

ZONING COMMISSIONS VS. ZONING BOARD OF ADJUSTMENT

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Zoning Commission

- Planning Commission
- Zoning Commission
- Planning and Zoning Commission

Zoning Commission

- Performs advisory functions
- Develops a comprehensive zoning plan
- Reviews and reports on amendments to zoning
- Focus is usually on large scale planning issues

Zoning Commission

- Texas Local Government Code Section 211.007
- Home Rule **SHALL** & General Law **MAY** appoint a zoning commission
- Provides no direction regarding make up of commission
- Shall recommend boundaries for original districts and appropriate zoning regulations for each district
- Governing body may not hold public hearing until **AFTER** it receives final report from Zoning Commission

Zoning is Discretionary

Zoning Board of Adjustment

- More of an action agency
- Deals with issues on a tract-by-tract basis
- Quasi - judicial

Zoning Board of Adjustment

- Zoning Board of Adjustment
 - City **MAY** create
 - General law city may appoint city council

Zoning Board of Adjustment

LGC Sections 211.008 – 211.011

- ◆ Five members
- ◆ Two year terms
- ◆ City council determines appointment procedure
- ◆ Removal only for cause

Zoning Board of Adjustment

LGC Sections 211.008 – 211.011

- ◆ Alternate members may be appointed to serve in the absence of one or more regular members when requested by the mayor or city manager (by ordinance)
- ◆ Each case must be heard by at least 75% of the membership

Zoning Board of Adjustment

LGC Sections 211.008 – 211.011

- ◆ Decide appeals from a decision of an administrative official regarding the Zoning Ordinance
 - ◆ May reverse, affirm, or modify an administrative official's order, requirement, or decision
- ◆ Authorize a variance if:
 - ◆ public interest is served;
 - ◆ substantial justice is achieved; and
 - ◆ unnecessary hardship would otherwise result
- ◆ Decide other matters authorized by ordinance (Special Exceptions, etc.)

WHAT BOARD OF ADJUSTMENTS CANNOT DO

- ◆ Grant a “use” variance
- ◆ Grant an increase to the variance requested
- ◆ Overturn a staff decision, authorize a variance from the zoning ordinance, or approve an applicant’s request with less than 75% of the affirmative votes of the members

WHAT BOARD OF ADJUSTMENTS

CAN DO

- ◆ Grant variance that will:
 - ◆ Not be contrary to public interest
 - ◆ Where due to special conditions literal enforcement would result in unnecessary hardship
 - ◆ So that the spirit of the ordinance is observed and substantial justice is done
- ◆ Board of Adjustments is the escape valve for the Zoning Ordinance when land does not fit ordinance mold

VARIANCES

UNNECESSARY HARDSHIPS

◆ WHAT THEY ARE **NOT**

- ◆ Property that cannot be used for its highest and best use
- ◆ Financial or economic hardship
- ◆ Self created hardship
- ◆ The development objectives of the property owner are or will be frustrated

Practical Tips

1. Be cautious – don't speed up the process.
2. Treat all applicants fairly.
3. Make proper findings.
4. Frame comments in objective terms.
5. Be attentive!

QUESTIONS ?

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QUESTIONS ?

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