

CITY OF BELLAIRE TEXAS

BOARD OF ADJUSTMENT

JANUARY 21, 2016

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



Board Member

Patty McGinty

Board Member

Debbie Karakowsky

Vice Chairman

Amar Raval

Board Member

Samir Sinha

Board Member

Seth A. Miller

Chairman

Tom Ligh

Board Member

William Stone

Mission Statement:

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

1. CALL TO ORDER**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**4. APPROVAL OF MINUTES**

1. Board of Adjustment - Regular Session - Dec 17, 2015 7:00 PM

5. REPORTS FROM OFFICERS, COMMITTEES, SUB-COMMITTEES AND COMMUNICATIONS BOARD MEMBERS HAVE HAD OUTSIDE THE MEETING**6. UNFINISHED BUSINESS**

1. Discussion, consideration, and possible action on the Board of Adjustment's 2015-2016 Rules of Procedure.

7. READING OF THE STANDARDS FROM SECTION 24-704, BELLAIRE CODE OF ORDINANCES**8. NEW BUSINESS**

1. Approval of the Board of Adjustment's 2015 Annual Report to City Council.
2. Discussion of Section 2-112, Board of Adjustment, (g) Quorum, of the City of Bellaire Code of Ordinances.

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).

10. GENERAL COMMENTS FROM BOARD MEMBERS**11. ANNOUNCEMENTS****12. ADJOURNMENT**



CITY OF BELLAIRE TEXAS

BOARD OF ADJUSTMENT

DECEMBER 17, 2015

Council Chamber

Regular Session

7:00 PM

7008 S. RICE AVENUE
BELLAIRE, TX 77401

1. CALL TO ORDER

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

2. PLEDGE TO THE FLAG (US AND TEXAS)

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

Attendee Name	Title	Status	Arrived
Patty McGinty	Board Member	Present	
Amar Raval	Vice Chairman	Present	
Tom Ligh	Chairman	Present	
Debbie Karakowsky	Board Member	Present	
Samir Sinha	Board Member	Present	
William Stone	Board Member	Present	
Seth A. Miller	Board Member	Present	
Ashley Parcus	Secretary	Absent	
ChaVonne Sampson	Development Services Manager	Present	
Scott Eidman	Attorney	Present	

4. APPROVAL OF MINUTES

- Board of Adjustment - Regular Session - Jul 16, 2015 7:00 PM

Chairman Ligh mentioned that on the last page he was listed as Vice Chairman instead of Chairman.

RESULT:	APPROVED AS CORRECTED [UNANIMOUS]
MOVER:	William Stone, Board Member
SECONDER:	Seth A. Miller, Board Member
AYES:	McGinty, Raval, Ligh, Karakowsky, Sinha, Stone, Miller

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

There were no reports.

6. UNFINISHED BUSINESS

Minutes Acceptance: Minutes of Dec 17, 2015 7:00 PM (Approval of Minutes)

There was no unfinished business.

The Board then decided to change the order of the agenda in order to give the public hearing applicant more time to get to the meeting.

Motion: a motion was made by Vice Chairman Raval and was seconded by Board Member Stone to change the order of the agenda and discuss the Rules of Procedure next.

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

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

Attorney Eidman read aloud the standards for special exceptions.

8. NEW BUSINESS

A. Public Hearings

1. Docket# BOA-2015-03-Consideration and possible action on a request for a special exception to allow for reduced off-street parking of 1.5 spaces per 1,000 square feet in lieu of the requirements set forth in Section 24-514a of the City of Bellaire Code of Ordinances. The property is addressed as 4950 Terminal Street, and is in the UV-T Zoning District.

a. Presentation by the 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].

William Kalkman & Thomas De Froy, Identity Architects-The applicants informed the Board that they are asking for a reduction in the off-street parking requirement to 1.5 per 1,000 rather than the 3.8 that is currently required by Section 24-514a. They explained that the hardship deals with the fact that there are currently no parking spaces on this properties site, and only limited parking available on the adjacent tract that is currently under agreement with CenterPoint. Mr. De Froy informed the Board that there are currently 21 parking spots available on the CenterPoint tract, but with the reallocation of loading areas, re-striping, and a minor extension of the current lot toward Terminal Street they will be able to increase that number to at least 36. They hope to get additional, but cannot guarantee that at this point. He added that CenterPoint does not anticipate any need for the easement in the near future. Mr. De Froy informed the Board that they intend to keep the existing brick building, but will demo a portion of the property in order to provide a new two-story office in order to bring the project more in line with what is required within the UV-T Zoning District. The applicants then reviewed the standards for approval of a special exception and explained why their request complies with each. Mr. De Froy stated that they do recognize that there could be a small increase in traffic, but do not anticipate a significant amount that would negatively impact the area. They also pointed out that there should be a shift from bigger warehouse type vehicles to smaller vehicles, which will help the activity in the area. Mr. De Froy assured the Board that they will be following the code requirements for the district, therefore, they do not anticipate that it will negatively impact property values of the surrounding area. The applicants reiterated that they will attempt to provide as much parking as possible on the site, but are not able to guarantee that, and are therefore requesting the reduction from 3.8 per 1,000 to 1.5 per 1,000 in order to keep the building viable.

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].

Mrs. Sampson reiterated that the property is within the UV-T Zoning District, and informed the Board that the application was submitted on Nov 20, 2015, mail outs were sent on Dec 3, 2015, and the legal notice was published in the Southwest News on December 8, 2015. She explained that the applicant is requesting a special exception under the provisions of Section 24-716 of the City of Bellaire Code of Ordinances in order to reduce the off-street parking requirements of 4 spaces per 1,000 for general retail and 3.5 per 1,000 for medical office use regulation from Section 24-514a. Mrs. Sampson gave a little background information on the property, stating that it contains a 1 story structure that was built in 1950, with the previous use being a warehouse for a medical supply company. She added that the use has been permitted as long as the structure is not expanded from the current building footprint, or significantly altered as a non-conforming use. Mrs. Sampson stated that the applicant plans to develop a mixed-use space with retail and medical offices uses, which would be in conformance with the UV-T use regulations. She added that the applicant is also proposing improvements that will address specific characteristics in that zoning district which are outlined within the Comprehensive Plan. Mrs. Sampson reiterated that the property at 4950 Terminal has no on site parking, therefore the property owner has entered into a parking agreement with CenterPoint in order to utilize their site for parking. She added that the CenterPoint property has been used for previous tenants as well. Mrs. Sampson informed the Board that currently the lot is striped for 21 parking spaces, with the proposal of an additional 15 spaces. She explained that there is also street parking available along N 2nd, which has 17 spaces, N 3rd, which has 4, and Terminal, which contains 6, making the site total 63. Mrs. Sampson stated that upon review of the application and materials submitted, it is in the opinion of the Development Services Director that the application does meet the standards for a special exception, and is therefore eligible for consideration of granting of the special exception. She added that it is requested that the Board waive the parking study requirement within the Rules of Procedure, Article IV, Section M. based on the total absence of on site parking of this property. Mrs. Sampson explained that the special exception is warranted to ensure the use of the existing structure, and added that the proposed use is consistent with the UV-T, which will help to show that the UV-T is a viable commercial area.

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].

There were no public comments.

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].

There was no rebuttal by the applicant.

e. Questions by the Board [Limitations: The Board may ask germane questions of the Applicant, Appellant, Property Owner, Counsel, or other Agent, and/or City Staff].

Board Member Stone asked staff to verify the number of spaces that are/will be available on the CenterPoint site.

Mrs. Sampson confirmed that there are currently 21 spaces and room for 15 more.

Board Member Stone asked if the applicant was asking that the special exception be granted for a specific period of time.

Mrs. Sampson explained that unless conditions are added by the Board, the special exception is associated with the ownership and will not be void until the property is vacated and a new owner comes in.

Board Member Stone asked the applicants to show where all of the on-street parking is. He then asked if ADA spots were being taking into account.

Mr. De Froy used the diagram to explained where all of the parking is located. He assured the Board that there are currently a few ADA spaces, and that all new parking will be in compliance with the state's ADA regulations.

Board Member McGinty asked what would happen if the piece of property to the left of 4950 Terminal is developed. She added that it would take away the parking available on the west side of 2nd Street.

Mrs. Sampson explained that proposals for any future developments in the area will be evaluated on a case by case basis to ensure that all of the code requirements will be met. She added that this site currently has zero parking spaces available, so any improvement in that number is beneficial.

Mr. De Froy pointed out that any development going in there would most likely need to come before the Board for a special exception as well.

Board Member McGinty asked how many offices/stores would be within their project.

Mr. De Froy informed the Commission that there would be a minimum of two in order to comply with code regulations, but that they are looking into the possibility of more than that.

Atilla Tuna, OFT Enterprises, potential owner of the property-Mr. Tuna explained that it is market driven, but that the plan is to have some medical and some retail tenants.

Mr. Kalkman added that they are looking at 80% retail and 20% office.

Vice Chairman Raval asked if anyone else was currently using the parking located on CenterPoint's R.O.W.

Mr. De Froy and Mr. Tuna explained that it is strictly for 4950 Terminal's use, and that a copy of the contract was included in the application.

Board Member Karakowsky asked what would happen when the contract with CenterPoint expires.

Mr. De Froy stated that it is his understanding that the contracts are done in 5 year increments, and that CenterPoint has expressed that they are more than willing to discuss an extension once this project is underway. He added that the only thing that

they anticipate happening would be the potential replacement of a tower due to weather related damage.

Board Member Karakowsky pointed out that if the contract, for whatever reason, was not renewed then 4950 Terminal would no longer meet the requirements for the special exception. She asked staff what would happen in that situation.

Mrs. Sampson explained that they would either need to come back before the Board, or no new tenant would be granted a Certificate of Occupancy.

Board Member Karakowsky asked what the actual number of required spots is that correlates to the 3.8 spaces per 1,000.

Mr. De Froy stated that it is 95.

Board Member Karakowsky asked if any additional spaces could be added when they are removing part of the current structure and rebuilding.

Mr. De Froy explained that although they will be rebuilding, there are not many options when it comes to adding parking in that area. He also mentioned that in doing so, it would not be in line with the pedestrian friendly atmosphere that the UV-T is looking for.

Board Member Karakowsky mentioned that CenterPoint does not like to be used to meet the required minimum parking, they prefer to be used as an overflow site for additional parking.

Mr. De Froy pointed out that the contract does not specifically state that, but during conversations with CenterPoint they have voiced their concern with being held liable by the City to provide parking for a site that does not have sufficient parking otherwise.

Board Member Karakowsky asked the applicants if they were looking for the Board to include specific wording within the approval of the special exception in order to address that concern.

Mr. De Froy stated that they were really just trying to be transparent with the information that was given to the Board, and that no specific wording is needed at this time.

Board Member Karakowsky asked for confirmation that there were no residential properties in that area.

The applicants confirmed this.

Board Member Miller asked how they calculated that 95 spaces were required for this development.

Mr. De Froy then explained how they got to 95 spaces by using Table 24-514a.A for 80% retail (78 spaces) and 20% office (17 spaces).

Chairman Ligh asked for confirmation that the City would have no control over the contract between the property owners at 4950 Terminal and CenterPoint.

Staff confirmed this.

Board Member Stone asked what type of retail clients the applicant would be seeking for this space.

Mr. Tuna informed the Board that there is really a broad range of options, from fast food to furniture. The challenge would be the fact that currently there are no retail businesses in that area.

f. Consideration of, deliberation by, and action on Docket Item by the Board [Requires 75%, or 6 affirmative votes for approval pursuant to Section 211.009 (c), Texas Local Government Code].

Mrs. Sampson reminded the Board that the parking study would need to be waived in order for the Board to vote on the application.

Motion: a motion was made by Board Member McGinty and seconded by Vice Chairman Raval to waive the requirement for the parking study.

Vote: the motion failed with a vote of 3-4.

Chairman Ligh asked if the applicant had submitted a parking study.

Attorney Eidman and Mrs. Sampson informed the Board that there was no parking study submitted.

Mrs. Sampson reiterated that staff was asking the Board to waive the requirement for the parking study due to the fact that this site has zero parking as it is, which basically deems a parking study pointless.

Board Member Karakowsky pointed out that from the prior discussion on parking studies it was established that a parking demand analysis would be included in a parking study, which would be beneficial in this case to analyze what the demand for this building would be.

Mr. Tuna explained that currently there is a lot of eighteen wheeler traffic in the area, which would decrease if the proposed project were to come in. He added that it will change the quality of traffic and will make it more pedestrian friendly. Mr. Tuna informed the Board that everyone in that area has similar issues due to a lack of parking. He stated that it is a challenging project and every other potential buyer has declined. Mr. Tuna asked the Board to reconsider waiving the parking study.

Mr. De Froy added that often times parking studies only reflect peak time uses, and tend to gravitate towards the detrimental impact of restaurants or night clubs. He explained that retail tends to be quite the opposite with a lack of true peak times associated with it.

Mr. Tuna also mentioned that with retail the busier times tend to be on the weekend, which would not cause a problem due to the fact that the other properties in the area are not open on the weekend.

Board Member Karakowsky asked the applicant if there was ever a conversation with the City regarding a parking study.

Mr. De Froy stated that it was never discussed.

Mr. Kalkman added that the parking study would reflect the current warehouse use

and would not appropriately reflect the demand needed when the use changes to office and retail.

Mr. Tuna pointed out that the reality of this is that something is going to have to be worked out if the City wants this area to be prosperous.

Vice Chairman Raval asked if a condition could be put on the special exception stating that it would no longer be effective if the contract with CenterPoint is terminated.

Attorney Eidman confirmed that conditions of that nature could be put on the special exception.

Board Member Stone added that another option would be to put a time limit on the special exception.

Board Member Miller asked the applicant why a parking study was not done for the project.

Mr. Tuna explained that it is a difficult situation because he is not the owner of the property and that it is currently under contract. He added that they are also under somewhat of a time constraint.

Board Member Miller asked Mr. Tuna when he became under contract with the current owner.

Mr. Tuna said that he believed that it was on or around October 29th, and that the closing date is January 12th.

Board Member Miller asked if they had contacted a firm that conducts parking studies in order to get an idea of how long it would take.

Mr. Tuna stated that they did not. He added that normally it does take about 30-40 days, and with the holidays possibly even longer.

Board Member Karakowsky pointed out that she can somewhat understand why a parking study would not be beneficial in this case because there is no way to provide additional spaces for the site regardless of what the parking study reflects.

Board Member Raval asked what their time frame is for completion of the project if the special exception is granted.

Mr. Tuna explained that it could be anywhere from 6 months to 3 years depending on the market.

Board Member Sinha stated that he would like to vote again to waive the requirement for the parking study.

Board Member Stone agreed that he would be comfortable with waiving the parking study, but felt inclined to add a condition in terms of duration or performance.

Motion: a motion was made by Board Member Sinha and seconded by Board Member Stone to reconsider the vote to waive the parking study.

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

Motion: a motion was then made by Board Member Sinha and seconded by Vice Chairman Raval to waive the parking study.

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

Motion: a motion was made by Board Member Stone and seconded by Board Member McGinty to approve the special exception with a two year limitation.

Board Member McGinty asked how binding the special exception would be since the applicant does not currently own the property.

Mrs. Sampson explained that submitted in the application packet was a letter of affidavit from the current property owner giving Mr. Tuna permission to apply for the special exception.

Chairman Ligh then called for a vote. However, prior to the vote being tabulated, Board Member Karakowsky voiced her concern that adding a two year limitation to the application would be putting a hardship on the buyer. She then asked if she could put an alternate motion on the table.

Chairman Ligh asked that the Board go back to discussion.

Motion: an alternate motion was made by Board Member Karakowsky and seconded by Board Member Miller that the special exception be granted as requested by the applicant.

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

B. Discussion, consideration, and possible action on the Board of Adjustment's 2015-2016 Rules of Procedure.

Board Member Stone mentioned that the rules reference a "parking study", a "parking demand analysis," and a "complete parking plan." He added that if all of those are the same thing then one consistent term should be used throughout the document.

Attorney Eidman pointed out that there are different levels of requirements with regard to parking.

Mrs. Sampson explained that a "parking demand analysis" is located within a "parking study," and that a "complete parking plan" could entail different facets depending on the situation.

Board Member Stone then pointed out that it seemed odd that the Board's Rules of Procedure would address something that the applicant is handling with City staff. He felt that it was not necessary, and suggested that it be taken out of the Rules.

Board Member Miller mentioned that even though the language is a little bit awkward, it also gives the Board the option to delay a hearing.

Board Member Stone felt that it would be read better if it actually said that rather than describing what the applicant needs to submit to the City.

Vice Chairman Raval stated that a parking study is required for the approval of a variance or special exception. He pointed out that the language in this section

informs all of the Board Members of that, and also explains that the Board would have to rule on a waiver of that requirement. Board Member Raval added that in his opinion, this language is intended to be more informational than anything else.

Board Member Stone reiterated that to him the Rules of Procedure should explain how the Board operates, not how an application should be submitted to City staff.

Board Member McGinty pointed out that several years back, she believed that the Board asked that Section M be added to the Rules of Procedure due to the need for a parking study requirement.

Mrs. Sampson mentioned that the requirement may not be listed anywhere in the zoning ordinance, and could have been added to the Rules of Procedure in order to have the power to enforce it with applicants. She informed the Board that she would verify that.

Motion: A motion was made by Board Member McGinty and seconded by Board Member Miller to table the item until staff could verify whether or not the requirement is listed in the zoning ordinance.

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

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).

There were no comments from the public.

10. GENERAL COMMENTS FROM BOARD MEMBERS

There were no general comments from the Board Members.

11. ANNOUNCEMENTS

Chairman Ligh mentioned that the Rules of Procedure will need to be finalized and asked the Board if they would like to wait to do that until there is a docket item on the Board's agenda.

The Board was in agreement that a meeting should not be held solely to finalize the Rules of Procedure.

12. ADJOURNMENT

Motion: a motion was made by Board Member McGinty to adjourn the Regular Meeting.

Chairman Ligh adjourned the meeting at 8:22 PM.

Board of Adjustment

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



Meeting: 01/21/16 07:00 PM
Department: Development Services
Category: Policy
Department Head: John McDonald
DOC ID: 1789

**SCHEDULED
ACTION ITEM (ID # 1789)**

Item Title:

Discussion, consideration, and possible action on the Board of Adjustment's 2015-2016 Rules of Procedure.

Background/Summary:

During the December 17th meeting, the Board voted to table the Rules of Procedure. Therefore, if the Board wishes to discuss this item during the January meeting it must first be taken from the table.

Proposed revisions by the Chairman and Board Member Stone have been attached.

ATTACHMENTS:

- Rules of Procedure 2015 (PDF)
- BOA Rules for possible revision by Bill Stone (PDF)
- BOA Rules Revision Considerations (PDF)

RULES
OF
PROCEDURE
FOR THE
BOARD OF
ADJUSTMENT
CITY OF BELLAIRE, TEXAS

Adopted
July 2015

Attachment: Rules of Procedure 2015 (1789 : Rules of Procedure)

RULES OF PROCEDURE

FOR THE

BOARD OF ADJUSTMENT

CITY OF BELLAIRE, TEXAS

Adopted – July 2015

City of Bellaire
7008 South Rice Avenue
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Board of Adjustment July 2015 - June 2016

Tom Ligh, Chairman
Amar Raval, Vice Chairman
Patty McGinty
Seth Miller
Debbie Karakowsky
Bill Stone
Samir Sinha

Staff

ChaVonne Sampson - Staff Liaison
Ashley Parcus - Secretary

City Council Liaison

Andrew Friedberg

Attachment: Rules of Procedure 2015 (1789 : 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].

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].

General Comments from Board members

Announcements (if any)

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 16th day of July, 2015.
Attest:

Signature of Chairman

BOARD OF ADJUSTMENT MEETING
CITY OF BELLAIRE, TEXAS

December 17, 2015

AGENDA ITEM # 8 B.

Discussion, consideration, and possible action on the Board of Adjustment's 2015- 2016 Rules of Procedure.

1. Are the Parking Study, the “parking demand analysis”, and the complete parking plan all the same thing? If so, we should change the Rules of Procedure and call it one thing.
2. If they are indeed different, then no change is necessary.
3. Is the parking section really needed? It really has nothing to do with the rules of our Board. And for that matter, Section L seems to not be needed as it has nothing to do with the BOA’s rules, and how we proceed. It seems more like a function of city staff and what the Applicant has to do with the City rather than what our Board does, and our rules that deal with our meeting(s).
4. It appears that the current BOA Rules of Procedure are a blend of how our Board operates plus what an Applicant does once an application is submitted. I am not sure that we should have Rules of Procedure that include how an Applicant submits an Application, and so, maybe we should make an effort to revise the Rules so that they only deal with what our Board does and handles our meetings.

Bill Stone
Member of Board of Adjustment
July 2015 – July 2017

Attachment: BOA Rules for possible revision by Bill Stone (1789 : Rules of Procedure)

Portions of Current 2015 BOA

Rules of Procedure

Article IV

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 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 VI definitions

Error: Refer to Section 211(a)(1), Texas Local Government Code.

(Section 211(a)(1) of the Texas Local Government code: The board of adjustment may: Hear and decide an appeal that alleged error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter.)

Special Exception: Refer to Section 211:009(a)(2), Texas Local Government Code.

(Section 211:009(a)(2) of the Texas Local Government Code: Hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so.)

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

(Section 211(a)(3) of the Texas Local Government Code: Authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to specific conditions, a literal enforcement of the ordinance would result in unnecessary hardship, so that the spirit of the ordinance is observed and substantial justice is done.)

Revision Considerations

Should Article IV be revised to mention only "parking study"?

Section M Parking Study required: Any applicant that requests a Variance or Special Exception from chapter 24, Section 514a of the City of Bellaire Code of Ordinances must submit with their application a "parking study". This study 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 reserve right to delay the process until the next board meeting to review the change.

Should the following definition replace the current verbiage?

Error: An alleged error in an order, requirement, decision, or determination made by an administrative official in the enforcement of a zoning code(s).

Should the following definition replace the current verbiage?

Special Exception: A special exception to the zoning code.

Should the following definition replace the current verbiage?

Variance: A deviation from the code of zoned property.

Board of Adjustment

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



Meeting: 01/21/16 07:00 PM
Department: Development Services
Category: Report
Department Head: John McDonald
DOC ID: 1791

**SCHEDULED
ACTION ITEM (ID # 1791)**

Item Title:

Approval of the Board of Adjustment's 2015 Annual Report to City Council.

Background/Summary:

Chapter 2, Administration, Section 2-104, Annual or special reports to city council, of the Code of Ordinances, requires each board and commission to file a report with the City Council no later than the first Council meeting in February.

The report is to address the following:

1. Whether the board is serving the purpose for which it was created;
2. Whether the board is serving current community needs;
3. A list of the board's major accomplishments;
4. Whether there is any other board, either public or private, which would better serve the function of the board; and
5. Other recommendations.

Attached is a draft report as prepared by Board Chairman Tom Ligh

Recommendation:

Approval of a final report to be forwarded to the City Council.

ATTACHMENTS:

- 2015 Annual Report (PDF)

February 1, 2016

Honorable Mayor Friedberg and City Council
City of Bellaire
7008 S. Rice Avenue
Bellaire, TX 77401

Submitted herewith is the annual report from the Board of Adjustment for the year 2015.

The Zoning Board of Adjustment is authorized by Texas Local Government Code Chapter 211. The Board of Adjustment (the Board) of the City of Bellaire, Texas is responsible for considering applications for variances or special exceptions to Chapter 24 of the Code of Ordinances of the City of Bellaire. Landowners or their agents apply to the Building Official of the Department of Community Development. Formal dockets, which must be legally advertised, are scheduled for the Board. Meetings are held to hear testimony on the application. The Board determines the outcome of all applications, which may only be appealed to a Harris County District Court. The Board, appointed by the Bellaire City Council, consists of seven members who are citizens of the United States and residents of Bellaire for at least one year. Board members serve staggered terms of two years each, with maximum three consecutive terms. The Board selects its own Chair and Vice Chair for a term of one year. The Board meets on the third Thursday of each month beginning at 7:00 p.m. in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue.

A quorum of at least six members is required to hear a case. The Board of Adjustment may, authorize in specific cases, a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so the spirit of the ordinance is observed and substantial justice is done.

During calendar year 2015 there were only three applications for hearing. Two were in April and one in December.

Docket # BOA-2015-01 in April was an application from the property owner at 4701 Pine Street, which is at the corner with West Loop 610. The property owner, who bought the newly built house, wanted a 10-foot high masonry fence in lieu of the 8-foot allow because the first floor of his house was built higher than the minimum required elevation above the flood plain. That application was denied.

Docket # BOA-2015-02 in April was an application from the Crosspoint Church, a satellite campus of the West University Baptist Church, to build a youth center on their property located at 4609 Bellaire Blvd. Their property has 21, 600 square feet. The current area required for a church is 22,000 square feet. The church applied for the permit when the code allowed much less than 22,000 square feet for a church. The architect expressed willingness to satisfy the adjacent neighbors with some of the building's exterior design features and relocating the entry and exit point. One Board member recused himself since he is a member of the church. The application for a variance was unanimously approved by the remaining six members of the Board.

Docket # BOA-2015-03 was an application in December and the last one of the year. It had to do with the number of parking spaces required for the building at 4950 Terminal Street. The building has existed for many years and has no parking spaces. The building will be undergoing renovation to creat mostly retail spaces and a limited number of office spaces. Land adjacent to the property will be leased by the applicant from Center Point for parking spaces, plus street parking was also counted to make up the required number of parking spaces. The application was unanimously approved.

The Board greatly appreciates the City staff for their support throughout the year.

Respectfully submitted,
Tom Ligh
Chair, Board of Adjustment

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



Meeting: 01/21/16 07:00 PM
 Department: Development Services
 Category: Discussion
 Department Head: John McDonald
 DOC ID: 1795

**SCHEDULED
 INFORMATION ITEM (ID
 # 1795)**

Item Title:

Discussion of Section 2-112, Board of Adjustment, (g) Quorum, of the City of Bellaire Code of Ordinances.

Background/Summary:

The following was submitted by Chairman Ligh:

Quorum Requirements

The below Bellaire Code of Ordinances was what triggered the BOA to call a special meeting to approve the annual report where 6 members are required to approve. Only a simple majority of the members present and voting are required to pass rules of procedure or a motion to adjourn.

Sec. 2-112(g) of the Bellaire Code of Ordinances provides:

(g) Quorum. No meeting of the board may be called to order nor may any business be transacted by the board without a quorum, consisting of at least 75 percent of the members of the board, being present. The concurring vote of at least 75 percent of the members (six members) shall be necessary for the board to take action, save and except to consider and pass rules of procedure or a motion of adjournment which shall require the concurring vote of a simple majority of the members of the board then present and voting.

Texas State code chapter 211.008(d) requires each case before the board of adjustment must be heard by at least 75 percent of the members. An annual report is not a "case".

Local governments may adopt rules stricter than state law, but not more lax.

Should the BOA ask the Bellaire City Council to review and consider modifying Sec. 2-112(g) of the Bellaire Code of Ordinances to allow a simple majority of members present and voting to approve annual reports and other internal board business?