

ORDINANCE NO. 24-1003-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINA GROVE, TEXAS, REPEALING AND REPLACING IN ITS ENTIRETY ORDINANCE NO. 960711, SECTION 13, BY REVISING PROVISIONS FOR THE BOARD OF ADJUSTMENT AND ADDING PROVISIONS ON ALLOWING ALTERNATE MEMBERS; REPEALING ALL ORDINANCES TO THE EXTENT THEY ARE IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECT DATE

WHEREAS, the City of China Grove, Texas ("City") is a Type A general-law municipality operating under the laws of the State of Texas; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, pursuant to Chapter 211 of the Texas Local Government Code, the City has the authority to establish a Board of Adjustment and establish rules and regulations governing its Board of Adjustment; and

WHEREAS, pursuant to Section 211.008 of the Texas Local Government Code, the City may appoint alternates to its Board of Adjustment; and

WHEREAS, on October 3, 2024, the City Council conducted a public hearing and, after consideration, determined that the ordinance amendment be approved as provided herein; and

WHEREAS, the City Council finds that the amendment proposed is reasonable, necessary, and proper for the good government of the City of China Grove.

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

SECTION 1. The foregoing recitals are found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this Ordinance.

SECTION 2. This Ordinance is adopted under the authority of the Constitution and laws of the State of Texas, particularly Chapter 211 of the Local Government Code.

SECTION 3. Ordinance No. 960711, Section 13, is hereby repealed and replaced in its entirety as set forth in Exhibit A attached hereto and incorporated into this Ordinance for all intents and purposes.

SECTION 4. 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 5. This Ordinance shall be cumulative of all provisions of ordinances of the City except where the provisions of the Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 6. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 7. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted 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 Texas Open Meetings Act, Chapter 551, Texas Local Government Code, as amended.

SECTION 8. This Ordinance shall be in full force and effect after its final passage and approval by the City Council, as duly attested by the Mayor and City Secretary, and any publication required by law.

PASSED and APPROVED this 3rd day of October, 2024.

CITY OF CHINA GROVE, TEXAS

By: Mary Ann Hajek
Mary Ann Hajek, Mayor

ATTEST:

Melinda Saucedo
Melinda Saucedo, City Secretary

Exhibit A

Section 13: Zoning Board of Adjustment

A. Creation of Zoning Board of Adjustment

There is hereby created a Zoning Board of Adjustment, or "ZBOA", for the purpose of granting variances to the terms of the zoning ordinance. The ZBOA may grant variances, in appropriate cases, and is subject to certain conditions and safeguards. The ZBOA shall be composed of the members of the City Council of the City of China Grove, as authorized by Chapter 211.008(g) of the Texas Local Government Code, until such time as separate membership is appointed by City Council. The ZBOA may also include two alternate members, as appointed by the City Council.

B. Membership and Terms

1. Upon adoption of this section, the City Council shall act as the ZBOA.
2. The City Council shall act as the Zoning Board of Adjustment consisting of five (5) Council members and the mayor. The City Council may also appoint two (2) alternates. All members (regular and alternate) shall be residents and registered voters of the City of China Grove. Alternates shall be appointed for a term of two (2) years and may be reappointed with no limitation on the number of terms one member may serve. Alternates are subject to removal for cause by the City Council upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any alternate member whose term becomes vacant.
3. Alternate members may attend all meetings of the ZBOA and are entitled to all information provided to regular members
4. In the absence of a regular member, Alternate members shall serve in place of the regular member with full privileges.
5. The chair of the ZBOA shall be the Mayor of the City who shall preside over all ZBOA meetings. The ZBOA shall elect a vice chair from the ZBOA's membership.

C. Meetings

1. Meetings of the ZBOA shall be held at the call of the chair or city secretary and at such other times as the ZBOA may determine. All meetings of the ZBOA shall be open to the public, except as allowed by law. All cases to be heard by the ZBOA shall be heard by at least five (5) of the members.
2. The ZBOA 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 in the office of the City Secretary and shall be a public record.

3. Zoning Board of Adjustment meetings and city council meetings shall be conducted separately. While ZBOA hearings may be held on the same day as city council meetings, ZBOA hearings must be clearly identified as separate from city council hearings.

D. Authority of ZBOA

1. The ZBOA shall have the authority, granted under the Texas Local Government Code and those established herein, to exercise powers and to perform duties including the following:
 - a. 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 zoning ordinance;
 - b. 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;
 - c. In exercising its authority under this ordinance, the ZBOA 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.
2. The concurring vote of five (5) members of the ZBOA shall be 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 review under this zoning ordinance; or
 - c. Authorize a variance from the terms of this chapter.
3. Any variance or appeals granted by the ZBOA shall lapse and become null and void unless construction or development authorized by the variance or appeal begins or is carried out according to the terms approved by the ZBOA.

E. Variances

1. The purpose of a variance is to vary from zoning standards made applicable to a use authorized under this Ordinance. A variance application shall not be used as a means of amending the text of the City's zoning regulations, of changing a zoning district classification of the property for which the variance is sought, or of granting a use otherwise not permitted in a district. A variance application cannot be used as a means to

contest the applicability of a standard to a development application, an exemption determination, or a decision on a development application.

2. Criteria for granting a variance

a. No variance shall be granted unless the Board finds:

1. There are special circumstances or conditions affecting the land involved such that the literal enforcement of the provisions of the zoning ordinance would deprive the applicant of the reasonable use of the land;
2. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
3. The granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
4. The granting of the variance constitutes a minimal departure from the zoning ordinance;
5. The subject circumstances or conditions giving rise to the alleged hardship are not self-imposed, are not based solely on economic gain or loss, and do not generally affect most properties in the vicinity of the property; and
6. Granting the variance is in harmony with the spirit, general purpose, and intent of the zoning ordinance so that:

- a. The public health, safety and welfare may be secured; and
- b. That substantial justice may be done.

b. Such findings of the ZBOA, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the meeting at which such variance is granted.

c. In exercising its authority under section 13.D. the ZBOA may also consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

1. The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the city under section 26.01, Tax Code;
2. Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
3. Compliance would result in the structure not being in compliance with a requirement of a city ordinance, building code, or other requirement;
4. Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
5. The city considers the structure to be a nonconforming structure.

F. Appeals to the ZBOA

1. A decision or interpretation by an administrative official in the enforcement of this ordinance may be appealed to the Zoning Board of Adjustment by any of the following persons that is not related to a specific application, address, or project:
 - a. A person aggrieved by the decision; or
 - b. Any officer, department, board, or bureau of the municipality affected by the decision.
2. A decision or interpretation by an administrative official in the enforcement of this ordinance may be appealed to the Zoning Board of Adjustment by any of the following persons that is related to a specific application, address, or project:
 - a. A person who filed the application that is the subject of the decision;
 - b. A person who is the owner or representative of the owner of the property that is the subject of the decision; or
 - c. Any person who 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
 - d. Any officer, department, or board of the city affected by the decision.
3. 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, the official from whom the appeal is taken shall immediately transmit to the ZBOA all the papers constituting the record of the action that is appealed.
4. 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.
5. The ZBOA 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 at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.