

CITY OF BELLAIRE TEXAS

BOARD OF ADJUSTMENT

JULY 16, 2015

Council Chamber	Regular Session	7:00 PM
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7008 S. RICE AVENUE
BELLAIRE, TX 77401



Board Member

Patty McGinty

Board Member

Amar Raval

Vice Chairman

Tom Ligh

Chairman

Debbie Sharp

Board Member

Debbie Karakowsky

Board Member

Sean Wheeler

Board Member

Seth A. Miller

Mission Statement:

The City of Bellaire is dedicated to outstanding quality service and facilities to ensure an open, progressive, and secure community.

I. CALL TO ORDER (BY OUTGOING CHAIRMAN)**II. PLEDGE OF ALLEGIANCE (THE US AND TEXAS)****III. CERTIFICATION OF A QUORUM (OUTGOING AND INCOMING BOARD)****IV. APPROVAL OF REGULAR MEETING MINUTES (OUTGOING BOARD ONLY)**

1. Board of Adjustment - Regular Session - Apr 16, 2015 7:00 PM

V. COMMUNICATIONS AND REPORTS (OUTGOING BOARD ONLY)**VI. UNFINISHED BUSINESS (OUTGOING BOARD ONLY)****VII. SWEARING IN OF NEW BOARD MEMBERS (INCOMING BOARD ASSUMES DUTIES AND OUTGOING BOARD RETIRES)****VIII. INTRODUCTION OF INCOMING BOARD MEMBERS****IX. ELECTION OF CHAIRMAN AND VICE-CHAIRMAN (INCOMING BOARD ONLY)****X. CONSIDERATION AND ADOPTION OF RULES OF PROCEDURE (INCOMING BOARD ONLY)**

1. Rules of Procedure

XI. COMMUNICATIONS AND REPORTS (INCOMING BOARD ONLY)**XII. GENERAL COMMENTS FROM 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)****XIII. GENERAL COMMENTS FROM BOARD MEMBERS (INCOMING BOARD ONLY)****XIV. ANNOUNCEMENTS (IF ANY)****XV. ADJOURNMENT**



CITY OF BELLAIRE TEXAS

BOARD OF ADJUSTMENT

APRIL 16, 2015

Council Chamber

Regular Session

7:00 PM

7008 S. RICE AVENUE
BELLAIRE, TX 77401

1. CALL TO ORDER

Chairman Sharp called the meeting to order at 7:00 PM.

2. PLEDGE TO THE FLAG (US AND TEXAS)

Chairman Sharp led the Board and the public in the pledges 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

Chairman Sharp certified that a quorum was present, consisting of the following members:

Attendee Name	Title	Status	Arrived
Patty McGinty	Board Member	Present	
Amar Raval	Board Member	Present	
Tom Ligh	Vice Chairman	Present	
Debbie Sharp	Chairman	Present	
Debbie Karakowsky	Board Member	Present	
Sean Wheeler	Board Member	Present	
Seth A. Miller	Board Member	Present	
Alan P. Petrov	City Attorney	Present	
ChaVonne Sampson	Development Services Manager	Present	
Ashley Parcus	Secretary	Present	

4. APPROVAL OF MINUTES

- Board of Adjustment - Regular Session - Jan 15, 2015 7:00 PM

RESULT: APPROVED [UNANIMOUS]
MOVER: Debbie Karakowsky, Board Member
SECONDER: Patty McGinty, Board Member
AYES: McGinty, Raval, Ligh, Sharp, Karakowsky, Wheeler, Miller

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

There were no reports.

6. UNFINISHED BUSINESS

There was no unfinished business.

Minutes Acceptance: Minutes of Apr 16, 2015 7:00 PM (Approval of Regular Meeting Minutes (Outgoing Board Only))

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

Mrs. Sampson read the Standards from Section 24-704.

8. NEW BUSINESS

A. Public Hearings

1. BOA-2015-01-Request filed by Rehan Memon, owner of the property at 4701 Pine Street, for a Special Exception to allow for the construction of a 10 foot concrete masonry unit (CMU) wall on the north and east side of the property in lieu of the 8 foot allowance as determined by Chapter 24, Section 512 A. of the City of Bellaire Code of Ordinances. The property is located in the R-3 Zoning District.

Chairman Sharp explained the public hearing process to the public.

Presentation by the Applicant

Mr. Rehan Memon, owner of 4701 Pine St.-Mr. Memon informed the Board that he is requesting this exception because he does not believe that in his case the 8 foot allowance is adequate enough to block the sight and sound of Loop 610. He explained that his house is taller than the neighboring homes, which gets him a better flood insurance rate, but also allows for more exposure to the 610 Freeway. He also mentioned that there were several trees acting as an additional buffer from 610, but they were cut down. Mr. Memon stated that he has two small children and it is very noisy and unsettling. He does not feel that an 8 foot fence/wall would allow for enough security, privacy, and noise reduction for his family. Mr. Memon explained that he has also installed several noise-reducing products in his home, but they still fail to provide the barrier that he would like.

Staff Findings

ChaVonne Sampson, Development Services Manager-Mrs. Sampson reiterated that Mr. Memon is asking for a Special Exception to allow for a 10 foot wall at 4701 Pine Street, which is located in the R-3 Zoning District. She stated that the application was submitted on March 25, 2015, that mail outs were sent on April 6, 2015, and that the notice was published in the Southwest News on April 7, 2015. Mrs. Sampson explained that the applicant did receive a Certificate of Occupancy on January 9, 2015, after which a permit application and plans were submitted to the City for the construction of a 10 foot masonry wall. She stated that those plans were approved and the permit was issued by the City in error. Mrs. Sampson informed the Board that during construction there was a stop work order put on the property once the City realized that the 8 foot allowance was not being followed. She stated that at that time, the City informed the applicant that although the plans were mistakenly approved, the applicant must still honor City Code. Mrs. Sampson added that the applicant is requesting a special exception based on the property's proximity to the 610 Frontage Road and the flood plain classification requiring the first floor of the home to be built at an elevation above grade. She explained that the site has a ground level of 53.2 and a first floor elevation of 56.5. Mrs. Sampson then reviewed the standards for granting a special exception, and stated that the Director of Development Services believes that the application does meet the requirements outlined in Section 24-718 and is eligible for consideration. She pointed out that based upon how the fence came to be and its location and exposure to the 610 frontage the Director does not oppose the granting of this request. Mrs. Sampson added that

the Fire Chief did submit a written comment detailing his apprehension with the allowance of a 10 foot wall as it relates to the access of first responders onto the property. She stated that his recommendation, if the Special Exception was granted, would be to install a Knox Box in order for the fire department/police department to gain access to the property.

Public Comments

Cody Crochet, 902 Lennette-Mr. Crochet informed the Board that he lives right down the street from the applicant, in a house that backs up to 610. He stated that he can attest to the constant noise that is produced by the traffic on the freeway, and felt that in Mr. Memon's case, an 8 foot structure would not be adequate to alleviate this issue. He mentioned that a retaining wall was to be installed on 610 when the recent improvements were done, but this never happened. Due to the height of Mr. Memon's home, Mr. Crochet felt that a 10 foot wall would be very beneficial to him and his family.

Lynn McBee-Ms. McBee mentioned that there had been an increase in the required home construction elevation due to the new measurements of the flood plain and asked if there had been any consideration in the increase of allowable fence height in order to match that change. She also believed that the City is at fault for not having foreseen this need earlier on. Ms. McBee didn't know if she could support the approval of the application due to the fact that it would create inconsistencies within the neighborhood. She suggested that the Board make a recommendation to the City to review the zoning regulations with regard to fence height and tie it into the elevation requirements for home construction.

Questions by the Board

Vice Chairman Ligh asked Mr. Memon if he purchased this home after it was already built.

Mr. Memon explained that he bought it from a private party during the last stages of construction. He informed the Board that it wasn't until after he and his family had moved in that he realized the noise and sight of the 610 traffic was too much.

Board Member Ligh mentioned that the new wall is being constructed outside the already existing fence and asked if the proposed structure was within his property boundaries or in the 610 R.O.W.

Mrs. Sampson stated that the wall is located on the property line, and that the existing fence was inside the property line.

Board Member Miller asked for a copy of the Fire Chief's written comment.

Board Member Miller asked Mr. Memon if he was prepared to provide evidence to support all the standards required in order for the Board to grant the Special Exception.

Mr. Memon stated that he felt his application met all of the standards and didn't know how he would be able to provide specific evidence to support each of those. He added that he didn't feel as though his proposal would negatively impact the neighborhood due to the fact that his house is on a corner lot with a vacant house next door, and that there was no consistency with the fences that are

currently existing. Mr. Memon stated that the proposed wall would be more safe for the surrounding residents, and that he doesn't have any problem providing a Knox Box as requested by the Fire Department. He felt that the 10 foot wall would not affect the property values of other homes in the area, but didn't know what evidence to provide to support that.

Board Member Karakowsky mentioned that the standards the Board is asked to take into consideration have nothing to do with aesthetics and/or fairness, they are simply focused on the affect that the wall would have on the neighboring properties with regards to safety and property values. She asked Mr. Memon if any of his neighbors had approached him with negative opinions about the wall.

Mr. Memon stated that it was the opposite. He explained that he had one neighbor approach the contractor about extending the 10 foot wall to his property.

The neighbor was present in the audience and asked if he could address his comments to the Board.

Board Member Karakowsky made a motion to suspend the Rules of Procedure in order to hear comments from the resident. Board Member Miller seconded the motion.

Another member of the audience came forward wishing to address the Board.

Board Member Karakowsky amended her motion to include a time limit of 5 minutes per speaker. Board Member Miller seconded her amended motion.

A third member of the audience came forward to speak.

Board Member Miller amended the motion again to reduce the time limit to 3 minutes per person. Board Member Raval seconded the motion.

Vote: 5-2. The motion to reduce the time limit to 3 minutes passed.

Vote on the original motion: 6-1. The motion to suspend the Rules of Procedure and allow for additional public comment was passed.

Alan Chodrow, 4701 Pine Circle-Mr. Chodrow explained that he noticed that a new fence was being built and took concern because he had been paying for the maintenance and repair of the existing fence. He added that he volunteered to buy the existing materials when Mr. Memon informed him that he was going to sell them. Mr. Chodrow mentioned that he then asked Mr. Memon what the fence was costing him to build in an effort to possibly extend it, but had not been able to contact anyone from the house that is currently vacant, and was also aware that a 10 foot fence was not allowed. He added that the property value of the other two homes along the fence line will be negatively impacted if/when he and the other property owner decide to sell their house. Mr. Chodrow also mentioned that there will be a difference in the fence lines of the new wall and existing fence, which will create an opening onto Mr. Memon's property.

Show-Yien Lee, 4700 Pine Circle-Ms. Lee explained that she owns the vacant home that has been referenced as being in between Mr. Memon and Mr. Chodrow's properties, and that she is in the process of trying to sell it. She stated that she sympathizes with the applicant but isn't sure what to do with regards to

the inconsistency of the structures. Ms. Lee felt that the City should do something for the residents who live along 610.

Jose Hernandez, Fence Contractor-Mr. Hernandez mentioned that the wall was only 3 feet tall when Mr. Chodrow approached him so there was no way of him knowing that it was going to be 10 feet in height. He added that Mr. Chodrow is claiming that the existing fence is his and that is why he is against approval of the wall. Mr. Hernandez informed the Board that he has been approached by several people that live on 610 who wish to have a 10 foot fence. He added that those residents are waiting to see if Mr. Memon's 10 foot wall is approved, and if so, they will also be applying.

Board Member Karakowsky asked Mr. Chodrow if he was concerned about the height of the wall or if it was simply the fact that the materials that he had maintained will be gone.

Mr. Chodrow explained that it is more about the fact that there will no longer be continuity and that he will have to buy his own fence back.

Board Member Karakowsky asked Mr. Memon if the trees that he mentioned were cut down before or after he owned the property.

Mr. Memon stated that they were cut down prior to him buying the house.

Board Member Raval mentioned that he is having a hard time finding evidence to support the applicant and City's opinion that this proposal will not substantially diminish or impair property values in the neighborhood. He reiterated that if this special exception is granted many others will come forward asking for the same thing. Board Member Raval then pointed out that if someone were to be denied that special exception it would negatively impact their property value.

Mr. Memon felt that the Board should look at each application individually and consider the fact that the elevation of his home is higher than the homes surrounding him. He reiterated that most areas of Bellaire have different color and different height fences, so there is no consistency. Mr. Memon pointed out that his property value would go down without the allowance of a 10 foot fence because no one is going to want to buy the property without having that buffer from 610.

Board Member McGinty asked how far it was from the back of his house to the back of his lot.

Mr. Memon stated that it was 15 feet.

Board Member McGinty asked if they had considered doing a "step up" on the wall in order to gradually increase the height to 10 feet. She also asked what kind of finish would be on the cinder block.

Mr. Memon stated that they had not considered doing a step increase, and that the cinder block will be finished with stucco.

Board Member McGinty asked what type of gate was going to be installed in the front wall.

Mr. Memon explained that it would be wrought iron.

Board Member McGinty asked if the gate would be 8 or 10 feet.

Mr. Memon informed her that it would be 8 feet.

Board Member McGinty asked if the neighbor across from him had objected to the 10 foot wall on Pine Street.

Mr. Memon stated that he had not.

Board Member Wheeler stated that he felt this was a reasonable request.

Chairman Sharp asked if the gate was approved in the building plans.

Mrs. Sampson stated that no gate was proposed in the plans that were submitted.

Chairman Sharp asked if a gate or Knox Box would be required for an 8 foot fence.

Mrs. Sampson explained that it would not be required due to the fact that an 8 foot fence is easier for the emergency personnel to jump than a 10 foot fence.

Board Member Miller asked Mr. Memon if he has had any discussions with the neighbor across the street regarding the 10 foot wall.

Mr. Memon explained that because construction of the wall was initially approved by the City, it is already at a height of 10 feet and he has not heard any objections by the neighbor.

Board Member Miller agreed that the City should look into increasing in the allowable fence height in order to match the change in required elevation. However, for this specific situation he feels that the Board is limited to the standards under Section 24-718. Board Member Miller stated that he didn't hear a lot of evidence to satisfy those standards.

Board Member Raval felt that by granting this Special Exception the Board would essentially be legislating a new 10 foot rule.

Mrs. Sampson reiterated that no application sets precedence for another and each must be taken into consideration individually.

Board Member McGinty mentioned that neither TxDot nor the City of Bellaire have done anything for the residents that live along 610 and felt that it was the Board's duty to grant this Special Exception.

Board Member Karakowsky also sympathized with Mr. Memon, but pointed out that the Board has a statute that it has to follow when considering these applications. She then quoted the Fire Chief in saying that, "The Bellaire Fire Department strongly urges Development Services to require enforcement of the code." Board Member Karakowsky felt that the Board's hands were tied.

Board Member Ligh pointed out that because the Development Services Department, the City's code enforcers, has no objections to the granting of this

Special Exception, he does not see a problem with the approval of this application.

Board Member Miller asked if the Fire Chief's recommendation was made before or after staff's recommendation was completed.

Mrs. Sampson stated that staff's recommendation was done prior to receiving the comment from the Fire Chief.

Board Member Miller asked that in the future staff provide the Board, in a timely manner, with any additional materials that are received.

Motion: a motion was made by Board Member Miller and seconded by Vice Chairman Ligh to approve the Special Exception.

Amended Motion: an amended motion was made by Board Member McGinty to allow for a 10 foot wall along 610 with an 8 foot wall along Pine St.

The amended motion failed for lack of a second.

Vote on the Original Motion: 3-4, the Special Exception was denied.

RESULT:	FAILED [3 TO 4]
MOVER:	Seth A. Miller, Board Member
SECONDER:	Tom Ligh, Vice Chairman
AYES:	McGinty, Ligh, Wheeler
NAYS:	Raval, Sharp, Karakowsky, Miller

2. BOA-2015-02-Request by Roy Harper & Associates, Inc., on behalf of Crosspoint Church/West University Baptist Church, owner of the property at 4609 Bellaire Boulevard, for a variance from Chapter 24, Section 526 B. (1) a. of the City of Bellaire Code of Ordinances, to allow for a minimum lot area of approximately 21,600 square feet in lieu of the required 22,000 square feet. The property is located in the R-3 Zoning District.

Board Member Ligh informed the Board that he is a member of the church and that he wished to recuse himself from voting on this item.

Attorney Petrov again reviewed the standards for the granting of a variance.

Presentation by the Applicant

Roy Harper, Roy Harper AIA & Associates-Mr. Harper informed the Board that he is the architect for the project and a long time member of the West University Baptist Church. He then provided the Board with a site plan for the project that had recently been revised due to comments and concerns of surrounding neighbors and of the Planning and Zoning Commission during a public hearing for the church on Tuesday night. Mr. Harper explained that the entrance to the property had been moved from Bellaire Court to Bellaire Boulevard in order to better accommodate the residents. He stated that the church purchased the property at 4609 Bellaire Boulevard back in 2004, when the minimum lot size was 7,400 square feet. He added that since then that requirement has increased to 22,000 square, which is larger than the size of their

property. Mr. Harper informed the Board that the church is simply seeking a variance of 400 square feet to allow for the development of their property, in which a hardship was created by the ordinance change.

Staff Findings

ChaVonne Sampson, Development Services Manager-Mrs. Sampson reiterated that this property is located at 4609 Bellaire Boulevard, within the R-3 Zoning District. She added that the mail outs were sent out to surrounding residents on April 6, 2015 and that a legal notice was published in the Southwest News on April 7, 2015. Mrs. Sampson stated that the applicant is requesting a variance from section 24-526 B. (1) a. of the code in order to reduce the minimum required lot area for a church from 22,000 square feet to 21,600 square feet, a 400 foot variance. She stated that the applicant is also requesting a specific use permit from the Planning and Zoning Commission, for which the public hearing was continued until the Commission's May meeting, and that information on the pending application before the Commission is included for background information only. Mrs. Sampson added that the Board's task is to determine if a variance is appropriate for this particular parcel, not to determine the appropriateness of the proposed development. She explained that the property in question was purchased by the church in 2004, prior to the increase in the required minimum lot size in 2014, meaning that the hardship was not self created. She added that without the granting of this variance the church would not be able to develop the property. Mrs. Sampson informed the Board that upon review of the application and materials submitted, the Director of Development Services feels that the request does not conflict with the standards outlined in Article VII, Division 1, Section 24-704 of the Code, and therefore offers no objections to the granting of the variance.

Public Comments-

Stanley Novy, 126 Bellaire Court-Mr. Novy Informed the Board that he and his neighbors have been concerned that the proposed development would increase the amount of traffic on their street. He added that the site plan is still up in the air and that he does not feel comfortable not knowing what the final development will look like. Mr. Novy stated that the current site plan is much better than the previous, but that it is still hard to speak in favor of an application when you don't know what the final plan is going to be.

Daine Novy, 126 Bellaire Court-Mrs. Novy felt that it was somewhat premature to ask for a variance for a project that had not yet been finalized. She added that all of the neighbors have appreciated the responsiveness and respectfulness of the church with regard to the concern of the residents, but stated that screening and buffering is of great concern and something that has not yet been addressed.

Shannon Tanner, Campus Pastor at Crosspoint Church-Pastor Tanner explained that the plan has been changing simply because the church is trying to be a good neighbor, and that there has always been a very amicable relationship with the surrounding residents. He added that they are trying to mitigate as much traffic as possible, and would also be willing to build some type of fencing or structure that would buffer the church property from the neighborhood, if necessary. He ended by saying that the church wishes to be able to expand, but also to show respectfulness to their neighbors.

Lynn McBee-Ms. McBee stated that Bellaire's population is very limited, and that an increase in density is the last thing that the City needs. She added that the public hearing before the Planning and Zoning Commission had been continued so that the church could get its act together to establish what it was asking for and to address some concerns from the residents. She mentioned that no one has asked the question of why the minimum lot size was increased by such a huge amount.

Rebuttal of Applicant

Mr. Harper agreed that there are still some decisions to be made with regard to the final project, but that the only changes being made are with regard to the residents' concerns. He felt that the solution provides well for the church and takes care of the neighbors. Mr. Harper added that screening and buffering will also be taken care of, as necessary.

Questions by the Board

Board Member McGinty asked what the parking regulation is for this building under the city's code.

Mrs. Sampson explained that it will be determinate on the square footage of the building or the amount of seating available, and will be regulated by the Planning and Zoning Commission.

Board Member McGinty asked if there was a requirement for green space.

Attorney Petrov stated that the green space requirement is 50%.

Board Member Raval asked Mr. Harper if he would be willing to amend his request to include a barrier or buffer along Bellaire Court.

Mr. Harper stated that the church would consider anything that would make the project more beneficial to the City of Bellaire's residents.

Board Member Karakowsky asked Mr. Harper if the lot could be sold, hypothetically, without impacting what is currently built.

Mr. Harper explained that the playground that is currently there may encroach on the property, but that it shouldn't post that much of a problem.

Board Member Karakowsky asked Mr. and Mrs. Novy if they had any specific conditions of screening or buffering that they wished to see put on the variance.

Mrs. Novy stated that she would like to see a solid fence with landscaping along Bellaire Court.

Board Member Karakowky asked Attorney Petrov if he agreed with Ms. McBee's characterization that the Planning and Zoning Commission agreed to recess their decision because the church "didn't have their act together."

Attorney Petrov stated that he would not have characterized it like that. He added that it was apparent in the discussion that the church was trying to work with the residents to resolve any issues or concerns that they may have, which

led to the Commission continuing their public hearing in order to get more information from the applicant and the residents.

Board Member Karakowsky asked if Attorney Petrov recalled any specific concerns of the residents other than the location of the driveway and the screening and buffering of Bellaire Court.

Attorney Petrov informed the Board that those were the main concerns. He added that the neighbor immediately adjacent was also concerned about the second story windows that were being proposed.

Board Member Miller mentioned that the Board is charged with applying the required standards in order to grant a variance. He informed Mr. Harper that the application is devoid of any evidence regarding the development not being materially detrimental or injurious to other property owners or improvements within the neighborhood. He asked if Mr. Harper could provide any evidence to that point.

Mr. Harper explained that they are taking every precaution to develop the building in a way that will not negatively impact the surrounding neighbors. He also mentioned that John McDonald, Development Services Director, stated that he could not find any reason why this project would be detrimental to the community.

Board Member Miller asked Mr. Harper how the development will impact the traffic on Bellaire Court.

Mr. Harper did not feel that the traffic on Bellaire Court would be impacted due to the fact that there will be no driveway there, and the walk gate that exists on the west property line will be closed. He added that there will be adequate parking on site, and that most of the youth that will be using the center are not of driving age.

Board Member Miller asked if any studies have been done with regard to the impact of the project on surrounding property values.

Mr. Harper stated that no studies have been done on that.

Board Member Miller asked what type of analysis staff performed in order to come to the conclusion that the variance has met all of the standards required for approval.

Mrs. Sampson explained that one of the considerations made by staff was that the hardship was created by a change in the zoning code, and was not self created by the property owner. She added that the city does not feel as though the development of this project is going to negatively impact its surrounding property owners or developments.

Chairman Sharp wanted clarification that the application would not even be in front of the Board if it were not for the lack of 400 square feet.

Mrs. Sampson confirmed that.

Chairman Sharp asked if the 22,000 square foot requirement was specific to churches, and if staff could give any background information on why the change was made.

Mrs. Sampson explained that it pertains to churches and schools. Attorney Petrov explained that the idea was to require parcels to be bigger than your average residential lot to help prevent someone from turning a smaller, residential sized lot into a church.

Chairman Sharp asked if there was any type of grand fathering that could take place.

Attorney Petrov stated that there is no grand fathering allowed in this instance. He added that the applicant had been in discussions with the Development Services Department prior to the amendment to this code, so it is obvious that they had been planning this project for some time, and working under the assumption that their lot satisfied the requirements.

Chairman Sharp asked if all of the concerns with the development, such as the location of the driveways, the buffering, and placement of the windows, etc. are issues that the specific use process will address.

Attorney Petrov confirmed this, but stated that the Board has the ability to add conditions to their ruling as well.

Consideration of the Application

Board Member Karakowsky pointed out that the Board is simply considering what the result of allowing them to build with 400 square feet less would be, not considering all of the specifications of the building. She also stated that Section 24-708 specifically grants the Board the right to put conditions on the granting of variances, which includes things related to screening, landscaping, location, and other conditions necessary to preserve the character of the area and protect properties in the vicinity. She felt that although the Board's question is narrow, it is their responsibility to consider what can be done in order to protect the neighbors.

Board Member Miller felt that there was not enough evidence to prove that this application meets all of the standards.

Board Member Karakowsky again pointed out that the Board is not charged with determining the impact of the project, simply the impact of allowing a variance in 400 square feet. She added that a lack of 400 square feet is not materially detrimental or injurious to other properties or improvements in the neighborhood.

Board Member Raval stated that he is somewhat hesitant about adding any conditions to this project due to the fact that it is at such an early stage, but at the same time he feels that it should somehow be addressed.

Board Member Karakowsky stated that she is struggling with the same thing.

Attorney Petrov informed the Board that if they feel as though they need more information on some specific points, they have the option to continue the hearing until next month.

Board Member Wheeler pointed out that if he wanted to he could find a reason to deny every single application that comes through the city, but this is the Board of Adjustment, not "the Board of no." He added that Board needs to figure out a way to be reasonable and help their neighbors when they need help, not deny them things based on technicalities. Board Member Wheeler felt that the Planning and Zoning Commission is also in place for a reason, and that they will take care of the specifics of the project.

Board Member McGinty agreed that the only charge of the Board is to determine whether or not to grant a variance of 400 feet, and stated that she sees no reason why it should be denied. She added that it is the job of Mr. McDonald and the Planning and Zoning Commission to ensure that all other regulations are met.

Chairman Sharp felt as though it is the Board's responsibility to include conditions as they feel appropriate in order to protect the surrounding residents, but wasn't sure how to go about doing it.

Board Member Karakowsky asked Board Member Wheeler if he doesn't feel that it is the Board's responsibility to put some conditions on it.

Board Member Wheeler stated that he did not feel that any conditions were necessary in this instance. He felt confident that the Planning and Zoning Commission would do their job, and that they have more experience with screening and other aspects of the project than the Board of Adjustment does.

Attorney Petrov reiterated that the Planning and Zoning Commission will consider the specifics of the projects, such as, landscaping, screening, buffering, etc.

Board Member Miller felt that the application was premature, and was still concerned about the lack of evidence proving that it met all of the standards for a variance to be granted.

Board Member Wheeler pointed out that it is hard to prove a negative, and that he is asking for things that no one can specifically provide evidence for.

Motion: a motion was made by Board Member Karakowsky and seconded by Board Member Wheeler to approve the variance as requested.

Board Member Miller asked if there will be no conditions added.

Board Member Raval mentioned that he is hesitant to add any conditions because an excessive amount of detail will lock the applicant in.

Board Member Miller also pointed out that doing so may bind the Planning and Zoning Commission.

Vote: 6-0. The variance was granted as requested.

RESULT:	APPROVED [6 TO 0]
MOVER:	Debbie Karakowsky, Board Member
SECONDER:	Sean Wheeler, Board Member
AYES:	McGinty, Raval, Sharp, Karakowsky, Wheeler, Miller
RECUSED:	Ligh

9. GENERAL COMMENTS

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

Lynn McBee-Ms. McBee suggested that the Board schedule a meeting or workshop and discuss whether the City has any obligation to modify impact on the residents when a zoning change takes place. She urged the Board to attend Crosspoint Church's hearing on May 14th before the Planning and Zoning Commission. She thanked the Board Members for their patience.

Councilman Andrew Friedberg-Councilman Friedberg congratulated the Board on a great meeting and discussion.

Attorney Petrov mentioned that it may be appropriate for the Planning and Zoning Commission to take a look at the allowable fence height along 610 due to the new height adjustments. He added that he has already emailed Mr. McDonald to add that topic to his list of items for future agendas.

10. GENERAL COMMENTS FROM BOARD MEMBERS

Board Member Miller mentioned that he felt as though staff was not doing a great job of screening the applications for variances and special exceptions, and asked that something be done to better that process.

11. ANNOUNCEMENTS

There were no announcements made.

12. ADJOURNMENT

Motion: a motion was made by Board Member Wheeler and seconded by Board Member Miller to adjourn the regular meeting.

Vote: the motion carried on a unanimous vote of 7-0.

The meeting was adjourned at 9:25 PM.

Board of Adjustment

Council Chambers, First Floor of City
Hall
Bellaire, TX 77401



Meeting: 07/16/15 07:00 PM
Department: Development Services
Category: Policy
Department Head: John McDonald
DOC ID: 1630

**SCHEDULED
ACTION ITEM (ID # 1630)**

Item Title:

Rules of Procedure

Background/Summary:

The Board is required to adopt the Rules of Procedure at the beginning of each new term.

A copy of the current rules are attached, however, they are contingent upon action taken by City Council on Monday, July 13th. If revisions are needed, a red lined draft will be sent out on Tuesday, July 14th.

ATTACHMENTS:

- Rules of Procedure 2014 (PDF)

RULES

OF

PROCEDURE

FOR THE

BOARD OF

ADJUSTMENT

CITY OF BELLAIRE, TEXAS

Adopted
July 2014

Attachment: Rules of Procedure 2014 (1630 : Rules of Procedure)

RULES OF PROCEDURE

FOR THE

BOARD OF

ADJUSTMENT

CITY OF BELLAIRE, TEXAS

Adopted – July 2014

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Board of Adjustment

July 2014 - June 2015

Debbie Sharp, Chairman
 Tom Ligh, Vice Chairman
 Patty McGinty
 Seth Miller
 Debbie Karakowsky
 Amar Raval
 Sean Wheeler

Staff

Shawn Cox - Staff Liaison
 ChaVonne Sampson-Staff Liaison
 Ashley Parcus - Secretary

City Council Liaison

Andrew Friedberg

Attachment: Rules of Procedure 2014 (1630 : Rules of Procedure)

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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 II 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 III Officers

Section A. Officers Named: The officers shall be Chairman and Vice-Chairman. The Board shall elect the Chairman and Vice-Chairman 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. Chairman's Duties: The Chairman is the Presiding Officer and Spokesperson for the Board. The Chairman may delegate Board business from time to time.

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

ARTICLE IV 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 Chairman shall call the meeting to order and shall preside until the new chairman 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 Chairman]
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 Chairman and Vice-Chairman [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 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 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 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 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, Bellaire Code of Ordinances.
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.

Section L. 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 M. Parking Study Required: Any applicants that request a Variance or Special Exception from Chapter 24, Section 514 and/or 514a of the City of Bellaire Code of Ordinances must submit 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 board meeting for their review. 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.

ARTICLE V Docket Items

Section A. Numbering Docket Items: Each appeal or application for variation or modification 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 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 is granted by the Board, the variance 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. 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 case of an application for variation or modification 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 K. 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.

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.

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.

ADOPTION OF RULES OF PROCEDURE

Adopted by the Board of Adjustment of the City of Bellaire on the 17th day of July, 2014.
Attest:

Signature of Chairman