

City of Bellaire

BOARD OF ADJUSTMENT
Thursday, August 15, 2019

Council Chamber

Regular Session

7:00 PM

FIRST FLOOR OF CITY HALL
7008 S. RICE AVENUE
BELLAIRE, TX 77401

Agenda

Chair

Debbie Karakowsky

Board Member

Lily Gilmer

Board Member

James P. Avioli

Board Member

Bharat Raval

Board Member

Timothy McKone

Board Member

Cindy Preble

Board Member

Samir Sinha

Board Member

Shampa Mukerji

REGULAR SESSION - 7:00 P.M.**1. Call to Order (By Outgoing Chairman)****2. Pledge to the Flag (US and Texas)**

Texas Pledge: (Honor the Texas Flag: I pledge allegiance to thee, Texas one state under God, one and indivisible)

3. Certification of a Quorum (Outgoing and Incoming Board)**4. Approval of Minutes (Outgoing Board Only)**

[Board of Adjustment - January 17 2019 Minutes](#)

5. Communications and Reports (Outgoing Board Only)**6. Unfinished Business (Outgoing Board Only)****7. Swearing In of New Board Members (Incoming Board Assumes Duties and Outgoing Board Retires)****8. Introduction of Incoming Board Members****9. Election of Chair and Vice Chair****10. Adoption of Rules of Procedure**

A. Adoption of the Board of Adjustment's 2019-2020 Rules of Procedure

[Agenda Statement Report - Pdf](#)

11. New Business**12. Communications and Reports****13. General Comments from the Public**

(Limitations: Six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board Members present).

14. General Comments from Board Members**15. Announcements (if any)****16. Adjournment**

City of Bellaire

BOARD OF ADJUSTMENT
JANUARY 17, 2019

Council Chamber

Regular Session

7:00 PM

FIRST FLOOR OF CITY HALL
7008 S. RICE AVENUE
BELLAIRE, TX 77401

1. CALL TO ORDER

Vice Chair, Lilly Gilmer, called the meeting to order at 7:01pm.

Attendee Name	Title	Status	Arrived
James P. Avioli Sr.	Board Member	Present	
Debbie Karakowsky	Chairman	Absent	
Samir Sinha	Board Member	Present	
Bharat Raval	Board Member	Present	
L. Timothy McKone	Board Member	Absent	
Lilly Gilmer	Vice Chairman	Present	
Cindy Preble	Board Member	Present	
Ashley Parcus	Development Services Coordinator	Present	

2. PLEDGE TO THE FLAG (US AND TEXAS)

Vice Chair Gilmer led the Board in the pledge to both flags.

Texas Pledge: (Honor the Texas Flag: I pledge allegiance to thee, Texas one state under God, one and indivisible).

3. CERTIFICATION OF A QUORUM

Vice Chair Gilmer certified that a quorum was present.

4. APPROVAL OF MINUTES

- a. Board of Adjustment - Regular Session - Aug 16, 2018 7:00 PM

Motion: Board Member Sinha motioned to approve the minutes. Board Member Avioli seconded.

Vote: The motion passed with a vote of 5-0.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Samir Sinha, Board Member
SECONDER:	James P. Avioli Sr., Board Member
AYES:	Avioli Sr., Sinha, Raval, Gilmer, Preble
ABSENT:	Karakowsky, McKone

5. REPORTS FROM OFFICERS, COMMITTEES, SUB-COMMITTEES AND COMMUNICATIONS BOARD MEMBERS HAVE HAD OUTSIDE THE MEETING

There were no reports to present at this meeting.

6. UNFINISHED BUSINESS

There was no unfinished business.

7. READING OF THE STANDARDS FROM SECTION 24-704, BELLAIRE CODE OF ORDINANCES

There were no applications for variances.

8. NEW BUSINESS

- a. Approval of the Board's 2018 Annual Report to City Council

Motion: Board Member Raval motioned to approve the report as presented. Board Member Sinha seconded the motion.

Vote: The motion passed with a unanimous vote of 5-0.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bharat Raval, Board Member
SECONDER:	Samir Sinha, Board Member
AYES:	Avioli Sr., Sinha, Raval, Gilmer, Preble
ABSENT:	Karakowsky, McKone

9. GENERAL COMMENTS

There were no members of the public at the meeting.

(Limitations: Six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board Members present).

10. GENERAL COMMENTS FROM BOARD MEMBERS

There were no comments.

11. ANNOUNCEMENTS

Ashely Parcus stated that she will be out starting in March. She noted that Chavonne Sampson, the Director, or Cristin Emshoff, the Assistant Director, will be the new staff liaison. Marleny Campos will be the new secretary who will be attending meetings and providing the minutes.

12. ADJOURNMENT

Motion: Board Member Raval motioned to adjourn the meeting. Board Member Sinha seconded.

Vote: The motioned passed with a unanimous vote of 5-0.

The meeting adjourned at 7:06pm.

AGENDA STATEMENT

City of Bellaire

MEETING: Board of Adjustment - Aug 15 2019

PREPARED BY: Ashley Parcus

DEPARTMENT: Development Services

ITEM TITLE:

Adoption of the Board of Adjustment's 2019-2020 Rules of Procedure

RECOMMENDATION:

The Director of Development Services recommends approval of the Board's 2019-2020 Rules of Procedure, as amended by the City Attorney.

BACKGROUND/SUMMARY:

The City Attorney is recommending several changes to the Board's Rules of Procedure, to include:

1. A global change of "Chairman" to "Chair" and "his" to "his or her" for gender neutrality
2. Moving definitions to the top rather than the bottom for ease of the reader
3. Modifying the definition of "City Building Official" to match duties and office described in referenced section in Chapter 24.
4. Changed language of "variation or modification" to "variance or special exception" as that is what the person's application would state and variance and special exception are defined terms.
5. Added Section C to Article VII due to the new legislative changes by HB 2497 requiring City Council approval of the Board of Adjustment Rules of Procedure.

A red line of the recommended changes is attached.

CITY ATTORNEY REVIEW:

Yes No

City of Bellaire

Rules of Procedure Board of Adjustment

City of Bellaire, Texas

2019-2020 Term

Adopted: July 2018

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ARTICLE I
Name and Authority

The name of this body is the Board of Adjustment pursuant to state and local law. The Board is authorized within the statutory guidelines contained in Sections 211.008 - 211.011, of the Texas Local Government Code and Chapter 2, Administration, of the City of Bellaire Code of Ordinances.

ARTICLE IVI
Definitions

Appeal: A process to permit a request for relief through application by a person aggrieved by a decision of the City Building Official pursuant to Bellaire's Planning and Zoning Regulations.

Appellant: A person aggrieved by a decision made by the City Building Official affected by the decision, who appeals in person or through his his or her designated representative for relief to the Board of Adjustment.

Applicant: A person who requests in person or through his his or her designated representative, either a special exception to the terms of Bellaire's Planning and Zoning Regulations or a request for a variance from the terms of Bellaire's Planning and Zoning Regulations.

Application: An appeal or a request for a variance or a special exception in writing specifying the grounds for an appeal contained in a standardized form issued by the City Building Official.

Board of Adjustment: A public and quasi-judicial body charged with the duty to hear and determine zoning appeals, special exceptions and variances pursuant to Section 211.009 of the Texas Local Government Code and Section 24-303 of the Bellaire Code of Ordinances.

City Building Official: The person duly appointed by the City Manager of the City of Bellaire, as provided by Chapter 24 of the Bellaire Code of Ordinances, charged with the duty and obligation of issuing permits and certificates of occupancy and with the responsibility for enforcing the provisions of the ~~Building Code~~ and Planning and Zoning Regulations for the City of Bellaire.

Error: Refer to Section 211.009(a)(1), Texas Local Government Code.

Hardship: A determination to be made by a Board of Adjustment or, in the event of its Appeal to a District Court. It is defined in Black's Law Dictionary as a condition, which may be unreasonable, unduly oppressive, arbitrary or confiscatory which, if, found to be true in the opinion of a Board of Adjustment, is grounds for the granting of a variance. The burden of proof of such hardship lies with an applicant.

Parking Demand Analysis: A survey or report that provides details of parking demand/supply for a proposed project. The means of data collection and calculations to determine parking requirements must be designed in accordance with Institute of Transportation Engineers Parking Generation.

Parking Plan: A site plan that identifies all parking space locations for a proposed project whether onsite or offsite.

Special Exception: Refer to Section 211.009(a)(2), Texas Local Government Code.

Staff Liaison: The city staff member appointed by the City Manager of the City of Bellaire to assist the Board of Adjustment.

Variance: Refer to Section 211.009(a)(3), Texas Local Government Code.

Zoning: A power over land use granted to a city pursuant to Chapter 211, Texas Local Government Code, for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.

ARTICLE ~~IIII~~
Membership

Membership to the Board of Adjustment is by appointment made by the Mayor and the City Council of the City of Bellaire, Texas pursuant to Section 24-303 Planning and Zoning Regulations of the City of Bellaire, Texas as amended. The membership of the Board of Adjustment is seven (7) members, each with a two year term alternatively, such that four (4) members are appointed to a two (2) year term in one year and three (3) members are appointed to a two (2) year term in the following year. Vacancies shall be filled by the Mayor and City Council as necessary.

ARTICLE ~~IIIV~~
Officers

Section A. Officers Named: The officers shall be ~~ChairmanChair~~ and Vice-~~ChairmanChair~~. The Board shall elect the ~~ChairmanChair~~ and Vice-~~ChairmanChair~~ at the first meeting of a newly appointed Board pursuant to Section 24-303(d) of the Code of Ordinances of the City of Bellaire.

Section B. ~~ChairmanChair~~'s Duties: The ~~ChairmanChair~~ is the Presiding Officer and Spokesperson for the Board. The ~~ChairmanChair~~ may delegate Board business from time to time.

Section C. Vice-~~ChairmanChair~~'s Duties: The Vice- ~~ChairmanChair~~ shall serve as ~~ChairmanChair~~ in the absence of the ~~ChairmanChair~~.

ARTICLE ~~IVV~~
Meetings

Section A. Quorum Requirement: A quorum of the Board shall be a majority of the Board [or four (4) members of a seven member Board] provided however, that if docket items and/or cases before the Board are heard, the quorum for such item shall be not less than 75% [or six (6) members of a seven (7) member Board] of the Board pursuant to Section 211.008 (d) of the Texas Local Government Code.

Section B. First Meeting of a New Board: The first meeting of a new Board shall be a joint meeting of the outgoing (old) Board and the incoming (new) Board. The outgoing ~~ChairmanChair~~ shall call the meeting to order and shall preside until the new ~~chairmanChair~~ is elected. There shall be no Docket Items for any variance, appeal, or exception on the agenda for this meeting. The outgoing Board shall approve the minutes of all previous meetings. The incoming Board shall adopt temporary or permanent Rules of Procedure and such rules shall take effect immediately and remain in effect until amended as outlined in **Article VIII - Amendments to Rules of Procedure**. Said Rules may be adopted "As Is" or adopted "As Amended" by a majority vote [that's four (4) or more votes] of the Board. All other amendments shall be adopted pursuant to **Article VIII - Amendments to Rules of Procedure**. The Agenda for the meeting shall be as follows:

1. Call to Order [by outgoing ~~ChairmanChair~~]
2. Pledge to the Flag [US and Texas]
3. Certification of a Quorum [outgoing and incoming Board]
4. Approval of minutes [outgoing Board only]
5. Communications and Reports [outgoing Board only]
6. Unfinished Business [outgoing Board only]
7. Swearing In of New Board Members [incoming Board assumes duties and outgoing Board retires]
8. Introduction of incoming Board members
9. Election of ~~ChairmanChair~~ and Vice-~~ChairmanChair~~ [incoming Board only]
10. Adoption of Rules of Procedure [incoming Board only]
11. Communications and Reports [incoming Board only]

12. General Comments from the Public [**Limitations:** Six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board members present].
13. General Comments from Board members [incoming Boards]
14. Announcements (if any)
15. Adjournment

Section C. Regular Meetings: Regular meetings of the Board of Adjustment shall be held at 7:00 P.M. on the third Thursday of each month, unless modified by the City of Bellaire. Regular meetings will take place in the Council Chambers of the City of Bellaire, 7008 South Rice Avenue, Bellaire Texas.

Section D. Special Meetings: Special meetings may be called by the ~~Chairman~~Chair or any two members of the Board, of which notice shall be given in conformity with the Texas Open Meetings Act and procedures of the City of Bellaire, Texas.

Section E. Open Meetings Act: All meetings shall comply with the Texas Open Meetings Act pursuant to Chapter 551, Texas Government Code.

Section F. Adding Agenda Items: Agenda items may be added by the Staff Liaison, the ~~Chairman~~Chair or any two members of the Board not later than 12:00 noon on the seventh (7th) calendar day prior to a meeting.

Section G. Sign-Up Form for Speakers: There shall be Sign-Up Forms for the purpose of permitting members of the public to address agenda items. Such forms shall be available to the public and forwarded to the Secretary and to the ~~Chairman~~Chair so that such person's names may be called to address the Board at the appropriate time. All testimony shall be given under oath.

Section H. The Agenda: Except as provided in Section B of this Article, the Agenda at all regular and special meetings of the Board shall be as follows:

1. Call to Order
2. Pledge to the Flag (US and Texas)
3. Certification of a Quorum
4. Approval of Minutes
5. Reports from Officers, Committees, Sub-committees and Communications Board Members have had outside the meeting
6. Unfinished Business
7. Reading of the Standards from Section 24-704 or 24-718 of the Bellaire Code of Ordinances, as it pertains to the Board's current agenda items.
8. New Business - Public Hearings on Docket Item for a Variance, Appeal or Exception [*Repeated and sequentially numbered for each Docket Item considered at each meeting.*]
 - a) Presentation by Applicant, Appellant, Property Owner, Counsel or other Agent [**Limitations:** Fifteen (15) minutes with extensions in five (5) minute increments as approved by a majority vote of the Board members present].
 - b) Presentation by the City [**Limitations:** Fifteen (15) minutes with extensions in five (5) minute increments as approved by a majority vote of the Board members present].
 - c) Public comments on Docket Item [**Limitations:** Names of those desiring to comment shall come from sign-up list and shall be limited to six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board members present].
 - d) Rebuttal by Applicant, Appellant, Property Owner, Counsel or other Agent. [**Limitations:** Six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board members present].
 - e) Questions by Board [**Limitations:** The Board may ask germane questions of the Applicant, Appellant, Property Owner, Counsel or other Agent, and/or City Staff].
 - f) Consideration of, deliberation by and action on Docket Item by the Board [**Requires**

75% or six (6) affirmative votes for approval pursuant to Section 211.009(c), Texas Local Government Code].

9. General Comments from the Public [**Limitations:** Six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board members present].
10. General Comments from Board members
11. Announcements (if any)
12. Adjournment

Section I. Motions in the Affirmative: All motions on final disposition of a Docket Item shall be in the affirmative.

Section J. Previous Question: A motion to move the Previous Question (close debate) shall be in order following a reasonable time for deliberation. Such motion shall require a second and a two-thirds (2/3) vote for passing.

Section K. Revising the Order of the Agenda During a Meeting: The order of the Agenda may be amended following Item three (3), by a simple majority vote of the Board.

ARTICLE ~~V~~^{VI} **Docket Items**

Section A. Numbering Docket Items: Each appeal or application for ~~variation or modification~~ variance or special exception filed in proper form with the required data and fees, shall be numbered serially, docketed, and shall be placed upon the calendar of the Board by the Secretary thereof. The docket numbers shall begin anew on January 1 of each year, and shall be hyphenated with the number of the year in which the said appeal or application is filed pursuant to Section 24-303 of the Bellaire Code of Ordinances.

Section B. Timing of Docket Items: All cases docketed more than fifteen (15) days next preceding a regular meeting day, and which the Texas Open Meeting Act requirement has been complied with, shall be automatically set for hearing on the succeeding regular meeting day. Cases docketed within fifteen (15) or fewer days of the regular meeting day shall be set for hearing on the second regular meeting day after docketing of the appeal or application.

Section C. Method of Appeal: Each appeal to the Board from an order, decision or determination of the City Building Official or designee or application for ~~variation or modification~~ variance or special exception of any of the provisions of the Zoning Regulations and all other applicable communication concerning Board business shall be made in writing to the Secretary of the Board.

Section D. Time Limitations of Order or Relief Granted: Unless otherwise modified by the Board, if any application for ~~variation or modification~~ variance or special exception is granted by the Board, the variance or special exception order shall include a requirement that all permits necessary for the prosecution of the work shall be obtained within one (1) year and construction begun within two (2) years of the order by the Board. The application form shall contain a notice of this section. The Board may modify this requirement.

Section E. Notification: The Order notifying the appellant or applicant shall also notify same of their appeal right to State District Court pursuant to Section 211.011, Texas Local Government Code, within ten (10) days of the date of the order is filed in the Board office.

Section F. Precedents: No action of the Board of Adjustment shall set a precedent. Each case shall be decided upon its merits and upon the circumstances attendant thereto.

Section G. Advice and Moot Questions: No formal requests for advice, or moot questions will be considered by the Board. Any advice, opinion or information given by any Board member or the Secretary or any other official or employee of the City of Bellaire shall not be binding on the Board.

Section H. Fees: All Applicants and Appellants shall pay a non-refundable application fee set by the City of Bellaire to the Secretary of the Board.

Section I. Application for Re-Hearings: No application or appeal to the Board shall be permitted on substantially the same subject matter in reference to the same property prior to the expiration of twelve (12) months from an order of the Board. No application or appeal shall be allowed on substantially the same subject matter in reference to the same piece of property during litigation against the City of Bellaire and/or the Board of Adjustment on said property.

Section J. Withdrawal of Application: Any appellant or applicant may request that his or her appeal or application be withdrawn at any time prior to a final vote or disposition by the Board. Such request shall be granted by the Board.

Section K. Disposition: In the final disposition of any appeal ~~or application for variation or modification~~, the decision shall affirm, modify or reverse the refusal of a permit by, or any order or decision of the City Building Official. In the case of an application for ~~variation or modification~~ variance or special exception the decision shall set forth that the application is denied or that it is granted with or without conditions. The vote of each member present on each decision shall be by record vote.

Section L. The Lack of a Quorum for a Variance Hearing: In the event that the Appellant, Applicant, Property Owner, Counsel, or other Agent is present at the scheduled hearing, but the Board of Adjustment is lacking a quorum for the hearing, the hearing shall be rescheduled without any penalties for the appellant or applicant and no additional application fee shall be imposed.

Section M. Special Exception or Variance Parking Requirement: Any applicant seeking a Variance or Special Exception from Chapter 24, Section 514 and/or 514a of the City of Bellaire Code of Ordinances must include with their application a "parking demand analysis". This analysis, along with the complete parking plan that is to be presented to the Board, must be given to the City of Bellaire ten days in advance of the scheduled board meeting. In the event the Board of Adjustment or the applicant wishes to revise the proposal at or before the hearing, the City of Bellaire may request and receive the right to delay the process until the next board meeting to review the changes. The Zoning Official may request a waiver of this requirement.

ARTICLE VI Definitions

~~**Appeal:** A process to permit a request for relief through application by a person aggrieved by a decision of the City Building Official pursuant to Bellaire's Planning and Zoning Regulations.~~

~~**Appellant:** A person aggrieved by a decision made by the City Building Official affected by the decision, who appeals in person or through his designated representative for relief to the Board of Adjustment.~~

~~**Applicant:** A person who requests in person or through his designated representative, either a special exception to the terms of Bellaire's Planning and Zoning Regulations or a request for a variance from the terms of Bellaire's Planning and Zoning Regulations.~~

~~**Application:** An appeal or a request for a variance or a special exception in writing specifying the grounds for an appeal contained in a standardized form issued by the City Building Official.~~

~~**Board of Adjustment:** A public and quasi-judicial body charged with the duty to hear and determine zoning appeals, special exceptions and variances pursuant to Section 211.009 of the Texas Local Government Code and Section 24-303 of the Bellaire Code of Ordinances.~~

~~**City Building Official:** The person duly appointed by the City Manager of the City of Bellaire, as provided by Chapter 24 of the Bellaire Code of Ordinances, charged with the duty and obligation of issuing permits and certificates of occupancy and with the responsibility for enforcing the provisions of the Building Code and Zoning Regulations for the City of Bellaire.~~

~~**Error:** Refer to Section 211.009(a)(1), Texas Local Government Code.~~

~~**Hardship:** A determination to be made by a Board of Adjustment or, in the event of its Appeal to a District Court. It is defined in Black's Law Dictionary as a condition, which may be unreasonable, unduly oppressive, arbitrary or confiscatory which, if, found to be true in the opinion of a Board of Adjustment, is grounds for the granting of a variance. The burden of proof of such hardship lies with an applicant.~~

~~**Parking Demand Analysis:** A survey or report that provides details of parking demand/supply for a proposed project. The means of data collection and calculations to determine parking requirements must be designed in accordance with Institute of Transportation Engineers Parking Generation.~~

~~**Parking Plan:** A site plan that identifies all parking space locations for a proposed project whether onsite or offsite.~~

~~**Special Exception:** Refer to Section 211.009(a)(2), Texas Local Government Code.~~

~~**Staff Liaison:** The city staff member appointed by the City Manager of the City of Bellaire to assist the Board of Adjustment.~~

~~**Variance:** Refer to Section 211.009(a)(3), Texas Local Government Code.~~

~~**Zoning:** A power over land use granted to a city pursuant to Chapter 211, Texas Local Government Code, for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.~~

ARTICLE VII Civil and Parliamentary Authority

Section A. Construction of Authority: The construction of authority in all matters associated with the Board of Adjustment, including the Agenda, shall be: **1)** the Constitution and statutes of the United States of America; **2)** the Constitution and statutes of the State of Texas; **3)** the Charter of the City of Bellaire; **4)** the Code of Ordinances of the City of Bellaire; **5)** these Rules of Procedure; and **6)** Robert's Rules of Order, Newly Revised.

Section B. Reference to State and Local Statutes: The conduct and scope of activity of the Board of Adjustment is governed by and subject to State and local laws including, but not limited to, Chapters 211, 213 and 216, Texas Local Government Code, Chapters 551 and 552, Texas Government Code, the Charter of the City of Bellaire, Texas, and Chapter 2, Administration of the City of Bellaire Code of Ordinances.

Section C. Parliamentary Authority: The Rules contained in the most recent edition of Robert's Rules of Order, Newly Revised shall govern the Board of Adjustment in all cases in which they are applicable and not inconsistent with a superior authority.

ARTICLE VIII Amendments to Rules of Procedure

Section A. Amendments by Existing Board: These Rules of Procedure may be amended by a majority vote of the entire Board of Adjustment provided previous notice is given at one meeting in advance of any such consideration, and further provided, that an amendment to bring these Rules of Procedure in compliance with a superior statute, rule, procedure or other authority may be considered without previous notice.

Section B. Annual Review: These Rules of Procedure shall be reviewed not less frequently than annually. The adoption of these Rules of Procedure by a New Board shall not constitute such review.

Section C. Approval by City Council: Texas Local Government Code, Chapter 211 was amended by House Bill 2497, 86th Legislature, Regular Session, to require the governing body of the municipality to approve the Rules of Procedure for the Board of Adjustment. Following the adoption of these Rules of Procedure by a New Board or any amendment to these Rules of Procedure, the Chair shall direct the Staff Liaison to present the adopted or amended Rules of Procedure to the City Council of the City of Bellaire, Texas for approval.

ADOPTION OF RULES OF PROCEDURE

Adopted by the Board of Adjustment of the City of Bellaire, Texas on the 15th day of July 2019.
Attest:

Signature of ~~Chairman~~Chair

Approved by the City Council of the City of Bellaire, Texas on the _____ day of _____ 2019.

Signature of Mayor