

**AGENDA
NOTICE OF MEETING OF THE BOARD OF ADJUSTMENT OF
SHAVANO PARK, TEXAS**

This notice is posted pursuant to the Texas Open Meetings Act. Notice hereby given that the Board of Adjustment of the City of Shavano Park, Texas will conduct a Regular Meeting on Tuesday, November 15, 2022 5:30 p.m. at 900 Saddletree Court, Shavano Park City Council Chambers.

The meeting agenda and agenda packet are posted online at www.shavanopark.org.

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. NOMINATION AND APPOINTMENT OF CHAIRMAN**
- 4. CHAIRMAN ANNOUNCEMENTS**
- 5. PRESENTATION – Board of Adjustment annual training and review in preparation for the Variance Hearing, with guidance for legislation under Local Government Code Section 211.009 - City Attorney**
- 6. 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.

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 – NOTICE OF POTENTIAL QUORUM:

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 the Shavano Park Board of Adjustment 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 4th day of November 2022 at 10:17 p.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Trish Nichols
City Secretary

BOARD OF ADJUSTMENT STAFF SUMMARY

Meeting Date: November 15, 2022

Agenda item: 6

Prepared by: Trish Nichols

Reviewed by: Bill Hill

AGENDA ITEM DESCRIPTION: PRESENTATION – Board of Adjustment annual training and review in preparation for the Variance Hearing - City Attorney

X

Attachments for Reference: 1) CoSP Ordinance Board of Adjustment w/ HB 1475
2) HB 1475 Actual
3) TML Email to City Manager REF: HB 1475
4) CoSP Board of Adjustment 2020 Policy
5) BOA Training PowerPoint

BACKGROUND / HISTORY: The City of Shavano Park (CoSP) provides regulations and guidance for the Board of Adjustments to two primary locations: 1) Chapter 36 ZONING; Article V – Board of Adjustments; and 2) CoSP City Council Policy #18, BOA Policy, dated June 22, 2020.

On May 8, 2021, the Texas Legislature passed House Bill (HB) 1475, which provided five additional grounds for consideration to determine whether compliance with the ordinance as applied to a structure is the subject of an appeal would result in unnecessary hardship (attachment #2).

DISCUSSION: In accordance with the BOA Policy paragraph 6.e, The Board of Adjustment must conduct annually training on the factors involved to approve a variance.

This training will review the CoSP BOA Ordinances and the Policy and discuss the considerations listed in HB 1475, which have been codified in the City ordinances.

The actual HB 1475 is provided as attachment #2 and an email exchange between the City Manager and the Texas Municipal League staff attorney is provided as attachment #3.

The City of Shavano Park Board of Adjustment Policy is provided as attachment #4. NOTE: This policy has not been amended based upon HB 1475 and the Board will need to account for the fact that HB 1475 overrides any conflict in our policy.

The City Attorney will lead the training and discussion for this meeting (see attached PowerPoint). NOTE: The training will largely be based upon the City Ordinance and City Policy with HB 1475 taken into account.

COURSES OF ACTION: None Required; Presentation only

FINANCIAL IMPACT: N/A

MOTION REQUESTED: N/A

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 Commission, shall be appointed as described in chapter 2, article IV, 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, all cases to be heard by the Board of Adjustment 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, 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 as will not be contrary to the public interest, 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 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 BOA a decision made by an administrative official that is not related to a specific application, address, or project under 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 a decision made by an administrative official that is related to a specific application, address, or project under 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 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 chapter 6 of the City of Shavano Park Code of Ordinances, as it exists or may be amended.

- (d) Such appeal shall be taken 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 appeal stays all proceedings in furtherance of the action appealed from, unless 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 opinion, cause immediate peril to life or property. In such case 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 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 the decision has been rendered. The 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 parties in interest and decide the same within a reasonable time. Upon 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 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 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 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, property 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 report to the Board of Adjustment within 30 days after 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 appeal from the decision of the City to grant in specific cases a variance from the terms of this chapter as will not be contrary to the public interest, 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 ~~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 the Board of Adjustment, unless such Board of Adjustment authorizes a longer period. If the permit or certificate of occupancy 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 six months from 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, 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, such application 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 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 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;
- (2) That the special exception will not be materially detrimental to public health, safety, or general welfare;
- (3) 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;
- (4) 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;
- (5) That the special exception will not result in such property violating any height, lot coverage, building size and/or exterior requirements;
- (6) That the special exception will not result in such property violating any district parking space regulations and/or tree preservation requirements;
- (7) That the special exception will not result in such property being incompatible with other properties within the zoning district;
- (8) That the conditions provided for in subsection (e) have been satisfied; and
- (9) 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 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 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, 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 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.

AN ACT

relating to municipal board of adjustment zoning variances based on unnecessary hardship.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 211.009, Local Government Code, is amended by adding Subsection (b-1) to read as follows:

(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

1 nonconforming structure.

2 SECTION 2. Section 211.009(b-1), Local Government Code, as
3 added by this Act, applies only to an appeal filed with a municipal
4 board of adjustment on or after the effective date of this Act.

5 SECTION 3. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 1475 was passed by the House on May 8, 2021, by the following vote: Yeas 133, Nays 6, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1475 was passed by the Senate on May 24, 2021, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

Bill Hill

From: Tad Cleaves <tad@tml.org>
Sent: Friday, October 22, 2021 2:27 PM
To: Bill Hill
Subject: RE: Board of Adjustment Training
Attachments: Land Use ZBA (2020).pdf

Bill,

In case you haven't seen this, below is a summary of the variance process before and after HB 1475:

post-session update: grounds for zoning variances expanded

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

Non-Conforming Structures:

Section 5 is a little odd, but I think the effect is to lower the bar for owners of non-conforming structures who want to make changes to the structure that would require a variance. At this point, the fact that the structure is non-conforming is now sufficient grounds to get the applicant over the unnecessary hardship requirement for obtaining a variance. It does not mean that all non-conforming structures MUST be granted variances, because the applicant must also make the additional required showings, but this amendment seems to lower the bar on one factor.

BOA Training:

At the UTCLE Land Use Fundamentals Seminar that is happening in Austin in April 2023, there is slated to be a Board of Adjustments talk. That could be an opportunity for BOA member or others who are in the land use decision making structure to get some training and make some connections. I am attaching a previous BOA powerpoint that covers a lot of the basics and has a list of cases and opinions at the end for further reading.

Sincerely,

Tad Cleaves
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Austin, Texas 78754
(512) 231-7400
tad@tml.org
www.tml.org

Empowering Texas cities to serve their citizens

Please be advised that the information in this e-mail is provided for informational purposes only. Neither this communication, nor any other communication with the Texas Municipal League (TML), creates an attorney-client relationship between the TML legal department or its attorneys and you or your city or any third party. Once received by a city official, this communication may be subject to public release. Every city official and employee should consult with local legal counsel to ensure that any information or documents comply with current law and the particular facts of each situation.

From: Amber McKeon-Mueller <Amber@tml.org>
Sent: Friday, October 22, 2021 1:28 PM
To: Tad Cleaves <tad@tml.org>
Cc: Alyssa White <alyssa@tml.org>
Subject: FW: Board of Adjustment Training

From: Bill Hill <citymanager@shavanopark.org>
Sent: Friday, October 22, 2021 12:41 PM
To: Legalinfo <legalinfo@tml.org>
Cc: Bill Longley <bill@tml.org>
Subject: Board of Adjustment Training

TML,

Do you have an material that would support Board of Adjustment training for granting a variance? Additionally, I am very confused what the implication of HB 1475 means in terms of exception #5 – nonconforming structure. Does this mean that the Board of Adjustments can now approval any variance which involves a “Structure”... what new authorizations does this provide the Board in approval?

Section 1. (5) the municipality considers the structure to be a nonconforming structure.

H.B. No. 1475

AN ACT

relating to municipal board of adjustment zoning variances based on unnecessary hardship.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 211.009, Local Government Code, is amended by adding Subsection (b-1) to read as follows:

(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.

Here to Serve!

Bill Hill
City Manager
Shavano Park

www.shavanopark.org



ESTABLISHED 1956

City Living with Country Charm!



CITY OF SHAVANO PARK
900 Saddletree Court
Shavano Park, TX 78231

CITY POLICY NO. 18

SUBJECT: Board of Adjustments (BOA) Policy

January 24, 2022

1. References.

- a. Tex. Loc. Gov't Code §211.008 – Board of Adjustment
- b. City of Shavano Park, Texas – Code of Ordinances / Chapter 36 – Zoning / Article V - Board of Adjustment
- c. Minutes of May 18, 2020 City Council meeting

2. Purpose. The purpose of this policy is to provide guidance for the preparation and conduct of the Board of Adjustment meeting proceedings.

3. Staff Point-of-Contact. The staff point of contact for this policy is the City Secretary at 210.581.1116 or citysecretary@shavanopark.org.

4. Background.

a. Texas Local Government Code Section 211.009 allows the Board of Adjustment to “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.”

b. The Board of Adjustment’s task is to provide relief to a property owner where a strict application of the zoning regulations for that property would subject the property owner to a unique and unfair burden not faced by most of the property owners in that zone. It is intended to be used for fairness, not as a special favor.

c. No variance can be granted by the Board of Adjustment unless:

- The variance will not be contrary to public interest.
- The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property is located.
- The variance will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district.
- The variance will not alter the essential character of the district or the property.
- The variance will be in harmony with the spirit and purposes of this chapter.
- 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 due to or the result of general conditions in the district in which the property is located.
- The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specific district.
- The variance will not adversely affect the public health, safety or welfare of the public.

d. 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:

- 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;
- 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;
- Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- The municipality considers the structure to be a non-conforming structure.

e. The most important fact to remember is that by establishing these difficult-to-meet criteria, the burden is clearly on the applicant. Each and every factor must be shown to be met in order to be granted a variance.

6. Policy.

a. Applicants requesting a variance will be provided a packet containing information of presenting the case to the Board of Adjustment. The packet should have a checklist of the statutory and local ordinance factors needed to be proven for the granting of a variance. It should emphasize to the applicant that each and every factor must be met and that the burden is on them. While it is not necessary for an attorney to present the case on behalf of the applicant, because of the quasi-judicial nature of the proceeding and the fact that it is an appealable decision, it will be strongly suggested that the applicant has legal representation.

b. City Staff will examine the property after the application is received and make a determination if the facts of the application are accurate. Property history and supporting documents if available should be conveyed to the Board of Adjustment if it plays a part in the hardship.

c. After the case is presented and discussion is completed, the Chairman will request a motion. Motions for variances should always be made in the positive. If a motion cannot be made in the positive, the variance should not be voted on and considered denied. There is no requirement a vote be taken either in the positive or negative, it just requires a minimum number of positive votes to approve if voted on.

d. A Board of Adjustment member who makes a motion to approve the variance, should state each of the factors individually and recite evidence that supports the finding of that factor. These findings within the motion shall be recorded in the minutes of the meeting.

e. Training on the factors involved to approve a variance should be done at a minimum upon being selected to the Board of Adjustment and yearly thereafter. When the Board of Adjustment meets, the City Attorney will provide a brief training review to the Board prior to the meeting.

f. The applicant must show that the hardship is:

- (1) Unique, oppressive, not common to other property, and not against the public interest.
- (2) Not merely that the property cannot be utilized for its highest and best use.
- (3) Not self-imposed.
- (4) Not a simple hindrance to the developer's goals