

**ORDINANCE NO. 2022-01-19-03**

**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 Addition to Municipal Code of Ordinances.** The City of Rollingwood, Texas Code of Ordinances, are hereby repealed and replaced as set forth on Exhibit A hereto.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 \_\_\_\_\_, 2022.

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 DIVISION 3. – BOARD OF ADJUSTMENT

2 Sec. 107-483. – Creation.

3 (a) The city has created a board of adjustment consisting of five members who are residents  
4 of the city.

5 (b) Members of the board shall be appointed by the mayor, subject to confirmation by the  
6 city council. Members of the city council and planning and zoning commission are not  
7 eligible for appointment to the board.

8 (c) The mayor also shall appoint, subject to confirmation by the city council, four alternate  
9 members of the board who shall be residents of the city, but who shall not be members  
10 of the city council or planning and zoning commission. Alternate members shall, upon  
11 request by the chairperson of the board, serve on the board in the absence of one or  
12 more regular members, so that all cases heard by the board will always be heard by at  
13 least 75 percent of the members, regular or alternate.

14 Sec. 107-484. – Terms.

15 (a) Each member and alternate member of the board shall serve a two-year term,  
16 commencing on January 1 and ending on December 31 of the following year. The terms  
17 of board members shall be staggered.

18 (b) Regular and alternate board members serving upon the effective date of this division shall  
19 continue to serve, and this division shall be deemed to carry forward and continue the  
20 terms of office of such members.

21 Sec. 107-485. – Removal.

22 (a) A regular or alternate member of the board may be removed from office by the city  
23 council for just cause and upon written charges being presented to the member.

24 (b) Upon request of the person against whom removal proceedings are pending, a public  
25 hearing shall be conducted to determine the merits of the written charges submitted.

26 Sec. 107-486. – Filling Vacancies.

27 Any vacancy on the board shall be filled by appointment by the mayor and confirmation  
28 by the city council for the unexpired term of the regular or alternate member whose position  
29 becomes vacant.

30 Sec. 107-487. – Organization.

31 (a) The chairperson of the board shall be elected by majority vote of the members of the  
32 board.

33 (b) The chairperson shall serve a term of one year, commencing on January 1 and ending on  
34 December 31, except that upon expiration of his term the chairperson shall continue to  
35 serve until his successor is elected.

36 Sec. 107-488. – Meetings.

37 (a) Meetings of the board shall be held at the call of the chairperson and at such other times  
38 as the board may determine.

39 (b) Meetings of the board shall comply with the provisions of the state open meetings act,  
40 V.T.C.A., Government Code ch. 551, including posting notices and agendas so as to  
41 adequately inform the public of the time, location and substance of business to be  
42 undertaken. Meetings closed to the public or executive sessions are normally not  
43 appropriate for the board and will not be conducted without the advice and consent of  
44 the city attorney.

45 Sec. 107-489. – Rules and regulations.

46 (a) The board shall adopt rules necessary to the conduct of its affairs and shall furnish a copy  
47 of such rules to the building official. Rules adopted by the board shall be consistent with  
48 the provisions of this division.

(b) All orders and other enactments adopted by the board shall be in accordance with its rules and regulations.

(c) 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 promptly filed in the office of the board and shall be a public record. The office of the board shall be the office of the city administrator where such records shall repose.

(d) The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of the building official or to decide in favor of the applicant on any matter upon which the board is required to pass under ~~the division~~this Chapter.

Sec. 107-490. – ~~Appeals based on error~~Powers of the Board.

The board shall, pursuant to the provisions provided for ~~have~~herein, have the power to:

(1) Hear and decide an appeal where it is alleged that there is an error in any order, requirement, decision or determination made by the building official in the enforcement of this ~~division~~Chapter; and

(2) Hear and decide special exceptions as authorized in this Chapter;

~~(1)(3)~~ Authorize a variance to the regulations as provided for in this Chapter; and

~~(2)(4) Decide any question involving the interpretation of any provision of this division, including determination of the location of any district boundary with respect to which there is uncertainty.~~Determine, in cases of uncertainty, the classification of any use not specifically named in this Chapter.

Sec. 107-491. – Special exceptions.

(a) ~~When, in its judgment, the public convenience and welfare will not be substantially or permanently injured, t~~The board may, in a specific case, where the board makes the

findings required under subsection (c) herein,~~after public notice and hearing,~~ grant the following special exceptions from the requirements of this division:

(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) In undeveloped sections of the city, grant temporary and conditional permits for not more than two years, provided that the grant of a temporary or conditional permit shall not be reason or cause for extension of such permit;

(4) 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

(5) Permit ~~a public utility or public service use or structure in any district, or a~~ public utility or public service building of a ground area or height at variance with those provided for the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety or general welfare.

(b) The board may grant such other special exceptions as may be provided for elsewhere in this division, subject to the terms and conditions therein set out.

(c) Prior to granting a special exception, the board shall make a finding that it is empowered under this ~~division~~Chapter to grant the special exception, that the public convenience and welfare will not be substantially or permanently injured in the granting of the special exception, and that the grant of the special exception will not adversely affect the public health, convenience, safety or general welfare.

(d) In granting a special exception, the board may prescribe appropriate conditions and safeguards in conformity with this division.

(e) 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~~ comply with the time limits set by the board shall void the special exception.

~~(f) The board shall determine, in cases of uncertainty, the classification of any use not specifically named in this division.~~

Sec. 107-492. – Variances.

(a) The board may authorize upon appeal, in specific cases, such variances from the terms of this ~~division~~ Chapter, where the board finds that the variance ~~as 1)~~ will not be contrary to the public interest, 2) where, owing to special conditions, literal enforcement of the provisions of this ~~division~~ Chapter will result in unnecessary hardship, and 3) ~~so that~~ the spirit of this ~~division~~ Chapter ~~shall will~~ be observed and substantial justice done, ~~including the following:~~

~~(1) Permit a variance in yard requirements where there are unusual and practical difficulties or unnecessary hardships in complying with such requirements due to an irregular shape of the lot, or topographical or other conditions.~~

~~(2) Permit a variance from the requirements of this division governing the construction or alteration of buildings or structures, whenever a property owner demonstrates that a strict application of such requirements will impose upon him unusual and practical difficulties or particular hardship.~~

(b) Prior to granting a variance in a zoning district other than a residential district, the board must find, in concert with the findings required in subsection (a), that:

(1) The variance is the minimum variance ~~that will make possible the reasonable use of the land, building or structure~~ necessary to alleviate the unnecessary hardship;

(2) Granting the variance will be in harmony with the general purpose and intent of this ~~division~~Chapter and will not be injurious to adjoining properties or the neighborhood, or be otherwise detrimental to the public welfare;

~~(3) Literal interpretation of the requirements of this division would deprive the applicant of rights commonly enjoyed by the owners of other properties in the same district under the terms of this division;~~

~~(4)~~(3) The special conditions with respect to which a variance is sought ~~do not~~are not the result ~~from of the an~~ action of the applicant;

~~(5) Granting the variance will not confer on the applicant any special privilege that is denied by this division to other land, buildings or structures in this same district;~~

~~(6)~~(4) If applicable, there is sufficient water and wastewater capacity and fire service available to serve the applicant's land as developed under the variance without detriment to the other property within the city; and

~~(7)~~(5) Granting the variance will not merely serve as a convenience to the applicant but will alleviate some demonstrable and ~~unusual unnecessary~~ hardship which is created by the literal enforcement of the provisions of this Chapter~~or difficulty so great as to warrant such variance.~~

(c) Prior to granting a variance in a residential district, in concert with the findings required in subsection (a), the board must find that:

(1) A special individual reason makes the ~~strict application of this division impractical~~literal enforcement of this Chapter result in an unnecessary hardship;

(2) Granting the variance will be in harmony with the general purpose and intent of this ~~division~~Chapter and will not be injurious to adjoining properties or the neighborhood, or be otherwise detrimental to the public welfare;



- 156 (3) The granting of the variance will not be detrimental to the public health,  
157 safety, or welfare or injurious to the property in the area;
- 158 (4) There are special circumstances or conditions such as topography, natural  
159 obstructions, aesthetic or environmental considerations affecting the land  
160 involved such that the strict application of the provisions of this ~~division~~  
161 Chapter would impose an unnecessary hardship which is created by the  
162 literal enforcement of the provisions of this Chapter~~deprive the applicant~~  
163 ~~of a reasonable use of his land;~~
- 164 (5) The granting of the variance will not have the effect of preventing the  
165 orderly development of other land in the area in accordance with the  
166 provisions of this ~~division~~Chapter;
- 167 (6) If applicable, there is sufficient water and wastewater capacity and fire  
168 service available to serve the applicant's land as developed under the  
169 variance without detriment to the other property within the city; and
- 170 (7) The circumstances or conditions from which relief is sought are not solely  
171 of an economic nature.

172 (d) In granting a variance, the board may prescribe appropriate conditions and safeguards  
173 in conformity with this ~~division~~Chapter.

174 (e) In considering a variance as applied to a structure, the board may, in addition to other  
175 relevant considerations, consider the following as grounds to determine whether an  
176 unnecessary hardship would result from compliance with the ordinance:

177 (1) the financial cost of compliance is greater than 50 percent of the appraised value  
178 of the structure as shown on the most recent appraisal roll certified to the assessor  
179 for the municipality under Section 26.01, Tax Code;

180 (2) compliance would result in a loss to the lot on which the structure is located of at  
181 least 25 percent of the area on which development may physically occur;

182 (3) compliance would result in the structure not being in compliance with a  
183 requirement of a municipal ordinance, building code, or other requirement;

(4) compliance would result in the unreasonable encroachment on an adjacent property or easement; or  
(4)(5) the municipality considers the structure to be a nonconforming structure.

Sec. 107-493. – Appeals based on error.

~~An appeal, a request for a variance, or an application for a special exception may be taken by any person to the board in accordance with the provisions of this division.~~

(a) Any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

(1) a person aggrieved by the decision; or

(2) any officer, department, board, or bureau of the municipality affected by the decision.

(b) Any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is related to a specific application, address, or project:

(1) a person who:

(A) filed the application that is the subject of the decision;

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

(C) 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

(2) any officer, department, board, or bureau of the municipality affected by the decision

(c) 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. The appeal must be filed not later than the 20th day after the date the decision is made. On receiving the notice,

210 the official from whom the appeal is taken shall immediately transmit to the board all  
211 the papers constituting the record of the action that is appealed. An appeal by a  
212 person aggrieved by a decision of the building official must be filed with the building  
213 official within 15 days after the decision being complained of was rendered and The  
214 appeal must be accompanied by payment of a filing fee in the amount established by  
215 the city council and set forth in the fee schedule on file with the city. ~~Upon filing of~~  
216 ~~the appeal, the building official shall promptly transmit to the board all of the papers~~  
217 ~~constituting the record upon which the action appealed from was taken.~~

218 (d) An appeal stays all proceedings in furtherance of the action that is appealed unless  
219 the official from whom the appeal is taken certifies in writing to the board facts  
220 supporting the official's opinion that a stay would cause imminent peril to life or  
221 property.

222 ~~(a)~~(e) The board shall set a reasonable time for the appeal hearing and shall give public  
223 notice of the hearing as provided in this Division and, in addition, give due notice to  
224 the parties in interest. A party may appear at the appeal hearing in person or by agent  
225 or attorney. The board shall decide the appeal at the next meeting for which notice  
226 can be provided following the hearing and not later than the 60th day after the date  
227 the appeal is filed.

228 ~~Sec. 107-494. – Stay of proceedings.~~

229 ~~— The filing of an appeal shall stay all proceedings in furtherance of the action appealed~~  
230 ~~from, unless the building official certifies to the board, after the notice of appeal has been filed~~  
231 ~~with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause~~  
232 ~~imminent peril to life or property. In such case, proceedings shall not be stayed other than by a~~  
233 ~~restraining order granted by the board or by a court of competent jurisdiction on application and~~  
234 ~~notice to the building official and due cause shown.~~

235 Sec. 107-49~~5~~4. – Notice of hearing.

236 (a) The board shall fix a date and time to conduct a hearing on each appeal, request for a  
237 variance, ~~or~~ application for a special exception filed with it, or other action authorized  
238 under this Chapter and shall mail notices of such hearing at least 30 days before the  
239 hearing.

240 (b) The notice must be mailed to the following persons at the address shown on the current  
241 tax rolls of the city and deposit of the notices in the U.S. mail will be deemed compliance  
242 with this requirement:

243 (1) The petitioner;

244 (2) The owners of the property located within 250 feet of any point of the lot, or  
245 portion thereof, with respect to which the appeal, request for a variance or  
246 application for special exception is taken;

247 (3) If the appeal, request for a variance or application for a special exception  
248 relates to a lot that is not in a residential district, all owners of property located  
249 within the city shown on the current tax rolls of the city; ~~and,~~

250 ~~(4) All other persons deemed by the board to be affected thereby.~~

251 (c) In addition to the mailed notification, a variance or special exception sign shall be placed  
252 adjacent to each public street or right-of-way, abutting the subject property, or if the  
253 property does not front a public street or right-of-way, to the closest public street or  
254 right-of-way, located in the middle of the frontage, and within three feet of the curb or  
255 the pavement, or as prescribed by the City Administrator at the time of application. One  
256 sign shall be required for the first 100 feet of frontage of the tract, and, thereafter, one  
257 additional sign for every 200 feet of frontage, or fraction thereof, except that no more  
258 than three signs shall be required on each roadway frontage. If the tract has less than  
259 200 feet of frontage per roadway, then only one sign is required per road. All signs shall  
260 be clearly visible to the public from the adjacent public streets. The applicant shall post  
261 the sign(s) at least 15 days prior to the ZBA meeting and maintain said sign(s) in good  
262 condition and in place until final action. If the sign(s) is not posted 15 days prior to the  
263 ZBA meeting, the applicant's case shall be withdrawn and rescheduled. If a sign(s) is

264 removed from the property or damaged, the applicant shall be responsible for  
265 purchasing a replacement sign(s) and installing it immediately. The sign(s) shall be  
266 furnished by the city and a fee shall be charged the applicant per the City fee schedule.

267 ~~Sec. 107-496. – Hearings.~~

268 ~~(a) At the hearing, any party may appear in person or by agent or by attorney. All testimony~~  
269 ~~shall be given in a manner prescribed by the ruled of the board. The board may administer~~  
270 ~~oaths, compel the attendance of witnesses and require the production of documents~~  
271 ~~under such rules as the board may establish.~~

272 ~~Hearings conducted by the board shall be open to the public; however, the board may meet~~  
273 ~~in executive session pursuant to V.T.C.A., Government Code ch. 551. The board shall hear~~  
274 ~~the intervention of any owner of property adjacent to, in the rear of, or across the street from~~  
275 ~~a lot, with regard to which the grant of an appeal, variance or special exception is pending,~~  
276 ~~and shall also hear any other parties of interest.~~

277 Sec. 107-49~~57~~<sup>57</sup>. – Decision by board.

278 With the exception of a decision on an appeal based on an error, which decision shall be  
279 determined as provided for in Sec. 107-493, The board shall make a decision ~~on each appeal,~~  
280 ~~request for a variance or application for a special exception~~ within 45 days of the hearing ~~on such~~  
281 ~~appeal, request or application~~ related to said decision. ~~The board may make such order,~~  
282 ~~requirement, decision or determination as, in it opinion, ought to be made under the~~  
283 ~~circumstances on such appeal, request or application.~~

284 Sec. 107-49~~68~~<sup>68</sup>. – Limitations.

285 (a) No appeal, request for a variance nor application for a special exception or other previous  
286 application, may be filed by the same applicant within 180 days of the date upon which  
287 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.

- (b) Any appeal, request or application approved by the board, either under the provisions of this division or under the authority granted to the board under the statutes of the state, shall authorize the issuance of a building permit or a certificate of occupancy, as the case may be, for a period of 90 days from the date of the favorable action on the part of the board, unless the board in its minutes shall, at the same time, approve a longer period. If an application for such building permit or certificate of occupant is not filed within the 90-day period or such extended period as the board may specifically approve, then the approval of the appeal, variance or special exception shall be deemed waived and all rights thereunder terminated. Such termination and waiver shall be without prejudice to a subsequent appeal, request or application to the board in accordance with the rules and regulations herein contained.

Sec. 107.49~~79~~. – Appeals from the board of adjustment.

(a) Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

(1) a person aggrieved by a decision of the board;

(2) a taxpayer; or

(3) an officer, department, board, or bureau of the municipality.

314 (b) The petition must be presented within 10 days after the date the decision is filed in  
315 the board's office.

316 ~~Any person, jointly or severally, aggrieved by any decision of the board, or any taxpayer, officer,~~  
317 ~~department, or board of the city may present any such matter to a court of competent~~  
318 ~~jurisdiction for review, after the final action of the board thereon, and in the manner and upon~~  
319 ~~the terms provided by the laws of the state.~~

320 Sec. 107.500 – 107-515. – Reserved.