ARTICLE XXXII.
BOARD OF ADJUSTMENT

(Ord. Nos. 2835; 07/01/03, 3331 10/06/09)

SECTION A. ORGANIZATION OF BOARD OF ADJUSTMENT.

1. The Board of Adjustment (Board) shall consist of nine (9) members who are residents and taxpayers of the city of Carrollton, each to be appointed by a majority of the City Council for a term of two (2) years and removable for cause by the City Council. Vacancies shall be filled for the unexpired term of any member, whose place becomes vacant for any cause, in the same manner as the original appointment was made. ***(Ord. No. 2671; 04/02/02)***

2. All cases to be heard by the Board shall always be heard by a minimum number of seven (7) members. ***(Ord. No. 2671; 04/02/02)***

SECTION B. OPERATIONAL PROCEDURES.

1. The Board may adopt rules to govern its proceedings provided, however, that such rules are not inconsistent with this ordinance or state law. Meetings of the Board may be held at the call of the chairman or at such other times as the Board may determine and in accordance with the Open Meeting Law. The chairman or, in his or her absence, the acting chairman may administer oaths and compel the attendance of witnesses.

2. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep a record of its examination and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

3. Appeals to the Board can be taken by any person aggrieved, or by an officer, department, or board of the municipality affected by any decision of the City Manager or Designee relative to the enforcement of this ordinance. Such appeal shall be taken within fifteen (15) days' time after the decision has been rendered by the City Manager or Designee, by filing with the City Manager or Designee and with the Board, a notice of appeal specifying the grounds thereof, and upon payment of a fee in an amount determined by the City Council. The City Manager or Designee shall forthwith transmit to the Board all the papers constituting the records upon which the action appealed from was taken.

4. An appeal shall stay all proceedings in furtherance of the action appealed from unless the City Manager or Designee certifies to the Board, after the notice of appeal shall have been filed, that in his or her opinion such stay will cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or a court of record on application or notice to the City Manager or Designee and on due cause shown. Criminal action commenced in the Municipal Court of the city shall not be stayed.

5. No appeal to the Board for the same or a related action on the same piece of property shall be allowed prior to the expiration of six (6) months from a previous ruling by the Board on any appeal to such body unless other property in the immediate vicinity has within the said six (6) month period been changed or acted on by the Board or City Council so as to alter the facts and conditions upon which the previous Board action was based, as determined by the Board. Such change of circumstances shall permit the rehearing of an appeal by the Board prior to the expiration of a six (6) month period, but such conditions shall not have any force in law to compel the Board, after a hearing, to grant a subsequent appeal; such subsequent appeal shall be considered entirely on its merits and the peculiar and specific conditions related to the property on which the appeal is brought.

6. At a public hearing relative to an appeal, any interested party may appear before the Board in person or by agent or by attorney. The burden of proof shall be on the applicant to establish the necessary facts to warrant favorable action of the Board on any matter. Any action granting a variance authorizing the issuance of a building permit or Certificate of Occupancy shall be valid only for a period of ninety (90) days from such action, unless said building permit or Certificate of Occupancy is secured in the ninety (90) day period, in which event the action shall be permanent. The Board shall have the authority to grant a longer period. If said building permit or certificate of occupancy is not secured within the ninety (90) day period, or within any extended period granted by the Board, the action of the Board shall become void without prejudice to a subsequent appeal, and such appeal shall be subject to the same regulations and requirements for hearing as herein specified for the original appeal.

SECTION C. ACTION OF THE BOARD OF ADJUSTMENT.

1. In exercising its powers, the Board may, in conformity with the provisions of the statutes of the state of Texas as existing or hereafter amended, reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination appealed from and make order, requirement, decision or determination in the Board's opinion, as ought to be made and shall have all the powers of the City Manager or Designee. The Board shall have the power to impose reasonable conditions to ensure compliance and protect adjacent property.

2. The concurring vote of seven (7) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on any matter upon which the Board is required to act under this ordinance or to cause any variance in said ordinance. ***(Ord. No. 2671, 04/02/02)***

3. Any person or persons, jointly or severally, aggrieved by any decision of the Board, or any taxpayer or any officer, department or board of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten (10) days after the decision of the Board and not thereafter.

SECTION D. NOTICE OF HEARING BEFORE BOARD OF ADJUSTMENT REQUIRED.

The Board shall hold a public hearing on all applications and appeals made thereto. Written notice of such public hearing shall be sent to the applicant and all other persons who are owners of real property lying within two hundred (200) feet of the property on which the application or appeal is made. Such notice shall be given not less than ten (10) days before the date set for the hearing to all owners of real property as the ownership appears on the last approved city tax roll. Such notice may be served by depositing the same, properly addressed and postage paid, in the United States Post Office. Notice shall also be given by publishing the same at least one (1) time in a newspaper of general circulation in the city of Carrollton at least ten (10) days prior to the date of such hearing, which notice shall state the time and place of such hearing.

SECTION E. JURISDICTION OF BOARD OF ADJUSTMENT.

When in its judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially injured, the Board may, in specific cases, after public notice and public hearing, and subject to appropriate conditions and safeguards, act upon certain items, as identified hereinbelow.

1. APPEALS:

   a. To hear and decide appeals where it is alleged there is error on any order, requirement, decision or determination made by the City Manager or Designee in the enforcement of this ordinance, and;

   b. To hear and decide appeals of the City Manager or Designee's interpretation as to the nature or type of use, for the purpose of determining the classification and applicability of the parking standards, appropriate district for the location of such use, or any other regulations of this ordinance as may be applied to such use, and;

   c. To hear and decide appeals from the decision of the City Manager or Designee in the enforcement of, and in accordance with, Article XXX, Section G, of this ordinance.
   (Ord. No. 1844, 11/03/92)

2. NONCONFORMING USES AND STRUCTURES:

   a. To initiate on its motion or on cause presented by interested property owners' action to bring about the discontinuance of a nonconforming use or structure, and;

   b. To require the discontinuance of a nonconforming use or structure under any plan whereby the full value of the use or structure can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance, and;

c. To authorize the expansion or enlargement of a nonconforming use, or the expansion, enlargement or structural alternation to a structure containing a nonconforming use, when such an expansion, enlargement or alteration would not tend to prolong the life of the nonconforming use. Upon review of the facts, the Board may establish a specific period of time for the occupancy to revert to a conforming use, and;

d. To authorize the reconstruction and occupancy of a nonconforming structure, or a structure containing a nonconforming use, where such structure has been damaged by fire or other causes to the extent of more than fifty (50) percent, but less than the total, of the replacement cost of the structure on the date of the damage. Such action by the Board of Adjustment shall have due regard for the property rights of the person or persons affected, and shall be considered in regard to the public welfare, character of the area surrounding such structure, and the conservation, preservation and protection of property, and;

e. To authorize the enlargement, expansion or repair of a nonconforming structure in excess of fifty (50) percent of its current value. In such instance, current value shall be established at the time of application for a hearing before the Board.

   If such expansion or enlargement is approved by the Board, all provisions of the district in which such structure is located shall apply to the new construction on the lot or parcel.

f. To authorize a change of use from one nonconforming use to another nonconforming use, provided that such change is to a use of a more restricted classification. In the event that a nonconforming use is changed to a nonconforming use of a more restricted classification, the building or structure containing such nonconforming use shall not later be reverted to the former lower or less restricted classification. The Board may establish a specific period of time for the conversion of the occupancy to a conforming use.

   1. Any change of a nonconforming use consistent with this Section shall be in accordance with the provisions of Article XXII of this ordinance.

g. To authorize the occupancy of an abandoned nonconforming structure. Such action by the Board shall have due regard for the property rights of the person or persons affected, and shall be considered in regard to the public welfare and safety, character of the area surrounding such structure, and the conservation, preservation and protection of property.

3. SPECIAL EXCEPTIONS AND VARIANCES:

a. EXCEPTIONS AND VARIANCES DISTINGUISHED:

1. A special exception is a permission given by the Board properly authorized by this ordinance in specific cases for an applicant to use his or her property in a manner contrary to the literal provisions of this ordinance provided such use subserves the general welfare and preserves the community interest.

2. A variance is an authorization by the Board granting relief and doing substantial justice in the use of the applicant's property by a property owner where, owing to special and unique conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship.

b. SPECIAL EXCEPTIONS:

1. A special exception may be granted an applicant when the Board finds:

A. That the granting of such exception will not be injurious or otherwise detrimental to the public health, safety, morals and general welfare of the public, and;

B. That the granting of such exception will not be detrimental or injurious to the property or improvements in such zone or neighborhood in which the property is located, and;

C. That the granting of such exception will be in harmony with the general purpose and intent of this ordinance, and will subserve the general welfare and preserve the community interest.

2. In determining its finding, the Board shall take into account the character and use of adjoining buildings and those in the vicinity, the number of persons residing or working in such building or upon such land, traffic conditions in the vicinity, and the conformance of such area to the Official Zoning Map and Comprehensive Plan.

In granting any special exception under the provisions of this ordinance, the Board may designate such conditions in connection therewith which, in its opinion, will secure substantially the purpose and intent of this ordinance.

3. The Board may, after public hearing and subject to the conditions and safeguards herein contained, authorize special exceptions to this ordinance, limited to the following:

A. The Board may authorize the extension of a height or area regulation into an adjoining district for a distance of not more than twenty-five (25) feet, where the boundary line of the district divides a lot in single ownership as of the effective date of this ordinance.

B. The Board may authorize the construction of a single-family detached residential structure, and exempt such structure from the minimum required exterior brick or stone content of the district in which such structure is to be located, provided that all of the following can be demonstrated:

1. That more than fifty (50) percent of the total existing single-family detached residential structures located on both sides of the street upon which such structure is to be located, measured from the block's intersecting streets, are not in compliance with the exterior brick or stone requirements of the applicable district, and;

2. That more than fifty (50) percent of the lots on both sides of the street upon which such structure is to be located, measured from the block's intersecting streets, are developed.

C. Where a lot is deemed to have a unique physical hardship regarding the location of a satellite television reception dish ordinance, an alternate location may be authorized by the Board to provide a direct line of sight between such antenna and the orbiting satellites. Alternate installations may include pole-mounted, but not roof-mounted, antennas. The maximum diameter of a satellite television reception dish, as required by this ordinance, shall not be increased.

At its discretion the Board may grant permission for alternate installations that would comply with the intent of this ordinance, while taking into account and providing for safeguards regarding the characteristics of the neighboring properties

The following are provided as examples of exceptional cases, and should not be considered an exclusive list.

1. The required area for installation of such antenna has physical interference from structures or foliage located on the same lot or adjacent thereto, such that a direct line of sight between the antenna and the orbiting satellites is prevented, or;

2. The lot or parcel has insufficient area within the side or rear yard, or the location of existing permanent structures, such as a swimming pool, leaves insufficient space for the installation of the antenna within the area required by this ordinance, or;

3. The lot or parcel has its south and/or southwesterly portion(s) located in front of the main building, and foliage or the main building itself would otherwise block reception by the antenna if such antenna were located within the required rear or side yard installation area.

D. The Board may authorize a cumulative height, of the support structure and antenna

for an amateur radio station, of greater than sixty (60) feet above the grade at the base of the support structure, where physical constraints are such that effective and reliable radio communications are hindered. The Board may approve such additional height where it finds any one of the following to be applicable:

1. Topographic characteristics of the lot upon which such support structure and antenna are to be located are such that effective and reliable radio communications cannot be conducted if the cumulative height of the support structure and antenna is sixty (60) feet or less above the grade at the base of the support structure. A mean lot elevation of less than 570 feet above mean sea level may be considered as a guideline to determine if a topographic hindrance to effective and reliable radio communications exists; or

2. The proximity of the support structure and antenna to, or height, arrangement or composition of, other permanent structures or apparatus, regardless of whether such structures or apparatus are located on the same lot as the support structure and antenna, are such that effective and reliable radio communications cannot be conducted if the cumulative height of the support structure and antenna is sixty (60) feet or less above the grade at the base of the support structure; or

3. The proximity of the support structure and antenna to any electrical distribution line is such that effective and reliable radio communications cannot be conducted if the cumulative height of the support structure and antenna is sixty (60) feet or less above the grade at the base of the support structure.

E. The Board may authorize a cumulative height, of the support structure and antenna for an amateur radio station, of greater than sixty (60) feet above the grade at the base of the support structure, where a lot is deemed to possess attributes such that radio communications is optimized, and that impacts on surrounding property are negligible. The Board may approve such additional height where it finds all of the following applicable:

1. The support structure and antenna are to be located on a lot of not less than 20,000 square feet in area; and

2. There are no residential dwellings on another lot within one hundred-fifty (150) feet of the location of the support structure and antenna on the date of the application to the Board for authorization of a special exception.

F. The Board may authorize a support structure for an antenna behind the main building of a lot at a location which is not in accordance with the provisions of Section D(2)(c) of Article XXVIII of the zoning ordinance. The Board may approve such location where it finds any one of the following to be applicable:

1. The location of any permanent structure or apparatus on the lot upon which the support structure and antenna are to be located is such that placement of the support structure and antenna at a location which is in accordance with the provisions of Section D(2)(c) of Article XXVIII of the zoning ordinance is precluded; or

2. The location of the support structure and antenna at a point which is in accordance with the provisions of Section D(2)(c) of Article XXVIII of the zoning ordinance would preclude the location of guy wires and anchors in a manner that would safely secure such support structure. Such determination shall be made relative to the safety specifications of the manufacturer of such support structure, or as certified by a structural engineer registered in the state of Texas that the location of such support structure in accordance with the provisions of Section D(2)(c) of Article XXVIII of the zoning ordinance would pose a hazard to property or occupants of the lot upon which such support structure and antenna are to be located and/or to adjacent property or occupants; or

3. The support structure and antenna are located on a lot of not less than 20,000 square feet in area, and that there are no residential dwellings on another lot within one hundred-fifty (150) feet of the support structure and antenna on the date of the application to the Board for authorization of a special exception.

G. A request for a special exception relative to subsections (D), (E) or (F) above may not be denied by the Board on the basis of the potential for interference between two radio transmitting stations or between a radio transmitting station and home entertainment equipment or systems. The Federal Communications Commission has sole regulatory authority governing minimum performance standards relative to the interference of home electronic equipment and systems from radio frequency energy.

H. Where a special exception is granted by the Board pursuant to subsection (D), (E) or (F) above, such action shall not nullify, abrogate, modify or otherwise change in any way any safety regulations applicable to such installation, as such safety regulations are established in Article XXVIII of this ordinance.

I. The Board may authorize overhead electrical service, in the (FWY) Freeway District only, to any structure lawfully existing on or before July 18, 1988, which is not currently connected to an electrical utility or service, provided, however, there has been no physical removal of such utility line subsequent to July 18, 1988. ***(Ord. No. 1582, 10/03/89)***

J. The Board may authorize the construction of a single-family detached residential structure, and exempt such structure from the minimum living area of the district in which such structure is to be located, provided that the following can be demonstrated:

1. That more than fifty (50) percent of the total existing single-family detached residential structures located on both sides of the street upon which a new building is to be placed, measured from the block's intersecting streets, are not in compliance with the minimum living area requirements of said zoning district, and

2. That more than fifty (50) percent of the lots on both sides of the street upon which a new dwelling is to be placed, measured from the block's intersecting streets, are developed. ***(Ord. No. 2489, 01/18/00)***

K. The Board may authorize the placement of solar panels on roofs of homes that are adjacent to arterial thoroughfares, as designated by the adopted Transportation Plan and which are not in accordance with the provisions of Article VII. Section K.8.4.A. The Board may approve such location where is finds the following to be applicable. *(Ord. No. 3576, 09/17/13)*

1. Panels/modules may be located on an alternate area of the roof if the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten percent (10%) above the energy production of the device in the most efficient non-alternate location. Complete modeling data and results shall be submitted with the application for the building permit.

c. VARIANCES:

1. The Board may grant a variance only of the front yard, side yard, rear yard, lot width, lot depth, lot coverage, minimum setback standards, or landscaping requirements where the literal enforcement of the provisions of this ordinance would result in the unnecessary hardship, and where such variance is necessary to permit the use or development of a specific parcel of land which differs from other parcels of land in the same district by being of such restricted area, shape, or slope that it cannot be developed in a manner consistent with the development permitted upon other parcels of land in the same district.

   The Board may grant a variance in the height of any structure within an approach zone, airport area, turning zone, or transition zone of the Addison Airport, as such areas are depicted on the Revised Carrollton Airport Zoning Map, dated April, 1979.

   A variance may be granted to an applicant when the Board finds:

   A. That there are special circumstances or conditions applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or building and do not apply generally to land or buildings in the same zoning district or neighborhood, and that said circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of such land or building; and

   B. That the granting of such variance will not be detrimental to the public welfare or injurious to the property or improvements in such zone or neighborhood in which the property is located; and

   C. That the granting of the variance is necessary for the reasonable use of the land or building and that the variance is granted by the Board is the minimum variance that will accomplish this purpose; and

   D. That the literal enforcement and strict application of the provisions of this ordinance will result in an unnecessary hardship inconsistent with the general provisions and intent of this ordinance and that, in granting such variance, the spirit of the ordinance will be preserved and substantial justice done; and

   E. In addition to considering the character and use of adjoining buildings and those in the vicinity, the Board, in determining its findings, shall take into account the number of persons residing or working in such buildings or upon such land and traffic conditions in the vicinity.

2. The Board may, after public notice and hearing and subject to the conditions and safeguards herein contained, vary or adapt the strict application of any of the terms of this ordinance under the power and authority herein granted.

3. In granting any variance under the provisions of this Article, the Board may designate such conditions in connection therewith which will, in its opinion, secure substantially the purpose and intent of this ordinance.

4. A variation from the standards established by this ordinance shall not be granted to relieve a self-created or personal hardship, nor for financial reason only, nor shall such modification be granted to permit any person a privilege in developing a parcel of land not permitted by this ordinance to other parcels of land in the district.
(Ord. No. 1844, 11/03/92)

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