

LINDALE BOARD OF ADJUSTMENTS

- APPLICANT INFORMATION- THE INFORMATION CONTAINED HEREIN SHOULD BE REVIEWED BY PERSONS APPLYING FOR A SPECIAL USE OR A VARIANCE
- THESE POWERS ARE GRANTED TO THE BOARD OF ADJUSTMENTS AS DOCUMENTED IN THE CITY OF LINDALE ZONING ORDINANCE
- THIS DOCUMENT PROVIDES THE RULES AND PROCEDURES ADOPTED BY THE BOARD OF ADJUSTMENTS
- THE BOARD OF ADJUSTMENTS CAN MAKE DECISIONS WITH REGARDS TO THE CITY OF LINDALE ZONING ORDINANCE

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Information and Responsibility

Know what 'Uses' are – addendum 1 and 2 are tables that indicate allowed uses in different zoning districts. A dot ● indicates allowed uses . A square ■ and the symbol of a dot within a square indicate uses allowed with 'special use'

The applicant should understand the Board of Adjustments and the powers and duties. As an applicant you should have knowledge and be ready to respond to questions from Board Members concerning your application. Obtaining and presenting facts may help your case or help the members vision the issue at hand.

Responsibility - your application is a case for you to present, your preparation or lack of, may influence the outcome. By familiarizing oneself with the enclosed material should help you with your preparation and endeavor.

PLANNING AND ZONING

An applicant can request to be placed on the Planning and Zoning Board meeting agenda. The Planning and Zoning Board member may provide a recommendation [(section 1-93 (b) line 3. OF THE Zoning Ordinance)]to the Board of Adjustments. The applicant has the responsibility to request a recommendation by the Planning and Zoning Board.

CITY OF LINDALE ZONING ORDINANCE

PART 7 BOARD OF ADJUSTMENT

Section 1-61 Members and Presiding Officer

(a) The Board shall consist of five members who are residents of the City of Lindale. Members shall be appointed by the City Council and shall serve a term of two years. No member shall serve more than four (4) consecutive terms. Terms shall be staggered so that no more than three members are appointed each year. Members serving on the Board under a prior ordinance are hereby appointed to complete their term.

(b). A member may be removed for cause, as found by the City Council, on a written charge after a public hearing as required by §211.008(b) of the Texas Local Government Code. A vacancy shall be filled by the City Council for the unexpired term.

(c). The Board shall elect a Presiding Officer who shall serve for a period of one year or until a successor is elected by the Board. The Presiding Officer shall preside over meetings and hearings. The Board shall elect a member to act as presiding officer over meetings and hearings in the absence of the Presiding Officer.

Section 1-62 Meetings

Meetings of the Board shall be held at the call of the Presiding Officer and at such other times as determined by the Board. All meetings shall be open to the public as required by §211.008(e) of the Texas Local Government Code.

Section 1-63 Hearings and Rules

(a). All hearings of the Board shall be open to the public. Each case before the Board must be heard by at least four of the five members as required by §211.008(d) of the Texas Local Government Code. The Presiding Officer or acting presiding officer may administer oaths and compel the attendance of witnesses as authorized by §211.008(e) of the Texas Local Government Code.

(b). The Board by majority vote may adopt rules to govern its proceedings that are not inconsistent with this ordinance. The Board shall immediately provide the Administrative Officer with a copy of all rules adopted by the Board.

Section 1-64 Minutes and Records

The Board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The Board shall keep records of its examinations and

other official actions. The minutes and records shall be filed immediately in the office of the Board of Adjustment and are public records. §211.008(f) of the Texas Local Government Code. The office of the Administrative Officer may serve as the Office of the Board of Adjustment.

Section 1-65 Powers and Duties of the Board of Adjustment

The Board shall hear and decide an appeal that alleges error in an order, requirement, decision or determination made by the Administrative Officer in the enforcement of this ordinance; hear and decide applications for special uses; authorize in specific cases a variance from the terms of this ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of this ordinance would result in unnecessary hardship, and so that the spirit of this ordinance is observed and substantial justice is done. §211.009(a) of the Texas Local Government Code. The Board shall review the status of non-conforming uses, Buildings or Structures that are brought before the Board and shall hear and determine whether the non-conforming use, Building or Structure should be allowed to continue, to be enlarged or expanded or to be terminated as provided in this ordinance.

Section 1-66–1-70. Reserved.

PART 8 APPEALS

Section 1-71 Standing to Appeal an Order, Requirement, Decision or Determination made by the Administrative Officer

The following persons may appeal an order, requirement, decision or determination made by the Administrative Officer to the Board of Adjustment:

- (a). a person aggrieved by the decision; or
- (b). any officer, department, or board of the City affected by the decision. §211.010(a) of the Texas Local Government Code.
- (c). A member of the City Council who also serves on the Board may not bring an appeal. §211.010(e) of the Texas Local Government Code.

Section 1-72 Procedure for Filing Appeal

- (a) The appellant must file with the Board and the Administrative Officer a notice of appeal specifying the grounds for the appeal.
- (b) The notice of appeal must be filed within thirty (30) days from the date the order, requirement, decision or determination is made by the Administrative Officer that is the subject of the appeal. If a notice of appeal is not filed in accordance with this section then the decision of the Administrative Officer is final.

(c) Upon receiving a notice of appeal filed in accordance with this section, the Administrative Officer shall immediately transmit to the Board all the papers constituting the record of the action taken that is appealed. §211.010(b) of the Texas Local Government Code.

Section 1-73 Stay of Proceedings Pending Appeal

An appeal stays all proceedings in furtherance of the action that is appealed unless the Administrative Officer certifies in writing to the Board facts supporting the Administrative Officer's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the Board or a court of record on application, after notice to the Administrative Officer, if due cause is shown. §211.010(c) of the Texas Local Government Code.

Section 1-74 Hearing Date and Notice

The Board shall hear an appeal within thirty (30) days from the date the Notice of Appeal is filed. The Board shall set a reasonable time for the hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at an appeal hearing in person or by agent or attorney. §211.010(d) of the Texas Local Government Code

Section 1-75 Decision

(a) The Board shall decide an appeal within a reasonable time, not to exceed sixty (60) days from the date of the hearing. §211.010(d) of the Texas Local Government Code.

(b) The Board may reverse or affirm, in whole or in part, or modify the Administrative Officer's order, requirement, decision or determination from which the appeal is taken and make the correct order, requirement, decision, or determination. §211.009(b) of the Texas Local Government Code.

Section 1-76 Vote Required to Reverse Administrative Officer

The concurring vote of four of the five members of the Board is necessary to reverse an order, requirement, decision, or determination of the Administrative Officer. §211.009(c) of the Texas Local Government Code.

Section 1-77 Filing and Notice of the Decision

(a) Minutes of the Board's proceedings indicating the vote of each member on each question of the appeal or the fact that a member was absent or failed to vote, records of the Board's examinations, its written decision and any other official action taken in connection with an appeal, shall be filed immediately in the office of the Board of Adjustment.

(b) The Board shall send written notice of its decision to the appellant and the Administrative Officer by First Class U.S. Mail, postage prepaid. If the Board has been provided an email address or fax number by which notice of its decision can be provided electronically to the Appellant then notice of its decision shall also be provided to the Appellant electronically.

Section 1-78-1-80. Reserved.

PART 9 VARIANCE

Section 1-81 Variance Defined

The use of a Lot or Building, Sign or other Structure erected, constructed, reconstructed, altered, or repaired in accordance with a variance approved by the Board under this Part shall not be a violation of this ordinance.

Section 1-82 Procedure for Applying for a Variance

(a) An application for a variance shall be filed by a property owner with the Administrative Officer. If the property is owned by more than one person or entity then the application shall be signed by each individual or entity that owns an interest in the property.

(b) The application shall state the name, address and telephone number of the applicant, the location of the Lot, Building, Sign or other Structure, the nature of the variance, and an explanation of why the variance would not be contrary to public interest and identifying the special conditions that would cause a literal enforcement of this ordinance to result in unnecessary hardship. The applicant shall provide such other information as is reasonably required by the Administrative Officer or the Board of Adjustment.

(c) The Administrative Officer shall submit the application for a variance to the Board of Adjustment.

Section 1-83 Criteria for Approving Variance

An application for a variance shall not be granted unless the Board determines that: (a) The variance is not contrary to the public interest;

(b) Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship;

And

(c) The spirit of the ordinance is observed and substantial justice is done by allowing the variance.

§211.009(a)(3) of the Texas Local Government Code.

(d) Economic or financial hardship shall not be grounds for granting a variance request.

Section 1-84. Regulation, District Boundary or Use shall not be Amended

The Board shall not amend any regulation of this ordinance, change a District boundary or allow a use not otherwise allowed in approving a variance.

Section 1-85. Vote Required to Approve Variance

The concurring vote of four of the five members of the Board is necessary to approve an application for a variance.

Section 1-86–1-90. Reserved.

PART 10. SPECIAL USES

Section 1-91 Special Use not a Violation

The use of a Lot or Building, Sign or other Structure erected, constructed, reconstructed, altered, or repaired in accordance with a special use permit approved in accordance with this Part shall not be a violation of this ordinance.

Section 1-92. Application and Hearing

(a) An application for a special use permit shall be filed with the Administrative Officer together with the fee as approved and scheduled by the City Council.

(b) The application shall state the name, address and telephone number of the applicant, the location of the Lot, Building, Sign or other Structure, the nature of the proposed use and the Section of this ordinance that authorizes the special use. The applicant shall provide such other information as is reasonably required by the Administrative Officer or Board.

(c) The Administrative Officer shall submit the application for a special use permit to the Board. The Board shall conduct a hearing on the application. The Board, in making its decision, shall consider the impact the proposed use will have on the surrounding community, including traffic, noise and property values; any conditions or restrictions that could mitigate an adverse impact; and any other matters that are relevant to a determination of whether the use would be compatible and appropriate. The Board may obtain a recommendation from the Planning and Zoning Commission concerning the application.

Section 1-93 Criteria and Procedure for Approving Special Uses

(a) The principal objective of this ordinance is to provide for an orderly arrangement of compatible Buildings and land uses, and for the proper location of all types of uses required for the social and economic welfare of the community. To accomplish this objective, each type and kind of use is classified

as permitted in one or more of the various Districts established by this ordinance. However, in addition to those uses specifically classified and permitted in each District, there are certain additional uses which it may be necessary to allow because of the unusual characteristics of the service they provide the public. These uses permitted by special use require particular considerations as to their proper location to adjacent, established or intended uses, or to the planned growth of the community.

(b) In determining whether an application for a special use should be approved, the Board shall consider:

1. the conditions controlling the location and operation of the particular special use established by the applicable sections of this ordinance;
2. the impact the proposed use will have on the surrounding community, including traffic, noise and property values; any conditions or restrictions that could mitigate an adverse impact; and any other matters that are relevant to a determination of whether the use would be compatible and appropriate; and
3. a recommendation obtained from the Planning and Zoning Commission.

(c) An application for a special use permit shall not be granted unless the Board determines that the proposed use, Lot, Building, Sign or other Structure is authorized by this ordinance.

(d) In order to mitigate any adverse impacts of the proposed use, the Board may impose reasonable conditions or restrictions in approving a special use. The conditions or restrictions shall be stated in the permit approving the special use and shall not conflict with any regulation in this ordinance.

Section 1-94. Regulation or District Boundary shall not be Amended by Special Use

The Board shall not amend any regulation of this ordinance or change a District boundary in approving an application for a special use.

Section 1-95 Vote Required to Approve Special Use

The concurring vote of four of the five members of the Board is necessary to approve an application for a special use.

BOARD OF ADJUSTMENT RULES OF PROCEDURE

SECTION 1. ORGANIZATION AND OFFICERS

Rule 1.1 Organization

The Board of Adjustment (“Board”) shall consist of five members appointed by the City Council and shall be organized under the laws of the State of Texas and the City of Lindale, Texas Zoning Ordinance, as amended (“Zoning Ordinance”).

Rule 1.2 Presiding Officer

(A) A Presiding Officer shall be elected by the Board, who shall serve for a period of one year or until a successor is elected by the Board. The Board shall also elect a member to act as presiding officer in the absence of the Presiding Officer.

(B) The Presiding Officer or acting Presiding Officer, shall:

(1) preside at all meetings and hearings, decide all points of order or procedure, and swear in witnesses and, when necessary, compel their attendance;

(2) prepare and execute a written decision on each appeal and application decided by the Board, consistent with the decision of the Board; and

(3) file the executed decision with the Office of the Board within twenty-four hours after the decision is executed.

Rule 1.3 Rules of Order

Robert’s Rules of Order Newly Revised shall be the Board’s final authority on all questions of procedures and parliamentary law not covered by these Rules of Procedure. A failure to strictly adhere to the procedures set forth in Robert’s Rules of Order shall not constitute grounds for the invalidation of any motion or order made by the Board.

Rule 1.4 Administrative Officer

(A) The Administrative Officer, or designee, shall perform the duties authorized under the Zoning Ordinance and these rules, and shall provide assistance to the Board as directed by the City Manager.

(B) The Administrative Officer shall:

(1) receive applications for variances and special uses, provide written notice to an applicant of any deficiency in an application or fees due, assign a case number to applications which comply with these rules and set the agenda for the Board's meetings;

(2) transmit to the Board applications for variances and special uses to be determined by the Board;

- (3) transmit to the Board all the papers constituting the record of the action taken by the Administrative Officer on matters appealed to the Board;
- (4) submit any issues concerning a non-conforming use, building or structure to the Board for determination;
- (5) receive Documentary Evidence submitted for the Board's review and promptly transmit Documentary Evidence to the Board;
- (6) prepare, file, post and serve required notices;
- (7) appear before the Board on any matter that comes before the Board under the Zoning Ordinance, including but not limited to appeals;
- (8) maintain all permanent records of the Board in the Office of the Board, including the official minutes.

Rule 1.5 City Attorney

The City Attorney may provide to the Board an oral or written opinion regarding any question of law, interpretation or application of these rules of procedure, or parliamentary rules, and shall review as to law any amendment to these rules of procedure prior to the amendment becoming effective.

SECTION 2. MEETINGS

Rule 2.1 Quorum

A quorum shall consist of four (4) members present. No proxies shall be allowed to establish a quorum or to transact business of the Board. In the absence of a quorum, the presiding Officer or acting Presiding Officer shall call the meeting to order, announce the absence of a quorum, and adjourn the meeting to a date certain when the scheduled agenda items will be considered. Should the absence of a quorum be known in advance of a scheduled meeting, the Presiding Officer authorizes the Administrative Officer or designee to preside at the meeting by rescheduling the hearing to a date certain.

Rule 2.2 Agenda

An agenda shall be prepared by City staff for each meeting of the Board. The agenda shall include appeals and other matters scheduled for consideration by the Board. The agenda shall be posted in accordance with Texas Government Code, Chapter 551 (Open Meetings Act).

Rule 2.3 Board Meetings

(A) Regular Meetings - Regular meetings shall be held _____ at _____ p.m. in the City Council Chambers at City Hall unless otherwise posted. Should no matters be scheduled for consideration by the Board, no meeting shall be held except as directed by the Presiding Officer.

(B) Special Meetings - Special meetings may be called by the Presiding Officer or the Administrative Officer and shall be subject to the Open Meetings Act. The Administrative Officer shall cause notice of the special meeting to be sent to each Board Member and shall provide any information necessary for consideration by the Board.

(C) Work Sessions - The Board may schedule work sessions to address administrative matters or proposed ordinance revisions. These sessions are for discussion purposes only. No decisions on case-related matters shall be made.

(D) Executive Sessions (Closed Meetings). The Board may convene into executive session pursuant to Section 551.071 to seek the advice of the City Attorney about pending or contemplated litigation or to seek or receive the attorney's advice with regard to legal issues relative to a case pending the Board's consideration.

SECTION 3. OFFICIAL RECORDS

Rule 3.1 Definition

The official records shall include these Rules of Procedure, and the minutes of the Board together with all Documentary Evidence considered by the Board, and written findings, decisions, and other official actions. Stenographic notes and tape recordings of proceedings and discussions shall not constitute the official record of the Board.

Rule 3.2 Minutes and Recording of Vote

Minutes of all meetings and proceedings shall be prepared by City staff showing the motion and vote of each member upon each question, or if absent, or failing to vote, indicating that fact. City staff shall attest the minutes.

Rule 3.3 Public Records

All requests and other matters coming before the Board shall be filed in the City's records and be available for public inspection during normal business hours. Original papers of all appeals shall be retained along with other special matters as the Administrative Officer deems essential for the permanent record. Rule 3.4 Board Office

The Office of the Administrative Officer shall be designated as the Board's office.

SECTION 4. APPLICATION PROCEDURES AND NOTICE

Rule 4.1 Types of Requests

The Board shall only consider requests authorized under section 211.009 of the Texas Local Government Code, as amended, and under the Zoning Ordinance, as amended. Rule 4.2 Application Required

(A) Every request for action of the Board shall be filed in the Board's Office on the application forms provided by the City, shall be accompanied by the prescribed fee, and shall be complete in all respects before being accepted for filing. The application shall bear the signature of the owner of the property which is the subject of the request or shall be accompanied by a letter of authorization from such owner. An incomplete application or a communication purporting to be an application and not made in the form prescribed shall be regarded only as a notice of intent to appeal or to file an application for a variance or special use, and shall not be considered or acted upon by the Board.

(B) An application or notice of appeal may be filed by a person aggrieved by a decision of the Administrative Officer with respect to the Zoning Ordinance or an officer, department or board of the City impacted by a decision of the Administrative Officer. The notice of appeal shall include the name, address, email address and telephone number of the applicant, specify the decision or determination of the Administrative Officer that is the subject of the appeal, state the grounds for the appeal, citing all provisions of the Zoning Ordinance which support applicant's position.

(C) An application for a variance include the name, address and telephone number of the applicant, the location of the Lot, Building, Sign or other Structure, the nature of the variance, and an explanation of why the variance would not be contrary to public interest and identify the special conditions that would cause a literal enforcement of the Zoning Ordinance to result in unnecessary hardship. The applicant shall provide such other information as is reasonably required by the Administrative Officer or the Board.

(D) An application for special use shall include the name, address and telephone number of the applicant, the location of the Lot, Building, Sign or other Structure, the nature of the proposed use and the section of the Zoning Ordinance that authorizes the special use. The applicant shall provide such other information as is reasonably required by the Administrative Officer or the Board.

Rule 4.3 Deadlines on Applications to Appeal Decision of Administrative Officer

(A) Every application for an appeal of a decision of the Administrative Officer must be filed in accordance with these rules and no later than thirty days from the date the decision was made.

(B) The Board shall hear an appeal within thirty (30) days from the date the appeal is filed.

(C) The Board shall decide an appeal within a reasonable time, not to exceed sixty (60) days from the date of the hearing on the appeal.

Rule 4.4 Guidelines for Application

Every application shall include a letter and site plan or other graphics explaining the applicant's request, along with the required non-refundable application fee.

Rule 4.5 Notice

(A) The Board of Adjustment shall hold a public hearing on all requests made to it and written notice of such public hearing shall be sent in accordance with state law and the Zoning Ordinance.

(B) Within three business days after an application for a variance or special use is accepted for filing by the Administrative Officer, applicant shall post notice on the property which states:

(1) For a Special Use Permit - "An application has been filed for a Special Use Permit affecting this property. For more information visit the City website at www.lindaletx.gov or call 903-882-6861."

(2) For a Variance - "An application for a Variance has been filed with the Lindale Board of Adjustment affecting this property. For more information visit the City website at www.lindaletx.gov or contact the Administrative Officer at 903-882-6861.

The notice shall be posted on a sign with a minimum sign face of two feet by three feet. A minimum font size of 28 shall be used for all letters. The sign shall be placed in a conspicuous location on the property and shall be removed by the applicant within three business days after the Board makes a determination on the application.

With respect to applications pending as of the date these rules were adopted, the notice shall be posted within three business days after the date these rules were adopted.

Rule 4.6 Withdrawal of Request

Any request may be withdrawn by an applicant upon written notice to the Administrative Officer. but no request shall be withdrawn after public notice has been given without formal consent of the Board.

SECTION 5. HEARINGS AND DECISIONS

Rule 5.1 Hearings Open to the Public

Hearings on all matters on which a decision of the Board is required by law shall be open to the public. Any party in interest may appear on his own behalf or be represented by legal counsel or agent.

Rule 5.2 Order of Business

The Presiding Officer shall call the meeting to order, and City staff shall record the members present and absent. The Presiding Officer shall publicly advise those present of the procedures followed in the hearing and disposition of cases. The Presiding Officer may call cases in any order.

Rule 5.3 Procedures for Hearing

(A) After opening the public hearing, the Presiding Officer shall first call upon the applicant to present the applicant's case and all evidence supporting the applicant's request. A true and correct copy of all written evidence, documents, photographs, and audio or video graphic evidence presented at the hearing shall be included in the record of the case.

(B) The Presiding Officer shall then call upon those members of the public who wish to express their support for the granting of the applicant's request. The Presiding Officer shall next call on those members of the public who wish to express their opposition to the granting of the applicant's request. Each person who wishes to speak shall state their name and address for the record. Each person who is called on to speak shall first swear that the testimony the person shall give shall be the whole truth and nothing but the truth. The Presiding Officer may establish reasonable time-limits for the members of the public as deemed necessary by the Presiding Officer.

(C) The applicant shall then be given the opportunity to rebut the arguments presented by those in opposition.

(D) Each person speaking shall proceed without interruption by any other person, and all arguments and pleadings shall be addressed to the Board. It shall be the responsibility of the Presiding Officer to maintain order and proper decorum during the hearing. No questioning or arguments between individual witnesses will be permitted. During the hearing, no member shall argue an issue with the applicant, nor indicate the member's final vote on the applicant's request until such time as the vote is called. Nothing herein shall be construed to prohibit a member from expressing his or her opinion as to the merits of the applicant's request or as to the existence of any hardship.

(E) Following the applicant's rebuttal, the Presiding Officer shall order the hearing closed. After the hearing is closed, the members may deliberate regarding the merits of the applicant's request and may vote on a motion made and seconded with respect to the disposition of the request.

(F) The Board may act on any request for which the applicant fails to appear after conducting the public hearing.

Rule 5.4 Board Review

The Presiding Officer may direct any question to the applicant or any persons speaking in order to bring out all relevant facts, circumstances and conditions affecting the request, and may call for questions from other members of the Board and from the City staff. At any time prior to the time a vote is called for, the Board may call back any applicant or speaker or staff member for clarification of fact presented by him in the hearing or to answer one or more questions of the members of the Board.

Rule 5.5 Documentary Evidence

(A) For purposes of these rules, Documentary Evidence means correspondence, notes, records, plans, drawings, appraisals, reports and any other documents relied upon to record or prove something, but signed applications shall not be considered Documentary Evidence.

(B) For purposes of these rules, Party means the applicant or any person or entity that appears in favor of or against the request.

(C) Seven copies of all Documentary Evidence shall be provided to the Administrative Officer no later than 10 business days prior to the scheduled hearing date. The Administrative Officer shall note the date the Documentary Evidence was received. The Administrative Officer shall forward a copy of the Documentary Evidence to each board member no later than 5 business days prior to the scheduled hearing date. Upon oral request made by the party at the scheduled hearing, the Board may, for good cause, suspend the operation of this rule and consider the evidence or postpone the hearing on the application to a date certain to allow the board sufficient time to consider the tendered evidence prior to the next scheduled hearing date.

(D) All Documentary Evidence shall conform to standard 8.5 x 11-inch letter-sized pages. Each page shall be serially numbered and double-spaced. Typewritten Documentary Evidence shall conform to a size 12 font or larger.

(E) Documentary Evidence considered by the Board becomes a part of the record and will not be returned.

Rule 5.6 Suspension of Rules

Any provision of these rules not governed by other law may be temporarily suspended by the affirmative votes of at least four members.

Rule 5.7 Consideration of Evidence

Decisions of the Board may be based on any credible evidence, including a member's own familiarity with a site. However, members of the Board should refrain from conducting independent investigations into any application and should consider only the evidence and testimony introduced at the meeting through the public hearing process and the background information presented by City staff through the information packet. Where deemed necessary, the Board may request City staff to obtain any additional relevant information for the Board's consideration.

Rule 5.8 Disposition of Cases

(A) The Board may unconditionally grant, conditionally grant, or deny an applicant's request. The Board may also defer action on any request in response to the applicant's request for deferral of the action or whenever it concludes that additional evidence is needed or that alternate solutions need further study. An applicant's request may be dismissed when the Board finds that the request has been improperly filed or, upon notification by the City, that permits have been issued for a conforming use or development of the property.

(B) An application for a variance shall not be granted unless the Board determines that:

- (1) The variance is not contrary to the public interest;
- (2) Due to special conditions, a literal enforcement of the Zoning Ordinance would result in unnecessary hardship; and

(3) The spirit of the Zoning Ordinance is observed and substantial justice is done by allowing the variance.

(4) Economic or financial hardship is not grounds for granting a variance.

(C) In determining an application for a special use, the Board shall consider:

(1) the conditions controlling the location and operation of the particular special use established by the Zoning Ordinance;

(2) the impact the proposed use will have on the surrounding community, including traffic, noise and property values; any conditions or restrictions that could mitigate an adverse impact; and any other matters that are relevant to a determination of whether the use would be compatible and appropriate; and

(3) a recommendation obtained from the Planning and Zoning Commission.

(D) An application for special use shall not be granted unless the Board determines that the proposed use, lot, building, or other structure is authorized by the Zoning Ordinance. In order to mitigate any adverse impacts of the proposed use, the Board may impose reasonable conditions or restrictions in approving a special use. The conditions or restrictions shall be stated in the permit approving the special use and shall not conflict with any regulation in the Zoning Ordinance.

Rule 5.9 Vote Required

The concurring vote of four members shall be necessary to grant, or to grant conditionally, any request made to the Board. When a motion to approve a request fails to receive four affirmative votes, the request is denied. A motion to deny a request shall pass on the vote of a simple majority of the members. Should a motion to deny fail to receive a majority vote, another motion must be made (e.g., "motion to approve", "motion to postpone", etc.) to dispose of the case. A simple majority vote of the members shall be required to approve any motion other than a motion to approve a request. All motions must receive a second to be considered by the Board.

Rule 5.10 Written Decision

(A) All decisions of the Board shall be in writing, shall indicate the decision of the Board and shall be filed in the Board's Office no later than the following business day after such decision has been made. However, the failure to timely file the decision in the Board's Office shall not have any effect on the validity of the decision.

(B) On all appeals the Board shall send written notice of its decision to the appellant and the Administrative Officer by First Class U.S. Mail, postage prepaid. If the Board has been provided an email address or fax number by which notice of its decision can be provided electronically to the Appellant then notice of its decision shall also be provided to the Appellant electronically.

SECTION 6. RE-APPLICATION

6.1 Re-application for Denied Request

No application for a variance or special use which has been denied shall be again filed earlier than one year from the date of original denial unless other property in the immediate vicinity has, within the one-year period, been changed or acted on by the Board or City Council so as to alter the facts and conditions on which the previous Board action was based. Such change of circumstances shall permit the rehearing of a request by the Board prior to the expiration of one-year period, but such conditions shall in no way have any force in law to compel the Board, after a hearing, to grant an applicant's subsequent request. Such subsequent request shall be considered entirely on its merits and the peculiar and specific conditions related to the property on which the request is brought.

SECTION 7. EXPIRATION OF GRANTED REQUEST

Rule 7.1 Expiration of Granted Request

Any variance or special exception granted or authorized by the Board shall authorize the issuance of a building permit and/or a Certificate of Occupancy, as the case may be, for a period of one year from the date of the favorable action of the Board unless said Board shall have in its action approved a different period of time and has so shown such specific period of time in the minutes of its action. If the building permit and/or Certificate of Occupancy shall not have been applied for within said one-year period 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. All applications for a request which have been denied shall be deemed to be denied with prejudice unless stated otherwise in the Board's written decision.

SECTION 8. CERTIFICATION AND AMENDMENTS

Rule 8.1 Certified Copy

A certified copy of these Rules of Procedure and of any amendments thereto will be placed on record in the office of the City Secretary within ten days following their date of adoption.

Rule 8.2 Repealing Clause

All previously adopted Rules of Procedure of the Board shall be and the same are hereby expressly repealed.

8.3 Amendment Procedure

Amendments to these Rules of Procedure may be made by the Board at any meeting upon the affirmative vote of four members, provided any such amendment is proposed at a preceding meeting and recorded on the minutes of such meeting. By unanimous consent of five members present, amendments may be adopted at the meeting at which they are introduced but such amendments shall not become effective until the next regular meeting.

8.4 Informal Advice

The Board or its individual members shall not consider a request (formal or informal) for advice on theoretical or actual situations that potentially may come before the Board in the future as an appeal or application for a variance or special use.

ADOPTED this day of , 2018.

Presiding Officer, Board of Adjustment

Filed in the Office of the City Secretary this day of , 2018.

City Secretary, City of Lindale, Texas

Addendum 1–Uses in Residential Districts

	A	R-1A	R-1B	R-1C	R-2	R-3	R-MH	R-PUD
Single Family Dwelling	●	●	●	●	●	●		●
Two Family Dwelling				■	●	●		●
Multiple Family Dwelling				■		●		■
HUD-Code Manufactured Home							●	
Leasing or renting of rooms, not to exceed 2 tenants		●	●	●	●	●	●	●
Farm or Orchard (excluding farm animals or livestock)	●	●	●	●	●	●	●	
Raising farm animals, livestock or beekeeping	●							
Dairy farm	●							
Forestry	●							
Nursery	●							
Church or Other House of Worship	●	●	●	●	●	●	●	
Boarding House						●		
Home Day Care Services	●	●	●	●	●	●	●	
Public or Private School	■	■	■	■	■	■	■	
Veterinary Hospital, Small Animal Clinic or Kennel	■							
Civic or Social Organizations	■	■	■	■	■	■	■	
Park	■	■	■	■	■	■	■	■
Golf Course	■	■	■	■	■	■		
Public Utility Station	■	■	■	■	■	■	■	■

	A	R-1A	R-1B	R-1C	R-2	R-3	R-MH	R-PUD
Police, Fire or Emergency Medical Services Station		■	■	■	■	■	■	■
Child Care Services	■	■	■	■	■	■	■	
Bed and Breakfast	■	■	■	■	■	■		
Home Occupation	■	■	■	■	■	■	■	■
Radio, Communication, or Television Transmission Tower	■							
Convalescent or Nursing Home						■		
Assisted Living Facility						■		
Continuing Care Facility						■		
Sheltered Care Facility						■		
Convenience scale commercial use if located on an Arterial Boulevard or Arterial Street where no existing commercial use exists within one mile		■	■	■	■	■	■	

● Permitted uses

■ Uses permitted by special exception

☐ Townhouses and condominiums are permitted, but not other multiple family dwellings.

Addendum 2–Uses in Non-Residential and Mixed Use Districts

	C-1	C-2	I-PD	MU-1	MU-2	MU-3	MU-4	I-1	I-2
Single Family Dwelling				■		●	●		
Two Family Dwelling				■		●	●		
Multiple Family Dwelling				■	■	●	●		
Leasing or renting of rooms						●	●		
Convalescent or Nursing Home	■			■	■				
Assisted Living Facility	■			■	■				
Continuing Care Facility	■			■	■				
Sheltered Care Facility	■			■	■				
Home Day Care Services				■		■			
Child Care Services	■			■	■	■			
Home Occupation				■		■			
Convenience Commercial Center	●	●		●	●		●		
Neighborhood Commercial Center	●	●		●	●		●		
Community Commercial Center		●			●				
Regional Commercial Center		●			●				
Business Services	●	●		●	●	●	●		
Financial Services	●	●		●	●	●	●		
Motor Bank	●	●		●	●	●			
Pawn Shop	●	●		●	●				

	C-1	C-2	I-PD	MU-1	MU-2	MU-3	MU-4	I-1	I-2
Health Care Services	●	●	●	●	●		●		
Health or Medical Facility		●	●		●				
Insurance or Real Estate Services	●	●		●	●	●	●		
Personal Services	●	●		●	●	●	●		
Professional Services	●	●		●	●	●	●		
Food Stores	●	●		●	●	●	●		
Specialty Retail Sales or Services	●	●		●	●	●	●		
Furniture or Home Furnishings	●	●		●	●		●		
General Merchandise Store	●	●		●	●		●		
Minor Automotive Repair	●	●		●	●			●	●
Major Automotive Repair		■		■	●			●	●
Automotive Service Station	●	●		●	●			●	●
Tractor Trailer Truck Service Station		■			●			●	●
Office Building	●	●	●	●	●	●	●		
Recreation Services	●	●		●	●	●	●		
Sports or Recreation Club	●	●		●	●	●	●		
Physical Fitness Center	●	●		●	●	●	●		
Entertainment Center		●		●	●	●	●		
Convention Center		●	●	●	●	●	●		
Cultural Institutions		●	●	●	●	●	●		

	C-1	C-2	I-PD	MU-1	MU-2	MU-3	MU-4	I-1	I-2
Restaurant		●		●	●	●	●	●	●
Hotel or Motel		●		●	●		●	●	●
Boarding House		●		●	●				
Bed and Breakfast				●		●	●		
Light or Medium Manufacturing						■		●	●
Heavy Manufacturing									●
Research or Testing Laboratory								●	●
Industrial or Research Park								●	●
Product Distribution Center								●	●
Warehouse								●	●
Storage Yard								●	●
Contractor Office								●	●
Bus, Cab or Truck terminal								●	●
Storage Lot for Boats or Recreational Vehicles								●	●
Commercial Printing								●	●
Commercial Bakery								●	●
Church or Other House of Worship	●	●	●	●	●	●	●		
Civic or Social Organizations	●	●		●	●	●	●		
Public or Private School	■		●	■	■	■			
School or College			●					●	●
Research Park			●						

	C-1	C-2	I-PD	MU-1	MU-2	MU-3	MU-4	I-1	I-2
Public Library	●	●		●	●	●	●		
Government Building or Services	●	●		●	●	●	●		
Postal Service	●	●		●	●	●	●	●	●
Public Utility Station	■	●		■	■	■		●	●
Police, Fire or Emergency Medical Services Station	■	●		■	■	■	●	●	●
Lumber Yard		■		■	●			●	●
Feed or Fertilizer Plant									●
Concrete or Asphalt Plant									●
Petroleum or Petroleum Products Refining									■
Food Processing Plant									■
Junk Yard or Salvage Yard									■
Retail Nursery				■				●	
New or Used Automobile or Truck Dealer		■		■	●			●	●
New or Used Motorcycle Dealer		■		■	●			●	●
New or Used Boat Dealer		■		■	●			●	●
New or Used Utility Trailer or Recreational Vehicle Dealer		■		■	●			●	●
New or Used Farm or Heavy Equipment Dealer		■		■	●			●	●

	C-1	C-2	I-PD	MU-1	MU-2	MU-3	MU-4	I-1	I-2
HUD-Code Manufactured Home Dealer								■	■
Veterinary Hospital, Small Animal Clinic or Kennel		■		■				■	■
Livestock Auction Barn								■	
Private Club		■		■					
Sexually Oriented Business								■	■
Park	■	■		■	■	■	●		
Golf Course	■			■	■		●		
Mortuary or Funeral Home	■	■		■	■				
Outdoor Farmer's Market						●			

● Permitted uses

■ Uses permitted by special exception