

AN ORDINANCE CREATING A ZONING BOARD OF ADJUSTMENTS FOR THE CITY OF NOLANVILLE, TEXAS. PROVIDING FOR THE COMPOSITION AND APPOINTMENT OF ITS MEMBERS, SPECIFYING THE NUMBER OF AND QUALIFICATION OF ITS MEMBERS, SEPECIFYING THEIR TERMS OF OFFICE, PROVIDING FOR THE REMOVAL FROM THE OFFICE OF A MEMBER AND FILING AND RESULTING VACANCY, SPECIFYING THE POWERS, DUTIES, AND RESPONSIBILITIES OF THE BOARD, ESTABLISHING EXTRATERRITORIAL POWERS, PROCEDURES, APPEALS AND PROVIDING A SAVINGS CLAUSE.

Be it ordained by the City of Nolanville:

Section 1. Creation of and composition of the Board of Adjustments

- A. There is hereby created a Zoning Board of Adjustments, hereafter sometimes referred to as the "Board," for the purpose, in appropriate cases and subject to appropriate conditions and safeguards, of making special exceptions and variances to the terms of this Ordinance that are consistent with the general purpose and intent of this Ordinance. The Board shall be composed of members who are resident citizens of the City of Nolanville.
- B. The Zoning Board of Adjustments shall consist of five (5) regular members, who shall be appointed by a simple majority vote of the City Council, and shall operate in accordance with Sections 211.008 through 211.011 of the Texas Local Government Code, as amended. The City Council shall provide for the appointment of up to four (4) alternate members to serve in the absence of one or more of the regular Board members on an alternating basis such that all alternate members have equal opportunities to serve on the Board.
- C. Appointments to the Zoning Board of Adjustment shall be for staggered terms of two years. Alternate members shall serve in the absence of one or more regular board members when required to do so by the Mayor or City Manager. The City Council may remove a member or alternate member of the board for cause, as found by the City Council on a written charge, after a public hearing.
- D. Vacancies shall be filled for the unexpired term of any member, or alternate member, whose term becomes vacant for any cause by a simple majority vote of the City Council.

- E. Members of the Board may be removed from office for cause, and after a public hearing, by a simple majority vote of the City Council. Failure to attend three (3) consecutive scheduled meetings shall be deemed as neglect and cause for removal from office, unless such absences were due to unusual circumstances beyond the member's control such as sickness of the member or someone within the member's immediate family. Absences may be excused by the Board or by the Council.

Section 2. Officers and Procedures

- A. The Zoning Board of Adjustments shall elect a Chairperson, Vice-Chairperson and Secretary from among its membership, and each officer shall hold office for two (2) years or until replaced by a simple majority vote of the full Board.
- B. The Zoning Board of Adjustment, by majority vote, shall adopt such procedural rules as are necessary to execute its duties. Each case before the Board must be heard by at least 75 percent of the members. Meetings of the board are held at the call of the chair or at other times as the board may determine. Such chair, or in the chair absence the acting chair, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public.
- 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 other official actions, all of which shall be filed in the office of the board and shall be a public record. The Secretary shall immediately notify in writing the City Council, Planning and Zoning Commission, and the City Building Official of each decision rendered by the Board in the conduct of its duties.

Section 3. Powers of the Zoning Board of Adjustments

- A. The Zoning Board of Adjustments shall have the authority, subject to the standards established in Sections 211.008 through 211.011 of the Texas Local Government Code and those established herein, to exercise powers and to perform duties including the following:
 - 1. **Appeals.** To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter.
 - 2. **Special Exceptions.** The Board may hear and decide special exceptions to the terms of a zoning ordinance. When in its judgment the public convenience and welfare will not be substantially or permanently injured, the Zoning Board of Adjustment may in a specific case, after public notice and hearing and subject to

appropriate conditions and safeguards, authorize special exceptions. A special exception is a type of variance, but is differentiated from a variance as the term is used in this Ordinance by the following:

1. A special exception does not require a finding of a hardship.
2. Approval of a special exception by the Zoning Board of Adjustments is specifically provided for and defined in this ordinance.
3. A special exception applies to nonconforming uses and structures, off-street parking requirements and landscaping requirements.

3. **Variances.** The Board may after public notice and hearing authorize in specific cases a variance from the terms of 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. The sole purpose of any variance shall be the modification of the specific regulations of this Ordinance and shall be for the purpose of assuring that no property, because of unique circumstances applicable to it, shall be deprived of any privileges commonly enjoyed by other properties in the same vicinity and zone. Before any variance may be granted, it shall be shown: (1). That there are exceptional or extraordinary circumstance or conditions applicable to the property. (2). That such a variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, and denied to the property in question. (3). That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity.

4. **Other Matters.** The Board may hear and decide other matters authorized by an ordinance adopted under this subchapter.

B. The concurring vote of at least 75 percent of the members of the Zoning Board of Adjustments is necessary to:

1. Reverse an order, requirement, decision or determination of an administrative official;
2. Decide in favor of an applicant on a matter on which the Board is required to review under this Zoning Ordinance;
3. Authorize a variance from a provision of this Zoning Ordinance; or
4. Hear and decide special exceptions to a provision of this Zoning Ordinance

Section 4. Appeals to the Zoning Board of Adjustments

- A. A person aggrieved by a decision made by an administrative official, or any officer, department, board, or bureau of the city affected by such a decision, may appeal the decision to the Zoning Board of Adjustment. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Zoning Board of Adjustment a notice of appeal specifying the grounds thereof and by paying a filing fee established by the City Council, at the time the notice is filed, which shall be credited to the General Fund of the city. The officer from whom the appeal is taken 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 officer from whom the appeal is taken certifies to the Board of Adjustment after the notice or appeal shall have been filed that by reasons of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Adjustment or by a court of record on application or notice to the officer from whom the appeal is taken and on the cause shown.
- B. The Zoning Board of Adjustment shall fix a reasonable time for the hearing of the appeal, giving public notice hereof, 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 5. Procedures

- A. An application for a variance, special exception or appeal to the Zoning Board of Adjustments shall be made in writing using forms prescribed by the City, and shall be accompanied by an application fee in accordance with the Council adopted fee schedule and any other additional information as may be requested in order to properly review the application. There is no filing fee for an appeal filed by any officer, department, board, or bureau of the City affected by the decision.
- B. The City Manager, or his/her designee, shall visit the site where the proposed variance or special exception will apply and the surrounding area, and shall report his/her findings to the Board.
- C. The Zoning Board of Adjustments shall hold a public hearing for consideration of the variance or special exception request no later than sixty (60) calendar days after the date the application for action, or an appeal, is filed. Notice shall be published in the official local newspaper before the fifteenth (15th) calendar day prior to the public hearing. Written notice of the public hearing for a variance or exception shall also be sent by regular United States mail to all owners of property, as indicated by the most recently approved City tax roll, that is located within the area of application and

within two hundred feet (200) of any property affected thereby, said written notice to be sent before the tenth (10th) calendar day prior to the date such hearing is held.

- D. The applicant bears the burden of proof in establishing the facts that may justify a variance, a special exception, an appeal, or any other action in his/her favor by the Board.

Section 6. Appeal to Courts

- A. All decisions of the Zoning Board of Adjustments are final and binding and may not be appealed to the City Council. However, any person aggrieved by a decision of the Zoning Board of Adjustments may present a verified petition to a court of appropriate jurisdiction that states that the decision of the Board is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented within ten (10) calendar days after the date the Board's decision is filed in the office of the Secretary to the Board. Subject to the provisions of Chapter 211.011 of the Texas Local Government Code, only a court appropriate jurisdiction may reverse, affirm or modify a decision of the Zoning Board of Adjustments.

Section 7. Savings Clause

- A. Any part, subdivision, paragraph, clause, phrase or sentence of this ordinance or the application of the same to a particular set of persons or circumstances should for any reason, be held invalid, such invalidity shall in no way affect the remaining portions of this ordinance and to such end the various division of this ordinance are declared to be server able.

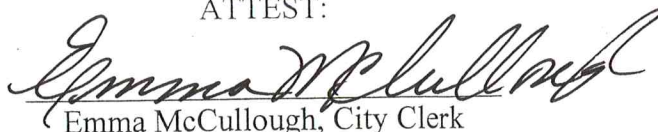
PASSED AND APPROVED this the 5th day of May 2011, by a vote of ____ (ayes) to ____ (nays) to ____ (abstentions) of the City Council of the City of Nolanville, Texas.

APPROVED:



Charlie L. Stewart, Mayor

ATTEST:



Emma McCullough, City Clerk