

ORDINANCE NO. 2017-04-17-5

AN ORDINANCE BY THE VILLAGE COUNCIL OF THE VILLAGE OF VINTON, TEXAS CREATING A ZONING BOARD OF ADJUSTMENT AND GRANTING THE VILLAGE COUNCIL AUTHORITY TO ACT AS THE ZONING BOARD OF ADJUSTMENT.

WHEREAS, the Village Council of the Village of Vinton, Texas, in accordance with V.T.C.A., Local Government Code § 211.008(g) as part of its implementation of the Village of Vinton's Unified Development Code (UDC) finds that is necessary and in the public interest to create a zoning board of adjustment and grant itself the authority to serve as a zoning board of adjustment in order to authorize in appropriate cases and subject to appropriate conditions and safeguards, variances and special exceptions to the terms of the UDC that are consistent with applicable provisions of the Local Government Code and the general purposes and intent of the UDC and in accordance with the applicable provisions contained therein and to hear and decide other matters authorized by the UDC.

NOW, therefore, be it ordained by the Village Council of the Village of Vinton, Texas, as follows:

Sec. 1. Created; compensation.

A zoning board of adjustment is hereby created to be composed of six members who shall be the Mayor and Village Council members serving on the governing body of the Village. Said members shall serve on the board of adjustment without compensation.

Sec. 2. Membership; terms of office.

(a) The mayor and city council members shall serve two-year terms on the board of adjustment coinciding and running concurrent with their terms of office on the city council, and until their successors on the governing body are duly elected, or appointed, and qualified. A member's position on the board of adjustment is automatically deemed to be vacated when the member vacates his or her position on the governing body of the Village. Each person elected or appointed to the governing body of the Village shall automatically become a member of the board of adjustment upon said election, or appointment and qualification for office.

(b) The mayor shall serve as the chairman of the board of adjustment. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. All meetings of the board shall be open to the public. Except when prohibited by law, each member may vote on matters pending before the board. Four members of the board shall constitute a quorum for the conduct of business. Each case before the board of adjustment must be heard by at least five members. Each member of the board shall regularly attend meetings and public hearings of the board.

(c) A member of the governing body of the Village who serves on the board of adjustment may not bring an appeal under or under V.T.C.A., Local Government Code §

211.010.

Sec. 3. Authority.

(a) The zoning board of adjustment shall have the authority, subject to the standards established in V.T.C.A., Local Government Code §§ 211.008—211.011 and in the UDC, to exercise the following powers and perform the following duties: (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 UDC; (2) Hear and decide special exceptions to the terms of the UDC when it requires the board to do so; and (3) Authorize, in specific cases, a variance from the terms of the UDC if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the UDC would result in an unnecessary hardship, and so that the spirit of the UDC is observed and substantial justice is done.

(b) In exercising its authority under subsection (a) of this section, the zoning board of adjustment 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 such purpose, the board has the same authority as the administrative official.

(c) The concurring vote of four members of the zoning board of adjustment 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 the UDC; or (3) Authorize a variation from the terms of the UDC.

Sec. 4. Limitations on authority.

(a) The zoning board of adjustment may not grant a variance authorizing a use other than the uses permitted in the district for which the variance is sought.

(b) The zoning board of adjustment shall have no power to grant or modify special use permits authorized under the UDC.

(c) The zoning board of adjustment shall have no power to grant a zoning amendment. If a request for a zoning amendment is pending before the planning and zoning commission or Village 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 zoning board of adjustment 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, has not been finally acted upon by both the planning and zoning commission and, where required, the Village Council. All administrative remedies available to the applicant shall have been exhausted prior to a hearing by the board.

Sec. 5. Variances.

(a) In order to grant a variance from the UDC, the zoning board of adjustment must make written findings that the variance creates undue hardship, using the following criteria:

(1) There are special circumstances specific to the property that create an undue hardship to the land that generally does not apply to surrounding properties; such as, but not limited to, its size, shape, area, or topography.

(2) Special consideration is necessary to allow the applicant the same right of use enjoyed under the UDC by surrounding properties and same zone district;

(3) Consideration is unique to the subject property and would not generally set a precedent for other applications;

(4) The hardship is not created by the applicant;

(5) A variance would not be detrimental to any adjacent properties or to public health and safety.

(b) The applicant bears the burden of proof in establishing the facts justifying a variance.

Sec. 6. Special exceptions.

(a) The zoning board of adjustment shall have the authority to hear and allow special exceptions only for uses which are conforming, but the building structure is not conforming.

(b) In granting a special exception, the zoning board of adjustment shall not authorize uses that are not allowed under the terms of the UDC for the respective district.

(c) A proof of hardship is not required for granting a special exception.

(d) In granting a special exception, the zoning board of adjustment shall not permit variances from the use district regulations which are not prevalent on other lots in the same zoning district.

Sec. 7. Variance and special exception procedures.

(a) Application and fee. An application for granting a variance or special exception by the zoning board of adjustment, other than an appeal, shall be in writing, using forms provided by the Village, and shall be accompanied by a fee. The application for a special exception shall be the same as for a zoning variance.

(b) Notice and hearing. The zoning board of adjustment shall hold a public hearing no later than 45 days after the date the application for action or an appeal is filed on each such application or appeal. Notice of a public hearing shall be provided to all property owners within 200 feet of the affected property at least ten days prior to the public hearing, and shall also be published in the official local newspaper.

(c) Appeals.

(1) An appeal may be taken from the decision of an administrative official by an applicant for the permit on which the decision is rendered, any person directly aggrieved by the decision or any officer, department, board or bureau of the city affected by the decision.

(2) The appellant must file a written notice of appeal with the zoning board of adjustment and the official against whom the appeal is taken, specifying the grounds for the appeal, within 15 days after the decision has been rendered. The officer to whom the appeal is made shall forthwith transmit to the board all papers constituting the record of the action that is appealed.

(3) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certified, in writing, to the board the facts supporting the official's opinion that a stay would cause imminent peril to life or property. In such 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.

(4) The appellant party may appear at the appeal hearing in person or by agent or attorney.

(5) The board shall decide the appeal within three weeks after placement of such appeal on its agenda, after which time the request shall be deemed automatically approved. 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.

(d) Concurring vote required. The concurring vote of four members of the zoning board of adjustment shall be necessary to reverse any order, requirement, decision or determination of an administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under the UDC, or to effect any variance to the UDC granted by the board.

(e) Judicial review. Any persons, jointly or severally, aggrieved by a decision of the zoning board of adjustment, or any taxpayer, officer, department or board of the city may present a petition to a court of record, duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented within ten days after the date the decision is filed in the board's office.

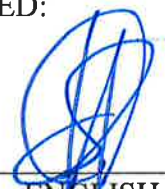
PASSED, APPROVED AND ADOPTED this 17<sup>th</sup> day of April, 2018.

  
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Manuel Leos, Mayor

ATTEST:

  
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Andrea Carrillo, Village Administrator

APPROVED:

  
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SHANE A. ENGLISH, Village Attorney