

House Bill Amendments to BDA

Planner: Nathan Warren

Request:

Consideration of amending Section 51A-4.703, "Board of Adjustment Hearing Procedures," of Chapter 51A, "Dallas Development Code," of the Dallas City Code.

Background:

- On May 8, 2019, the Texas House of Representatives voted to approve House Bill No. 2497 ("HB 2497").
- On May 22, 2019, the Texas Senate voted to approve HB 2497.
- On June 10, 2019, HB 2497 was signed into Texas law by Governor Abbott .
- HB 2497 became effective on September 1, 2019.

Intent:

The proposed amendments to the Dallas Development Code intend to bring Section 51A-4.703, "Board of Adjustment Hearing Procedures," into compliance with the newly effective state law.

General Information:

HB 2497 amended Section 211.010 of the Texas Local Government Code by amending Subsections (a), (b), and (d) and adding Subsection (a-1). These amendments are reflected by new language added to Section 51A-4.703(a)(2) and (d)(3). The amendments more specifically define who is allowed to file an appeal of a decision of an administrative official to the city's board of adjustment. For decisions that re not related to a specific application, address, or project, the following persons may appeal: (1) a person aggrieved by the decision; or (2) any officer, department, or board of the city affected by the decision. For a decision that is related to a specific application, address, or project, the following persons may appeal: (1) a person who filed the application that is subject to the decision, is the owner or representative of the property that is subject of the decision, or is aggrieved by the decision and is the owner of real property within 200 feet of the subject property that is the subject of the decision; or (2) any officer, department, or board of the city affected by the decision.

Further, HB 2497 requires that an appeal must be filled not later than the 20th day after the date the decision is made, and the board shall decide 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.

Staff Analysis:

Staff recommends approval of the proposed amendments to Section 51A-4.703, "Board of Adjustment Hearing Procedures," of Chapter 51A, "Dallas Development Code," of the Dallas City Code because the amendments will bring this section into compliance with current state law.

SEC. 51A-4.703. BOARD OF ADJUSTMENT HEARING PROCEDURES.

(a) Initiation.

(1) Authorized public hearings. The board may authorize a public hearing on issues within the board’s jurisdiction. A board authorized public hearing must comply with the procedures in this section. If 10 or fewer property owners are involved, the director shall send written notice to the owners of real property within the subject area not less than 10 days before the meeting at which the board will consider authorization of a public hearing. This notice must be written in English and Spanish if the area of request is located wholly or partly within a census tract in which 50 percent or more of the inhabitants are persons of Spanish origin or descent according to the most recent federal decennial census. If more than 10 property owners are involved, the director shall give notice of the public hearing in the official newspaper of the city at least 10 days before the meeting at which the board will consider authorization of a public hearing.

(2) Appeals of decisions of administrative officials. Parties listed in Subparagraphs (A) and (B) [~~Any aggrieved person, or an officer, department, or board of the city~~] may appeal a decision of an administrative official to the board when that decision concerns issues within the jurisdiction of the board. For purposes of this section, “administrative official” means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue.

(A) For a decision made by an administrative official that is not related to a specific application, address, or project, the following persons may appeal to the board:

- (i) a person aggrieved by the decision; or
- (ii) any officer, department, or board of the city affected by the decision.

(B) For a decision made by an administrative official that is related to a specific application, address, or project, the following persons may appeal to the board:

- (i) a person who:
 - (aa) filed the application that is the subject of the decision;
 - (bb) is the owner or representative of the property that is the subject of the decision; or
 - (cc) 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

(ii) any officer, department, or board of the city affected by the decision.

(C) An appeal to the board must be made not later than the 20th day after the date [~~within 15 days after notice of~~] the decision is made by [~~of~~] the official.

(D[~~B~~]) The appellant shall file with the official a written notice of appeal on a form approved by the board.

(E[~~C~~]) The official shall forward the notice of appeal and the record upon which the appeal is based to the director.

(b) Appeal stays all proceedings.

(1) An appeal to the board stays all enforcement proceedings involving the action appealed from unless the official appealed from certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property.

(2) If the official makes such a finding, enforcement proceedings will be stayed only if, after notice to the official, the board or a court of record, upon a finding of due cause, issues a restraining order.

(c) Notice of hearing.

(1) The board shall hold a public hearing on all applications.

(2) The director shall send written notice of a public hearing to the applicant and all owners of real property located within 200 feet, including streets and alleys, from the boundary of the area upon which the request is made. The notice must be given not less than 10 days before the day set for the hearing by depositing the notice properly addressed and postage paid in the United States mail to the property owners as evidenced by the last approved city tax roll. This notice must be written in English and Spanish if the area of request is located wholly or partly within a census tract in which 50 percent or more of the inhabitants are persons of Spanish origin or descent according to the most recent federal decennial census.

(3) The director shall give notice of the time and place of the public hearing in the official newspaper of the city at least 10 days before the hearing.

(d) Board action.

(1) The applicant has the burden of proof to establish the necessary facts to warrant favorable action of the board.

(2) Cases must be heard by a minimum of 75 percent of the members of a board panel. The concurring vote of 75 percent of the members of a panel is necessary to:

(A) reverse an order, requirement, decision, or determination of an administrative official involving the interpretation or enforcement of the zoning ordinance;

(B) decide in favor of an applicant on a matter on which the board is required to pass under state law, the city charter, or city ordinances; or

(C) grant a variance.

(3) The board shall decide an appeal of a decision of administrative official at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the appeal date is filed. The board shall have all the powers of the administrative official on the action appealed from. The board may in whole or in part affirm, reverse, or amend the decision of the official.

(4) The board may impose reasonable conditions in its order to be complied with by the applicant in order to further the purpose and intent of this chapter.

(5) The decision of the board does not set a precedent. The decision of the board must be made on the particular facts of each case.

(6) The applicant shall file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.

(e) Two year limitation.

(1) Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.

(2) If the board renders a final decision of denial without prejudice, the two year limitation is waived.

(3) The applicant may apply for a waiver of the two year limitation in the following manner:

(A) The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.

(B) The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple

majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in this section.

DRAFT

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AN ACT

relating to rules of and appeals to a municipal board of adjustment.

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

SECTION 1. Section 211.008(e), Local Government Code, is amended to read as follows:

(e) The board by majority vote shall adopt rules in accordance with any ordinance adopted under this subchapter and with the approval of the governing body. Meetings of the board are held at the call of the presiding officer and at other times as determined by the board. The presiding officer or acting

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presiding officer may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public.

SECTION 2. Section 211.010, Local Government Code, is amended by amending Subsections (a), (b), and (d) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

- (1) a person aggrieved by the decision; or
- (2) any officer, department, board, or bureau of the municipality affected by the decision.

(a-1) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision

made by an administrative official that is related to a specific application, address, or project:

(1) a person who:

(A) filed the application that is the subject of the decision;

(B) is the owner or representative of the owner of the property that is the subject of the decision; or

(C) 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

(2) any officer, department, board, or bureau of the municipality affected by the decision.

(b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed not later than

the 20th day after the date the decision is made [~~within a reasonable time as determined by the rules of the board~~]. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide 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 [~~within a reasonable time~~].

SECTION 3. (a) Section 211.008(e), Local Government Code, as amended by this Act, applies only to rules adopted by a municipal board of adjustment on or after the effective date of

this Act.

(b) Section 211.010(a), Local Government Code, as amended by this Act, applies only to an appeal based on a decision made by an administrative official on or after the effective date of this Act. An appeal based on a decision made by an administrative official before the effective date of this Act is governed by the law in effect on the date the decision was made, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2019.

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President of the Senate

Speaker of the House

I certify that H.B. No. 2497 was passed by the House on May 8, 2019, by the following vote: Yeas 145, Nays 2, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2497 was passed by the Senate on May 22, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

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