



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