such owners and persons shall be determined according to the current tax rolls of the city and substantial compliance therewith shall be deemed sufficient, provided, however, that the depositing of such written notice in the mail by the board of adjustment shall be deemed in compliance with this section.
- (e) *Decision of the board.* The board shall decide the appeal within a reasonable time. The board may reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination as in its opinion ought to be made in the premises, and to that end, shall have all powers of the officer or department from whom the appeal is taken. In granting any appeal, the board may place reasonable conditions and

restrictions on the property that the board deems appropriate to assure that the spirit and intent of this chapter is observed.

- (f) *Vote of four members required.* The concurring vote of four members of the board is necessary to:
- (1) Reverse an order, requirement, decision or determination of an administrative official;
 - (2) Decide in favor of an applicant on a matter on which the board is required to pass; or
 - (3) Authorize a variation from the terms of this chapter.
- (g) *Appeals to court.* Any person or persons, jointly or separately, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department or board of the city may present to a court of record, a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of such illegality. Such petition shall be presented to the court within ten days after the rendering of the decision complained of by the board of adjustment, and not thereafter.
- (h) *Authorized special exceptions.* The following special exceptions may be permitted by the board of adjustment, in the district specified, subject to full and complete compliance with any and all conditions listed, together with such other conditions as the board of adjustment may impose:
- (1) Permit the erection and use of a building or the use of premises for railroads if such uses are in general conformity with the city comprehensive plan and present no conflict or nuisance to adjacent properties.
 - (2) Permit a public utility or public service building in any zoning district, or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare.
 - (3) Grant a permit for the extension of a use, height, or area regulation into an abutting district where the boundary line of the district divides a lot in a single ownership on the effective date of the ordinance from which this chapter is derived.
 - (4) Waive or reduce the parking and loading requirements in any of the districts, whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.
 - (5) Determine whether an industry should be permitted within the M-1 or M-2 District because of the methods by which it would be operated and where the board determines that there will be no adverse effects upon uses within surrounding zoning districts.
 - (6) Rule on all applications on siting of manufactured homes in districts not so zoned. Approval shall only be allowed in cases of extreme hardship under guidelines established by the board.
 - (7) Approve the location of amateur radio equipment and TV antennas (including ham radio and CB equipment but not including commercial equipment) in a residential district subject to the restrictions in this chapter.
 - (8) Approve the location of satellite receive-only antennas which exceed one meter in diameter in residential districts or two meters in diameter in non-residential districts subject to the following conditions: To receive a special exception, a satellite receive-only antenna which exceed:
 - a. One meter in diameter located in a residential zoning district, or
 - b. Two meters in diameter located in a non-residential zoning district (except governmental antennas), must comply with the following requirements:

-
1. A satellite receive-only antenna shall not exceed 12 feet in height; however, satellite receive-only antennas may be placed on the roof of commercial structures if screened from public view from line of sight at ground level from the property line.
 2. Setbacks.
 - i. *Front and side.* Satellite receive-only antennas shall not be permitted in front or side yards;
 - ii. *Rear.* Satellite receive-only antennas shall be permitted in rear yards provided they meet the minimum setback as required for accessory buildings in residential districts and as for all buildings in nonresidential districts.
 3. Separation. There shall be no minimum or maximum separation requirements for satellite receive-only antennas from other structures on the same lot of record;
 4. Satellite receive-only antennas shall not be permitted in easements;
 5. Lights. No auxiliary or outdoor lighting shall be allowed on satellite receive-only antennas except such lights or lighting as may be required by the Federal Aviation Administration or the Federal Communications Commission;
 6. Construction standards. Except for satellite receive only antennas installed by a governmental entity, a building permit must be obtained prior to the construction and/or installation of a satellite receive only antenna;
 7. No part of an antenna, or any attachment thereto may extend beyond the property lines of the owner of such antenna site.
- (9) Approve the location of telecommunications antennas and towers.
- a. *Application.* To properly evaluate applications to locate telecommunications antennas or towers, the following information must be provided by the applicant, as applicable:
 1. A description of the nature of the antenna or tower site. Indicate whether the proposed structure is a monopole or lattice tower. Indicate the proposed height;
 2. Provide photos or drawings of all equipment, structures and antenna;
 3. Describe why the antenna or tower is necessary;
 4. State the name(s) of the telecommunications providers or other users of the antenna or tower and describe the use to be made by each user;
 5. Indicate if this antenna or tower site will be connected to other sites; and if so, describe how it will be connected and who will provide the backhaul network;
 6. The applicant must address whether an effort has been made to co-locate the facility proposed for this antenna or tower on existing towers or facilities in the same general area. Identify the location of existing sites. Describe in detail efforts made and explain in detail why existing site were not feasible. Attach all studies or tests performed which demonstrate why the existing sites will not provide sufficient signal coverage. Provide written documentation from existing sites' owners and/or operators which confirm the statements provided. Indicate whether or not the existing sites allow or promote co-location and, if not, describe why not;
 7. Indicate whether or not co-location will be allowed to other telecommunications providers at the requested site. If they are not allowed, state every reason and the basis for each reason;

-
8. If the requested location is in a residential district the applicant must address whether an effort has been made to locate the facility in a commercial or industrial district. Identify the location of the commercial and/or industrial district sites. Describe in detail efforts and explain in detail why these commercial or industrial district sites were not feasible. Attach all studies or tests performed which demonstrate why the commercial or industrial sites will not provide sufficient signal coverage. Provide written documentation from commercial or industrial district sites' owners and/or operators which confirm the statements provided;
 9. Indicate the applicant's current coverage area for the city. Attach maps showing the areas the applicant's existing antennas currently cover, the areas the applicant's existing sites and other existing sites would cover, and the areas the applicant's existing sites and the requested site would cover;
 10. Describe the applicant's master antenna and tower plan for the city. Attach maps and other related documentation. Provide information indicating each phase of the plan;
 11. Describe the applicant's plan to minimize the number of telecommunications towers need to cover the city.
- b. *Conditions of approval.* The board of adjustment will approve a requested application for a special exception to locate a telecommunications antenna or tower subject to the finding that co-location of this facility with a nearby existing antenna facility is not feasible and subject to the following conditions:
 1. Applicant will permit co-location of others at the site;
 2. Applicant will configure its antenna and other equipment to accommodate other providers;
 3. Applicant will identify its backhaul network connecting antenna sites;
 4. Applicant will give notice to the city identifying any providers who co-locate on the site and identify their backhaul network; and
 5. Applicant shall meet the height, area, separation, and other requirements as listed in section 42-45.
 - c. *Written report upon denial of request.* The city shall document any denial of a request to place, construct, or modify personal wireless service facilities in writing, stating the reason for denial and indicating substantial evidence that supports the denial.
 - d. *Abandoned antenna facilities.* Any antenna or antenna facility that is not operated for a continuous period of 12 months shall be considered abandoned and the owner shall remove it within 90 days of receipt of notice from the city.
- (10) To grant a permit for the extension of a use, height or area regulation into an abutting district, where the boundary line of the district divides a lot in a single ownership on the effective date of the ordinance from which this chapter is derived.
- (11) To waive or reduce the parking and loading requirements in any of the districts, when:
- a. The character or use of the building is such as to make unnecessary the full provision of parking or loading facilities; or
 - b. When such regulations would impose an unreasonable hardship upon the use of the lot.
- The board shall not waive or reduce such requirements merely for the purpose of granting an advantage or a convenience.

(i) *Limitations on jurisdiction.*

- (1) The board shall have no authority to change any provisions of this chapter and its jurisdiction is limited to hardship and borderline cases which may arise from time to time. The board may not change the district designation of any land either to a more or less restrictive zone.
- (2) It is the intent of this chapter that all questions of interpretation and enforcement shall be first presented to the zoning administrator, that such questions shall be presented to the board only on appeal from the decision of the zoning administrator and that recourse from the decisions of the zoning board of adjustment shall be to the courts as provided by the laws of the state.

(Ord. No. 2015-005, § 1, 4-20-2015)

Sec. 211.008. BOARD OF ADJUSTMENT. (a) The governing body of a municipality may provide for the appointment of a board of adjustment. In the regulations adopted under this subchapter, the governing body may authorize the board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance and in accordance with any applicable rules contained in the ordinance.

(b) A board of adjustment must consist of at least five members to be appointed for terms of two years. The governing body must provide the procedure for appointment. The governing body may authorize each member of the governing body, including the mayor, to appoint one member to the board. The appointing authority may remove a board member for cause, as found by the appointing authority, on a written charge after a public hearing. A vacancy on the board shall be filled for the unexpired term.

(c) The governing body, by charter or ordinance, may provide for the appointment of alternate board members to serve in the absence of one or more regular members when requested to do so by the mayor or city manager. An alternate member serves for the same period as a regular member and is subject to removal in the same manner as a regular member. A vacancy among the alternate members is filled in the same manner as a vacancy among the regular members.

(d) Each case before the board of adjustment must be heard by at least 75 percent of the members.

(e) The board by majority vote shall adopt rules in accordance with any ordinance adopted under this subchapter and with the approval of the governing body. Meetings of the board are held at the call of the presiding officer and at other times as determined by the board. The presiding officer or acting presiding officer may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public.

(f) The board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The board shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the board's office and are public records.

(g) The governing body of a Type A general-law municipality by ordinance may grant the members of the governing body the authority to act as a board of adjustment under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 363, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. [2497](#)), Sec. 1, eff. September 1, 2019.

Sec. 211.009. AUTHORITY OF BOARD. (a) The board of adjustment may:

(1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;

(2) hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;

(3) 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; and

(4) hear and decide other matters authorized by an ordinance adopted under this subchapter.

(b) In exercising its authority under Subsection (a)(1), the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official.

(b-1) In exercising its authority under Subsection (a)(3), the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

(1) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section [26.01](#), Tax Code;

(2) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;

(3) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;

(4) compliance would result in the unreasonable encroachment on an adjacent property or easement; or

(5) the municipality considers the structure to be a nonconforming structure.

(c) The concurring vote of 75 percent of the members of the board is necessary to:

(1) reverse an order, requirement, decision, or determination of an administrative official;

(2) decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or

(3) authorize a variation from the terms of a zoning ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 2, eff. Aug. 28, 1995.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 318 (H.B. [1475](#)), Sec. 1, eff. September 1, 2021.

Sec. 211.010. APPEAL TO BOARD. (a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

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

(a-1) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is related to a specific application, address, or project:

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

(b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed

not later than the 20th day after the date the decision is made. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(c) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.

(e) A member of the governing body of the municipality who serves on the board of adjustment under Section [211.008](#)(g) may not bring an appeal under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1997, 75th Leg., ch. 363, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. [2497](#)), Sec. 2, eff. September 1, 2019.

Sec. 211.011. JUDICIAL REVIEW OF BOARD DECISION. (a) Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

(1) a person aggrieved by a decision of the board;

(2) a taxpayer; or
(3) an officer, department, board, or bureau of the municipality.

(b) The petition must be presented within 10 days after the date the decision is filed in the board's office.

(c) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

(d) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(f) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

(g) The court may not apply a different standard of review to a decision of a board of adjustment that is composed of members of the governing body of the municipality under Section [211.008](#)(g) than is applied to a decision of a board of

adjustment that does not contain members of the governing body of a municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1997, 75th Leg., ch. 363, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 646, Sec. 1, eff. Aug. 30, 1999.