

CITY OF BELLAIRE TEXAS

BOARD OF ADJUSTMENT

AUGUST 16, 2018

Council Chamber

Regular Session

7:00 PM

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



Board Member

James P. Avioli Sr.

Vice Chairman

Debbie Karakowsky

Chairman

Samir Sinha

Board Member

Jed Mandel

Board Member

Bharat Raval

Board Member

L. Timothy McKone

Board Member

Lilly Gilmer

Board Member

Cindy Preble

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 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).

III. CERTIFICATION OF A QUORUM (OUTGOING AND INCOMING BOARD)**IV. APPROVAL OF MINUTES**

1. Board of Adjustment - Regular Session - Jun 21, 2018 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****X. ADOPTION OF RULES OF PROCEDURE**

- A. Rules of Procedure

XI. NEW BUSINESS

- A. Discussion on Chapter 2, Administration, Article VII, Boards and Commissions, Section 2-92, Creation of New Boards, subsection (b) of the Code of Ordinances of the City of Bellaire.

XII. COMMUNICATIONS AND REPORTS**XIII. 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).

XIV. GENERAL COMMENTS FROM BOARD MEMBERS**XV. ANNOUNCEMENTS****XVI. ADJOURNMENT**



CITY OF BELLAIRE TEXAS

BOARD OF ADJUSTMENT

JUNE 21, 2018

Council Chamber

Regular Session

7:00 PM

7008 S. RICE AVENUE
BELLAIRE, TX 77401

1. CALL TO ORDER

Vice Chairman Debbie Karakowsky called the meeting to order at 7:05 PM.

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

Attendee Name	Title	Status	Arrived
James P. Avioli Sr.	Board Member	Present	
Debbie Karakowsky	Vice Chairman	Present	
Samir Sinha	Chairman	Absent	
Jed Mandel	Board Member	Present	
Bharat Raval	Board Member	Present	
L. Timothy McKone	Board Member	Present	
Ashley Parcus	Development Services Coordinator	Present	
Lilly Gilmer	Board Member	Present	
Zachary Petrov	Assistant City Attorney	Present	
Pat B. McLaughlan	Council Member	Present	
ChaVonne Sampson	Director of Development Services	Present	

4. APPROVAL OF MINUTES

- Board of Adjustment - Regular Session - Jan 18, 2018 7:00 PM

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

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

There were no reports from officers, committees, or communications.

6. UNFINISHED BUSINESS

There was no unfinished business.

Minutes Acceptance: Minutes of Jun 21, 2018 7:00 PM (Approval of Minutes)

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

Assistant City Attorney, Zachary Petrov, read aloud the Standards from Section 24-704, Bellaire Code of Ordinances, the standard dealing with the variance request.

8. NEW BUSINESS**A. Public Hearings**

Docket # BOA-2018-02-Request by Lori A. Hood, owner of the property at 4921 Palmetto, for an appeal of an administrative official's determination that fifty percent (50%) of the installation of an uncovered wood deck over bare soil in the backyard of 4921 Palmetto is included in the definition of Other Surface, as defined in Chapter 24, Planning and Zoning, Article II, Definitions and Interpretation, Section 24-202, Definitions (123.1) of the City of Bellaire Code of Ordinances, and counts towards lot coverage. The property is located within the R-4 Residential Zoning District.

RESULT:	APPROVED [5 TO 1]
MOVER:	L. Timothy McKone, Board Member
SECONDER:	Bharat Raval, Board Member
AYES:	Karakowsky, Mandel, Raval, McKone, Gilmer
NAYS:	Avioli Sr.
ABSENT:	Sinha

i. Presentation by the Applicant

Ms. Hood began that in November 2017, she bought her home and that (2) weeks later her property was muddy. She then said that she discovered her property is flattest in Bellaire and that the drainage placed by the builder is inadequate, yet it was still approved by the City. Ms. Hood described the improvements she made on her drainage system as well as how her lot sits (1) foot below her neighbor's, therefore receiving surrounding runoff water. She had a pool built that sits (10) inches above grade and would like to put in a structured deck that will sit (8) to (9) inches above grade that will drain into the sump pumps she installed. Ms. Hood stated that her current lot coverage is about (54.6) percent and was told by the City that she is limited to (55) percent. She displayed Sec. 24-533 of the Bellaire Code of Ordinances that referred to the definition of the R-4 Residential District. Ms. Hood pointed out that within the code under section C. (1) (a), there is an issue of (2) contrasting definitions published where (1) definition states that the maximum lot coverage for her lot is (55) percent and the other states (60) percent. She stated that she spoke with the City Attorney, Mr. Alan Petrov, and that he responded that the listing of (60) percent lot coverage regulation is a mistake. Ms. Hood noted a pattern in the code amongst other definitions for residential districts where no. (7) consistently states the maximum lot coverage with the exception of the R-4 definition. Ms. Hood pulled up the definition of "Lot Coverage" from the Code that mentions surfaces and displayed another definition in the Code that describes a surface as any material applied to the surface of land. Ms. Hood asked the Board to agree that she should be held to (60) percent of coverage area, and that the deck she'd like to install not be considered a "surface" since it is not applied directly to the surface of the land - it will be applied (8) to (10) inches above grade.

Mr. Petrov commented that the issue does not concern the (55) percent versus the (60) percent lot coverage. They are only discussing whether the deck will be counted towards the lot coverage as publicly noticed and scheduled on the agenda. However, it could be another official

determination by the Director, ChaVonne Sampson, which could be challenged, and then be brought before the board at a later time.

ii. Presentation by the City

The Development Services Coordinator, Ashley Parcus, presented the City's position stating that it is the administrative official's determination that (50) percent of the installation of an uncovered wood deck over bare soil in the backyard of the property would be included in the definition of *Other Surface*, as defined in *Chapter (24), Planning and Zoning, Article II, Definitions (123.1) of the City of Bellaire Code of Ordinances*, and therefore counts towards the allowable lot coverage. Ms. Parcus gave the Board some background information about the property and the application. The application was finalized by Ms. Hood on May 2, 2018. Notice of the public hearing was published in the Southwest News on June 5th, and mail outs were sent out to all residents within (200) feet of the property in question went out on June 7th. She stated that the property is located within the R-4 Zoning District and is approximately (8,100) square feet in size, meaning that the allowable lot coverage for the property is (55) percent. Ms. Parcus mentioned that the property owner recently installed a parking surface in the front yard and a swimming pool in the back. The survey that was required to be submitted to the City in order to obtain for final approval for the pool project showed that the lot coverage exceeded the allowable maximum of (55) percent, therefore, the City would not approve the installation of the wood deck. Since that time, Ms. Hood has removed certain areas of coverage in order to reduce the impervious total, but after doing so, the property is still at its maximum allowance of (55) percent. The property owner was informed that her best option would be to apply for an appeal of the administrative official's interpretation, as she would not be able to get a variance or special exception from a definition.

Ms. Hood has stated before that since purchasing the lot in November 2017, she has had severe drainage issues that prevent her from being able to utilize her property appropriately, and has paid a significant amount of money in order to have a drainage system installed. She feels that the installation of a wood deck (8) inches above the soil will help to keep a smooth transition to the already existing pool, and that it should not count towards the lot coverage due to the fact that the gaps in between the board and the elevation of the deck will allow the water to seep through to the ground and the drains, grading, and sand in place will serve to properly dispose of the water underneath the decking.

Ms. Parcus mentioned that Section 24-745 of the Code states that the Board may reverse, affirm, or modify the administrative official's interpretation. If the Board chooses to modify the interpretation, it shall have the power to also impose reasonable conditions to be complied with by the applicant. Ms. Parcus informed that Staff's Recommendation is that based on the fact that the code already acknowledges that (50) percent of the wood deck should not count as an impervious surface, and that a certain percentage of the water will drain through the decking material, the Director of Development Services recommends that the Board affirm the interpretation of *Section 24-202, Definitions (123.1), Other Surface*.

- iii. **Public Comments: Names of those desiring to comment shall come from a sign-up list and shall be limited to six (6) minutes per speaker, with extensions in two (2) minute increments, as approved by majority vote of Board Members present.**

Caroline Avedesian, 4919 Palmetto St. - Ms. Avedesian provided her public comment via e-mail and is the owner adjacent to the property. She states in the letter that having observed remediation, drainage improvements, and the state of the backyard, she does not oppose the construction of the deck and supports Ms. Hood's request to build the deck.

Greg Gordon, 4910 Palmetto St. - Mr. Gordon stated that when flooding is more frequent and severe, he does not think the community should surrender (1) square inch of pervious land and feels that Ms. Hood's need is outweighed by the needs public good.

Lori Aylett, 4910 Palmetto St. - Ms. Aylett agrees with the City Official's decision on the interpretation of the code should stand stating that with current flooding issues, water needs to go into the drainage system and that deck with water seeping through it is not what the code envisioned.

Christine Drusch, 4914 Palmetto St. - Ms. Drusch stated that she owns the neighboring house at 4923 Palmetto and doesn't believe the definition should be changed, adding that rules are there to protect everyone as a whole. She said that she appreciates their drainage system but believes that there should be enough land exposed for the absorption of water. She then said that if an engineer comes and decides that a deck should not be counted towards lot coverage, then the rules should be changed. Ms. Drusch mentioned that she had a petition signed by herself and neighbors who support the City of Bellaire's definition on lot coverage and the Administrative Official's determination. In the petition, it is also asked that the Board not overturn the City's decision.

Doug Christians, 4913 Palmetto St. - Mr. Christians mentioned that the owners 4921 Palmetto paved their front yard and stated that if the paving in the front had not been done, they'd have available lot coverage to build their deck in the back. He did mention that the lot is lower than the others and when there is substantial rain, there is a lot of standing water. Mr. Christians believes the rules were put in place with a reason, and does not believe they should be granted a variance.

iv. **Rebuttal by the Applicant**

Ms. Hood began by stating that the reason they're here is whether or not she is entitled to (55) percent or (60) percent lot coverage and that the Code, as published, allows her (60) percent lot coverage. She mentioned that the reason she paved her front yard (driveway expansion) was because there was no drainage and it was muddy. Ms. Hood added that she has a cut-out in her driveway so water can get released properly. She said that all the deck is going to do is make her yard even with the ones around her so water does not get retained on her lot. She informed that grass will not grow in her yard because of the amount of runoff from surrounding properties. Ms. Hood states that she is following the Code as written and published, and if it is a mistake, then that is a problem for the City to fix. Additionally, the definition of a surface should not apply to her raised desk since it will be (8) to (9) inches above grade, not installed directly to the earth's surface. Ms. Hood said that if they determine her raised deck is a surface, then platforms used to raise air conditioning units should be counted towards lot coverage as well.

v. **Questions by the Board**

Board Member Avioli asked Ms. Hood if she had considered mediation to the people around her for causing the problem or if she was just trying to solve the problem.

Ms. Hood answered that she is trying to solve the problem since she is not sure what the others could do except the same drainage measures she's done.

Board Member Avioli asked if the water from the sump pump goes out into the streets.

Ms. Hood confirmed and added that it then goes into the drainage system.

Board Member Avioli mentioned that she has one neighbor that does not mind her building the deck, but then questioned what harm her present situation causes to others.

Ms. Hood replied that she was not aware of any, just her own.

Board Member Avioli invited Ms. Drusch to comment.

Ms. Drusch stated that she has seen increased flooding where water meets in the middle of their properties.

Ms. Hood mentioned that Ms. Drusch's down spouts do not attach to any drainage system and the down spout water comes into her yard, which is where most of the water issues come from for the right hand side of her property.

Ms. Drusch confirmed this. She then said that she doesn't think that the City should allow a change in rules.

Ms. Griffin stated that they aren't here to change the rules. They are here because of the definition that's in place and whether it applies or not.

Board Member Avioli asked if the issue of the property to be at (55) or (60) percent can be determined today.

Mr. Petrov answered no, because that is not what was publicly noticed or on the agenda. He informed that what is on the agenda is whether or not the deck would count as an "other surface" and count towards lot coverage.

Board Member Avioli asked what changes Ms. Hood has made to comply with the (55) percent.

Ms. Hood responded that she cut off part of her driveway, the stairs, and replacing concrete with stone.

Board Member Avioli then questioned what alternative would Ms. Hood have if not able to build her deck.

Ms. Hood replied that she could maybe put rocks in and risk visitors cutting their feet, but she's not really sure and is considering selling the house.

Board Member Gilmer asked if there were plans for the deck.

Ms. Griffin replied that they tried to get a permit with plans but were unable to until they resolved their max (55) percent issue.

Board Member Gilmer asked Ms. Hood to confirm that she believes her deck wouldn't cause a drainage issue.

Ms. Hood confirmed and added that her deck would not be applied to the surface.

Board Member Gilmer asked Mr. Petrov to confirm that the Board was here only to reverse, affirm, or modify the administrative official's interpretation.

Mr. Petrov answered yes, that could be the only thing determined today. He added that Ms. Hood could request another decision from ChaVonne regarding the (55) and (60) percent issue and can appeal that. She may also request a variance to request larger lot coverage.

Board Member Gilmer asked for clarification about Ms. Hood not being qualified to get a variance as spoken about earlier in the meeting.

Mr. Petrov explained that Ms. Hood would not be able to get a variance on a definition, but she could ask for a variance in lot coverage.

Vice Chair Karakowsky addressed Ms. Hood's (60) percent position by reading Sec. 24-201 of the City of Bellaire Ordinances that states in the event of provisions that are in conflict or differing regulations as to the same type of requirement, type or use, the most restrictive provision shall be deemed controlling. She asked if Ms. Hood had seen that ordinance or if she had a view on it.

Ms. Hood replied that she had not seen it. She says that she thinks the definition of lot coverage for her property has (2) different requirements within Sec. 24-553.

Vice Chair Karakowsky questioned how she believes the requirements are not in conflict with each other.

Ms. Hood responded that she thinks the Code is talking about the size of the house dependent on the size of the lot and then when it gets down to number (7), it is regarding the maximum total lot coverage for the structure and other surfaces.

Vice Chair Karakowsky mentioned that the provision Ms. Hood was citing states under the definition of "other surfaces" that the water surface of the pool or a spa, (50) percent of an un-covered wood deck constructed over bare soil and loosely graveled walkways shall not be considered an "other surface" and would take it to mean that the deck would be counted towards lot coverage at (50) percent.

Ms. Hood replied that the structure she wants to put up won't be applied to the surface and says it's the difference between what the City is talking about and what she is wanting to do.

Vice Chair Karakowsky asked what Ms. Hood sees as the important difference of adding a deck over bare soil as opposed to uncovered wood deck.

Ms. Hood answered that in her mind, decks are normally applied to a surface as a ground cover and do not usually see raised decks in this part of the country.

Vice Chair Karakowsky asked if Ms. Hood's position is that by adding the words "over bare soil" that it is reinforcing the concept that the City's definition is referring to a wood deck touching the surface.

Ms. Hood replied yes.

Vice Chair Karakowski stated that she has driven by the home and then asked Ms. Hood if when she did the paving in the front, did she anticipated needing to do something in the back. She additionally inquired if Ms. Hood did the paving in the front having in mind that she still had available lot coverage to build a deck in the back.

Ms. Hood answered yes and that the reason she paved the front because it was all mud. She then stated that they didn't think a deck would be qualified as a surface.

Vice Chair Karakowski questioned why Ms. Hood could not do loose gravel in the front yard instead so it would bring her to comply with the code and build the decking in the back.

Ms. Hood responded that she spoke to her contractor that it would be expensive and she would have to make sure she has enough gravel to hold her vehicles.

Vice Chair Karakowski asked if Ms. Hood had researched what other cities have done in similar instances.

Ms. Hood replied that she spoke with City of Houston and they have a different interpretation of decks than Bellaire. She mentioned that she wasn't aware until 4 p.m. of the same day that what has been posted as coverage in the Code was a mistake according to the City Attorney and therefore did not have enough time to prepare more information.

Board Member Mandel asked Ms. Hood when she removed items to lower her lot coverage, what percentage she came to.

Ms. Hood answered that it was about (54.6) percent.

Board Member Mandel asked if the City has confirmed that number.

Ms. Hood replied yes, she had a new survey done.

Board Member Mandel asked if there has been any analysis conducted on how much the posts for the deck would add to the lot coverage asked if just counting the posts, would she still be under the (55) percent.

Ms. Hood said she would think so.

Board Member Avioli asked if the decking is approved, would there be any plans to cover it.

Ms. Hood answered no.

vi. Consideration of, deliberation by, and action on the Docket Item

Board Member Mandel said he would have a tendency to agree with the petitioner as far as the City of Bellaire's definition of a surface is general, antiquated and needs to be updated. He questioned if the City Engineer or Planning & Zoning Commission has looked at the definition lately. He added that rainfall would completely fall below and doesn't believe it should be counted as impervious coverage wholly, depending on what materials are used and how it's constructed.

Mr. Petrov commented up that the Code could not be rewritten, but can modify how it's been interpreted. A re-write is a legislative matter that would have to go to Planning & Zoning and then Council.

Vice Chair Karakowsky brought up how the definition of "other surface" mentions any material applied to the surface of the land which does not permit the natural permeation of water. She discusses how a deck would not be a completely natural permeation method of water since the deck is partially covering the soil and seems to be why a deck is held to (50) percent towards lot coverage. Vice Chair Karakowsky mentions that decks are listed as a specific example of a surface in the code. She argued that it would not be in the Board's realm of abilities to parse what a deck is and that Ms. Hood's raised wood deck is covered within the definition of "other surface".

Board Member Avioli stated that he believes the ordinances were written for a purpose and shouldn't be changed drastically just at will since the Board doesn't have the authority to do that. He asked Mr. Petrov would other options there would be for the applicant.

Mr. Petrov listed Ms. Hood's options if the Board affirms the City's interpretation.

Board Member McKone stated that he believes the uncovered wood deck constructed over soil meets the definition.

Board Member Avioli questioned if they were going to discuss whether it's pervious or impervious.

Vice Chair Karakowsky replied that the definition does not raise it as a question as written in regards to decks, patios or porches.

Board Member McKone adds that the definition does give those surfaces (50) percent credit as being permeable since it is not completely closed as to not let water through.

Board Member Mandel stated that if the petitioner came in with variance request with facts, figures and described the appropriate measures to reduce drainage issues, then the board would be able to decide to grant a variance or not, but the Board only here to agree or disagree with the City's decision. He said that he is not inclined to disagree with the City's definition but the definition should be looked at.

Board Member Gilmer agrees with Mandel and stated that she sympathizes, but the definition only says deck and does not give further detail of whether the deck is raised or more permeable. She says the Board can only look at the definition, what has been presented, and determine if the City made the appropriate ruling for the appeal, not if the deck allows enough drainage.

Motion: a motion was made by Board Member McKone and seconded by Board Member Raval to affirm the administrative official's interpretation that (50) percent of the installation of an uncovered wood deck over bare soil in the backyard of the property would be included in the definition of *Other Surface*, as defined in *Chapter (24), Planning and Zoning, Article II, Definitions (123.1) of the City of Bellaire Code of Ordinances*, and therefore counts towards the allowable lot coverage.

Vote: The motion carried on a vote of 5-1.

Docket # BOA-2018-03-Request for a variance by Jason and Lee Anne Dixon, owners of the property at 4512 Valerie Street, to allow for the construction of a continuous landing/front porch to encroach five (5) feet, six (6) inches in the front yard setback, as a result of the elevation of the home due to recent flooding. The request will result in a front yard setback of twenty four (24) feet, six (6) inches rather than the thirty (30) feet as required by Chapter 24, Planning and Zoning, Section 24-532 C. (1) a) 6) a. of the City of Bellaire Code of Ordinances. The property is located within the R-3 Residential Zoning District.

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

i. Presentation by the Applicant

Mr. Dixon stated that he and his wife have lived in their home on 4512 Valerie since 2012 and have been residents of Bellaire since 1998. He mentioned that (2) of his properties flooded in Harvey and was forced to sell (1). Mr. Dixon presented a slideshow of pictures his property and street during the flood and stated that he received (10) inches of water resulting in him having to remove the electrical and lower levels of sheet rock. He informed the Board that he is considering lifting the house to avoid flooding and that it would be a very simple lift considering the box shape of his home. He stated that he has talked to multiple contractors about lifting his home with a (3) foot raise and determined he would be within (6) inches of finished floor level of newer homes in the area to keep his home in line with new construction. Mr. Dixon pointed out that his home has (3) sets of front doors and has a slab on grade front porch that is (6) feet continuously under all front doors. Mr. Dixon then showed a photo of a home that

portrayed what he would like to do with his home and stated that he was careful in trying to design something that wouldn't cause a disturbance to his neighbors and be suitable with the looks of the homes in the area. He then displayed a rendering of the front of the home after elevation. He also showed a plan view of the proposed construction showing property setbacks and stated that the porch will essentially stay the same to maintain continuous access to all (3) sets of front doors. Mr. Dixon also mentioned that his porch would be compliant with ADA wheelchair turning radius recommendations stating the he will likely end up in a wheelchair later in life and would like to wheel out of the side double-door. He then explained how water runs down the sides of the house and there is no protection when trying to get in the house when it is raining. He would like to remedy that problem with a patio cover. Mr. Dixon presented a petition signed by his neighbors who had no objections to his proposed designs.

Mr. Dixon said that Hurricane Harvey caused his current problem since he is (6) inches below BFE and is electively choosing to raise the home (3) feet, placing his structure at (2) to (2.5) feet above the BFE. If not approved, he would struggle with hardship of trying to find a way to an alternate means to access the lifted home. Mr. Dixon then informed that the materials chosen for the structure will not cause harm to his neighborhood or cause safety concerns.

ii. Presentation by the City

Ms. Parcus began by stating that the application is on a request for a variance by Jason and Lee Anne Dixon, owners of the property at 4512 Valerie Street to allow for the addition of a continuous landing/front porch to encroach 5 feet 6 inches into the front yard setback as a result of the elevation of the home due to recent flooding. Approval of the request would result in a front yard setback of (24) feet, (6) inches rather than the (30) feet as required by Section 24-532 C. (1) a) 6) a. of the city code.

The application was submitted on April 30, 2018. Notice of the public hearing was published in the Southwest News on June 5th, and mail outs were sent to properties within 200 feet on June 7th. The property is located within the R-3 Residential Zoning District.

The home was built in 1991, based on building code regulations at that time, resulting in a first floor elevation of (52.1) feet, which is now (6) inches below the City's current base flood elevation requirements. When the home was constructed, the front façade included three front doors with a concrete landing. Therefore, in order to allow for the reasonable use of the already existing home once it is elevated, a porch or landing structure is needed.

As reviewed earlier by Attorney Petrov, Section 24-704 states that the Board shall not grant a variance unless it shall, in each case, make specific written findings based directly upon the particular evidence presented to it which support written conclusions that: 1) Such modification of height, yard, area, lot width, lot depth, off street loading, screening wall, coverage, parking and sign regulations are necessary to secure appropriate development of a parcel of land which materially differs from other parcels in the district because of a special condition unique to and inherent in the parcel itself, such as restricted area, shape, or slope, such that the parcel cannot be appropriately developed without a modification; 2) A literal enforcement of the Zoning

Ordinance from which the variance is requested would result in an unnecessary hardship not self-created or personal, nor solely financial in nature; 3) The granting of the variance will not be materially detrimental or injurious to other property or improvement in the neighborhood in which the subject property is located, nor impair an adequate supply of light or air to the adjacent property, substantially increase the congestion in the public streets, increase the congestion in the public streets, increase the danger of fire, endanger the public health, safety and well-being, or substantially diminish or impair property values within the neighborhood; 4) the variance desired will not be opposed to the general spirit and intent of this chapter.

Ms. Parcus pointed out that if the property owners were only requesting to extend the steps into the front setback, it would have been approved administratively, but the fact that they are adding an attached structure to the front of the house, it triggered the need for a variance. She then stated that upon review and evaluation of the application, all four areas of the criteria are met. It is the opinion of the Director of Development Services that the request is not in conflict with the standards as outlined in Article VII, Division 1, Section 24-704, and therefore no objections are offered to the granting of this variance.

iii. Public Comments: Names of those desiring to comment shall come from a sign-up list and shall be limited to six (6) minutes per speaker, with extensions in two (2) minute increments, as approved by majority vote of Board Members present.

Mike & Marcia Baker, 4504 Valerie St. - The Bakers provided their public comment via e-mail. Their opinion is that the front porch would enhance the community because front-of-house, open-air porches are aesthetically pleasing, promote outdoor activities and encourage better relations with the neighborhood. They support the variance request.

Winston Jia, 4508 Valerie St. - Mr. Jia lives on Holt but owns the property on Valerie. He expressed that his only worry is that if Mr. Dixon is approved, it will set a precedent for anyone wanting to build a front porch and will be automatically allowed to do so.

iv. Rebuttal by the Applicant

Mr. Dixon addressed Mr. Jia's concern by stating that he is not wanting a front porch for aesthetic reason or just to extend his home. His need for the variance is an issue of access and to maintain the current use of the structure.

v. Questions by the Board

Board Member Raval asked if there is a precedent in place for homes encroaching into their setback or if their decision will set a precedent for future homes wanting to.

Ms. Parcus answered no.

Board Member Avioli asked Mr. Dixon for clarification on how much the front porch and stairs would be encroaching.

Mr. Dixon explained that the porch is (6) feet and the house is (6) inches behind the property line so (5) feet and (6) inches of the porch would extend. Beyond that, additional

(4) foot (2) inches are the stairs which is where the (9) feet (8) inches total for the entire landing comes from.

Board Member Avioli then questioned the City if the encroachment of the (5) feet (6) inches is what they need to worry about.

Ms. Parcus answered yes.

vi. Consideration of, deliberation by, and action on the Docket Item.

Board Member McKone said it appears that all of the (4) criteria are met and deemed to support the motion.

Motion: a motion was made by Board Member Mandel and seconded by Board Member Avioli to allow for the construction of a continuous landing/front porch to encroach five (5) feet, six (6) inches in the front yard setback.

Vote: The motion carried on a unanimous vote of 6-0.

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).

Ms. Hood stated that she is under the (60) percent as stated in the Code and that her contractor will get a permit for her deck the next day since she now knows her deck counts as (50) percent and hopes she will not be denied. She expressed that she disagrees with the Board's decision and that the City needs to fix the mistake in the Code.

10. GENERAL COMMENTS FROM BOARD MEMBERS

Board Member Mandel stated that he wants Ms. Hood to build their deck and gave an example of an approved variance request with HISD and would've liked to see them come in a different situation. He wished Ms. Hood and Ms. Griffin good luck.

Vice Chair Karakowsky expressed that it was a heavy decision to make and wanted to reassure the applicants that they were heard and the Board cares about their situation

11. ANNOUNCEMENTS

There were no announcements.

12. ADJOURNMENT

Motion: a motion was made by Board Member Avioli and seconded by Board Member Raval to adjourn the Regular Meeting.

Vote: the motion carried with a vote of 6-0.

The meeting was adjourned at 8:58 PM.

Board of Adjustment

Council Chamber, First Floor of City Hall
Bellaire, TX 77401-4411



Meeting: 08/16/18 07:00 PM
Department: Development Services
Category: Policy
Department Head: ChaVonne Sampson
DOC ID: 2640

SCHEDULED**ACTION ITEM (ID # 2640)**

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, which were last adopted in July of 2017, are attached.

ATTACHMENTS:

- Rules of Procedure 2017-18 (PDF)

RULES

OF

PROCEDURE

FOR THE

BOARD OF

ADJUSTMENT

CITY OF BELLAIRE, TEXAS

Adopted
July 2017

Attachment: Rules of Procedure 2017-18 (2640 : Rules of Procedure)

RULES OF PROCEDURE

FOR THE

BOARD OF ADJUSTMENT

CITY OF BELLAIRE, TEXAS

Adopted – July 2017

City of Bellaire
 7008 South Rice Avenue
 Bellaire TX 77401-4411
 Tel - 713/662-8222
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 Web Page - <http://www.bellairetx.gov>
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Board of Adjustment July 2017 - June 2018

Jill Almaguer, Chairman
 Samir Sinha, Vice-Chairman
 Jim Avioli Sr.
 Debbie Karakowsky
 Jed Mandel
 Bharat Raval
 Timothy McKone

Staff

ChaVonne Sampson - Staff Liaison
 Ashley Parcus - Secretary

City Council Liaison
 Gus Pappas

Attachment: Rules of Procedure 2017-18 (2640 : 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, unless modified by the City of Bellaire. Regular meetings will take place in the Council Chambers of the City of Bellaire, 7008 South Rice Avenue, Bellaire Texas.

Section D. Special Meetings: Special meetings may be called by the Chairman 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 or 24-718 of the Bellaire Code of Ordinances, as it pertains to the Board's current agenda items.
8. New Business - Public Hearings on Docket Item for a Variance, Appeal or Exception [**Repeated and sequentially numbered for each Docket Item considered at each meeting.**
 - a) Presentation by Applicant, Appellant, Property Owner, Counsel or other Agent [**Limitations:** Fifteen (15) minutes with extensions in five (5) minute increments as approved by a majority vote of the Board members present].
 - b) Presentation by the City [**Limitations:** Fifteen (15) minutes with extensions in five (5) minute increments as approved by a majority vote of the Board members present].
 - c) Public comments on Docket Item [**Limitations:** Names of those desiring to comment shall come from sign-up list and shall be limited to six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board members present].
 - d) Rebuttal by Applicant, Appellant, Property Owner, Counsel or other Agent. [**Limitations:** Six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board members present].
 - e) Questions by Board [**Limitations:** The Board may ask germane questions of the Applicant, Appellant, Property Owner, Counsel or other Agent, and/or City Staff].
 - f) Consideration of, deliberation by and action on Docket Item by the Board [**Requires** 75% or six (6)

affirmative votes for approval pursuant to Section 211.009(c), Texas Local Government Code].

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

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

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

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

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

Section K. Disposition: In the final disposition of any appeal or application for variation or modification, the decision shall affirm, modify or reverse the refusal of a permit by, or any order or decision of the City Building Official. In 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 L. The Lack of a Quorum for a Variance Hearing: In the event that the Appellant, Applicant, Property Owner, Counsel, or other Agent is present at the scheduled hearing, but the Board of Adjustment is lacking a quorum for the hearing, the hearing shall be rescheduled without any penalties for the appellant or applicant and no additional application fee shall be imposed.

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

ARTICLE VI Definitions

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

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

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

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

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

City Building Official: The person duly appointed by the City Manager of the City of Bellaire, as provided by Chapter 24 of the Bellaire Code of Ordinances, charged with the duty and obligation of issuing permits and

certificates of occupancy and with the responsibility for enforcing the provisions of the Building Code and Zoning Regulations for the City of Bellaire.

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

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

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

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

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

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

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

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

ARTICLE VII Civil and Parliamentary Authority

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

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

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

ARTICLE VIII Amendments to Rules of Procedure

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

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

**ADOPTION OF RULES
OF PROCEDURE**

Adopted by the Board of Adjustment of the City of Bellaire on the 20th day of July, 2017.
Attest:

Signature of Chairman

Attachment: Rules of Procedure 2017-18 (2640 : Rules of Procedure)

Board of Adjustment

Council Chamber, First Floor of City Hall
Bellaire, TX 77401-4411



Meeting: 08/16/18 07:00 PM
Department: Development Services
Category: Discussion
Department Head: ChaVonne Sampson
DOC ID: 2639

SCHEDULED**INFORMATION ITEM (ID # 2639)****Item Title:**

Discussion on Chapter 2, Administration, Article VII, Boards and Commissions, Section 2-92, Creation of New Boards, subsection (b) of the Code of Ordinances of the City of Bellaire.

Background/Summary:

On June 19, 2018, City Council voted to commence a periodic review of the City of Bellaire board and Commissions, pursuant to Section 2-92 (b) of the Code of Ordinances. Subsection (b) of the Code provides as follows:

(b) Prior to adoption of an ordinance creating and establishing any new board, and each five years thereafter, city council shall specifically review and consider the following:

- (1) For boards other than ad hoc advisory boards, whether the establishment of the board will create sufficient betterment to the community to justify the city's delegation of a portion of its authority;
- (2) Whether another board or agency, either public or private, which is already in existence could serve the same purpose;
- (3) The costs, both direct and indirect, of establishing and maintaining the board;
- (4) Whether the board is necessary to enable the city to obtain state or federal grants or other financing; and
- (5) Whether the creation of a new board is the best method of achieving the benefit desired.

This item has been added to each board and commission's agenda to allow members the opportunity to provide feedback. The Council Liaison to each board/commission will report back to City Council on the discussion during a Workshop Session to be held in August of 2018.