

**CITY OF SHAVANO PARK  
PLANNING & ZONING COMMISSION MEETING  
CITY HALL, COUNCIL CHAMBERS  
900 SADDLETREE COURT, SHAVANO PARK, TEXAS 78231  
November 3, 2021**

**6:30 P.M.**

**This notice is posted pursuant to the Texas Open Meetings Act. Notice hereby given that the Planning & Zoning Commission of the City of Shavano Park, Texas will conduct a Regular Meeting on Wednesday, November 3, 2021 6:30 p.m. at 900 Saddletree Court, Shavano Park City Council Chambers.**

The meeting agenda and agenda packet are posted online at [www.shavanopark.org](http://www.shavanopark.org).

**AGENDA**

1. Call to order
2. Vote under Section 36-69 of the Shavano Park City Code (“Code”) concerning a finding that each of the items following item 2 on the agenda are “planning issues” or otherwise prescribed Planning & Zoning Commission duties under 36-69(1) of the Code or the severance of one or more of such items for an individual vote on such item or items.
3. The Planning and Zoning Commission welcomes “Citizens to be Heard.” If you wish to speak, you must follow these guidelines. **As a courtesy to your fellow citizens and out of respect to our fellow citizens, we request that if you wish to speak that you follow these guidelines.**
  - Pursuant to Resolution No. R-2019-011 citizens are given three minutes (3:00) to speak during “Citizens to be Heard.”
  - Members of the public may only speak once and cannot pass the individual’s time allotment to someone else
  - Direct your comments to the entire Commission, not to an individual member
  - Show the Commission members the same respect and courtesy that you expect to be shown to youThe Chairman will rule any disruptive behavior, including shouting or derogatory statements or comments, out of order. Continuation of this type of behavior could result in a request by the Mayor that the individual leave the meeting, and if refused, an order of removal. In compliance with the Texas Open Meetings Act, no member of the Commission may deliberate on citizen comments for items not on the agenda. (Attorney General Opinion – JC 0169)
4. Consent Agenda:
  - A. Approval - Planning & Zoning Commission minutes, October 6, 2021.
5. Discussion / Presentation - Texas Open Meeting Act and Public Information Act Training by City Attorney – Attorney Cristian Rosas-Grillet of Bojorquez Law Firm
6. Discussion / Action - Possible amendments to Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances to comply with H.B. 1475 of the 87th Texas Legislature - City Manager
7. Report / update - City Council items considered at previous City Council meetings and discussion concerning the same - City Manager

8. **Chairman Announcements:**

- A. Advise members to contact City staff to add new or old agenda items.
- B. Advise members of pending agenda items:

9. **Adjournment**

**Accessibility Statement:**

The City of Shavano Park City Hall is wheelchair accessible. The entry ramp is located in the front of the building. Accessible parking spaces are also available in the front and sides of the building. Sign interpretative services for meetings must be made 48 hours in advance of the meeting. Call the A.D.A. Coordinator at 817-447-5400 or TDD 1-800-735-2989.

**Decorum Required:**

Any disruptive behavior, including shouting or derogatory statements or comments may be ruled out of order by the Presiding Officer. Continuation of this type of behavior could result in a request by the Presiding Officer that the individual leave the meeting, and if refused, an order of removal.

**Action by Commission Authorized:**

The Planning and Zoning Commission may vote and/or act upon any item within this Agenda. The Commission reserves the right to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code Section 551.071, to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The City Attorney may appear in person, or appear in executive session by conference call in accordance with applicable state law.

**Executive Sessions Authorized:**

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

**Attendance by Other Elected or Appointed Officials:**

It is anticipated that members of City Council or other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the governing body of the

above named Shavano Park Planning and Zoning Commission is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin boards, of the City Hall of said City Shavano Park, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted on this the 29 of October 2021 at 3:03 p.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

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Trish Nichols  
City Secretary

1. **Call to order**

Chairman Laws called the meeting to order at 6:30 p.m.

**PRESENT:**

Carla Laws  
Lori Fanning  
Shawn Fitzpatrick  
Vickey Maisel  
Bill Simmons  
William Stipek  
Song Tan  
Cindy Teske

**ABSENT:**

Michael Janssen

2. **Vote under Section 36-69 of the Shavano Park City Code (“Code”) concerning a finding that each of the items following item 2 on the agenda are “planning issues” or otherwise prescribed Planning & Zoning Commission duties under 36-69(l) of the Code or the severance of one or more of such items for an individual vote on such item or items.**

Upon a motion made by Commissioner Maisel, and a second made by Commissioner Stipek, the Planning & Zoning Commission voted seven (7) for and none (0) opposed to approve the agenda as it was provided as Planning & Zoning Commission issues. The motion carried.

3. **Citizens to be Heard.**

No one signed up to address the Planning & Zoning Commission.

4. **Consent Agenda:**

Approval - Planning & Zoning Commission minutes, September 1, 2021.

Upon a motion made by Commissioner Fitzpatrick, and a second made by Commissioner Maisel, the Planning & Zoning Commission voted seven (7) for and none (0) opposed to approve the Planning & Zoning Commission minutes of September 1, 2021 as presented. The motion carried.

5. **Nomination and appointment of Chairman and Vice-Chairman.**

Upon a motion made by Commissioner Maisel to nominate Carla Laws to serve as Chairman and a second by Commissioner Fitzpatrick, the Planning & Zoning Commission voted seven (7) for and none (0) opposed to approve the appointment of Carla Laws as Chairman. The motion carried.

Upon a motion made by Commissioner Maisel to nominate Shawn Fitzpatrick to serve as Vice-Chairman and a second by Commissioner Simmons, the Planning & Zoning Commission voted

seven (7) for and none (0) opposed to approve the appointment of Shawn Fitzpatrick as Vice-Chairman. The motion carried.

6. **Discussion - Welcome new members, thanks to departing members with information on open meeting and open records training – Chairman Laws**

Chairman Laws welcomed new members and offered thanks to departing members.

7. **Public Hearing - The purpose of the public hearing is to receive comments from members of the public regarding proposed amendments to Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances to extend valid time of permits for portable on-demand storage structures (PODS).**

Public hearing opened at 6:36 p.m.

Assistant to the City Manager Curtis Leeth presented an overview of this agenda item.

Public hearing closed at 6:37 p.m.

8. **Discussion / action - Possible amendments to extend valid time of permits for portable on-demand storage structures (PODS) under Chapter 36 – ZONING - City Manager**

Upon a motion by Commissioner Maisel and a second by Commissioner Fitzpatrick, the Planning & Zoning Commission voted seven (7) for and none (0) opposed to approve possible amendments to extend valid time of permits for portable - on-demand storage structures (PODS) under Chapter 36 – ZONING 90 (ninety) days. Upon request from the permit holder, the City Manager may grant incremental 1 (one) month extensions of said permit as long as a valid building permit from the City of Shavano Park is active on the property of the permit holder. The motion carried.

9. **Public Hearing - The purpose of the public hearing is to receive comments from members of the public regarding proposed amendments to Chapter 24 – SIGNS of the City of Shavano Park Code of Ordinances to remove sign regulations that distinguish between on and off premise signage and commercial vs. noncommercial speech.**

Public hearing opened at 7:01 p.m.

Assistant to the City Manager Curtis Leeth presented an overview of this agenda item.

Public hearing closed at 7:06 p.m.

10. **Discussion / action - Possible amendments to Chapter 24 - SIGNS to remove sign regulations that distinguish between on and off premise signage and commercial vs. noncommercial speech - City Manager**

Upon a motion by Commissioner Stipek and a second by Commissioner Fitzpatrick, the Planning & Zoning Commission voted seven (7) for and none (0) opposed to approve possible amendments

to Chapter 24 - SIGNS to remove sign regulations that distinguish between on and off premise signage and commercial vs. noncommercial speech.

- 11. Public Hearing - The purpose of the public hearing is to receive comments from members of the public regarding proposed amendments to Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances to comply with H.B. 1475 of the 87th Texas Legislature, which changes Board of Adjustment authority related to variances and gives additional objective grounds for which a variance from a municipal zoning ordinance may be granted.**

Public hearing opened at 7:16 p.m.

Assistant to the City Manager Curtis Leeth presented an overview of this agenda item.

Public hearing closed at 7:19 p.m.

- 12. Discussion / action - Possible amendments to Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances to comply with H.B. 1475 of the 87th Texas Legislature - City Manager**

Upon a motion by Commissioner Fitzpatrick and a second by Commissioner Stipek, the Planning & Zoning Commission voted seven (7) for and none (0) opposed, to make a motion to postpone further action on item 12 until staff makes further revisions to the Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances.

After the motion Chairman Laws stated that the motion to postpone is only to allow staff more time to accomplish administrative edits and is not an act of non-compliance with State Law.

- 13. Discussion / action - Possible amendments to provide regulations for mobile food units and mobile food courts under Chapter 8 – BUSINESS AND BUSINESS REGULATIONS - City Manager**

Assistant to the City Manager Curtis Leeth addressed the possible amendments to provide regulations for mobile food units and mobile food courts under Chapter 8 – BUSINESS AND BUSINESS REGULATIONS

Upon a motion by Commissioner Fitzpatrick and a second by Commissioner Simmons, the Planning & Zoning Commission voted seven (7) for and none (0) opposed, for a motion to recommend to the City Council the revisions of mobile food units and mobile food courts as presented by staff this evening. The motion carried.

- 14. Report / update - City Council items considered at previous City Council meetings and discussion concerning the same - City Manager.**

Assistant to the City Manager Curtis Leeth provided an overview of items considered at the previous City Council Meeting.

15. **Chairman Announcements:**

- A. Advise members to contact City staff to add new or old agenda items.
- B. Advise members of pending agenda items:
  - i. Presentation / discussion – Open Meetings and Open Records Training by City Attorney

16. **Adjournment**

Upon a motion made by Commissioner Simmons, and a second made by Commissioner Tan, the Planning & Zoning Commission voted seven (7) for and none (0) opposed to adjourn the meeting at 8:50 p.m. The motion carried.

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Carla Laws, Chairman

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Trish Nichols, City Secretary

## PLANNING AND ZONING STAFF SUMMARY

Meeting Date: November 3, 2021

Agenda item: 5

Prepared by: Curtis Leeth

Reviewed by: Bill Hill

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### **AGENDA ITEM DESCRIPTION:**

Discussion / Presentation - Texas Open Meeting Act and Public Information Act Training by City Attorney – Attorney Cristian Rosas-Grillet of Bojorquez Law Firm



**Attachments for Reference:** 1)

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**BACKGROUND / HISTORY:** The P&Z has not conducted training covering Texas Open Meeting Act and Public Information Act in a while and there are several new commissioners.

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**DISCUSSION:** Attorney Cristian Rosas-Grillet of Bojorquez Law Firm (City Attorney firm) will provide a training covering Texas Open Meeting Act and Public Information Act.

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**COURSES OF ACTION:** Not an action item.

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**FINANCIAL IMPACT:** N/A

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**MOTION REQUESTED:** Not an action item.



## PLANNING AND ZONING STAFF SUMMARY

Meeting Date: November 3, 2021

Agenda item: 6

Prepared by: Curtis Leeth

Reviewed by: Bill Hill

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### **AGENDA ITEM DESCRIPTION:**

Discussion / action - Possible amendments to Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances to comply with H.B. 1475 of the 87th Texas Legislature - City Manager



#### **Attachments for Reference:**

- 1) 6a Board of Adjustment Amendments
- 2) 6b House Bill 1475

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**BACKGROUND / HISTORY:** In the regular session of the 87<sup>th</sup> Texas Legislature, House Bill 1475 was signed into law and made effective September 1, 2021.

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**DISCUSSION:** TML Summary follows:

In cities with zoning regulations, the Board of Adjustment (“BOA”) serves as the appellate body for certain zoning-related decisions. BOAs are authorized by state law to hear appeals of administrative decisions, decide whether or not to grant special exceptions to terms of the zoning ordinance, authorize variances from the zoning ordinance, and hear and decide “other matters” authorized under the city’s zoning ordinance. H.B. 1475 changes BOA authority related to variances and gives additional objective grounds for which a variance from a municipal zoning ordinance may be granted.

#### Zoning Variances: Then and Now

A BOA is authorized to grant a variance if, among other things, enforcing the ordinance as written would result in “unnecessary hardship.” The term, “unnecessary hardship” is not defined in state law, so over time courts have grappled with the sorts of facts that can constitute an “unnecessary hardship” and justify granting a variance. Until the passage of H.B. 1475, an unnecessary hardship would be one that was not self-imposed, personal in nature, related to the property for which the variance is sought, and not a solely financial hardship. The hardship needed to be a condition unique, oppressive, and not common to other property.

This changes the above analysis in a couple ways. It adds more objective criteria which a BOA can consider to determine whether compliance with a city’s zoning ordinance as applied to a structure would result in an unnecessary hardship. For the first time, purely financial considerations can qualify an applicant for a variance. Additionally, if the proposed structure would be considered a nonconforming structure, that could be grounds to grant a variance. Those are two significant shifts in variance analysis, which allow an applicant to get over the “unnecessary hardship” hurdle a little more easily. Under the new law, there might be an unnecessary hardship if:

1. the cost of compliance with the zoning ordinance is greater than 50 percent of the appraised value of the structure as shown on the most recent certified appraisal roll; or
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; or
3. compliance would result in the structure not in compliance with a requirement of another city ordinance, building code, or other requirement; or
4. compliance would result in the unreasonable encroachment on an adjacent property or easement; or
5. the city considers the structure to be a nonconforming structure.

Keep in mind that to grant a variance, the variance must not be contrary to the public interest, and the spirit of the zoning ordinance must be observed. So even if a proposed structure fits an “unnecessary hardship” category above, granting the variance is not automatic. The facts surrounding each variance request still have to be analyzed by the BOA, but starting September 1, 2021, H.B. 1475 changes part of the analysis. Cities and their BOAs should look at their zoning rules, policies, documentation, and electronic or printed materials to make sure they are updated to reflect this change in state law and be ready for new arguments from zoning applicants in the fall.

Public notice for the Public Hearing was accomplished on September 15, 2021.

Staff prepared draft amendments to comply with H.B. 1475’s provisions regarding the interpretation of “unnecessary hardship” while leaving the Board of Adjustment’s criteria for granting variances intact (attachment 12a). This will maintain current City variance criteria while complying with Texas Law. For example the Board of Adjustment could decline a variance as being against the spirit of the zoning chapter even if the applicant showed unnecessary hardship as defined by state. The Board will continue to weigh the interest of neighbors (who may protest the variance) along with the property’s owner’s unnecessary hardship now defined by the State.

At the October 6, 2021 Planning & Zoning Commission meeting, the Commission postponed consideration until the November meeting to give time to staff to accomplish administrative edits. After the motion Chairman Laws stated that the motion to table is only to allow staff more time to accomplish administrative edits and is not an act of non-compliance with State Law.

In addition City Attorney reviewed and proposed additional edits:

- Wordsmithing improvements from Commissioners Laws and Fitzpatrick
- Gender neutral term they/their
- Sec-125(d) made consistent to Sec. 36-126 (20 day limit to appeal a decision)

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**COURSES OF ACTION:** Recommend approval of amendments; recommend additional amendments; or decline entirely and provide guidance to staff.

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**FINANCIAL IMPACT:** N/A

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**MOTION REQUESTED:** Recommend approval of amendments to Chapter 36 – ZONING of the City of Shavano Park Code of Ordinances to comply with H.B. 1475 of the 87th Texas Legislature.

## ARTICLE V. - BOARD OF ADJUSTMENT

### Sec. 36-122. - Organization.

There is hereby created a Board of Adjustment consisting of five members who are citizens of the City and who are not members of the City Council or the ~~Planning and Zoning~~ Planning & Zoning Commission, and who shall be appointed as described in ~~C~~chapter 2, ~~A~~article IV, ~~S~~section 2-87. Positions shall exist for a term of two years, beginning on October 1 of each odd numbered year and ending on May 31 of the next succeeding odd-numbered year and continuing thereafter. Board members may be removable for cause by the City Council upon a written charge and after public hearing. The City Council shall confirm four alternate members of the Board of Adjustment who shall serve in the absence of one or more of the regular members when requested to do so by the Mayor. ~~a~~All cases to be heard by the Board of Adjustment will always be heard by a minimum number of four members. ~~These~~ All alternate members, when appointed, shall serve for the duration of the same term defined in this section ~~period~~ as for the regular members, and any vacancy shall be filled in the same manner and shall be subject to removal as the regular members.

### Sec. 36-123. - Rules and meetings.

The Board of Adjustment shall adopt rules of procedure in accordance with the provisions of this section. Meetings of the Board of Adjustment shall be held at the call of the Chairperson, who shall be selected by the Board at its June meeting each year, and at such other times as the Board of Adjustment may determine. Such Chairperson, or in their absence the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes to 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, findings, and other official actions, all of which shall be immediately filed in the office of the City and shall be a public record.

### Sec. 36-124. - Powers and duties.

The Board of Adjustment shall have the following powers:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official of the City in the enforcement of this chapter.

- (2) To authorize upon appeal ~~in specific cases~~ a variance from the terms of this chapter ~~asthat will~~ shall not be contrary to the public interest, ~~and,~~ where, due to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.
- (3) To authorize special exceptions, in accordance with ~~Sec. section~~ 36-132, to a zoning standard applicable to particular types of development within any zoning district, which is consistent with the overall intent of the zoning regulations and for which express standards are prescribed, but that requires additional review to determine whether the development with the modification is compatible with adjoining land uses and the character of the neighborhood in which the development is proposed.
- (4) To hear and decide other matters authorized by the City Council.

Sec. 36-125. - Appeals to the Board of Adjustment ~~(BOA)~~.

- (a) Any of the following persons may appeal to the ~~Board of Adjustment BOA~~ a decision made by an administrative official that is not related to a specific application, address, or project under ~~C~~chapter 36 of this Code:
  - (1) A person aggrieved by the decision; or
  - (2) Any officer, department, board, or bureau of the municipality affected by the decision.
- (b) Any of the following persons may appeal to the ~~BOA~~ Board of Adjustment a decision made by an administrative official that is related to a specific application, address, or project under ~~C~~chapter 36 of the Code:
  - (1) A person who filed the application that is the subject of the decision; or
  - (2) A person who is the owner or representative of the owner of the property that is the subject of the decision; or
  - (3) Any person who is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or
  - (4) Any officer, department, or board of the city affected by the decision.
- (c) Appeals to the ~~BOA~~ Board of Adjustment may be made by a person aggrieved by the decision of the building official on the basis of alleging an error in an order, requirement, decision or determination made by the building official in the

enforcement of the international and national codes as well as ~~C~~chapter 6 of the City of Shavano Park Code of Ordinances, as it exists or may be amended.

- (d) Such appeal shall be ~~taken~~ filed not later than the 20th day after an original decision, order, requirement, or determination has been rendered within a reasonable time, as provided by the rules of procedure of the Board of Adjustment, by filing in writing with the administrative official from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The administrative official from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all papers constituting the record of the action that is appealed.

Sec. 36-126. - When appeal stays all proceedings.

~~An~~Once an appeal is filed it shall stay all proceedings in furtherance of the action appealed from, unless, after the time that notice of the appeal is filed, the administrative official from whom the appeal is taken certifies in writing to the Board of Adjustment ~~after notice of appeal shall have been filed with him~~ that by reason of facts stated in the certificate a stay would, in ~~his~~ the City Manager's opinion, cause immediate peril to life or property. ~~In such case proceedings~~Under this exception proceedings shall not be stayed other than by a restraining order, which may be granted by the Board of Adjustment, or by a court of record on application upon showing of due cause by the appealing party filing for an appeal after notice to the administrative official from whom the appeal is taken and if due cause is shown.

Sec. 36-127. - Time for notice and hearing of appeal.

The appeal must be filed not later than the 20th day after an original decision, order, requirement, or determination has been rendered ~~the decision has been rendered~~. The Board of Adjustment BOA shall make a decision on 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. The Board of Adjustment shall fix a reasonable time for hearing of the appeal, give public notice thereof, as well as due notice to the interested parties ~~in interest~~ and decide the same within a reasonable time. ~~Upon~~At the hearing any party may appear in person or by agent or by attorney.

Sec. 36-128. - Action on appeal.

In exercising the powers set forth in ~~section~~Sec. 36-124, the Board of Adjustment may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the administrative official's order, requirement, decision, or

determination ~~appealed from and may make the correct order, requirement, decision, or determination~~ and to that end shall have all the powers of the administrative official from whom the appeal is taken.

Sec. 36-129. - Vote necessary for decision of board of adjustment.

The concurring vote of four members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of an administrative official, to decide in favor of the applicant on any matter on which the Board is authorized ~~it is required to pass~~ under this chapter, or to authorize a variance from the terms of in this chapter.

Sec. 36-130. - Notice of public hearings before the Board of Adjustment.

The notice of public hearing, provided for in this section, shall be given by publication one time in the City's official newspaper, stating the time and place of such hearing, which time shall not be earlier than 15 days from date of such publication, and in addition thereto, the Board of Adjustment shall mail notices of such hearing to the ~~petitioner-applicant~~ and to all owners of property lying within 200 feet of any point of the lot or portion thereof, on which a variance or special exception is desired, and to all other persons deemed by the Board of Adjustment to be affected thereby; such owners and persons shall be determined according to the last approved tax roll of the City. Such notice may be served by depositing the same, properly addressed and postage paid, in any post office.

Sec. 36-131. - Variances.

- (a) *Requests for variance.* All requests for variations from the terms of this chapter shall be in writing and shall specify the facts involved, the relief desired, and grounds therefore. Each such application shall be filed with the City Secretary who, after investigation, shall transmit such application together with ~~his~~-their report to the Board of Adjustment within 30 days ~~after~~-of receipt.
- (b) *Hearings on applications for variances.* The Board of Adjustment shall fix a reasonable time for the hearing of all applications for variances, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Any party may appear in person or by agent or by attorney at this hearing.
- (c) *Granting variances.* The Board of Adjustment is hereby authorized, upon a party's appeal from the decision of the City, to grant ~~in specific cases~~ a variance from the

terms of this chapter ~~that as will~~shall –not be contrary to the public interest, and where ~~also~~, due to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice is done. The Board of Adjustment 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 Sec. 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 non-conforming structure.

(d) *Criteria for granting variances.* No variance can be granted unless:

- (1) Such variance will not be contrary to public interest.
- (2) Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property ~~for which the variance sought~~ is located.
- (3) Such variance will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district.
- (4) Such variance will not alter the essential character of the district ~~in which it is located~~ or the property ~~for which the variance is sought~~.
- (5) Such variance will be in harmony with the spirit and purposes of this chapter.
- (6) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property ~~and are not merely financial~~, and are not due to or the result of general conditions in the district in which the property is located.
- (7) The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specified district.



- (8) The variance will not adversely affect the public health, safety or welfare ~~of the public.~~
- (e) *Limitation on variances.* Any variance authorized by the Board of Adjustment shall constitute authority to authorize the issuance of a building permit or a certificate of occupancy, as the case may be, if applied for within 120 days from the date of favorable action ~~on the part of by~~ the Board of Adjustment, unless such Board of Adjustment authorizes a longer period. If the permit or certificate of occupancy ~~is shall~~ not ~~be~~ applied for within said 120-day period, or such extended period as the Board of Adjustment may have authorized, then the grant of the variance shall terminate. Such termination shall be without prejudice to a subsequent application to said Board of Adjustment in accordance with the rules and regulations regarding applications. No application to the Board of Adjustment shall be allowed on the same ~~piece of~~ property ~~prior to the expiration of until~~ six months ~~from a after a~~ ruling of the Board of Adjustment, ~~on any application to such body~~ unless other property ~~in the same block~~ within 200 feet thereof, ~~within such six-month period~~, has been altered or changed by a ruling of the Board of Adjustment ~~within such six-month period.~~ ~~In~~ which case such change of circumstances shall permit the allowance of such application but in no way ~~force in law~~ to compel the Board of Adjustment, after a hearing, to grant such subsequent application. ~~but, S~~ such subsequent applications shall be considered on its merits as in all other cases.

Sec. 36-132. - Special exceptions.

- (a) *Applications for special exception.* All applications for special exceptions from the terms of the chapter shall be in writing and shall specify the facts involved, the special exception desired and grounds therefore. The property owner shall file such application with the City Secretary who, after investigation by the City Manager or ~~his their~~ designee(s), shall transmit such application together with a report to the Board of Adjustment within 60 days after receipt. The non-refundable fee for an application shall be the same as the fee for an application for variance or as described in Appendix A - City of Shavano Park Fee Schedule.
- (b) *Hearings on applications for special exceptions.* The Board of Adjustment shall fix a reasonable time for the hearing of all applications for special exceptions, give public notice thereof, as well as due notice to all persons entitled to notice under ~~section~~ Sec. 36-130, and such hearing shall be held within 90 days after receipt of the City Manager's report. At each hearing, any person may appear in person or by agent or by attorney.

(c) *Granting special exceptions.* The Board of Adjustment may grant special exceptions to the side and rear setbacks provided for under this chapter and solely in accordance with the following:

(1) Reduce the side or rear setbacks requirements in all single family residential zoning districts and all single family residential planned unit development zoning districts by up to 50 percent if the application satisfies the conditions provided for in subsections (d) and (e) and the side or rear setback in question abuts the following:

- a. The streets of N.W. Military, and DeZavala;
- b. City of San Antonio zoning districts;
- c. O-1, B-1 or B-2 zoning districts; or
- d. Greenbelts as designated on a plat.

(d) *Conditions for granting special exceptions.* If the Board of Adjustment finds that all of the conditions in this subsection have been satisfied, the Board of Adjustment may approve the special exception application. This subsection's conditions are as follows:

~~(1) That the special exception will not endanger public health, safety, or general welfare;~~

(12) That the special exception will not be materially detrimental to public health, safety, or general welfare;

(23) That as of the hearing date, it is not foreseeable that the special exception will substantially impair or diminish the presently permitted neighborhood uses, values and enjoyment of neighboring properties;

(34) That the special exception will not significantly impede the normal and orderly development and/or improvement of surrounding properties as to uses permitted in the district and/or immediately contiguous district;

(45) That the special exception will not result in such property violating any height, lot coverage, building size and/or exterior requirements;

(56) That the special exception will not result in such property violating any district parking space regulations and/or tree preservation requirements;

(67) That the special exception will not result in such property being incompatible with other properties within the zoning district;

(78) That the conditions provided for in subsection (e) have been satisfied; and

(89) That any accessory building allowed under this subsection shall be neither larger than 500 square feet nor taller than 16 feet from the lowest grade point of such building.

- (e) *Conditions and guarantees.* ~~In order to protect the public health, safety and general welfare of the community and~~ Prior to the granting of any special exception, the Board of Adjustment shall stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special exception as deemed necessary in its sole discretion to protect the public health, safety and general welfare of the community and to secure compliance with the standards and requirements specified in subsection (d) above. When ~~the Board of Adjustment grants~~ granting a special exception, the Board of Adjustment shall require such evidence and written guarantees as it deems necessary as proof that the property owner has and/or will comply with all conditions stipulated in connection therewith.
- (f) *Effect of denial of application.* If the Board of Adjustment denies a special exception in whole or in part, the property owner must wait at least one year from the date of said denial to make a resubmission under this section.
- (g) *Failure to comply with conditions.* Should a property owner fail to comply with any conditions of the Board of Adjustment in granting a special exception to a property, the City shall seek appropriate enforcement and remedies as stated in ~~section~~Sec. 36-5 of this chapter.

#### Sec. 36-133. - Appeals from the Board of Adjustment.

Any person, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board of the City, may present to a court of record a verified petition as provided by Tex. Local Government Code § 211.011, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of illegality. Such petition shall be presented to the Court within ten days after the filing of the decision ~~Board~~ in the office of the City Secretary.

#### Sec. 36-134. - Fees.

The Board of Adjustment shall be empowered to assess and collect the fees specified in Appendix A - City of Shavano Park Fee Schedule to defray administrative costs. Such fees shall be deposited with the Secretary of the City, for deposit in the General Fund of the City.