

ARTICLE 6
BOARD OF ADJUSTMENT

Section 6-101. Creation of the Board of Adjustment

The Board of Alderpersons shall provide for the appointment of a Board of Adjustment and the regulations and restrictions adopted shall be pursuant to the provisions of applicable statutory requirement of the State of Texas. The Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of this Zoning Ordinance in harmony with its general purpose and intent and in accordance with general and specific rules herein contained.

Section 6-102. Powers and Duties

The Board of Adjustment shall have the following powers:

- (A) To hear and decide appeals where it is alleged there is error in any order requirement, decision, interpretation, or determination made by the Building Inspector in the enforcement of this Ordinance;
- (B) To interpret the intent of the Zoning District Map where uncertainty exists because the physical features on the ground vary from those on the Zoning District Map and none of the rules set forth elsewhere in this Ordinance apply;
- (C) To hear and decide request for Use Permits for:
 - (1) The substitution of one non-conforming use for another non-conforming use when the extent of the substituted use is found to be less detrimental to the environment than the first,
 - (2) The enlargement of a building devoted to a non-conforming use where such extension is necessary and incidental to the existing use of such building and does not increase the area of the building devoted to a non-conforming use more than twenty-five percent (25%) and does not prolong the life of the non-conforming use or prevent a return of such property to conforming use,
 - (3) The reconstruction of a non-conforming structure or building on the lot or tract occupied by such building if the cost of reconstruction is less than sixty percent (60%) of the appraised value of the structure or building or if the reconstruction would not prevent the return of such property to a conforming use or increase the non-conformity of such non-conforming structure or building;
- (D) To initiate on its motion, or cause to be presented by interested property owners action to bring about the discontinuance of a non-conforming structure under any plan whereby full value of the 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;

- (E) To authorize in specific cases a variance from the terms of the zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done.
- (F) In reaching its decision, the Board of Adjustment shall not grant the variance appeal if it finds that:
 - (1) literal enforcement of the controls will not create an unnecessary hardship or practical difficulty in the development of the affected property, or
 - (2) the situation causing the hardship or difficulty is either self-imposed or generally affecting all or most properties in the same zoning district, or
 - (3) the relief sought will injure the permitted use of adjacent conforming property, or
 - (4) the granting of the variance will not be in harmony with the spirit and purposes of these regulations.

Any variance granted by the Board shall terminate automatically (a) when the specified period of use has expired, or (b) when the use ceases to be in full compliance with any condition imposed by the board, or (c) when the use has been abandoned.

Section 6-103. Organization of the Board

The Board of Adjustment shall consist of five (5) members, including its chairman, who are residents of the Town of Talty. Each shall be appointed for a term of two (2) years. Three (3) members shall be appointed in even numbered years, and two (2) members shall be appointed in odd numbered years to maintain a membership of five (5) members. Members shall be removable for cause by the Board of Alderpersons upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. However, the Board of Alderpersons may provide for the appointment of four (4) alternate members of the Board of Adjustment who shall serve in the absence of one (1) or more regular members when requested to do so by the Mayor. All cases to be heard by the Board of Adjustment will always be heard by a minimum number of four (4) members. These alternate members, when appointed, shall serve for the same period as the regular members and any vacancies shall be filled in the same manner and shall be subject to removal as the regular members.

Section 6-104. Rules and Regulations

The Board shall develop and adopt rules in accordance with the provisions of this Ordinance. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman, or in his absence the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. 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 records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board (the office of the Town Secretary) and shall be a public record.

Section 6-105. Appeals

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, commission or committee of the Town of Talty affected by any decision of the decision of the Building Inspector. Such appeal shall be made within thirty (30) days by filing with the building Inspector and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Building Inspector shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the Building Inspector certifies to the board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown, The Board of Adjustment shall hear the appeal within thirty (30) days or such extensions as requested by the applicant, give public notice thereof, as well as due notice to the parties in interest, and decide the same within; a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

Section 6-106. Revision of Appealed Decisions

In exercising the above mentioned powers, such Board may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have the power of the Building Inspector from whom the appeal is taken.

Section 6-107. Votes Necessary

The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector, to decide in favor of the applicant on any variation in this Ordinance.

Section 6-108. Appeals from the Board of Adjustment

Any person or persons or any taxpayer or any officer, department, board, commission, or committee of the town, jointly or severally, aggrieved by any decision of the board of Adjustment, may present to a court of record a petition, 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 filing of the decision in the office of the Board.