

ORDINANCE NO. 4789
Zoning Text Amendment No. 2020 - 03

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE MESQUITE ZONING ORDINANCE, AS PREVIOUSLY AMENDED, BY REPEALING AND REENACTING SECTION 5-200 TO BE TITLED “SPECIAL EXCEPTIONS, VARIANCES, AND APPEALS OF ADMINISTRATIVE DECISIONS”; AMENDING APPENDIX D – THE COMPREHENSIVE FEE SCHEDULE OF THE MESQUITE CITY CODE BY REPEALING AND REENACTING ARTICLE XII, SECTION 12-116, TITLED “BOARD OF ADJUSTMENT FEES”; PROVIDING A REPEALING CLAUSE; PROVIDING A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE IN AN AMOUNT NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000); PROVIDING FOR PUBLICATION; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Texas enacted H.B. 2497, codified in Title 7 of the Local Government Code, Subtitle A., Chapter 211 – Municipal Zoning Authority, Subchapter A – General Zoning Regulations, amending Sections 211.008 and 211.010; and

WHEREAS, the City Council previously adopted amendments to the Mesquite Zoning Ordinance, on **November 4, 2019**, in Ordinance No. 4738 (Zoning Text Amendment No. 2019-05) that address the newly revised State law (regarding the requirement for any updated Board of Adjustment Rules to be approved by the City Council) codified in Texas Local Government Code, Chapter 211, Section 211.008; and

WHEREAS, this ordinance makes the necessary revisions to Section 5-200 of the Mesquite Zoning Ordinance to align with the changes to State law (regarding appeals of administrative decisions) codified in Texas Local Government Code, Chapter 211, Section 211.010; and

WHEREAS, this ordinance also reorganizes and updates Section 5-200 of the Mesquite Zoning Ordinance to provide improved clarity to processes and procedures associated with special exceptions, variances, and appeals of administrative decisions; and

WHEREAS, in addition, this ordinance reorganizes Section 12-116 titled “Board of Adjustment Fees” of Article XII of Appendix D – the *Comprehensive Fee Schedule* of the Mesquite City Code, so as to add two new fees and to track with the newly revised Section 5-200; and

WHEREAS, on **May 26, 2020**, the City of Mesquite Planning and Zoning Commission considered the text amendments to the Mesquite Zoning Ordinance and after having given proper public notice and holding a public hearing, the Planning and Zoning Commission recommends the City Council adopt the text amendments to the Mesquite Zoning Ordinance; and

WHEREAS, the City Council gave public notice and held a public hearing regarding the proposed Mesquite Zoning Ordinance text amendments; and

WHEREAS, the City Council finds that it is in the best interests of the citizens of the City to amend the Mesquite Zoning Ordinance as herein provided.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. Recitals Incorporated. The City Council hereby finds and determines the recitals made in the preamble of this ordinance are true and correct, and hereby incorporates such recitals here in the body of this ordinance as if copied in their entirety.

SECTION 2. ZONING ORDINANCE TEXT AMENDMENT: Repealing and Reenacting Section 5-200 of the Mesquite Zoning Ordinance. Part 5 of the Mesquite Zoning Ordinance, as amended, is hereby amended by repealing and reenacting existing Section 5-200 currently titled “Appeal, Variance, Special Exception Procedures” to be retitled “Special Exceptions, Variances and Appeals of Administrative Decisions” and to now read as identified in **EXHIBIT A** attached hereto and made a part hereof, and in all other respects said Zoning Ordinance and Part shall remain in full force and effect.

SECTION 3. MESQUITE CITY CODE, APPENDIX D – THE COMPREHENSIVE FEE SCHEDULE AMENDMENT: Repealing and Reenacting Article XII, Section 12-116, “Board of Adjustment fees.” Article XII of Appendix D – the Comprehensive Fee Schedule of the Mesquite City Code, as amended, is hereby amended by repealing and reenacting existing Section 12-116 titled “Board of Adjustment Fees” to reorganize the fees listed in the section and by adding a fee for a written request for reconsideration; to read as identified in **EXHIBIT B** attached hereto and made a part hereof, and in all other respects, said Code, Appendix and Sections to remain in full force and effect.

SECTION 4. Repealing Clause. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 5. Conflicts Resolution Clause. In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Mesquite and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling.

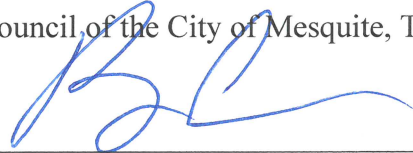
SECTION 6. Severability Clause. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, the Mesquite City Code, as hereby or previously amended, or the Mesquite Zoning Ordinance, as hereby or previously amended, which shall remain in full force and effect.

SECTION 7. Penalty Clause. Generally. Nothing in this ordinance prohibits the City from pursuing civil and criminal enforcement remedies and penalties concurrently or availing itself of any other remedy allowed by law. **Criminal.** Any violation of the provisions or terms of this ordinance by any “person,” (as defined in Mesquite City Code, Chapter 1, [Section 1-2](#)) shall be deemed a Class C Misdemeanor criminal offense, and upon conviction thereof, shall be subject to a penalty of fine not to exceed TWO THOUSAND DOLLARS (\$2,000.00) for each offense, as provided in Mesquite City Code, Chapter 1, [Section 1-6](#), as amended. **Civil.** The City may also file a civil action for enforcement of this ordinance. **Maximum penalties.** If the maximum penalties provided for by this ordinance for an offense or civil action is greater than the maximum penalty provided for the same offense or civil action under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense or civil action shall be the maximum penalty provided by the laws of the State of Texas.

SECTION 8. Publication. This ordinance shall be published in the City’s official newspaper in accordance with Mesquite City Charter, Article IV, [Section 24](#).

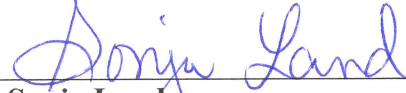
SECTION 9. Effective Date. This ordinance after its passage and publication shall take effect on, and be in force from and after, five (5) days after publication thereof, in accordance with Mesquite City Charter, Article IV, [Section 24](#), and it is accordingly so ordained.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on this the **15th day of JUNE 2020**.



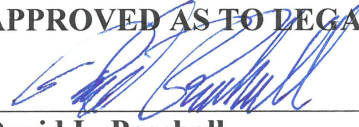
Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

Mesquite Zoning Ordinance

* * *

5-200 – SPECIAL EXCEPTIONS, VARIANCES, AND APPEALS OF ADMINISTRATIVE DECISIONS.

- 5-201 – In General
- 5-202 – Application Procedures
- 5-203 – Notice
- 5-204 – Public Hearing
- 5-205 – Reasonable Accommodations for Persons with Disabilities
- 5-206 – Special Exception
- 5-207 – Variance
- 5-208 – Rules for Motions, Decisions, Request for Reconsiderations, and Appeals to Court
- 5-209 – Expiration
- 5-210 – Appeals of Administrative Decisions to Board of Adjustment

5-200 – SPECIAL EXCEPTIONS, VARIANCES AND APPEALS OF ADMINISTRATIVE DECISIONS.

5-201 – In General.

A. Board of Adjustment.

1. *Board.*

The composition and appointment of the Board of Adjustment shall be in compliance with this Zoning Ordinance.

Cross reference – Sec. 5-402 General Regulations of Boards and Commissions.

Cross reference – Sec. 5-408 Board of Adjustment.

2. *Authority.*

The Board of Adjustment is authorized to hear and decide, including but not limited to, applications for special exceptions, variances, and appeals of administrative determinations or decisions.

Cross reference – Sec. 5-408 Board of Adjustment; (G) Duties and Powers.

Cross reference – Sec. 5-206 Special Exception.

Cross reference – Sec. 5-207 Variance.

Cross reference – Sec. 5-210 Appeals of Administrative Decisions to Board of Adjustment.

B. Definitions.

1. The rules of [Section 6-101](#), regarding interpretation, construction and interchangeability of terms, shall be observed, except when the context requires otherwise.
2. Definitions – The following words, terms and phrases, when used in Section(s) 5-200 have the meanings ascribed to them in this sub-section, except where the context clearly indicates a different meaning.

Board. Board means the Board of Adjustment of the City of Mesquite, Texas.

Board's office. Board's office means the Planning & Development Services Department.

Department. Department means Planning & Development Services.

Director. Director means Director of Planning & Development Services, or his or her authorized designee(s).

5-202 – Application Procedures.

This section applies to applications for special exceptions, special exceptions for reasonable accommodations, and variances.

A. Pre-Application Conference.

1. *Pre-application conference optional.* Prior to the submission of any application for a special exception or variance, applicants are encouraged to schedule and attend an optional pre-application conference with the Department City Staff.
2. *Purpose of pre-application conference.* Pre-application conferences with Department City Staff may be used to discuss, in general, procedures, standards, or regulations relating to the special exception or variance request.

3. *Pre-application conference request.* If a pre-preapplication conference is requested, the Department City Staff may require the applicant to submit information in the form of a *Pre-Application Conference Request Form* prior to the pre-application conference to allow Department City Staff time to review the proposal.
4. *A pre-application conference request form is not an application.* Any *Pre-Application Conference Request Form* materials submitted or discussed as a part of a pre-application conference shall not be considered a special exception or variance application but will be considered an informal request for information prior to the actual application submittal by an applicant.
5. *Scheduling the pre-application conference.* After receipt of a *Pre-Application Conference Request Form*, the Department City staff will schedule the pre-application conference and inform the applicant in writing of the conference date, time and location.
6. *Record of pre-application conference.* The City is not responsible for making or keeping a summary of the topics discussed at the pre-application conference.

B. Application contents.

1. *Application form(s).* All applications for special exceptions and variances ("application(s)") must be on forms provided by the Director. The Director is authorized to request all information necessary to evaluate the request in the application.
2. *Application contents.* A submitted application must include all information, plans, and data as specified in the application requirements.
3. *Map/drawing.* When requested, the applicant shall include with the application a map, site plan, plot plan, or other drawing, drawn to scale and/or dimensioned, which indicates the property in question and shows all structures and improvements and their relationship to each other, to the property boundaries and to the proposed action. Any required plans must be at a scale sufficient to permit a clear and precise understanding of the proposal, unless specifically required to be at a set scale.
4. *Submittal waivers.* If any application submittal requirement is not applicable or is inappropriate to determine the nature of the special exception or variance, a submittal waiver may be requested with justification for such a waiver. The Director may waive the submittal requirements, except for fees, where the Director finds it is clearly justifiable to make such a waiver. Any person aggrieved by the Director's determination may appeal in accordance with Section 5-210 (Appeals of Administrative Decisions to Board of Adjustment).

C. Fees.

1. *Fee required.* Unless otherwise herein authorized, each application must be accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule.

Cross reference – The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, Sec. 12-116.

2. *No fees required for City-initiated applications.* There are no fee requirements if an application is submitted by any officer, department, board, or commission of the City.
3. *Fee is required for a determination of a complete application.* An application shall not be considered complete unless it is accompanied by the required fee.

4. *Refunds.* If an application is withdrawn, no fee, or portion thereof, shall be refundable after notices regarding the application have been issued or processed for issuance; however, a refund shall be issued when the applicant requests to withdraw the application due to a City staff error or other error not the fault of the applicant.

D. Submitting the Application.

1. *Submission.* Submission, and completeness review, are both required prior to the City's acceptance and the official filing of an application for a special exception or variance. All applications must be submitted, in such quantity as required by the application instructions, with the Department, unless otherwise specified.
2. *Date of submission.* All applications for special exceptions or variances shall be considered submitted when entered on the City's online application portal before 3 p.m. on a business day during normal office hours. Applications entered on or after 3 p.m. on a business day or on Saturday, Sunday, or holidays shall not be considered submitted until the next business day following the date the information was entered.

Cross reference – City's on-line application portal - [City of Mesquite Citizen Self Service](#).

E. Completeness Review of Application.

1. *Completeness review required.* Submission, and completeness review, are both required prior to the City's acceptance and the official filing of an application for a special exception or variance.
2. *Requirements of a complete application.* A complete application includes, but may not be limited to:
 - a. Required forms.
 - b. All information, plans, and data as specified in the application requirements.
 - c. The appropriate fee(s).
3. *Incomplete applications.* If the application does not include all the submittal requirements for the application, the Director will reject the application and provide the applicant with the reasons for the rejection. The Director will take no further steps to process the application until all deficiencies are remedied.
4. *Completeness determination.* The Director shall make his or her final determination regarding a complete or incomplete application in writing.

F. Acceptance and Official Filing of the Application.

1. *A submitted and complete application shall be accepted and officially filed.* If it is determined that a submitted application is complete, the Director shall accept the application and date stamp the application noting the date of the acceptance and official filing of the application.
2. *City shall notify applicant of the acceptance and official filing date.* Upon acceptance and official filing of an application, the Director shall provide to the applicant notice of City's acceptance and official filing date of the application.

G. Substantive Changes Made After Application is Determined Complete.

After an application is determined complete, any substantive change made by the applicant to the application requires resubmittal of the entire application and a new completeness review. However, such revisions do not require an additional payment of fees, unless notices have been issued or processed for issuance. In addition, if the substantive changes made to the application were made after notices have been issued or processed for issuance and are due to a City staff error or other error not the fault of the applicant, additional payment of fees are not required. Once the application is under consideration by the appropriate body, additional information or revisions requested during review do not constitute a substantive change to the application.

H. Withdrawal of Application.

An applicant has the right to withdraw an application at any time prior to the final decision, including the ability to withdraw the application if it has been tabled or postponed by the Board. The applicant must submit a request for withdrawal in writing. Fees shall only be refunded in accordance with this section. The Director's receipt of a written withdrawal request shall officially terminate the application.

Cross reference – Fees, Section 5-202. – Application Procedures, (C).

I. Consideration of Subsequent Applications.

1. *Prohibited for one year.*

Within one (1) year of the date of denial of a special exception or variance by the Board of Adjustment, a subsequent application for substantially the same request will not be reviewed or heard unless an exception exists.

2. *New application is permissible after the one (1) year wait requirement.*

An application submitted after the required one (1) year wait requirement shall be processed as a new application; however, the new application shall denote the history of any prior requests and/or prior denials associated with the property.

3. *Exceptions to the one (1) year wait requirement.*

A subsequent application for a denied request may be reviewed or heard, prior to the expiration of the one (1) year wait requirement, if extenuating circumstances exist such that changed conditions or facts will substantially alter the criteria for review of the application.

4. *Submitting the subsequent application prior to the expiration of the one (1) year wait requirement.*

- a. Any subsequent application submitted prior to the expiration of the one (1) year wait requirement shall be processed in the same manner as all other original applications, including, the requirement to pay all applicable fees associated with an application.

Cross reference – Section 5-202. – Application Procedures.

- b. Any subsequent application submitted prior to the expiration of the one (1) year wait requirement shall include a detailed statement of the grounds justifying its reconsideration.

5. *Completeness review of a subsequent application.*

Submission, and completeness review, are both required prior to the City's acceptance and the official filing of any subsequent application prior to the expiration of the one (1) year wait requirement.

Cross reference – Completeness Review of Application, Section 5-202. - Application Procedures., (E).

6. *Acceptance and official filing of the subsequent application.*

If it is determined that a submitted subsequent application is complete, the Director shall accept the application and date stamp the application noting the date of the acceptance and official filing of the application. Upon acceptance and official filing of any subsequent application, the Director shall provide to the applicant notice of City's acceptance and official filing date of the application.

Cross reference – Acceptance and Official Filing of the Application, Section 5-202. - Application Procedures., (F).

7. *Decision regarding resubmittal of a subsequent application for consideration.*

- a. The Director shall make a determination as to whether the subsequent application is appropriate for resubmittal to the Board prior to the expiration of the one (1) year wait requirement.
- b. If the Director finds that there are no new grounds for consideration of the subsequent application prior to the expiration of the one (1) year wait requirement, he/she will summarily, and without hearing, deny the request for consideration of the subsequent application.

8. *Appeal of Director's decision.*

Any person aggrieved by the Director's decision to either deny or approve a subsequent application to be considered by the Board prior to the expiration of the one (1) year wait requirement may appeal in accordance with Section 5-210 (Appeals of Administrative Decisions to Board of Adjustment).

5-203 – Notice.

A. Required Notice.

1. *Public notice pursuant to the Open Meetings Act.*

All public hearings, pursuant to any matter in Section(s) 5-200, shall be held at public meetings of the Board of Adjustment. The public notice for meetings shall comply with the Texas Open Meetings Act.

Cross reference – Sec. 5-402 – General Regulations of Boards and Commissions.

State Law reference – V.T.C.A., Government Code, Open Meetings Act, Notice of Meeting, § 551.041.

State Law reference – V.T.C.A., Government Code, Open Meetings Act, Time and Accessibility of Notice, § 551.043.

2. *Other Notice.*

The following table summarizes the City's required notice for matters in Section(s) 5-200.

Table 5-203.01				
APPLICATION	NOTICE TYPE			TIMING
	Mailed	Published	Posted on Property	(in days before the hearing date, or decision date if no hearing is required)
Special Exception	•			11 days
Variance	•			11 days
Request for Reconsideration	•			11 days
Appeals of Administrative Decisions	•			11 days

B. Mailed Notice.

1. *Purpose of mailing notice.* The mailing of the notice of a public hearing informs potentially interested parties within the proximity of the property of the date, time and place of such public hearing and the substance of the public hearing agenda items that may be considered or reviewed.
2. *Requirement and deadline for mailing notice.* The Director shall give notice of a public hearing by mailing notice not later than the eleventh (11th) day before the date of the public hearing, unless otherwise provided. The date of the public hearing shall be considered Day Zero (0).
3. *Exceptions to the requirement for mailed notice.*
 - a. *Postponed public hearing.* In the event a public hearing is postponed (prior to opening the hearing), no new mailed notice is required to conduct the hearing at a later date, provided the hearing is postponed to a date specific and a public announcement of the future date, time, and place of the postponed hearing is made during the current meeting and recorded in the minutes.

- b. *Continued public hearing.* In the event a public hearing is opened and continued to a date specific, no new mailed notice is required to continue and conduct the hearing at a later date, provided the hearing is continued to a date specific and a public announcement of the future date, time, and place of the continued hearing is made during the current hearing and recorded in the minutes.
- 4. *Method of mailing and parties.* A mailed notice of public hearing is properly served by its deposit, properly addressed with postage paid, in the U.S. mail to the:
 - a. applicant;
 - b. owners of record of real property, as indicated by the most recently approved municipal tax roll, located within 200-feet of the subject property; and
 - c. parties to an appeal.
- 5. *Content of notice.* A mailed notice of public hearing shall provide at least the following specific information:
 - a. generally describe the subject matter of the public hearing;
 - b. identify the applicant and the location of the subject property;
 - c. identify the body holding the public hearing and the date, time, and place of the public hearing;
 - d. if the decision of the body holding the public hearing may be appealed, describe the procedure and requirements for an appeal; and
 - e. include the address, website, and telephone number of the office from which additional information may be obtained.
- 6. *Sufficiency of notice.* Minor typographical and grammatical errors contained in the notice shall not invalidate the notice; however, the notice shall contain the correct date, time and location of the public hearing, and a reasonable person should be able to determine the location of the property and subject matter of the application or item being taken up by the Board.

Sec. 5-204 – Public Hearing.

Public hearings for special exceptions, variances or appeals of administrative determinations or decisions to the Board of Adjustment shall be conducted in accordance with this Zoning Ordinance, State law, and any other applicable Board rules and regulations.

A. Pre-Hearing Examination.

Once required notice is given, any person may examine the application and material submitted in support of or in opposition to the application during normal business hours, subject to the exceptions set forth in the Texas Public Information Act. Upon reasonable request, any person is entitled to copies of the application and related documents. A fee may be charged for such copies in accordance with the schedule of charges for producing records pursuant to the Public Information Act.

State law reference – Public Information Act, V.T.C.A. Government Code, [§ 552.001](#).

Cross reference – Schedule of charges for producing records, Mesquite City Code, [Sec. 1-15](#).

B. Conduct of Public Hearing.

1. *Appearances at a public hearing.* A party may appear at the public hearing in person, by agent, or attorney.
2. *Speakers.* A person shall be called to speak at a public hearing in the manner provided by the chairperson (“Chair”) and/or at the time provided in the Agenda. A speaker shall state the speaker's name and address at the beginning of the speaker's presentation when addressing the Board.
3. *Preliminary issues prior to opening a public hearing.* Before opening a hearing, the Board shall decide preliminary issues raised by the parties or City staff, including, but not limited to, requests to postpone the public hearing. In the case of an appeal of an administrative decision, the Board shall decide whether the appellant has standing (which include issues of timeliness, jurisdiction, or ripeness) to appeal.
4. *Process of public hearing.* A public hearing on an individual application, or on a grouping of applications, shall generally proceed as follows:
 - a. Presentation of a report by City staff.
 - b. Opportunity for comments and/or presentation by the applicant (or appellant when applicable).
 - c. The Chair will open the public hearing.
 - d. Opportunity for comments by persons supporting the application (or appeal when applicable).
 - e. Opportunity for comments by persons opposing the application (or appeal when applicable).
 - f. Opportunity for rebuttal by the applicant (or appellant when applicable).
 - g. The Chair may close the public hearing.
5. *Questions.* A member of the Board may ask questions of any person at any time during the hearing. With the approval of the Chair, a person addressing the Board may ask a question of another person in attendance.
6. *Time limits.* The Chair conducting a public hearing may limit speakers' time to address the body.

7. *Postpone holding a public hearing.* The Board may postpone holding a public hearing prior to the opening of the public hearing. No new mailed notice is required to conduct the hearing at a later date, provided the hearing is postponed to a date specific and a public announcement of the future date, time, and place of the postponed hearing is made during the current meeting and recorded in the minutes.
8. *Continuing an opened public hearing.* The Board may continue an opened public hearing to a later date. No new mailed notice is required to continue and conduct the hearing at a later date, provided the hearing is continued to a date specific and a public announcement of the future date, time, and place of the continued hearing is made during the current hearing and recorded in the minutes.
9. *Closing and re-opening a public hearing.* If a public hearing is opened and later in the same meeting closed and adjourned, rather than “continued” to a later date, in order to re-open the public hearing on another day, all mailed notice must be given that would have been required for the initial public hearing.

5-205 – Reasonable Accommodations for Persons with Disabilities.

A. In General.

This section allows a person to seek relief from the enforcement of any regulation contained in this Zoning Ordinance that would result in illegal discrimination against persons with disabilities.

B. Purpose.

Special exceptions may be granted for reasonable accommodations when needed to provide disabled individuals an equal opportunity to use and enjoy a dwelling.

Federal law reference – Federal Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619.

C. Authority.

Under State law, the Board of Adjustment may hear and decide special exceptions to the terms of this zoning ordinance when the special exceptions are expressly provided for by ordinance. Under federal law, special exceptions for a reasonable accommodation are required to provide disabled or handicap individuals an equal opportunity to use and enjoy a dwelling.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009\(a\)\(2\)](#).

Federal law reference – Federal Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619.

D. Effect.

Approval of an application for a special exception, for a reasonable accommodation, entitles the applicant to undertake the use or activity authorized under the special exception.

E. Initiation.

All applications for requests for a special exception, for a reasonable accommodation, may be made by any person with a disability, or their authorized representative, and shall be made in accordance with the requirements contained in Section 5-202 (Application Procedures). The request shall state the reason for the special exception for a reasonable accommodation from this Zoning Ordinance and the basis for the request.

F. Notice.

Notice, in accordance with Section 5-203 (Notice), shall be provided to the public regarding a request for a special exception, for a reasonable accommodation, and any associated public hearing.

G. Public Hearing.

A public hearing, in accordance with Section 5-204 (Public Hearing), shall be conducted to determine whether the request for a special exception, for a reasonable accommodation, should be granted.

H. Action by the Director.

Action by the Director for applications for requests for a special exception, for a reasonable accommodation, shall follow the process for special exceptions in accordance with Section 5-206 (Special Exception).

I. Action by the Board of Adjustment.

Action by the Board for applications for requests for a special exception, for a reasonable accommodation, shall follow the process for special exceptions in accordance with Section 5-206 (Special Exception).

J. Limitations.

1. This section does not authorize the Board to grant a change in the use of a building or structure.
2. A reasonable accommodation for an increase in the number of residents for any use terminates if the property ceases to be operated as housing for disabled or handicap persons as defined by the Fair Housing Act, as amended.

Federal law reference – Federal Fair Housing Act , as amended, 42 U.S.C. §§ 3601-3619.

K. Modifications and Conditions.

1. *Granting a special exception approval with a modification.*

The Board may grant a special exception, for a reasonable accommodation, that is less than that requested in the submitted application when it has been decided that the applicant is entitled to some relief, but not to the entire relief requested in the application.

2. *Granting a special exception with conditions and restrictions.*

The Board may impose such conditions and restrictions upon the special exception, for a reasonable accommodation, consistent with the purpose stated in this section.

L. Approval Standards.

To grant a special exception, for a reasonable accommodation, the applicant, or applicant's authorized representative, shall have the burden to demonstrate and the Board must find that:

1. The applicant (or the person on whose behalf the applicant is requesting the accommodation) suffers from a disability as defined by the Fair Housing Act, as amended; and
2. The applicant (or the person on whose behalf the applicant is requesting the accommodation) demonstrates that the accommodation is both reasonable and necessary. An accommodation under this section is "necessary" if without the accommodation the applicant will be denied an equal opportunity to obtain the housing of his or her choice.

5-206 – Special Exception.

A. In General.

A special exception refers to uses or a modification of standards this Zoning Ordinance allows, but that are examined and specially approved by the Board of Adjustment.

B. Purpose.

The purpose of a special exception review by the Board is to determine situational suitability for the requested special exception.

C. Authority.

The Board may hear and decide special exceptions to the terms of this zoning ordinance when the special exceptions are expressly provided for by ordinance.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009\(a\)\(2\)](#).

D. Effect.

Approval of an application for a special exception entitles the applicant to undertake the use or activity authorized under the special exception.

E. Applicability.

An application for a special exception may be filed only for the use or modifications listed below, or as otherwise provided for in this Zoning Ordinance:

1. Nonconforming uses. [1-302](#) (B).
2. Nonconforming structures and premises. [1-303](#) (B).
3. Temporary uses.
 - a. Temporary classrooms. [1-603](#) (A).
 - b. Temporary residences. [1-603](#) (B).
4. Accessory telecommunications facilities - Oversized antenna. [1-702](#) (A)(2).
5. Special exception for tree preservation. [1A-403](#) (G).
6. Principal or accessory uses in residential districts. [2-201](#) (C) and [2-203](#).
7. Minimum unit size in residential districts. [2-305](#) (A).
8. Lighted game courts in residential districts. [2-603](#) (J) and [2-604](#) (C).
9. Accessory dwelling units in residential districts. [2-603](#) (N).
10. Oversized accessory structure in residential districts. [2-604](#) (A).
11. Front carports in residential districts. [2-604](#) (B).
12. Front or exterior porch covers in residential districts. [2-604](#) (C).
13. Principal or accessory uses in nonresidential districts. [3-201](#) (C) and [3-203](#).
14. Off-Site parking in nonresidential districts. [3-403](#) (A).
15. Joint use parking in nonresidential districts. [3-403](#) (B).
16. Parking reduction in nonresidential districts. [3-403](#) (C).
17. Flagpoles over seventy-five (75) feet in height. [3-702](#) (D).
18. Reasonable accommodations for persons with disabilities. 5-205.

F. Initiation.

A property owner, or person expressly authorized in writing by the property owner, may request a pre-application conference and/or submit an application for a special exception in accordance with Section 5-202 (Application Procedures).

G. Notice.

Notice, in accordance with Section 5-203 (Notice), shall be provided to the public regarding a request for a special exception and any associated public hearing.

H. Public Hearing.

A public hearing, in accordance with Section 5-204 (Public Hearing), shall be conducted to determine whether the request for a special exception should be granted.

I. Action by the Director.

All applications for special exceptions, along with the associated fees, must be submitted to the Department in accordance with Section 5-202 (Application Procedures). The Director shall take the following actions upon the City's acceptance and the official filing of the application:

1. Upon receipt of an accepted and officially filed application the Director shall review and produce a staff report for presentation to the Board. The staff report shall include a summary of the requested special exception, staff comments, and a staff recommendation.
2. The Director shall schedule the application for a public hearing and consideration by the Board.
3. The Director shall provide notice in accordance with Section 5-203 (Notice).

J. Action by the Board of Adjustment.

1. *Public hearing and consideration of the application.* After receipt of an accepted and official filed application and staff report from the Director, the Board shall hold a public hearing, at a public meeting, in accordance with Section 5-203 (Public Hearing) and consider the application for a special exception.
2. *Actions.*
 - a. The Board must evaluate the application based upon the evidence presented at the public hearing, pursuant to the approval standards of this section and may take any of the following actions regarding the application for a special exception:
 - (1) approval;
 - (2) approval with modifications;
 - (3) denial; or
 - (4) the Board may also, including but not limited to:
 - (a) postpone holding the public hearing and consideration of the application to a later date; or
 - (b) continue an opened public hearing and consideration of the application to a later date.

- b. The Board may require that a special exception be:
 - (1) revocable;
 - (2) effective for a specified time period; or
 - (3) subject to one or more conditions.

K. Modifications and Conditions.

- 1. *Granting a special exception approval with a modification.*

The Board may grant a special exception that is less than that requested in the submitted application when it has been decided that the applicant is entitled to some relief, but not to the entire relief requested in the application.

- 2. *Granting a special exception with conditions and restrictions.*

The Board may impose such conditions and restrictions upon the special exception as may be deemed necessary for the protection of the public health, safety, and welfare.

L. Approval Standards.

- 1. *Special exceptions.*

Special exceptions may be granted as set out in this Zoning Ordinance, when the Board finds that the special exception:

- a. will allow greater use and enjoyment of property; and
- b. without creating adverse impacts on adjacent properties; and
- c. that it will be compatible with the surrounding neighborhood; and
- d. when applicable, the board shall also consider any additional criteria set out in this Zoning Ordinance for any specific special exception.

- 2. *Special exceptions for a reasonable accommodation for persons with disabilities.*

See Section 5-205 (Reasonable Accommodations for Persons with Disabilities) for the approval standards for a special exception for a reasonable accommodation.

M. Vote Required.

The concurring vote of four (4) members of the Board is required to grant a request for special exception or a special exception for a reasonable accommodation.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (c).

Cross reference – Motions, Section 5-208. - Rules for Motions, Decisions, Reconsiderations, and Appeals to Court., (A).

5-207 – Variance.

A. In General.

A variance is suspension of the literal enforcement of this Zoning Ordinance. In general, it is the duty of the Board of Adjustment to determine whether the literal application of the Zoning Ordinance to the piece of property would be unreasonable in light of the City's general authority to secure reasonable zoning.

B. Purpose.

Zoning variances are intended to address unnecessary hardships or practical difficulties resulting from the strict application of zoning-related standards. The purpose of the variance process is to provide a narrowly limited means by which relief may be granted from unforeseen applications of this Zoning Ordinance.

C. Authority.

1. *Variance from the terms of the zoning ordinance.*

The Board may, in specific cases, after written notice and a public hearing, authorize a variance from the terms of this Zoning Ordinance in accordance with the approval standards in this section.

State Law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#).

2. *Variances prohibited.*

The Board shall not grant use variances. A use variance is a request for a variance to allow a use that is not listed as a permitted use within a zoning district.

D. Effect.

Approval of an application for a variance entitles the applicant to deviate from the strict terms of this Zoning Ordinance as authorized by the terms in the variance.

E. Initiation.

A property owner, or person expressly authorized in writing by the property owner, may request a pre-application conference and/or submit an application for a variance in accordance with Section 5-202 (Application Procedures).

F. Notice.

Notice, in accordance with Section 5-203 (Notice), shall be provided to the public regarding a request for a variance and any associated public hearing.

G. Public Hearing.

A public hearing, in accordance with Section 5-204 (Public Hearing), shall be conducted to determine whether the request for a variance should be granted.

H. Action by the Director.

All applications for variances, along with the associated fees, must be submitted to the Department in accordance with Section 5-202 (Application Procedures). The Director shall take the following actions upon the City's acceptance and the official filing of the application:

1. Upon receipt of an accepted and officially filed application the Director shall review and produce a staff report for presentation to the Board. The staff report shall include a summary of the requested variance, staff comments, and a staff recommendation.
2. The Director shall schedule the application for a public hearing and consideration by the Board.
3. The Director shall provide notice in accordance with Section 5-203 (Notice).

I. Action by the Board of Adjustment.

1. *Public hearing and consideration of the application.* After receipt of an accepted and official filed application and staff report from the Director, the Board shall hold a public hearing, at a public meeting, in accordance with Section 5-203 (Public Hearing) and consider the application for a variance.
2. *Actions.*
 - a. The Board must evaluate the application based upon the evidence presented at the public hearing, pursuant to the approval standards of this section and may take any of the following actions regarding the application for a variance:
 - (1) approval;
 - (2) approval with modifications;
 - (3) denial; or
 - (4) the Board may also, including but not limited to:
 - (a) postpone holding the public hearing and consideration of the application to a later date; or
 - (b) continue an opened public hearing and consideration of the application to a later date.
 - b. The Board may require that a variance be:
 - (1) revocable;
 - (2) effective for a specified time period; or
 - (3) subject to one or more conditions.

J. Modifications and Conditions.

1. *Granting a variance approval with a modification.*

The Board may grant a variance that is less than that requested in the submitted application when it has been decided that the applicant is entitled to some relief, but not to the entire relief requested in the application.

2. *Granting a variance with conditions and restrictions.*

The Board may impose such conditions and restrictions upon the variance as may be deemed necessary for the protection of the public health, safety, and welfare.

K. Approval Standards.

In order to grant a zoning variance from the terms of this Zoning Ordinance the Board must find that:

1. The variance is not contrary to the public interest; and
2. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship; and
3. The unnecessary hardship, if any, is neither self-created nor personal to the owner of the parcel of land; and
4. The requested variance is not needed merely to promote economic gain or to prevent economic loss; and
5. The spirit of this Zoning Ordinance is observed and substantial justice is done.

State Law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#).

L. Vote Required.

The concurring vote of four (4) members of the Board is required to grant a request for variance.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (c).

Cross reference – Motions, Section 5-208. - Rules for Motions, Decisions, Reconsiderations, and Appeals to Court., (A).

5-208 – Rules for Motions, Decisions, Request for Reconsiderations, and Appeals to Court.

This section is applicable to special exceptions, special exceptions for reasonable accommodations, and variances.

A. Motions.

1. *Motions to approve the application.*

The concurring vote of four (4) members of the Board is required to grant a request for special exception, a special exception for a reasonable accommodation, or a variance.

- a. *Motion to approve – carries.* When the motion to approve an application is made, seconded, and receives four (4) affirmative votes, the motion is adopted and the request is approved.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (c).

- b. *Motion to approve – fails.*

- (1) When a motion to approve an application is made, seconded, and fails to receive four (4) affirmative votes, the motion fails and the request is deemed denied, unless otherwise provided.

- (2) *Exception.* In the event only four (4) members are present, and a motion to approve an application is made and seconded, and a vote is taken where at least one member abstains from the vote (leaving only three (3) or less members voting):

- (a) the motion fails, but the request shall not be deemed denied (unless three (3) members vote against the motion to approve thereby denying the request); and

- (b) the public hearing is automatically re-opened and continued so that consideration of the application shall be automatically postponed and placed on the agenda for the first available meeting for which notice of the hearing can be timely provided.

2. *Motion to deny the application.*

A simple majority vote of the members of the Board is required to deny a request for special exception, special exception for a reasonable accommodation, or a variance.

- a. *Motion to deny – carries.* When the motion to deny an application is made, seconded, and receives a simple majority vote, the motion is adopted and the request is denied.

- b. *Motion to deny – fails.* When the motion to deny an application is made, seconded, and fails to receive a simple majority vote, the motion fails, the request is neither denied or approved, and another motion must be made (e.g., "motion to approve," "motion to postpone," etc.) to dispose of the case.

- 3. *All other motions.* A simple majority vote of the members shall be required to adopt any motion other than a motion to approve the application or to decide in favor of an applicant on any matter on which the Board is required to pass under this Zoning Ordinance.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (c).

Cross reference – Request for Reconsideration, Section 5-208, (C).

B. Decision.

1. The Board's decision is not an official final decision until it is "filed in the Board's office."
2. A final decision is deemed to be "filed in the Board's office" on the later of:
 - a. The first business day after the expiration of the 7-day time period for the Board's receipt of a written request for reconsideration; or
 - b. If a timely request for reconsideration is filed, the first business day *after*:
 - (1) the meeting at which the Board denies the request for reconsideration; or
 - (2) if a request to reconsider a matter is granted and the application is reconsidered by the Board – the meeting at which the Board takes action on the case.

Cross reference – Request for Reconsideration, Section 5-208, (C).

3. Unless otherwise provided, the Board's final decision "filed in the Board's office" is final unless timely appealed to a court of competent jurisdiction in accordance with Texas Local Government Code, Chapter 211.

State law reference – Judicial Review of Board Decision, V.T.C.A. Local Government Code, [§ 211.011](#).

Cross reference – Appeal of Board of Adjustment Decision to Court, Section 5-208, (D).

C. Request for Reconsideration.

The following applies to a written request for reconsideration filed with the Board within seven (7) calendar days of the decision.

1. *Reconsideration at a subsequent meeting.* A matter on which the Board has acted, with regard to a special exception or variance, may be reconsidered at a subsequent meeting, once by the Board, unless otherwise provided.
2. *Reconsideration distinguished from submission of a subsequent application.* This sub-section applies to written requests for reconsideration. Any person wishing to submit a "subsequent application" shall do so in accordance with Section 5-202 (Application Procedures).

Cross reference – Consideration of Subsequent Applications, Section 5-202. – Application Procedures., (I).

3. *Persons authorized to request reconsideration.* A written request to reconsider may be filed by any of the following persons:
 - a. A person who:
 - (1) Filed the application that is the subject of the decision; or
 - (2) is the owner or representative of the owner of the property that is the subject of the decision; or
 - (3) is aggrieved by the decision and is the owner of real property within 200-feet of the property that is the subject of the decision; or
 - b. any officer, department, board, or commission of the City affected by the decision.

4. *Time period for receipt of a request for reconsideration.* Requests for reconsideration shall be filed within seven (7) calendar days after the Board's decision. For purposes of calculating the City's receipt of a timely request for reconsideration, the date of the Board's decision shall be considered Day Zero (0).
5. *Request for reconsideration must be made in writing.* Requests for reconsideration shall be filed in writing on forms provided by the Director. A request for reconsideration shall state:
 - a. why the action should be reconsidered;
 - b. how the Board erred in its determination (if applicable); and
 - c. any new or clarified evidence (if applicable).
6. *Fee.*
 - a. *Fee required.* Unless otherwise herein authorized, a written request to reconsider must be accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule.

Cross reference – The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, Sec. 12-116.
 - b. *No fee required for City-initiated requests for reconsideration.* There are no fee requirements if a written request for reconsideration is submitted by any officer, department, board, or commission of the City.
 - c. *Refunds.* If a written request for reconsideration is withdrawn, no fee, or portion thereof, shall be refundable after notices regarding the request have been issued or processed for issuance; however, a refund shall be issued when the person requests to withdraw the request for reconsideration due to a City staff error or other error not the fault of the person.
7. *Request for reconsideration is placed on the agenda of the first available meeting.* When a request to reconsider has been properly filed, the Director shall place the request on the agenda of the first available meeting for which notice of the hearing can be timely provided.

State Law reference – V.T.C.A., Government Code, Open Meetings Act, Notice of Meeting, [§ 551.041](#).
State Law reference – V.T.C.A., Government Code, Open Meetings Act, Time and Accessibility of Notice, [§ 551.043](#).
8. *Notice.* The Board shall provide notice, in accordance with Section 5-203 (Notice), to the public regarding the Board's receipt of a request for reconsideration and the mailed notice shall notify the public that the Board may elect to reconsider the matter and if the request for reconsideration is granted the application will be reconsidered by the Board and a public hearing will be held.
9. *Withdraw of a request for reconsideration.* A person has the right to withdraw their written request for reconsideration at any time prior to the final decision, including the ability to withdraw the request if it has been tabled or postponed by the Board. The person must submit a request for withdrawal in writing. Fees shall only be refunded in accordance with this section. The Director's receipt of a written withdrawal shall officially terminate the request for reconsideration.

Cross reference – Fee, Section 5-208 (C)(6).
10. *Board's consideration of the request for reconsideration.* The Board shall review the request for reconsideration and shall, on the basis of the written material submitted by the applicant in support of the request, determine whether to reconsider the matter because of an error in its original determination or on the basis of new or clarified evidence not presented to the Board at the original hearing that might affect its determination.

11. *Motion to reconsider the matter.*

- a. A Board member may move to reconsider, based on the written request for reconsideration, regardless of the Board member's vote on the original matter.
- b. The affirmative vote of four (4) members of the Board shall be necessary to reconsider a matter. When a motion to reconsider is made, seconded, and receives four (4) affirmative votes, the application shall then next be reconsidered by the Board (immediately following the Board's favorable decision to reconsider the matter).

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (c).

- c. When a motion to reconsider is made, seconded, and fails to receive four (4) affirmative votes, the motion fails and the request is deemed denied and shall constitute final action on the matter.

12. *Vote requirements if the application is reconsidered.* Action on the application, for which reconsideration has been granted, is subject to the same voting requirements as the original determination.

13. *Request for reconsideration NOT a requirement prior to appeal to Court.* A request for reconsideration by the Board is permissible, but not mandatory prior to filing an appeal with a court of appropriate jurisdiction as provided under Sec. 211.011 of the Texas Local Government Code and other applicable law.

D. Appeal of Board of Adjustment Decision to Court.

1. Final decisions of the Board may be appealed, to a district court, county court, or county court at law, within ten (10) days of the Board's final decision being "filed in the Board's office" as provided under Sec. 211.011 of the Texas Local Government Code and other applicable law.

State law reference – Judicial Review of Board Decision, V.T.C.A. Local Government Code, [§ 211.011](#).

2. A final decision is deemed to be "filed in the board's office" as herein described above.

Cross reference – Defining "filed in the Board's office", Section 5-208 Decision (B)(2).

3. The date the final decision of the Board of Adjustment is "filed in the board's office" shall be considered Day Zero (0).

5-209 – Expiration.

This section is applicable to special exceptions, special exceptions for reasonable accommodations, and variances.

A. Expiration of Special Exception and/or Variance.

An approved special exception, special exception for a reasonable accommodation, or variance will expire one hundred eighty (180) days, or an extended time period as the Board of Adjustment may designate, after the date the Board's decision is "filed in the Board's office", unless a building permit or Certificate of Occupancy is issued before the expiration of such period.

Cross reference – Defining "filed in the Board's office", Section 5-208 Decision (B)(2).

B. Effect of Expiration.

If the building permit and/or Certificate of Occupancy is not issued within said one hundred eighty (180) days or such extended period as the Board may have specifically granted, then the special exception, or variance shall be deemed to have been waived and all rights thereunder terminated.

C. Calculation of Time Period.

For purposes of calculation for expiration, the date the Board of Adjustment's final decision is "filed in the Board's office" shall be considered Day Zero (0).

Cross reference – Defining "filed in the Board's office", Section 5-208 Decision (B)(2).

D. Extension of Time Period.

1. *Time period limits.* The Board of Adjustment may grant an extension of time for a period of validity longer than one hundred eighty (180) days, but in no event shall the Board of Adjustment grant a time period of more than three hundred and sixty-five (365) days.
2. *Authorization for extension of time period.* The Board of Adjustment is authorized to extend the time period for validity of the special exception and/or variance on the same day of approval or at any time thereafter in a public meeting prior to the date of expiration.
3. *Application and fee for extension of time period if requested after original day of approval.* A person may apply in writing to the Board of Adjustment for an extension of time at any time prior to the date of expiration of the special exception and/or variance. An application for an extension of time for a period of validity longer than that which was approved by the Board shall be on forms provided by the Director. All applications for extensions of time shall be accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule. When an application for extension of time has been properly filed, the Director shall place the application on the agenda of the first available meeting for which notice of the matter can be timely provided.

Cross reference – The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, Sec. 12-116.

4. *Expiration.* The applicant, holding an expired special exception and/or variance still wishing to pursue the special exception and/or variance, shall be required to file a new application along with the appropriate fees in accordance with Section 5-202 (Application Procedures).

5-210 – Appeals of Administrative Decisions to Board of Adjustment.

A. In General.

Persons aggrieved by an administrative order, requirement, decision, or determination made by a City administrative official, in the enforcement or interpretation of this Zoning Ordinance, may appeal to the Board of Adjustment. An administrative order, requirement, decision, or determination may sometimes herein be referred to collectively as an “administrative decision.”

Cross reference – Appeals of Director’s Interpretation of Zoning Ordinance, [Sec. 1-103](#) (C).

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#).

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#).

B. Purpose.

The appeal process, for a person aggrieved by a decision made by a City administrative official, provides for a secondary review by the Board for the purpose of the Board to determine whether the administrative official correctly applied the Zoning Ordinance and its regulations.

C. Authority.

1. The Board shall hear and decide appeals that allege error in an order, requirement, decision, or determination made by an administrative official in the enforcement or interpretation of this Zoning Ordinance.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (a).

2. In exercising its authority, the Board may reverse or affirm, in whole or in part, or modify the administrative official’s order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the Board has the same authority as the administrative official.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (b).

D. Persons Authorized to Make an Appeal.

1. *Appeals NOT related to a specific application, address or project.* Any of the following persons may appeal to the Board an administrative decision made by an administrative official that is NOT related to a specific application, address, or project:

- a. A person aggrieved by the administrative decision; or
- b. Any officer, department, board, or bureau of the City affected by the administrative decision.

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#) (a).

2. *Appeals related to a specific application, address, or project.* Any of the following persons may appeal to the Board an administrative decision made by an administrative official that is related to a specific application, address, or project:

- a. A person who:
 - (1) Filed the application that is the subject of the administrative decision; or

(2) is the owner or representative of the owner of the property that is the subject of the administrative decision; or

(3) is aggrieved by the administrative decision and is the owner of real property within 200-feet of the property that is the subject of the decision; or

b. any officer, department, board, or bureau of the City affected by the administrative decision.

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#) (a-1).

E. Initiating an Appeal.

1. *Notice of appeal.* The appellant must file with the Board, and the official from whom the appeal is taken, a notice of appeal specifying the grounds for the appeal.

2. *Fee.* Unless otherwise herein authorized, a notice of appeal must be accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule. There are no fee requirements if a notice of appeal is filed by any officer, department, board, bureau, or commission of the City.

Cross reference – The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, Sec. 12-116.

3. *Appellate burden.* The appellant is responsible for establishing the administrative official's administrative decision being appealed is contrary to the applicable law or regulations.

4. *Content of notice of appeal.* A notice of appeal shall be filed in writing on forms provided by the Director. A notice of appeal shall identify the following:

- a. The name, address, and telephone number of the appellant.
- b. The name of the original applicant, if the appellant is not the original applicant.
- c. The name or title of the administrative official that issued the decision.
- d. The decision being appealed.
- e. The date of decision.
- f. A description of the appellant's status as a person authorized to make an appeal.
- g. The reasons the appellant believes the decision is in error and does not comply with the requirements of this Zoning Ordinance.

5. *Deadline.* The appeal must be filed not later than the twentieth (20th) day after the date the administrative decision is made. The date the administrative decision is made shall be considered Day Zero (0).

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#) (b).

6. *Acceptance and official filing of notice of appeal.* A notice of appeal is considered accepted and officially filed upon the Planning & Development Services Department's receipt before 5 p.m. on a business day during normal office hours. Any notice of appeal received on or after 5 p.m. on a business day or on Saturday, Sunday, or holidays shall not be considered officially accepted and filed until the next business day following the date the information was received or entered. A notice of appeal shall not be considered accepted and officially filed unless it is accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule.

Cross reference – The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, Sec. 12-116.

F. Stay of Administrative Proceedings.

1. The appeal stays all proceedings in furtherance of the action that is appealed, unless, after receipt of the notice of appeal, the administrative official from whom the appeal is taken certifies in writing to the Board of Adjustment facts supporting the official's opinion that a stay would cause imminent peril to life or property.
2. If the administrative official files the written statement, the proceedings shall not be stayed, unless, a restraining order is granted by the Board of Adjustment or a court of record. A restraining order allowing the stay of proceedings would require an application to the Board or a court of record, notice to the administrative official, and a showing of due cause.

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#) (c).

G. Scheduling of Public Hearing.

A public hearing on an appeal shall be scheduled for the first available meeting for which notice of the hearing can be timely provided and not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed.

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#) (d).

H. Notice.

Notice, in accordance with Section 5-203 (Notice), shall be provided to the public and to the parties in interest regarding an appeal and any associated public hearing.

I. Public Hearing.

A public hearing shall be conducted in accordance with Section 5-204 (Public Hearing).

J. Action by the Director.

The Director shall take the following actions upon the City's acceptance and the official filing of the notice of appeal:

1. Upon receipt of a notice of appeal, the administrative official from whom the appeal is taken shall be immediately notified. The administrative official shall immediately transmit to the Board all the papers constituting the record of the action that is appealed.
2. The Director shall review and produce the records of the action(s), including a summary of the record, for transmission and presentation to the Board.
3. The Director shall schedule the appeal for a public hearing on the next meeting of the Board for which notice can be provided and not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed.
4. The Director shall provide notice in accordance with Section 5-203 (Notice).

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#) (b).

K. Action by the Board of Adjustment.

1. *Public hearing and consideration of appeal; deadline.* After receipt of an accepted and officially filed notice of appeal, the Board shall hear and decide the appeal at a public meeting and hold a public hearing in accordance with Section 5-203 (Public Hearing) not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed.
2. *Actions.*
 - a. *Preliminary issues prior to opening a public hearing.* Before opening a hearing, the Board shall decide preliminary issues raised by the parties or City staff, including, but not limited to, requests to postpone the public hearing. The Board shall also decide whether the appellant has standing (which include issues of timeliness, jurisdiction, or ripeness) to appeal.
 - b. The Board must evaluate the notice of appeal based upon the record and in exercising its authority, the Board may:
 - (1) affirm;
 - (2) modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the Board has the same authority as the administrative official;
 - (3) reverse; or
 - (4) the Board may also, including but not limited to:
 - (a) postpone holding the public hearing and consideration of the appeal to a later date so long as the appeal is decided not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed; or
 - (b) continue an opened public hearing and consideration of the appeal to a later date so long as the appeal is decided not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (b).

L. Approval Standards.

In order to grant an appeal modifying or reversing an administrative decision, the appellant must establish the administrative official's decision being appealed is contrary to the applicable law or regulations, and the Board must:

1. find the City staff's administrative decision is erroneous; and
2. provide a statement of grounds in support of the finding; and
3. state what the Board determines to be the correct interpretation of the matter at issue in the appeal.

M. Vote Required.

1. *Motion to affirm, in whole, the administrative decision.*

The concurring vote of a simple majority of the Board is required to affirm in whole, an administrative decision of an administrative official.

- a. *Motion to affirm the administrative decision – carries.* When a motion to affirm in whole, the administrative decision, from which an appeal is taken, is made, seconded, and receives a simple majority vote the motion is adopted and the decision of the administrative official is affirmed.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (b) and (c).

- b. *Motion to affirm the administrative decision – fails.* When a motion to affirm in whole, the administrative decision from which an appeal is taken, is made, seconded, and fails to receive a simple majority vote the motion fails, the decision of the administrative official is neither affirmed or reversed, and another motion must be made (e.g., "motion to modify," "motion to reverse," or "motion to postpone," etc.) to dispose of the appeal.

2. *Motion to modify the administrative decision.*

The concurring vote of four (4) members of the Board is required to modify an administrative decision of an administrative official.

- a. *Motion to modify the administrative decision – carries.* When a motion to modify the administrative decision, from which an appeal is taken, is made, seconded, and receives four (4) affirmative votes the motion is adopted and the decision of the administrative official is modified.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (b) and (c).

- b. *Motion to modify the administrative decision – fails.*

(1) When a motion to modify the administrative decision, from which an appeal is taken, is made, seconded, and fails to receive four (4) affirmative votes the motion fails, the decision of the administrative official is not modified, and is neither affirmed or reversed, and another motion must be made (e.g., "motion to affirm," "motion to reverse," or "motion to postpone," etc.) to dispose of the appeal, unless otherwise provided.

(2) In the event only four (4) members are present, and a motion to modify the administrative decision is made and seconded, and a vote is taken where at least one member abstains from the vote (leaving only three (3) or less members voting):

(a) the motion fails; and

(b) the public hearing is automatically re-opened and continued so that consideration of the appeal of the administrative decision shall be automatically postponed and placed on the agenda for the first available meeting for which notice of the hearing can be timely provided, so long as it is not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed.

3. *Motion to reverse, in whole, the administrative decision.*

The concurring vote of four (4) members of the Board is required to reverse in whole, an administrative decision of an administrative official.

- a. *Motion to reverse the administrative decision – carries.* When a motion to reverse in whole, the administrative decision, from which an appeal is taken, is made, seconded, and receives four (4) affirmative votes the motion is adopted and administrative decision is reversed.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (b) and (c).

- b. *Motion to reverse the administrative decision – fails.*

(1) When a motion to reverse in whole, the administrative decision from which an appeal is taken, is made, seconded, and fails to receive four (4) affirmative votes the motion fails, the administrative decision is neither reversed or affirmed, and another motion must be made (e.g., "motion to modify," "motion to affirm," or "motion to postpone," etc.) to dispose of the appeal, unless otherwise provided.

(2) In the event only four (4) members are present, and a motion to reverse in whole, the administrative decision is made and seconded, and a vote is taken where at least one member abstains from the vote (leaving only three (3) or less members voting):

(a) the motion fails; and

(b) the public hearing is automatically re-opened and continued so that consideration of the appeal of the administrative decision shall be automatically postponed and placed on the agenda for the first available meeting for which notice of the hearing can be timely provided, so long as it is not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed.

4. *All other motions.* A simple majority vote of the members shall be required to approve any motion other than a motion to modify or a motion to reverse.

N. Decision.

1. The Board's decision is not an official final decision until it is "filed in the Board's office."
2. In the case of an appeal of an administrative decision, the Board's final decision is deemed to be "filed in the board's office" on the first business day after the meeting at which the Board takes action by affirming, modifying or reversing the administrative decision.
3. Unless otherwise provided, the Board's final decision "filed in the Board's office" is final unless timely appealed to a court of competent jurisdiction in accordance with Texas Local Government Code, Chapter 211.

State law reference – Judicial Review of Board Decision, V.T.C.A. Local Government Code, [§ 211.011](#).

Cross reference – Appeal of Board of Adjustment Decision to Court, Section 5-210, (P).

O. Request for Reconsideration – Not Permissible.

In the case of an appeal of an administrative decision, a written request for reconsideration is not permissible.

P. Appeal of Board of Adjustment Decision to Court.

1. Final decisions of the Board may be appealed, to a district court, county court, or county court at law, within ten (10) days of the Board's final decision being "filed in the Board's office" as provided under Sec. 211.011 of the Texas Local Government Code and other applicable law.

State law reference – Judicial Review of Board Decision, V.T.C.A. Local Government Code, [§ 211.011](#).

2. In the case of an appeal of an administrative decision, the Board's final decision is deemed to be "filed in the board's office" as herein described above.

Cross reference – Defining "filed in the Board's office" in the case of an appeal of an administrative decision, Section 5-210 Decision (N)(2).

3. The date the final decision of the Board is "filed in the board's office" shall be considered Day Zero (0).

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APPENDIX D
COMPREHENSIVE FEE SCHEDULE

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ARTICLE XII. PLANNING AND DEVELOPMENT SERVICES

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Sec. 12-116. Board of Adjustment fees.

Special exceptions.....	\$200.00
Special Exception, for a reasonable accommodation.....	\$200.00
Variances:	
Residential variances.....	\$200.00
Non-residential variances.....	\$500.00
Sign variances.....	\$500.00
Request for reconsideration.....	\$150.00
Request for extension of time period.....	\$150.00
Appeals of administrative decisions to the Board of Adjustment.....	\$500.00
Termination of nonconforming situations –	\$4,300.00
Request to establish compliance date.....	

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