

CITY OF SANDY OAKS, TEXAS

ORDINANCE NO. 2019-126

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANDY OAKS, TEXAS CREATING A BOARD OF ADJUSTMENT; PROVIDING FOR VOTING AND MEETING PROCEDURES; PROVIDING FOR POWERS AND DUTIES; PROVIDING FOR AUTHORITY IN THE ETJ; PROVIDING FOR SEVERABILITY; PROVIDING FOR A FINDING OF PROPER NOTICE AND MEETING AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Sandy Oaks, Texas ("City") is a Type A General Law Municipality incorporated and operating under the laws of the State of Texas; and

WHEREAS, Chapter 211 of the Local Government Code ("Chapter 211") authorizes the governing body of a municipality to appoint a Board of Adjustment to exercise the powers authorized by Chapter 211; and

WHEREAS, the governing body of a Type A general-law municipality by ordinance may grant the members of the governing body the authority to act as a board of adjustment pursuant to section 211.008(g); and

WHEREAS, the City Council finds that the enactment of this ordinance is necessary for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance;

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

SECTION 1. FINDINGS OF FACT. The above recitals are hereby found to be true and correct legislative and factual findings of the City Council of the City and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. GENERAL. The Planning and Zoning Commission (also referred to as the "P&Z" or the "Commission") shall function according to the following criteria that establish membership and operating procedures.

SECTION 3. CREATION. There is hereby created a Zoning Board of Adjustment, hereafter sometimes referred to as the "Board" or the "BOA," for the purpose in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of this Ordinance that are consistent with the general purpose and intent of this Ordinance.

SECTION 4. MEMBERS OF THE BOA.

- A. The BOA shall consist of the entire membership of the City Council, including the Mayor, in accordance with Sections 211.008(g) of the Local Government Code.
- B. Board members shall serve terms of two (2) years concurrently with their term on City Council. There is no limitation on the number of terms one member may serve.

- C. Any vacancy on the Board shall be filled for the unexpired term by the member of the City Council filling a vacancy on City Council via appointment or special election as provided by section 22.010 of the Local Government Code.
- D. The members of the Board shall regularly attend meetings and public hearings of the Board, shall serve without compensation, and shall not hold any other office or position with the City while serving on the Board, other than an office on the City Council as permitted by Section 211.008(g) of the Local Government Code.
- E. The Board shall elect a Chairperson and a Vice-Chairperson from among its membership, and each officer shall hold office for one (1) year or until replaced by a majority vote of the full Board. The Board, at its first meeting on or after March 15, 2019, shall select the positions. The Mayor or his/her designee shall serve as Secretary to the Board, and shall keep minutes of all meetings held by the Board.

SECTION 5. MEETINGS.

- A. The Board may establish rules, regulations and bylaws for its own government, which shall conform as nearly as possible with those governing the City Council and Roberts Rules of Order. The rules, regulations and bylaws of the BOA shall be subject to approval by City Council.
- B. The Board shall meet at City Hall or in some other specified location as may be designated by the Chairperson, at the call of the Chairperson and at such other times as the Board may determine. The Chairperson, or Vice-Chairperson in the Chairperson's absence, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public in accordance with Texas Open Meeting Act.
- C. Five (5) members of the Board shall constitute a quorum for the conduct of business. All cases to be heard by the Board shall always be heard by at least seventy-five percent (75%) of the members, which constitutes five (5) members.
- D. Meetings shall be open to the public and conducted in accordance with the Texas Open Meetings Act, Government Code Chapter 551, and Chapter 211 of the Local Government Code, as those chapters may be amended.
- E. 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 Board's office and are public records.

SECTION 6. AUTHORITY OF THE BOARD.

- A. The BOA shall have the authority, subject to the standards established in Sections 211.008 through 211.011 of the Local Government Code and those established herein, to exercise powers and to perform duties including the following:
 - 1. Hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of Chapter 211, Subchapter A or an ordinance adopted under Chapter 211, Subchapter A;

2. Hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the Board to do so;
3. Authorize in specific cases a variance from the terms of a 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;
4. In exercising its authority under Subsection A(1) above, 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.
5. The concurring vote of at least seventy-five percent (75%), or five (5) members, of the full Board is necessary to:
 - (a) Reverse an order, requirement, decision or determination of an administrative official;
 - (b) Decide in favor of an applicant on a matter on which the Board is required to pass under a zoning ordinance;
 - (c) Authorize a variance from the terms of a zoning ordinance; or
 - (d) Authorize special exceptions to a zoning ordinance.

SECTION 7. LIMITATIONS ON AUTHORITY OF THE BOARD

- A. The Board may not grant a variance authorizing a use other than those permitted in the zoning district for which the variance is sought, except as provided in Section 9 hereto.
- B. The Board shall have no power to grant or modify Specific-Use Provisions authorized under a zoning ordinance.
- C. The Board shall have no power to grant a zoning amendment. In the event that a request for a zoning amendment is pending before the Planning and Zoning Commission or the City Council, the Board shall neither hear nor grant any variances with respect to the subject property until final disposition of the zoning amendment.
- D. The Board shall not grant a variance for any parcel of property or portion thereof upon which a site plan, preliminary plat or final plat, where required, is pending on the agenda of the Planning and Zoning Commission and, where applicable, by the City Council. All administrative remedies available to the applicant shall have been exhausted prior to hearing by the Zoning Board of Adjustments.

SECTION 8. VARIANCES AND SPECIAL EXCEPTIONS.

- A. The Board of Adjustments may authorize a variance from the City's zoning regulations when, in its opinion, undue hardship will result from requiring strict compliance. In granting a variance, the Board shall prescribe only conditions that it deems necessary for, or desirable to, the public interest. In making the findings hereinbelow required, the Board shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work within the proposed use, and the probable effect such variance will have upon traffic conditions and upon the public health, safety, convenience and welfare of the community.
- B. **Conditions Required for Variance** - No variance shall be granted without first having given public notice and having held a public hearing on the variance request in accordance with Section 11 of this Ordinance and unless the Board finds:
1. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Ordinance or a zoning ordinance would deprive the applicant of the reasonable use of his/her land; and
 2. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
 3. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; and
 4. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Ordinance or a zoning ordinance.

Such findings of the BOA, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the Board meeting at which such variance is granted. Variances may be granted only when in harmony with the general purpose and intent of this Ordinance and a zoning ordinance so that the public health, safety and welfare may be secured and that substantial justice may be done.

- C. **Findings of Undue Hardship** - In order to grant a variance, the Board must make written findings that an undue hardship exists, using the following criteria:
1. That literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property; and
 2. That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district; and
 3. That the relief sought will not injure the permitted use of adjacent conforming property; and

4. That the granting of a variance will be in harmony with the spirit and purpose of these regulations.

D. A variance or special exception shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely upon economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by a zoning ordinance to other parcels of land in the particular zoning district. No variance or special exception may be granted which results in undue hardship upon another parcel of land.

E. The applicant bears the burden of proof in establishing the facts that may justify a variance or a special exception.

F. **Special Exceptions for Nonconforming Uses and Structures** - Upon written request of the property owner, the BOA may grant special exceptions to the provisions of this Ordinance or a zoning ordinance, limited to the following, and in accordance with the following standards:

1. Expansion of a nonconforming use within an existing structure a maximum of ten percent (10%) provided that, in the case of a nonconforming residential use, such expansion does not increase the number of dwelling units to more than the number that was existing when the use first became nonconforming.
2. Expansion of the gross floor area of a nonconforming structure a maximum of ten percent (10%).
3. Change from one nonconforming use to another, re-construction of a nonconforming structure that has been totally destroyed, or resumption of a nonconforming use previously abandoned, only upon a finding that the failure to grant the special exception deprives the property owner of substantially all use or economic value of the land.
4. In granting special exceptions under this Section, the BOA may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including, but not limited to, conditions specifying the period during which the nonconforming use may continue to operate or exist before being conformed to the standards of a zoning ordinance.
5. For existing single-family and duplex structures that were constructed prior to the effective date of this Ordinance, the BOA may authorize a special exception for any structure that was constructed over a setback line established by a zoning ordinance.

G. The BOA may authorize the reconstruction and occupancy of a nonconforming structure, or a structure containing a nonconforming use, where such structure has been damaged by fire or other causes to the extent of more than sixty percent (60%), of the replacement cost of the structure as of the date of the damage. Such action by the BOA shall have due regard for the property rights of the person or persons affected, and shall be considered in regard to the public welfare, character of the area surrounding such structure, and the conservation, preservation and

protection of property.

- H. The BOA may authorize the enlargement, expansion or repair of a nonconforming structure if such enlargement, expansion or repair will improve the condition of the structure, if it will bring the structure closer into compliance with this Ordinance or a zoning ordinance, or if it will otherwise improve or enhance public health, safety or welfare.

SECTION 9. APPEALS TO THE BOARD.

- A. **Authority.** In addition to the authorization of variances from the terms of this Ordinance, the BOA shall have the authority to hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of a zoning ordinance. The BOA may reverse or affirm, in whole or in part, or may 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 BOA has the same authority as the administrative official. The BOA may also hear and decide other matters authorized by any Subdivision Ordinance of the City and other ordinances regarding land use/development regulations.

- B. **Who May Appeal** - Any of the following persons may appeal to the Board a decision made by an administrative official:

1. A person directly aggrieved by the decision; or
2. Any officer, department, board or office of the City affected by the decision.

C. **Procedure for Appeal.**

1. The appellant must file with the BOA and the official from whom the appeal is taken a written notice of appeal specifying the grounds for the appeal. The appeal must be filed within ten (10) days after the decision has been rendered. Upon receiving the notice, the official from whom the appeal is taken shall immediately transmit to the Board all papers constituting the record of action that is appealed.
2. An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the Board facts supporting the official'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 BOA or a court of record on application, after notice to the official, if due cause is shown. The appellant party may appear at the appeal hearing in person or by agent or attorney.
3. The Board shall decide the appeal within forty-five (45) days at a public hearing after the written request (*i.e.*, notice of appeal) was received, after which time the request shall be deemed automatically approved if no formal action is taken. The Board shall give public notice of the hearing and due notice to the parties of interest. 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 may make the correct order, requirement, decision or determination.

SECTION 10. PROCEDURES OF THE BOARD.

- A. **Application and Fee.** An application for a variance by the BOA shall be made in writing using forms prescribed by the City, and shall be accompanied by an application fee as established by separate ordinance, a site plan and/or additional information as may be requested in order to properly review the application. Such information may include, but is not limited to, plat plans, site building plans, photographs, topographic contour maps, and/or other similar documents.
- B. **Review and Report by the City.** The City Administrator, or his/her designee, shall visit the site where the proposed variance will apply and the surrounding area, and shall report his/her findings to the BOA.
- C. **Notice and Public Hearing.** The BOA shall hold a public hearing for consideration of the variance request no later than forty-five (45) days after the date the application for action, or an appeal, is filed. Notice of the public hearing shall be provided to all property owners within two hundred feet (200') of the affected property within the City limits at least ten (10) days prior to the public hearing, and also published in the official local newspaper at least ten (10) days prior to the public hearing.
- D. **Action by the Board.** The BOA shall not grant a variance unless it finds, based upon compelling evidence, that each of the conditions in Section 8 has been established. The BOA may impose such conditions, limitations and safeguards as it deems appropriate upon the granting of any variance. Violation of any such condition, limitation or safeguard shall constitute a violation of this Ordinance. All findings of the Board shall be in writing in the minutes of the meeting.

SECTION 11. JUDICIAL REVIEW OF BOARD DECISION.

- A. All decisions of the BOA are final and binding except as provided by this Section.
- B. 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 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 office of the City.
- C. Such petition must be presented within ten (10) days after the date the decision is filed in the City Secretary's office.
- D. If the Court grants a *writ of certiorari* on the presentation of the petition indicating the time by which the Board's return must be made and served on the petitioner's attorney, the Board's return must be verified and must concisely state any pertinent and material

facts that show the grounds of the decision under appeal.

- E. Subject to the provisions of Section 211.011 of the Local Government Code, only the court of record may reverse or affirm, in whole or in part, or modify the decision that is appealed.
- F. Costs may not be assessed against the Board unless the court determines that the Board acted with gross negligence, in bad faith, or with malice in making its decision.

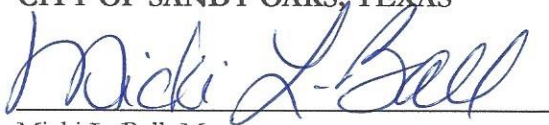
SECTION 12. SEVERABILITY. If any section, paragraph, sentence, clause, phrase or word of this Ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance, and the City Council hereby declares that it would have passed such remaining portions despite invalidity or unconstitutionality.

SECTION 13. PROPER NOTICE AND MEETING. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Government Code.

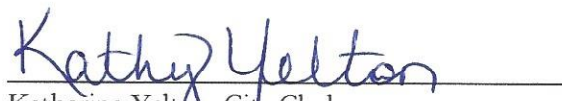
SECTION 14. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and approval.

PASSED AND APPROVED THIS 21ST DAY OF JANUARY, 2019.

CITY OF SANDY OAKS, TEXAS


Micki L. Ball, Mayor

ATTEST:


Katherine Yelton, City Clerk