

**SECTION 29
BOARD OF ADJUSTMENT**

A. PURPOSE

It is the declared purpose of this ordinance that non-conforming uses be eliminated and be required to conform to the regulations prescribed in the preceding articles of this ordinance, having due regard for the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated non-conforming use and the conservation and preservation of property. The Governing Body shall, from time to time, on its own motion or upon cause presented by interested property owners, inquire into the existence, continuation or maintenance of any non-conforming use within the City.

B. ORGANIZATION

A Board of Adjustment shall be established and have all the powers and authority in accordance with the Charter of the City of Benbrook and Section 211.008, Local Government Code, as amended. The Board of Adjustment shall consist of five (5) voting members, appointed by the City Council. Board members shall serve two (2) year terms, with Places 1, 3, and 5 appointed in odd numbered years and Places 2 and 4 appointed in even numbered years. In addition, the City Council may appoint up to four (4) alternates to serve in the absence of any Board member. The Board shall elect a chairperson from its members. Any member or alternate of the Board of Adjustment may be removed for just cause by the City Council. "Just Cause" as that term is used herein shall include three (3) unexcused absences from meetings, regular or special, of the Board of Adjustment. Vacancies shall be filled by appointment by the City Council of a suitable person to serve out the unexpired term of any person whose place on the Board of Adjustment, either as a member or as an alternate, has become vacant for any cause.

The Board of Adjustment may adopt rules to govern its proceedings, providing, however, that such rules are not inconsistent with the terms of this ordinance. Meetings of the Board of Adjustment shall be held at the call of the Chairman, who 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 of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicate such fact and shall keep records of its examinations and other official actions, all of which shall be filed in the offices of the Board of Adjustment and kept as public record.

C. JURISDICTION

The Board of Adjustment shall have all powers granted by and be organized and controlled by the provisions of Section 211.009, Local Government Code. The Board of Adjustment is hereby vested with power and authority, and in appropriate cases and subject to appropriate conditions and safeguards, to make such exemptions and exceptions to the terms of this ordinance in harmony with its general purposes and intent in accordance with general or special rules herein contained for the purpose of rendering full justice and equity to the general public.

D. APPEALS

Appeals to the Board of Adjustment can be taken by any person aggrieved by any officer, department, or board of the municipality or affected by any decision of the administrative officer. Such appeal shall be taken within fifteen (15) days time after the decision has been rendered by the administrative officer, by filing with the officer from whom the appeal is taken and with the Board of Adjustment, a notice of appeal specifying the

grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceeding of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the 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 imminent peril to life or property. In such case proceedings shall not be stayed, otherwise, than by restraining order which may be granted by the Board of Adjustment or by a court of record on application, after notice to the officer from whom the appeal is taken on due case shown.

E. HEARING

The Board of Adjustment shall fix a reasonable time for the hearing of any appeal, variance, special exception, or other matter which the Board of Adjustment is authorized to review hereunder, give public notice thereof, as well as due notice to the parties and interests and decide the same within a reasonable time. Upon the hearing any party may appear in person or by attorney or agent. The notice provided in this section shall be given by publication in the official city publication stating the time and place of such hearing, which shall not be earlier than ten (10) days from the day of such publication, and in addition thereto, the Board of Adjustment shall mail notices of such hearing to the petitioner and the owners of the property lying within two hundred feet (200') of any point of the lot or portion thereof, on an appeal, variance, exception or other action is proposed, and to all person deemed by the board of Adjustment to be affected, such owners and persons shall be determined according to the current tax rolls of the City and substantial compliance therewith shall be deemed sufficient, provided, however, that the depositing of such written notice in the mail by the board of Adjustment shall be deemed sufficient compliance with the purpose of this matter.

Any variance or special exceptions authorized by the Board of Adjustment, either under the provisions of this chapter, or under the authority granted to the Board of Adjustment under the Statutes of the State of Texas, shall authorize the issuance of a building permit for a period of ninety (90) days from the date of the favorable action on the part of the Board of Adjustment, unless said Board of Adjustment in its minutes shall, at the same time, grant a longer period. If a building permit shall not have been issued within said ninety (90) day period or as the Board of Adjustment may specifically grant the special exceptions shall be deemed waived, and all rights thereunder terminated. Such termination and waiver shall be without prejudice to a subsequent appeal to said Board of Adjustment in accordance with the rules and regulations regarding appeals.

The same appeal to the Board of Adjustment shall not be allowed on the same piece of property prior to the expiration of one (1) year from a ruling of the Board of Adjustment on any appeal to such body unless other property in the same zoned areas shall have, within such one (1) year period, been altered or changed by ruling of the Board of Adjustment, in which case such change of circumstance shall permit the allowance of an appeal but shall in no way have force in law to compel the Board of Adjustment after a hearing to grant such subsequent appeal, but such appeal shall be considered on its merits as in all other cases.

F. POWER

The Board of Adjustment shall have the following powers:

1. Variances

The Board of Adjustment may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance. In granting a variance, the Board shall prescribe only conditions that it deems necessary or desirable to protect the public interest. In making its findings hereinbelow required, the Board shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, and the probable effect such variance will have upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity. No variance shall be granted unless the Board finds:

- a. That there were special circumstances or conditions affecting the land involved such that the strict application of the provisions of this ordinance deprive the applicant of reasonable use of his land; and
- b. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
- c. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and
- d. That the granting of a variance will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of this ordinance.

Such findings of the Board, together with the specific facts upon which it is based, shall be incorporated into the official minutes of the Board of Adjustment meeting at which such variance is granted. Variances may be granted only when in harmony with the general purpose and intent of this ordinance so that the public health, safety and welfare may be secured and substantial justice done. Pecuniary hardship to the applicant, standing alone, shall not be deemed to constitute undue hardship.

2. Special Exceptions

The Board of Adjustment may permit a special exception when such use or development is specifically authorized under paragraph I of this Section. In reaching its decision the Board of Adjustment shall determine that the requested exception will establish only those uses permitted under the ordinance, that the location of the proposed activities and improvements are clearly defined on the site plan filed by the applicant; that the exception will be wholly compatible with the use and permitted development of adjacent properties either as filed or subject to such requirements as the Board of Adjustment finds to be necessary to protect and maintain the stability of adjacent properties.

A special exception that has not been implemented within two years of approval shall expire unless specifically extended by the Zoning Board of Adjustment.

3. Appeals of Decisions of Administrative Officers

- a. The Board of Adjustment may hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by the administrative officer in the enforcement of this ordinance.
- b. In exercising its power, the Board of Adjustment may, in conformity with the provisions of Chapter 211, Local Government Code, revise or reform,

wholly or partly, or may modify the order, requirement, decision or determination as sought to be made and shall have all the powers of the officer from whom the appeal is taken, and may require such conditions and safeguards as the Board finds necessary to preserve the spirit and intent of this ordinance.

4. Non-Conforming Uses

- a. The Board of Adjustment may permit the reconstruction, extension or enlargement of a building occupied by a pre-existing non-conforming use on the lot occupied by such building provided such reconstruction does not prevent the return of such property to a conforming use.
- b. The Board of Adjustment may require the discontinuance of non-conforming uses under any plan whereby the full value of the structure or use can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance.
- c. The Board of Adjustment may determine whether an existing nonconforming animal lot, barn or stable may continue, may continue with additional restrictions, or be discontinued if petitioned under the provisions of Section 28.13. In making its determination, the Board shall consider public health, animal welfare, and nuisance conditions, as well as the general character of the neighborhood.

G. CONCURRING VOTE

The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the administrative officer, or to decide in favor of the application on any matter upon which it is required to pass under this ordinance or to affect any variance in said ordinance.

H. GRIEVANCES

Any person or persons, jointly or separately, aggrieved by any decision of the Board of Adjustment or any taxpayer or any officer, department or board of the City may present to a court of record, a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of such illegality. Such petition shall be presented to the court within ten (10) days of the questioned decision of the Board of Adjustment, and not thereafter, and shall comply in all respects with the requirements set forth in Section 211.011 of the Local Government Code.

I. AUTHORIZED SPECIAL EXCEPTIONS

The following special exceptions may be permitted by the Board of Adjustment, in the District specified, subject to full and complete compliance with any and all conditions listed, together with such other conditions as the Board of Adjustment may impose:

SPECIAL EXCEPTION	DISTRICTS REQUIRING BOARD APPROVAL
a. Split-zoned lots, extension of use. Conditions: Extension of a use to lot line or for a distance of not more than one hundred	ALL

- feet (100') where the boundary line of district divides a lot held in single ownership.
- b. Helistop for loading and unloading of passengers and cargo. Subject to any conditions as may be determined by the Board. ALL
 - c. Sand and gravel mining. As a condition to approval, the Board may require the submittal of engineering data regarding the proposed operation and closure of the mine. The Board may require additional conditions as deemed appropriate. ALL
 - d. Carport that extends into the required front, side or rear yard of a lot. To qualify for this special exception, the carport must: A and B
 - 1. have been completed or under construction by December 17, 1992;
 - 2. have no more than one of its sides enclosed; and
 - 3. comply with all applicable requirements of the building code.
 - e. Compression Stations, Natural Gas CF, E, F, G, HC, MU