

ORDINANCE NO. 2025-1950

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KIRBY, TEXAS, ESTABLISHING A ZONING BOARD OF ADJUSTMENT; ADDING CHAPTER 32, ARTICLE III, “ZONING BOARD OF ADJUSTMENT,” TO ESTABLISH REGULATIONS GOVERNING THE BOARD; ADDING CHAPTER 153, ARTICLE VIII, SECTION 153.122, “VARIANCES, SPECIAL EXCEPTIONS, AND APPEALS,” TO OUTLINE RELATED PROCEDURES; REPEALING ALL ORDINANCES TO THE EXTENT THEY ARE IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Kirby, Texas (“City”) is a home-rule 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, the Planning and Zoning Commission held a public hearing on Tuesday, July 8, 2025, and, following such hearing, provided its recommendation to the City Council; and

WHEREAS, on Thursday, July 24, 2025, 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 Kirby.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRBY, 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. Chapter 32, Article III “Zoning Board of Adjustment” and Chapter 153 Zoning, section 153.122 “Variances, Special Exceptions, and Appeals”, are hereby added 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 on first reading this ____ day of _____, 2025.

PASSED and APPROVED on second reading this ____ day of _____, 2025.

CITY OF KIRBY, TEXAS

By: _____
Janeshia A. Grider, Mayor

ATTEST:

Christine Wilson, City Secretary

Exhibit A

All text which is underlined denotes the addition of new text. All text which is ~~stricken through~~ denotes the removal of existing text. All other text is existing, unchanged text. Any existing text which has been omitted shall be considered unchanged.

Exhibit A

Chapter 32: - Departments, Boards and Commissions

Article III. - Zoning Board of Adjustment

32.50 - Creation; members

(A) Creation

- (1) There is hereby and established a Zoning Board of Adjustment of the city, to hear variances, special exceptions, and appeals in accordance with the provisions of section 211.008, Tex. Loc. Gov't Code. The word "board" when used in this article shall mean the Zoning Board of Adjustment where appropriate.

(B) Membership and Terms

- (1) The Board consists of five (5) members and two (2) alternate members who are residents of the City of Kirby.
- (2) The Mayor may nominate members to the Board. Each nominee must be approved by a simple majority vote of the City Council before becoming a member of the Board.
- (3) A term is two (2) years.
- (4) The Board will elect a Chair and Vice Chair from among its membership, with each officer holding office for one (1) year or until replaced by simple majority vote.
- (5) The City Manager's designee will serve as secretary to the Board with responsibility for filing orders issued by the Board and keeping the minutes and records of all meetings held by the Board.
- (6) Alternate member of the Board.
 - (a) The Mayor may nominate alternate members to the Board. Each alternate must be approved by a simple majority vote of the City Council.
 - (b) An alternate member may serve in the absence of one or more regular members when requested to do so by the City Secretary.
 - (c) An alternate member serves for the same term as a regular member and is subject to removal in the same manner as a regular member.
 - (d) The City Council will fill a vacancy among the alternate members in the same way as a vacancy among the regular members.
- (7) Removal. City Council may remove a member for cause found on a written charge after a public hearing. Vacancies should be filled by approval of the City Council for the unexpired term.

32.51 - Adoption of Rules; Meetings

- (A) The Board holds meetings at the call of the chairperson.
- (B) Any combination of four (4) regular and alternate members of the Board constitutes a quorum and the concurring vote of a quorum of members 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 that the Board is required to consider under the zoning ordinance;
 - (3) Authorize a variance from the zoning ordinance.
- (C) The Chair or acting Chair may administer oaths and compel the attendance of witnesses. All meetings of the Board are open to the public.
- (D) Board meetings are conducted according to Texas Government Code Ch. 551.
- (E) The Board will keep a record of minutes that provide a record of the evidence presented, deliberations of the Board, and 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 by the secretary and become public record upon filing.
- (F) The Board by majority vote shall adopt rules in accordance with TLGC Chapter 211.008(e) as amended and with the approval of the City Council.

32.52 – Powers and Duties

- (A) The Board has the powers and duties that are expressly identified in Section 153.122, Variances, Special Exceptions, and Appeals, including hearing and acting on applications for variances, special exceptions, and appeal of an administrative decision.
- (B) All procedures and powers not specified in this section shall conform to procedures and powers given in TLGC Chapter 211.008—011, as amended.

Title XV: - Land Usage

Chapter 153: - Zoning

Article VIII. – Administration and enforcement

153.122 Variances, Special Exceptions, and Appeals

- (A) Purpose and applicability.
 - (1) This Section 153.122 is established to govern the Zoning Board of Adjustment's authority to hear and decide appeals, grant variances, and authorize special exceptions from the regulations

in Chapter 153 (Zoning), as authorized by Texas Local Government Code Section 211.008, when the Zoning Board of Adjustment issues written findings that the request meets the criteria specified in this Section 153.122.

(2) The Zoning Board of Adjustment is given the power under this section to hear and decide the following:

- (a) Requests for variances from one or more requirements of Chapter 153 Zoning
- (b) Appeal of an administrative decision in which the responsible official is given decision-making authority over a zoning-related matter;
- (c) Special exceptions from one or more requirements of Chapter 153 Zoning

(B) Variances

(1) Criteria for granting a variance.

(a) The Zoning Board of Adjustment may grant a variance only upon making written findings that all of the following criteria have been satisfied:

- (i) Existence of Special Conditions: There are special circumstances or conditions affecting the land, structure, or use that are peculiar to the subject property and do not generally apply to other similarly situated properties within the same zoning district. Such conditions are not self-imposed or the result of the applicant's actions.
- (ii) Unnecessary Hardship: A strict or literal enforcement of the provisions of the zoning ordinance would result in unnecessary hardship to the applicant, such that the property cannot be reasonably used in a manner consistent with the zoning ordinance without the requested variance.
- (iii) Not Contrary to the Public Interest: The granting of the variance will not be injurious to the public health, safety, or welfare, and will not adversely affect the use or value of adjacent or nearby properties, nor alter the essential character of the surrounding area.
- (iv) Observance of the Spirit of the Ordinance: The variance is consistent with the general purpose and intent of the zoning ordinance, and the essential objectives of the regulations from which relief is sought will not be compromised.
- (v) Substantial Justice: Granting the variance will result in substantial justice, such that the benefits to the applicant are not outweighed by any detriment to the public or neighboring properties, and the variance does not confer a special privilege inconsistent with the limitations imposed on other properties within the same zoning district.

(b) In exercising its authority, the Zoning Board of Adjustment may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the request would result in unnecessary hardship:

- (i) 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 municipality under Section 26.01, Tax Code;

- (ii) 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;
 - (iii) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (iv) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (v) the municipality considers the structure to be a nonconforming structure.
- (2) The Zoning Board of Adjustment may impose such conditions, limitations and safeguards as it deems appropriate upon the granting of any variance.

(C) Special Exceptions

- (1) Reserved

(D) Appeals

- (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 Zoning Board of Adjustment 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 Zoning Board of Adjustment 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 Zoning Board of Adjustment 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 Zoning Board of Adjustment 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.

- (6) In exercising its authority under this ordinance, 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 that purpose the board has the same authority as the administrative official.

(E) Limitations of the Zoning Board of Adjustment authority

- (1) The Zoning Board of Adjustment may not grant a variance authorizing a use other than those uses permitted in the same district.
- (2) The Zoning Board of Adjustment may not grant or modify any specific use permit.
- (3) The Zoning Board of Adjustment may not grant variances modifying or waiving the procedural requirements of the ordinance.