

**THE BOARD OF ADJUSTMENT
OF THE CITY OF SOUTHLAKE
RULES OF PROCEDURE**

Adopted September 11, 2008

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OFFICE OF CITY SECRETARY

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BOARD OF ADJUSTMENT

RULES OF PROCEDURE

SECTION 1. ORGANIZATION, OFFICERS, AND STAFF

1.1 Organization

The Southlake Board of Adjustment ("Board") shall consist of members appointed by the City Council and shall be organized under the laws of the State of Texas and the Zoning Ordinance No. 480, as amended ("Zoning Ordinance"), of the City of Southlake ("City").

1.2 Officers

A Chair and Vice-Chairman shall be appointed in accordance with the Zoning Ordinance 480, Section 44.1, as amended. The City Manager shall designate a representative to serve the Board as Secretary.

1.3 Duties

- a. The Chairman, or in his absence the Vice-Chairman, shall preside at all meetings, shall decide all points of order or procedure, and shall swear in witnesses and, when necessary, compel their attendance.
- b. In the absence of both the Chairman and the Vice-Chairman, the Acting Chairman shall preside. The Acting Chairman shall be a regular member (or if no regular member is present then an alternate member) whose last name is closest to the beginning of the alphabet.
- c. The Secretary shall be custodian of the minutes and other official records, shall attend to the correspondence of the Board, and shall cause notices to be given as are required and in the manner prescribed by law.

1.4 Rules of Order

Robert's Rules of Order Newly Revised shall be the Board's final authority on all questions of procedures and parliamentary law not covered by these Rules of Procedure. A failure to strictly adhere to the procedures set forth in Robert's Rules of Order shall not constitute grounds for the invalidation of any motion or order made by the Board.

1.5 Administrative Official

The Administrative Official, or designee, shall perform the duties authorized under the Zoning Ordinance of the City of Southlake and shall provide assistance to the Board as directed by the City Manager. The Official shall make interpretations of the provisions of the Comprehensive Zoning Ordinance No. 480, as amended, and shall present to the City Council any revisions to the Zoning Ordinance recommended by the Board. The Administrative Official shall set the agenda for the Board's meetings and shall maintain all permanent records of the Board (including the official minutes).

1.6 Recording Secretary

The Recording Secretary shall keep an accurate record of all the meetings of the Board, shall file the final actions of the Board with the Office of the Board within twenty-four hours of the Board's meeting, shall prepare and submit minutes of all meetings of the Board in a timely manner, and shall support the Board in the manner directed by the City Manager.

1.7 City Attorney

The City Attorney may provide to the Board an oral or written opinion regarding any question of law, interpretation or application of these rules of procedure, or parliamentary rules, and shall review as to law any amendment to these rules of procedure prior to the amendment becoming effective.

SECTION 2. MEETINGS

2.1 Quorum

A quorum shall consist of four (4) Members present. No proxies shall be allowed to establish a quorum or to transact business of the Board. In the absence of a quorum, the following persons (in the noted order) shall call the meeting to order. The Chairman, the Vice-Chairman, the Acting Chairman, or (if no Member is present) a Staff member may call the meeting to order, announce the absence of a quorum, and announce the adjournment of the meeting until a specific date, time, and place when the scheduled agenda items / public hearings would be resumed.

Should the absence of a quorum be known in advance of a scheduled meeting, the Chairman authorizes the Administrative Official, or other Staff member, to preside at the meeting by rescheduling the hearing to a date certain.

2.2 Agenda

An agenda shall be prepared by the Secretary for each meeting of the Board. The agenda shall include appeals and other matters scheduled for consideration by the Board. There shall be attached to the agenda a list of matters pending action by the Board. The agenda shall be posted on the official bulletin boards at Town Hall, 1400 Main Street pursuant to the Texas Government Code, Chapter 551.

2.3 Board Meetings

- a. **Regular Meetings** - Regular meetings shall be held on the second and fourth Thursday following the first Tuesday of each month at 6:30 p.m. in the City Council Chambers at Town Hall unless otherwise posted. Should no matters be scheduled for consideration by the Board, no meeting shall be held except as directed by the Chairman of the Board.
- b. **Special Meetings** - Special meetings may be called at any time by the Chairman or the Administrative Official and shall be subject to the Open Meetings Act. The Administrative Official shall cause notice of the special meeting to be sent to each Board Member and shall provide any information necessary for consideration of the Board. Any case requiring a public hearing and being considered in a special meeting shall meet the notice requirements set forth in the state statutes and in the Zoning Ordinance of the City of Southlake.
- c. **Work Sessions** - The Board may schedule work sessions to address administrative matters or proposed ordinance revisions. These sessions are for discussion purposes only. No decisions on case-related matters shall be made.
- d. **Executive Sessions (Closed Meetings)**. The Board may convene into executive session pursuant to Section 551.071 to seek the advice of the City Attorney about pending or contemplated litigation or to seek or receive the Attorney's advice with regard to legal issues relative to a case pending the Board's consideration.

2.4 Public Meetings

All meetings shall be held in full compliance with the provisions of state law, the Zoning Ordinance of the City and these Rules of Procedure.

SECTION 3. OFFICIAL RECORDS

- 3.1 Definition
The official records shall include these Rules of Procedure, and the minutes of the Board together with all findings, decisions, and other official actions. Stenographic notes of the Secretary and tape recordings of proceedings and discussions shall not constitute the official record of the Board.
- 3.2 Recording of Vote
The minutes of the Board's proceedings shall show the vote of each member on each decision of the Board, or if absent or failing to vote shall indicate that fact.
- 3.3 Public Records
All requests and other matters coming before the Board shall be filed in the City's records and be available for public inspection during normal business hours. Original papers of all appeals shall be retained along with other special matters as the Secretary deems essential for permanent record.
- 3.4 Board Office
The Office of the Planning and Zoning Department shall be designated as the Board's office.
- 3.5 Written Decision
All decisions of the Board shall be in writing, shall indicate the decision of the Board and shall be filed in the Board's Office no later than the following business day after such decision has been made. However, the failure to timely file the decision in the Board's Office shall not have any effect on the validity of the decision.

SECTION 4. APPLICATION PROCEDURES

- 4.1 Types of Requests
The Board shall only consider requests authorized under section 211.009 of the Texas Local Government Code, as amended, and under the Zoning Ordinance.
- 4.2 Application Required
Every request for action of the Board shall be filed in the Board's Office on the application forms provided by the City, shall be accompanied by the prescribed fee, and shall be complete in all respects before being accepted for filing. The application shall bear the signature of the owner of the property which is the subject of the request or shall be accompanied by a letter of authorization

from such owner. An incomplete application or a communication purporting to be an application and not made in the form prescribed shall be regarded only as a notice of intent to appeal, and shall not be considered or acted upon by the Board.

4.3 Guidelines for Application and Decision

Every application shall include a letter and site plan or other graphics explaining the applicant's request, along with the required non-refundable application fee. Where two or more different types of requests are included in the same application, each set of regulations established by the Zoning Ordinance shall apply to the consideration of the requests.

4.4 Notice

The Board of Adjustment shall hold a public hearing on all requests made to it and written notice of such public hearing shall be sent in accordance with the provisions of state law and the Zoning Ordinance.

4.5 Consideration of Evidence

Decisions of the Board may be based on any credible evidence, including a member's own familiarity with a site. However, members of the Board should refrain from conducting independent investigations into any application and should consider only the evidence and testimony introduced at the meeting through the public hearing process and the background information presented by City staff through the information packet. Where deemed necessary, the Board may request City staff to obtain any additional relevant information for the Board's consideration.

4.6 Withdrawal of Request

Any request may be withdrawn by an applicant upon written notice to the Secretary, but no request shall be withdrawn after public notice has been given without formal consent of the Board.

SECTION 5. HEARINGS AND DECISIONS

5.1 Public Hearings

Hearings on all matters on which a decision of the Board is required by law shall be open to the public. Any party in interest may appear on his own behalf or be represented by legal counsel or agent.

5.2 Order of Business

The Chairman shall call the meeting to order, and the Secretary shall record the members present and absent. The Chairman shall publicly advise those present of the procedures followed in the

hearing and disposition of cases. Unless the Board suspends the rules pertaining to the order of business, the Chairman shall call each case in the order listed on the agenda.

5.3 Procedures for Hearing

- a. After opening the public hearing, the Chairman shall first call upon the applicant, if present, to present the applicant's case and all evidence supporting the applicant's request. A true and correct copy of all written evidence, documents, photographs, and audio or videographic evidence presented at the hearing shall be included in the record of the case.
- b. The Chairman shall then call upon those members of the public who wish to express their support for the granting of the applicant's request. The Chairman shall next call on those members of the public who wish to express their opposition to the granting of the applicant's request. Each person who wishes to speak shall state their name and address for the record. Each person who is called on to speak shall first swear that the testimony the person shall give shall be the whole truth and nothing but the truth. The Chairman may establish reasonable time-limits for the members of the public as deemed necessary by the Chairman.
- c. The applicant shall then be given the opportunity to rebut the arguments presented by those in opposition.
- d. Each person speaking shall proceed without interruption by any other person, and all arguments and pleadings shall be addressed to the Board. It shall be the responsibility of the Chairman, or Vice Chairman in the Chairman's absence, or the Acting Chairman in the Vice Chairman's absence, to maintain order and proper decorum during the hearing. No questioning or arguments between individuals will be permitted. During the hearing, no member shall argue an issue with the applicant, nor indicate the member's final vote on the applicant's request until such time as the vote is called. Nothing herein shall be construed to prohibit a member from expressing his or her opinion as to the merits of the applicant's request or as to the existence of any hardship.
- e. Following the applicant's rebuttal, the Chairman shall order the public hearing closed. After the hearing is closed, the members may deliberate regarding the merits of the applicant's request and may vote on a motion made and seconded with respect to the disposition of the request.

- f. The Board may act on any request for which the applicant fails to appear after conducting the pre-scheduled public hearing.

5.4 Board Review

The Chairman may direct any question to the applicant or any persons speaking in order to bring out all relevant facts, circumstances and conditions affecting the request, and may call for questions from other members of the Board and from the City staff. At any time prior to the time a vote is called for, the Board may call back any applicant or speaker or staff member for clarification of fact presented by him in the hearing or to answer one or more questions of the members of the Board.

5.5 Suspension of Rules

Any provision of these rules not governed by other law may be temporarily suspended by the affirmative votes of four members or by unanimous consent.

5.6 Disposition of Cases

The Board may unconditionally grant, conditionally grant, or deny an applicant's request. The Board may also defer action on any request in response to the applicant's request for deferral of the action or whenever it concludes that additional evidence is needed or that alternate solutions need further study. An applicant's request may be dismissed when the Board finds that the request has been improperly filed or, upon notification by the City, that permits have been issued for a conforming use or development of the property.

5.7 Participation in Deliberations and Voting

All members present may participate in the deliberations of each case and may directly question the applicant/agent or Staff members.

Only the five regular members shall vote on the case unless absence or conflict of interest prevents their participation. Should any regular member be unable to vote, the alternate members shall be selected by the Chairman, in numerical order beginning with Alternate Member #1 and ending with Alternate Member #4, to vote in the regular members' absence.

Should any member be unable to vote on any matter before the Board, he or she shall clearly acknowledge this for the record prior to the vote, and the Presiding Officer shall clearly designate, for the

record and for the audience, which of the alternate members will be voting.

5.8 Vote Required

The concurring vote of four members shall be necessary to grant, or to grant conditionally, any request made to the Board. When a motion to approve a request fails to receive four affirmative votes, the request is denied. A motion to deny a request shall pass on the vote of a simple majority of the members. Should a motion to deny fail to receive a majority vote, another motion must be made (e.g., "motion to approve", "motion to postpone", etc.) to dispose of the case. A simple majority vote of the members shall be required to approve any motion other than a motion to approve a request. All motions must receive a second to be considered by the Board.

SECTION 6. REAPPLICATION

6.1 Reapplication for Denied Request

No application for a request which has been denied shall be again filed earlier than one year from the date of original denial unless other property in the immediate vicinity has, within the one year period, been changed or acted on by the Board or City Council so as to alter the facts and conditions on which the previous Board action was based. Such change of circumstances shall permit the rehearing of a request by the Board prior to the expiration of one year period, but such conditions shall in no way have any force in law to compel the Board, after a hearing, to grant an applicant's subsequent request. Such subsequent request shall be considered entirely on its merits and the peculiar and specific conditions related to the property on which the request is brought.

SECTION 7. EXPIRATION OF GRANTED REQUEST

7.1 Expiration of Granted Request

Any special exception or variance granted or authorized by the Board shall authorize the issuance of a building permit and/or a Certificate of Occupancy, as the case may be, for a period of one year from the date of the favorable action of the Board unless said Board shall have in its action approved a different period of time and has so shown such specific period of time in the minutes of its action. If the building permit and/or Certificate of Occupancy shall not have been applied for within said one year period or such extended period as the Board may have specifically granted, then the special exception or variance shall be deemed to have been waived and all rights thereunder terminated. All applications for a

request which have been denied shall be deemed to be denied with prejudice unless stated otherwise in the Board's written decision.

SECTION 8. CERTIFICATION AND AMENDMENTS

8.1 Certified Copy

A certified copy of these Rules of Procedure and of any amendments thereto will be placed on record in the office of the City Secretary within ten days following their date of adoption.

8.2 Repealing Clause

All previously adopted Rules of Procedure of the Board shall be and the same are hereby expressly repealed.

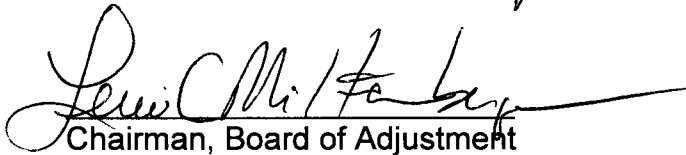
8.3 Amendment Procedure

Amendments to these Rules of Procedure may be made by the Board at any meeting upon the affirmative vote of four members, provided any such amendment is proposed at a preceding meeting and recorded on the minutes of such meeting. By unanimous consent of five members present, amendments may be adopted at the meeting at which they are introduced but such amendments shall not become effective until the next regular meeting.

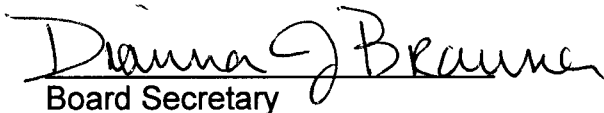
8.4 Informal Advice

The Board or its individual members shall not consider a request (formal or informal) for advice on theoretical or actual situations that potentially may come before the Board in the future as an appeal or application.

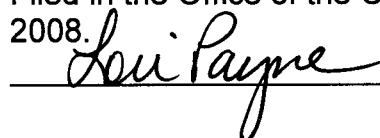
ADOPTED this 11th day of September, 2008


Chairman, Board of Adjustment

ATTESTED:


Board Secretary

Filed in the Office of the City Secretary this 12th day of September,
2008.

, City Secretary, City of Southlake, Texas