

ORDINANCE NO. 2021-12-15-03

AN ORDINANCE OF THE CITY OF ROLLINGWOOD REPEALING AND REPLACING SECTION 107-490 THROUGH SECTION 107-515 OF THE CITY OF ROLLINGWOOD, TEXAS CODE OF ORDINANCES, PART II OF THE LAND DEVELOPMENT CODE, DIVISION III BOARD OF ADJUSTMENT; PROVIDING FOR FINDINGS, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING

WHEREAS, the City of Rollingwood (“City”) is a Texas General Law Municipality operating under the laws of the State of Texas; and

WHEREAS, the City is empowered by Chapter 211 of the Texas Local Government Code to establish a board of adjustment and associated rules and regulations; and

WHEREAS, the City Council may from time to time choose to amend, supplement, change or modify the City’s regulations; and

WHEREAS, the City Council finds that the repeal and replacement of Section 107-490 through Section 107-515 of the Code of Ordinances as depicted in Exhibit A is compliant with the requisites of the state law, including Texas Local Government Code; and

WHEREAS, the City has complied with all conditions precedent necessary to take this action, has properly noticed and conducted all public meetings pursuant to the Texas Local Government Code and Texas Government Code, as applicable.

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

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes and findings of fact.

Section 2. Addition to Municipal Code of Ordinances. The City of Rollingwood, Texas Code of Ordinances, are hereby repealed and replaced as set forth on Exhibit A hereto.

Section 3. Severability. If any provision of this Ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of this Ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Ordinance.

Section 4. Repealer. This ordinance shall be cumulative of all other ordinances of the City, and this ordinance shall not operate to repeal or affect any other ordinances of the City except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of

this ordinance, in which event such conflicting provisions, if any, are hereby repealed.

Section 5. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all required by Chapter 551, as amended, Texas Government Code.

Section 6. Effective Date. This Ordinance will take effect upon its adoption by the City Council.

PASSED AND APPROVED this _____ day of _____, 2021.

CITY OF ROLLINGWOOD, TEXAS

By: _____
Gavin Massingill, Mayor

ATTEST:

Ashley Wayman, City Secretary

APPROVED AS TO FORM:

Charles E. Zech, City Attorney
DENTON NAVARRO ROCHA BERNAL & ZECH, PC

1 **Exhibit A**

2

3 ***Section 107-490 through Section 107-515 are hereby repealed and replaced with the following:***

4

5 **Sec.107-490 Duties**

6

7 The board of adjustment shall have the following duties:

- 8 (a) The board may hear and decide an appeal that alleges error in an order, requirement, decision, or
- 9 determination made by an administrative official in the enforcement of the city's zoning regulations
- 10 (b) The board is authorized to hear and decide a special exception to the zoning regulations as allowed by
- 11 Sec.107-492
- 12 (c) The board may authorize variances from the terms of city's zoning regulations provided that the variance as
- 13 will not be contrary to the public interest, and due to special conditions, a literal enforcement of the
- 14 provisions of this ordinance would result in unnecessary hardship, and so that the spirit of this ordinance
- 15 shall be observed and substantial justice done.
- 16 (d) The board shall determine, in cases of uncertainty, the classification of any use not specifically named in this
- 17 zoning ordinance.
- 18

19 **Sec.107-491 Appeals based on error**

20

21 (a) *Applicability*

22 The board may hear and decide an appeal that alleges error in an order, requirement, decision, or

23 determination made by an administrative official in the enforcement of this chapter.

24

25 (b) *Submittal and Processing of Appeal*

26 An appeal by a person aggrieved by a decision of an administrative official must be filed with the city

27 administrator or his/her designee no later than the 20th day after the date the decision was made. An appeal

28 shall contain a written statement of the reasons why the decision is erroneous and shall be accompanied by

29 a filing fee established by the city council. An appeal may include any other documents that support the

30 position of the appellant. Upon filing of the appeal, the city administrator or his/her designee shall promptly

31 transmit to the board all of the papers constituting the record of action that is appealed.

32

33 (c) *Stays of Proceedings*

34 An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom

35 the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would

36 cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining

37 order granted by the board or a court of record on application, after notice to the official, if due cause is

38 shown.

39

40 (d) *Notice*

41 Public notice of the appeal hearing shall be given through posting of the meeting agenda. Notice of the

42 appeal hearing shall be mailed at least thirty (30) days before the hearing date to the following persons at the

43 address shown on the current tax rolls of the city and deposit of the notices in the U.S. mail will be deemed

44 compliance with this requirement:

45 (i) The appellant.

46 (ii) The owners of the property located within 250 feet of any point of the lot the appeal is

47 requested for.

48

49 (e) *Hearings*

At the hearing, any party may appear in person or by agent or by attorney. All testimony shall be given in a manner prescribed by the rules of the board. Hearings conducted by the board shall be open to the public; however, the board may meet in executive session pursuant to V.T.C.A., Government Code ch. 551.

(f) *Decision by the Board*

The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. The board shall decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date of the appeal is filed. In exercising its authority under this subsection, 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. The concurring vote of 75 percent of the members of the board shall be necessary to reverse an order, requirement, decision, or determination of an administrative official.

(g) *Time Limit*

If the board grants relief on an appeal, a new development application or permit application shall be submitted within 180 days after the date of such approval or the appeal shall become null and void.

(h) *Notification of Decision on Appeal*

The appellant shall be notified in writing by the city administrator or his/her designee of the decision on the appeal.

Sec.107-492 Special Exceptions

(a) *Purpose*

The board is authorized to hear and decide a special exception to the zoning regulations which are not permitted by right in a particular district because of potential adverse effect, but which if controlled in the particular instance as to its relationship to the neighborhood and to the general welfare, may be permitted by the board, where specifically authorized by Sec.107-492 (d). A special exception is an allowed variation from the zoning regulations, but is differentiated from a variance as the term is used in this Zoning Ordinance by the following:

- (1) A special exception does not require a finding of an unnecessary hardship.
- (2) Specifically allowed and pre-determined by Sec.107-492(d).

(b) *Application Requirements*

Any request for a special exception shall be accompanied by an application prepared in accordance with the City's application rules in effect at the time of submittal and payment of a filing fee in the amount established by the city council and set forth in the fee schedule on file with the city.

(c) *Processing of Application and Decision*

- (1) *Submittal.* An application for a special exception shall be submitted to the city administrator or his/her designee. The city administrator or his/her designee shall review the application for completeness in accordance with Section 105-23. The city administrator or his/her designee may, at its option, request a recommendation from any other appropriate city department or consultant. The city administrator or his/her designee shall notify the applicant of items requiring correction or attention before providing a recommendation on the application. After appropriate review, the city administrator or his/her designee shall forward a written recommendation to the board for consideration.
- (2) *Notice.* An application for a special exception requires mailed notice of the public hearing. The notice must be mailed at least thirty (30) days before the hearing date to the following persons at the address

shown on the current tax rolls of the city and deposit of the notices in the U.S. mail will be deemed compliance with this requirement:

- (i) The petitioner.
- (ii) The owners of the property located within 250 feet of any point of the lot the special exception is requested for, when the special exception application relates to a residential lot.
- (iii) All owners of property located within the city, when the special exception request relates to a non-residential lot.

(3) *Decision by the Board.*

- (i) The board shall receive the recommendation of the city administrator or his/her designee and shall hold a public hearing. The board may vote to approve, approve with conditions, or deny the special exception.
- (ii) The board may, on its own motion or by request of the property owner, postpone consideration of the special exception in order to review additional information or modifications which may have a direct bearing on the final decision.
- (iii) The concurring vote of 75 percent of the members of the board shall be necessary to grant any special exception.

(d) *Special Exception Authorized*

When, in the board's judgment, the public convenience and welfare will be substantially served and neighboring property will not be substantially or permanently injured, the board may, in a specific case, after public notice and hearing, grant the following special exceptions from the requirements of this chapter:

- (1) Permit the reconstruction of a nonconforming building or structure that has been damaged by fire or other cause;
- (2) Permit the enlargement or extension of a nonconforming use or nonconforming building upon the lot occupied by such use or building at the time of the passage of this division;
- (3) Permit such modifications of yard, open space, lot area, or lot width regulations as may be necessary to improve a parcel of land, if the parcel is of such restricted size that it cannot be appropriately improved without such modification; or
- (4) Permit modifications to lot area, lot dimensions, or height requirements of a district for a public utility or public service building when it is found reasonably necessary for the public health, convenience, safety, or general welfare.
- (5) The board may grant such other special exceptions as may be provided for elsewhere in this zoning ordinance, subject to the terms and conditions therein set out.

(e) *Findings*

Prior to granting a special exception, the board shall make a finding that it is empowered under this zoning ordinance to grant the special exception, and that the grant of the special exception will not adversely affect the public health, convenience, safety or general welfare.

(f) *The Board may Impose Conditions*

In granting a special exception, the board may prescribe appropriate conditions and safeguards in conformity with this zoning ordinance.

(g) *Time Limit*

The board shall prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both. Failure to begin or complete, or both, such action within the time limit set shall void the special exception.

Sec.107-493 Variances

(a) *Purpose*

The board may authorize variances from the terms of this chapter provided that the variance as will not be contrary to the public interest, and due to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done. Approval of a variance authorizes a property owner to submit subsequent development applications consistent with the approved variance.

(b) *Application Requirements*

Any request for a variance shall be accompanied by an application prepared in accordance with the city's application rules in effect at the time of submittal and payment of a filing fee in the amount established by the city council and set forth in the fee schedule on file with the city.

(c) *Processing of Application and Decision.*

(1) *Submittal.* An application for a variance shall be submitted to the city administrator or his/her designee. The city administrator or his/her designee shall review the application for completeness in accordance with Section 105-23. The city administrator or his/her designee may, at its option, request a recommendation from any other appropriate city department or consultant. The city administrator or his/her designee shall notify the applicant of items requiring correction or attention before providing a recommendation on the application. After appropriate review, the city administrator or his/her designee shall forward a written recommendation to the board for consideration.

(2) *Notice.* An application for a variance requires mailed notice of the public hearing. The notice must be mailed at least thirty (30) days before the hearing date to the following persons at the address shown on the current tax rolls of the city and deposit of the notices in the U.S. mail will be deemed compliance with this requirement:

(i) The petitioner.

(ii) The owners of the property located within 250 feet of any point of the lot the variance is requested for, when the variance application relates to a residential lot.

(iii) All owners of property located within the city, when the variance request relates to a non-residential lot.

(3) *Decision by the Board.*

(i) The board shall receive the recommendation of the city administrator or his/her designee and shall hold a public hearing. The board may vote to approve, approve with conditions, or deny the variance.

(ii) The board may, on its own motion or by request of the property owner, postpone consideration of the variance in order to review additional information or modifications which may have a direct bearing on the final decision.

(iii) The concurring vote of 75 percent of the members of the board shall be necessary to grant any variance.

(iv) The approval shall be effective for a period of 180 days after the date of such approval. If no associated development application or permit application is submitted within that time, the variance shall become null and void.

(d) *Criteria for Zoning Variance Approval*

In order to make a finding of a hardship and grant a variance the board must determine the following:

(1) The variance is not contrary to the public interest;

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

(3) The variance, if granted, would be the minimum necessary relief required to alleviate the unnecessary hardship.

- (4) By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done;
- (5) Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located;
- (6) Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located; and
- (7) Such the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located;
- (8) In considering a variance as applied to a structure, the board may, in addition to other relevant considerations, consider the following as grounds to determine whether an unnecessary hardship would result from compliance with the ordinance:
- (i) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;
 - (ii) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
 - (iii) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (iv) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (v) the municipality considers the structure to be a nonconforming structure.

(e) *Finding of Fact*

The board shall complete a findings of facts to support its conclusion for each variance presented to it. The findings of facts shall be filed in the board office and made part of the record.

Sec. 107-494. Limitations.

No appeal, request for a variance nor application for a special exception may be filed by the same applicant within 180 days of the date upon which the board denied such appeal, request or application, unless other property in the immediate vicinity has, within the 180-day period, been changed or acted on by the board or city council so as to alter the facts and conditions upon which the previous board action was based. Such change of circumstances shall permit the rehearing of an appeal, request or application by the board prior to the expiration of the 180-day period, but such conditions shall in no way have any force in law to compel the board to reconsider the appeal, request or application. Such subsequent rehearing shall be considered entirely on its merits and the peculiar and specific conditions related to the property with reference to which such proceeding is brought.

Sec. 107-495. Appeals from the board of adjustment.

Any person, jointly or severally, aggrieved by any decision of the board, or any taxpayer, officer, department, or board of the city may present any such matter to a court of competent jurisdiction for review, after the final action of the board thereon, and in the manner and upon the terms provided by the laws of the state, including Texas Local Government Code Sec.211.011

255

256 **Secs. 107-496—107-515. Reserved.**