



COUNCIL AGENDA ITEM

CITY OF BULVERDE, TEXAS

Tuesday, July 14, 2015

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BULVERDE, TEXAS AMENDING CHAPTER 1 (GENERAL PROVISIONS), ARTICLE 1.05(BOARDS AND COMMISSIONS) OF THE CODE OF ORDINANCES OF THE CITY BY ADDING A NEW DIVISION 5 (BOARD OF ADJUSTMENT) CREATING A BOARD OF ADJUSTMENT FOR THE CITY OF BULVERDE IN ACCORDANCE WITH SECTION 211.008 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING FOR OTHER AMENDMENTS TO THE CODE OF ORDINANCES TO FACILITATE THE CREATION OF THE BOARD OF ADJUSTMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

DEPARTMENT: Administration

PRESENTED BY: Danny Batts, City Secretary

Background: Periodically, property owners will request variances from the City's zoning regulations because application of the general zoning rules are impractical in their particular situation. For example, someone might find it difficult to build a home within the City's residential setbacks on an irregularly shaped lot, or because natural or historical features on property can make adherence to the City's general regulations problematic. In these cases, state law allows a City to consider variances from the general zoning rules that will enable an owner to achieve a productive use of their property. Variances are narrowly tailored to individual properties and do not create general exceptions to the City's zoning regulations. Generally, state law requires a City wishing to allow variances to create a special board, called a board of adjustment (BOA), to consider and grant these variances. Using a special exception in the statute for general law cities, the City was able to transfer the BOA's duties to the City Council, and the City Council has historically granted zoning variances for the City of Bulverde. However, now that the City has grown and converted to Home Rule status, it is no longer eligible to allow the Council to stand in for a properly constituted BOA.

Current Activity/Findings: A Board of Adjustment is a quasi-judicial body that hears testimony, makes findings, and issues orders, much like a court of law. The authority of the board is limited to:

1. Hearing appeals of administrative decisions made by staff related to the zoning ordinance; and
2. Granting variances to the terms of the zoning ordinance, if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the regulation would result in unnecessary hardship.

The BOA is not an administrative or policy making body, and therefore will not have a role in:

1. Creation of new zoning districts and classifications
2. Amendments to the Zoning Ordinance
3. Updates to the Comprehensive Plan
4. Special Use Permits
5. Matters related to the Subdivision Ordinance, including subdivision variances.
6. Matters related to the Sign Ordinance, including sign code variances.

Given the serious nature of granting variances to the City's zoning regulations, all decisions of the BOA must be supported by 75% of board members. The attached ordinance provides for a board composed of 5 members and 1 alternate member. This represents a standard composition for boards of this type.

Recommendation: The attached ordinance does not alter the City's current standards for the granting of zoning variances, but merely creates a new board to consider those variances. Since state statute requires the City to establish a Board of Adjustment in order to consider variances, and since variances are a vital part of ensuring that the Zoning Ordinance is administered in a fair and effective manner, staff recommends approval.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BULVERDE, TEXAS AMENDING CHAPTER 1 (GENERAL PROVISIONS), ARTICLE 1.05 (BOARDS AND COMMISSIONS) OF THE CODE OF ORDINANCES OF THE CITY BY ADDING A NEW DIVISION 5 (BOARD OF ADJUSTMENT) CREATING A BOARD OF ADJUSTMENT FOR THE CITY OF BULVERDE IN ACCORDANCE WITH SECTION 211.008 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING FOR OTHER AMENDMENTS TO THE CODE OF ORDINANCES TO FACILITATE THE CREATION OF THE BOARD OF ADJUSTMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 211.008 of the Texas Local Government Code authorizes a municipality to create a board of adjustment for certain purposes related to the administration of planning and zoning regulations; and

WHEREAS, Section 211.008(g) of the Texas Local Government Code authorized the City Council of the City to act as the City's Board of Adjustment while the City was constituted as a Type A General Law Municipality; and

WHEREAS, the City's adoption of a Home Rule Charter has removed the City Council's authority to act as the City's Board of Adjustment; and

WHEREAS, the City of Bulverde now needs to create a board of adjustment in order to continue to carry out the intent and purposes of its zoning regulations;

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

SECTION 1. Chapter 1, Article 1.05, of the Code of Ordinances is amended by adding a new Division 5, to read as follows:

Division 5. Board of Adjustment

Section 1.05.130 Created

There is hereby created and established a board of adjustment, which shall consist of five members to be appointed by the city council. Such members shall serve for two-year staggered terms. The city council may also appoint one alternate member of the zoning board of adjustment, who shall serve in the absence of one of the regular members when requested to do so by the city manager or his designee. The alternate member shall serve for a two-year term. Both regular and alternate members may be removed from office for cause by the city council upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member or alternate member whose term becomes vacant. All cases to be heard by the board of adjustment shall always be heard by a minimum number of four members.

Section 1.05.131 Purpose

The board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions and variances to the terms of the zoning regulations of the City, and decide appeals from decisions of administrative officials, in harmony with their general purpose and intent and in accordance with general or specific rules herein contained.

Section 1.05.132 Officers; compensation

Each year, at the at the time of the regular appointment of new members, the City Council shall appoint from the members of the board a Chairman and Vice Chairman to serve for one (1) year, beginning in that month. The City Secretary shall serve as the ex-officio Secretary of the Commission, unless the City Secretary or the board shall designate another person to serve as Secretary. Members of the board of adjustment shall serve without compensation.

Section 1.05.133 Authority

- a) The board of adjustment may:
 - 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 the City's zoning regulations, or any regulation adopted in accordance with Chapter 211 of the Texas Local Government Code;
 - 2) hear and decide special exceptions to the terms of a zoning regulation when the regulation requires the board to do so;
 - 3) authorize in specific cases a variance from the terms of a zoning regulation if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the regulation would result in unnecessary hardship, and so that the spirit of the regulation is observed and substantial justice is done; and
 - 4) hear and decide other matters authorized by the City Council.
- b) In exercising its authority under Subsection (a)(1), 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.
- c) The concurring vote of 75 percent of members of the board 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 pass under a zoning regulation; or
 - 3) authorize a variation from the terms of a zoning regulation.

Section 1.05.134 Appeal to Board

- a) Any of the following persons may appeal to the board of adjustment a decision made by an administrative official regarding a zoning regulation:
 - 1) a person aggrieved by the decision; or

- 2) any officer, department, board, or bureau of the municipality affected by the decision.
- b) 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 within a reasonable time as determined by the rules of the board. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.
- c) 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 board or a court of record on application, after notice to the official, if due cause is shown.
- d) 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. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal within a reasonable time.

Section 1.05.135 Rules and procedure.

The board of adjustment shall adopt rules necessary for its government and procedure, not inconsistent with the terms of this code and with the provisions of state law.

Section 1.05.136 Meetings

Meetings of the board of adjustment shall be held at the call of the chairman, and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel attendance of witnesses. All meetings of the board shall comply with the Texas Open Meetings Act. 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 filed with the Board Secretary and shall be a public record.

Section 1.05.137 Judicial Review of Board of Adjustment Decision

In accordance with Section 211.011, a decision of the board of adjustment may be appealed to a District Court. Such appeal must be filed within 10 days after the date the decision of the board of adjustment. An appeal may be filed by a person aggrieved by a decision of the board, a taxpayer or an officer, department, board of the City.

SECTION 2. Chapter 14, Zoning, Exhibit A, Zoning Ordinance, Section 3, Definitions, is amended by amending the definition of the term "Board" to read as follows:

Board. The City Council of the City of Bulverde, Texas.

SECTION 3. Chapter 14, Zoning, Exhibit A, Zoning Ordinance, Section 3, Definitions, is amended by adding the definition of the term “Board of Adjustment” to read as follows:

Board of Adjustment. The Board of Adjustment of the City of Bulverde, Texas

SECTION 4. Chapter 14, Zoning, Exhibit A, Zoning Ordinance, Section 18, Variances, is amended by replacing every occurrence of the term “board” with the term “board of adjustment”.

SECTION 6. Severability: If any portion of this Ordinance shall, for any reason, be declared invalid, invalidity shall not affect the remaining provisions thereof.

SECTION 7. Repealer: All Ordinances or parts of Ordinances in conflict herewith are expressly repealed to the extent of such conflict.

SECTION 8. This ordinance shall be effective upon adoption by the City Council.

Passed and Approved this 14th day of July, 2015.

Bill Krawietz, Mayor

Attest:

Danny S. Batts II, City Secretary