

CITY OF WOODCREEK

ORDINANCE No. 08-117

BOARD OF ADJUSTMENT ORDINANCE

AN ORDINANCE ENACTED TO BE INCLUDED IN THE WOODCREEK CODE OF ORDINANCES; ESTABLISHING FUNCTIONS AND AUTHORITY OF THE CITY'S BOARD OF ADJUSTMENT; PROVIDING FOR THE FOLLOWING: ORGANIZATION OF THE BOARD OF ADJUSTMENT; AUTHORITY OF THE BOARD OF ADJUSTMENT; MEETING PROCEDURE; PROCEDURE FOR REQUESTING A VARIANCE; AND PROCEDURE FOR AN APPEAL TO THE BOARD OF ADJUSTMENT.

WHEREAS, the City Council of the City of Woodcreek ("City Council") seeks to promote the clarity of the City's Ordinances; and

WHEREAS, current Ordinances discuss the functions and authority of the Board of Adjustment, i.e. the Zoning Ordinance and the Site Development Ordinance; and

WHEREAS, the City Council has determined that in order to promote consistency and clarity of Board of Adjustment's role, an Ordinance solely defining the Board of Adjustment's functions and authority is needed; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation 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 provide for the appointment of a board of adjustment; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace or order of the City of Woodcreek to adopt an ordinance solely defining the functions and authority of the board of adjustment.

NOW, THEREFORE, BE IT ORDAINED by the Woodcreek City Council:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. ENACTMENT

Ordinance 08-117 for the City of Woodcreek is hereby established so to read in accordance with *Attachment "A"*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

3. REPEALER

To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein. Specifically, Section 42 of the Zoning Ordinance and parts of Section 10 of the Site Development Ordinance are repealed.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication as provided for by law.

5. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED this, the 12th day of November 2008, by a vote of 3 (*ayes*) to 0 (*nays*) to 0 (*abstentions*) of the City Council of Woodcreek, Texas.

CITY OF WOODCREEK:

by: 
Mayor Gloria Whitehead

ATTEST:


Pieter Sybesma, Interim City Administrator

APPROVED AS TO FORM:

Alan J. Bojorquez, City Attorney

SECTION 1. ENACTMENT PROVISIONS

1.1. Popular Name

This Chapter shall be commonly cited as the "Board of Adjustment Ordinance."

1.2. Purpose

This Chapter provides the functions and authority of the City's Board of Adjustment.

SECTION 2. DEFINITIONS

2.1. Rules of Interpretation

Words and phrases used in this Chapter shall have the meanings set forth in this section. Words and phrases not defined in this Ordinance shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

2.2. Specific Terminology

Board: The Board of Adjustment of the City of Woodcreek. See definition below.

Board of Adjustment: The body appointed by the City Council to preside over requests for variances and preside over appeals due to errors of an administrative official in accordance with the terms of the Zoning Ordinance and Site Development Ordinance that are consistent with the general purpose and intent of the aforementioned ordinances and in accordance with any applicable rules contained in the aforementioned ordinances.

City: The City of Woodcreek, an incorporated municipality located in Hays County, Texas.

Planning and Zoning Commission: Planning and Zoning Commission for the City of Woodcreek

Site Development Ordinance: Site Development Ordinance of the City of Woodcreek.

Variance: Means an adjustment or deviation in the application of specific regulations of the Zoning Ordinance and Site Development Ordinance to a particular parcel of property

which, because of special conditions or circumstances peculiar to the particular parcel, is necessary to prevent the property from being deprived of rights and privileges enjoyed by other parcels in the same vicinity and district.

Zoning Ordinance: Zoning Ordinance of the City of Woodcreek.

SECTION 3. MEMBERS

3.1. Appointments

The Board shall consist of five (5) members appointed by the Mayor and approved by a majority vote of City Council.

3.2. Term

Each member will be appointed for a term of two (2) years until their successors are duly appointed and qualified. The members of the board shall be identified by place numbers, 1-5 and shall serve staggered terms. Members 1, 3 and 5, shall serve for two (2) year terms with terms beginning February 1, of odd numbered years. Members 2, and 4, shall serve for two (2) year terms with terms beginning February, of even numbered years.

3.3. No Compensation

The members of the Board will serve without compensation.

3.4. Removal of member

Board members may be removed, if the Mayor and a majority vote of City Council decide to remove the member for: (a) incompetency, corruption, misconduct, or malfeasance in office; or (b) lack of confidence by City Council. Any Board Member may be removed for cause on a written charge after a public hearing.

3.5. Vacancy

A vacancy on the Board will be filled for the unexpired term by the majority of the members of the City Council.

3.6. Alternate Members

The Board shall also consist of no more than four (4) alternate members who will serve in the absence of one or more regular members when requested to do so by the Mayor. Alternate members shall be appointed in the same manner as regular members, shall serve for the same period as a regular member, and are subject to removal in the same manner as a regular member. Vacancies among the alternate members shall be filled in the same manner as vacancies among the regular members.

3.7. Cases before the Board

Each case before the Board of Adjustment must be heard by a minimum of four (4) of the members.

SECTION 4. MEETINGS

4.1. Calling a Meeting

Meetings of the Board shall be held at the call of the Chair and at other times as determined by the Board. Four (4) members of the Board shall constitute a quorum for the Board to conduct business.

4.2. Public Meetings

All meetings shall be public; however, upon the advice and consent of the City Attorney the Board may go into executive session pursuant to Chapter 55.071 of the Texas Government Code.

4.3. Minutes

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.

Findings of the Board together with any recommendations it receives, and the specific facts upon which its findings are based, shall be incorporated into the official minutes of the Board of Adjustment meeting.

4.4. Act by Resolution

When four members concur, the Board shall act by resolution. Said resolution shall provide the Board's findings, decision and any other such material used by the Board to reach a decision and shall be signed by a minimum of four (4) members and maintained with the records of the Board.

4.5. Adoption of Rules

The Board may adopt rules in accordance and consistent with this Ordinance as necessary and required. A copy of any such rules shall be furnished to any person requesting the same.

All rules and regulations shall operate uniformly in all cases and all resolutions and orders shall be in accordance therewith.

SECTION 5. AUTHORITY OF THE BOARD

5.1. General Authority

The Board shall have the authority, subject to the standards established in Sections 211.008 to 211.011 of the Texas Local Government Code and those established herein, to exercise the following powers and perform the following duties:

- 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 city ordinances;

- b. Hear and decide requests for variances from the requirements of the City's Zoning Ordinance and Site Development Ordinance, provided that the variance is not contrary to public interest and due to special conditions;
- c. In exercising its authority under Subsection (a) 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
- d. The concurring vote of at least four (4) members of the Board is required to: (1) reverse an order, requirement, decision or determination of an administrative official; or (2) authorize a variance from the terms of the Zoning or Site Development Ordinance.
- e. 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, has not been finally acted upon by both the Planning and Zoning Commission and, where required, the City Council

SECTION 6. APPEALS ALLEGING ERROR

6.1. General

The Board shall have the power to hear and decide an appeal that alleges an error in an order, requirement, decision, or determination made by an administrative official in the enforcement of Chapter 211 of the Texas Local Government Code, the Zoning Ordinance, or the Site Development Ordinance.

6.2. Procedures

The procedure for asserting an appeal alleging error before the Board shall be consistent with the procedure for requesting a variance. See Section 8 for procedures.

SECTION 7. VARIANCES

7.1. General

The Board shall have the power to authorize in specific cases a variance from the terms of the Zoning Ordinance or the Site Development Ordinance, if the variance is not contrary to the public interest and, due to special conditions, requiring strict compliance of the

provisions within the aforementioned Ordinances would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done.

7.2. Zoning Variances

Zoning variances that may be brought before the Board may include, but are not limited to:

- a. **Yard and Fence Setbacks**
Permit a variance in the setback requirements of any district where there are unusual and practical difficulties or unnecessary hardship in the carrying out of these provisions due to an irregular shape of the lot, topography, or other conditions; provided that such variance will not significantly affect any adjoining property or the general welfare of the community.
- b. **Structures**
Permit a variance whenever a property owner can show that a strict application of the terms of the Zoning Ordinance relating to the construction or alteration of a building or structure or the use of land will impose unusual and practical difficulties or particular hardship.

7.2.1. Requirements for Zoning Variances

- a. The Board shall ensure that any surrounding property pertaining to a variance request will be properly protected.
- b. The Board shall not in any event permit a use on any property that is not permitted within the Zoning category for which such property is zoned.

7.3. Site Development Plan Variances

The Board shall take into account the nature of the proposed use of the land involved, the existing uses of land in the vicinity, the number of persons who will reside or work in the proposed development, and the probable effect of such variance upon traffic conditions and upon the public health, safety, convenience, and welfare in the vicinity.

7.3.1. Requirements for Site Development Variance

No variance shall be granted unless the Board finds that all of the following provisions are met:

- a. Special circumstances or conditions affecting the land involved such that the strict application of the provisions of the Site Development Ordinance

would deprive the applicant of the reasonable use of the involved land;

- b. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
- c. Granting of the variance will neither be detrimental to the public health, safety, or welfare, nor injurious to other property in the area; and
- d. Granting of the variance will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of the Site Development Ordinance.

7.3.2. Burden of Proof for Site Development Variance

The burden shall be on the applicant to demonstrate that the requirements listed in Section 7.3.1 are met prior to or at the time of requesting the variance.

7.4 Minimum Departure

When the Board determines that a variance is warranted, the variance permitted shall be the minimum departure from the terms of the relevant ordinance – either the Zoning Ordinance or Site Development Ordinance.

7.5 Recommendation

The Board may seek the recommendation of the Planning and Zoning Commission, and the City Engineer prior to taking any action on a proposed variance. The Board shall obtain the recommendation of the Planning and Zoning Commission and/or the City Engineer should the City Administrator direct the Board to do so.

7.6 Pecuniary Hardship

Pecuniary hardship of the applicant, property owner, or developer, by itself, shall not be deemed sufficient to constitute undue hardship.

7.7. Granting Variance for More Favorable Outcome for General Public

It shall be an adequate basis for granting a variance if doing so will enable the applicant to create additional open space, reduce impervious cover, preserve trees, maintain critical environmental features, ensure more wildlife preservation, or bring nonconforming structures (including signs) into compliance with current regulations. This section is designed to achieve a more favorable outcome for the general public than would be possible complying with the Site Development Ordinance or Zoning Ordinance.

7.8. Necessary Percentage of Vote

The concurring vote of four (4) of the members of the 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 the Zoning Ordinance or the Site Development Ordinance; or
- c. Authorize a variation from the terms of the Zoning Ordinance or the Site Development Ordinance.

SECTION 8. PROCEDURE FOR REQUESTING AN APPEAL ALLEGING ERROR OR A VARIANCE

8.1. Appellants

In the event that any person has been aggrieved by the decision of an administrative officer – pertaining to Chapter 211 of the Local Government Code, the Zoning Ordinance, or the Site Development Ordinance – such person may submit an appeal to the Board. Any officer, department, board, or bureau of the City affected by an administrative officer’s decision may also submit an appeal to the Board.

8.2. Written Request

A request for an appeal alleging error (as provided in Section 6) or a variance shall be made in writing and include information to support the request for an appeal or a variance. Such information may include, but is not limited to, documentation provided to the administrative official, plat plans, site and building plans, contour maps and locations of existing flora. The request for an appeal alleging an error shall clearly state the grounds for the appeal. The request for a variance shall clearly state the unusual conditions or circumstances which, in the applicant’s opinion, justifies a variance.

8.3. Stay of Proceedings after Appeal is Filed

An appeal stays all proceedings in furtherance of the action that is appealed unless the administrative 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.

8.4. Fee

The fee for an appeal or a variance is provided in the Fee Schedule Ordinance.

8.5. Address

The request for appeal or variance and the appropriate fee shall be mailed to the City of Woodcreek, 41 Champion Circle, Woodcreek, TX 78676.

8.6. Notice/Request & Deadline for Appeal Alleging Error

The appellant must file a notice of appeal with the Board and the administrative official. The notice of appeal must be filed ten (10) days from the date of the administrative official's decision. On receiving the notice, the administrative official shall immediately transmit to the Board all the papers constituting the record of the action that is appealed.

8.7. Deadline for Decision on Variance Request

The request for variance will be approved or denied within sixty days (60) from the date the request was received by the City. Failure to take action on a submitted request for variance within the prescribed sixty days (60) results in an automatic approval of the request.

SECTION 9. HEARING & DECISION

9.1. Setting a Hearing

After receiving a request for an appeal, the Board shall set a reasonable time for an appeal hearing and shall give public notice of the hearing and due notice to the parties in interest.

9.2. Public Hearings

All hearings relating to an appeal alleging error or a request for a variance, shall be public; provided that upon the advice and consent of the City Attorney the Board may go into executive session pursuant to Chapter 55.071 of the Texas Government Code.

At a hearing for an appeal alleging error, any party to the appeal may appear in person, by agent, or by attorney.

9.3. Decision by Board

The Board shall decide appeals and requests for variances within a reasonable time.

The Board may, upon the concurring vote of four (4) members, 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.

9.4. Denials by the Board

In the event the Board denies a request submitted within the prescribed time frame under this Ordinance, the following appeal procedures will apply accordingly.

9.4.1. Denial of Appeal Alleging Error

An appeal of a decision rendered by the Board must be filed within ten (10) days after the date the decision is filed with the Board's office in accordance with Chapter 211 of the

Texas Local Government Code.

9.4.2. Request to Reconsider

Upon the denial of a request for a variance, an applicant for the variance may file a Request to Reconsider the initial decision rendered by the Board. The Request to Reconsider must be in writing and must contain additional information not previously submitted to the Board in support of the request. A filing fee of one hundred fifty dollars (\$150.00) is required to be submitted to the Board with the Request to Reconsider.

Upon the denial of a request for a variance, an applicant as defined under Chapter 211 of the Texas Local Government Code may file an appeal of the denial within ten days (10) after the date the decision is filed with the Board's office, in accordance with Chapter 211 of the Texas Local Government Code.