

ORDINANCE NO. 25-XXX

AN ORDINANCE AMENDING CHAPTERS 7, 12, AND 31 OF THE CITY OF KILLEEN CODE OF ORDINANCES; REPEALING CERTAIN APPEALS AND ADJUSTMENTS BOARDS; CREATING A BOARD OF ADJUSTMENT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Killeen, Texas, is a home-rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code;

WHEREAS, the City of Killeen maintains four citizen boards to handle various matters related to variance and special exceptions requests, dangerous buildings, appeals, and recommendations to City Council;

WHEREAS, the City Council finds it to be unnecessary to maintain four different boards to handle these matters; and

WHEREAS, the City Council desires to create a single citizen board to make those decisions and recommendations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KILLEEN:

SECTION I. That Section 7-59 of the Code of Ordinances, City of Killeen, Texas, is hereby repealed in its entirety and replaced to read as follows:

Sec. 7-59 – Aviation Board of Adjustment

- (a) The Board of Adjustment, as created pursuant to Section 31-66 of this Code, shall serve as the Aviation Board of Adjustment for the City of Killeen.
- (b) The Board of Adjustment is granted the authority to exercise the following powers:
 - (1) To hear and decide appeals from any order, requirement, decision or determination made by the building official in the enforcement of this Article.
 - (2) To hear and decide special exceptions to the terms of this Article upon which such Board of Adjustment under such regulations may be required to pass.
 - (3) To hear and decide specific variances under this Article.

SECTION II. That Section 12-40 of the Code of Ordinances, City of Killeen, Texas, is hereby amended to read as follows:

Sec. 12-40. - Variance procedures.

- (a) The ~~zoning~~ board of adjustment as established by the city council, pursuant to Chapter 31-66 of this Code, shall hear and render judgment on requests for variances from the requirements of this chapter.
- (b) The ~~zoning~~ board of adjustment shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this chapter.
- (c) Any person aggrieved by the decision of the ~~appeal~~ board of adjustment may appeal such decision in the courts of competent jurisdiction.
- (d) The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the federal emergency management agency upon request.
- (e) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the national register of historic places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this chapter.
- (f) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in section 12-39(b) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- (g) Upon consideration of the factors noted above and the intent of this article, the ~~zoning~~ board of adjustments may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter.
- (h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (i) The prerequisites for granting variances under this section shall be as follows:
 - (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (2) Variances shall only be issued upon:
 - a. Showing a good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

- c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expenses, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (j) Variances may be issued by a community for new construction and substantial improvement and for other development necessary for the conduct of a functionally dependent use provided that:
- (1) The criteria outlined in (a) through (i) above are met, and
 - (2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

SECTION III. That Chapter 31, Article II, Division 3 of the Code of Ordinances, City of Killeen, Texas, is hereby amended to read as follows:

DIVISION 3. - BOARD OF ADJUSTMENT; APPEALS, VARIANCES, ETC.

Sec. 31-66. - Established.

A board of adjustment is hereby reestablished in accordance with the provisions of V.T.C.A., Local Government Code § 211.008.

Sec. 31-67. - Membership.

The board shall consist of ~~seven~~ nine (9) regular members who shall be citizens of the city or of the city's extraterritorial jurisdiction, each to be appointed or reappointed by the mayor and confirmed by the city council, for staggered terms of two (2) years respectively. Four (4) members shall have training or experience in the construction or building industry; one (1) member shall have aviation experience; one (1) member shall have fire suppression or fire prevention experience; At least one (1) member of the board shall be a member of the city planning and zoning commission and his term shall expire at the same time as his term on such commission and three (3) members shall be at-large. Each member of the board shall be removable for just cause by the city council upon written charges ~~and after public hearings~~, or as otherwise provided by this code. Vacancies shall be filled by the city council for the unexpired term of any member whose term becomes vacant. The board shall elect its own chairman, who shall serve

for a period of one (1) year or until a successor is elected. Up to two (2) alternates may be appointed by the mayor and confirmed by the city council who shall serve in the absence of one (1) or more regular members. Alternate members shall be at-large and serve of the same period as the regular members and any vacancies shall be filled in the same manner. Alternate members shall be subject to removal in the same manner as the regular members.

Sec. 31-68. - Meetings.

Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine.

Sec. 31-69. - Hearings.

The hearings of the board of adjustment shall be public. However, the board may go into executive session in accordance with State law. The board shall hear the intervention of any owner of property adjacent to, in the rear of, or across the street from a lot as to which the granting of any building permit is pending, and shall also hear any other parties in interest.

Sec. 31-70. - Rules and regulations.

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 immediately filed in the office of the board and shall be a public record. ~~The board of adjustment shall act by resolution in which six (6) members must concur.~~ The board shall adopt from time to time such additional rules and regulations as it may deem necessary to carry into effect the provisions of this chapter, and shall furnish a copy of the same to the building inspector, all of which rules and regulations shall operate uniformly in all cases. All of its resolutions and orders shall be in accordance therewith.

Sec. 31-71. - Appeals procedure generally.

Appeals may be taken to and before the board of adjustment by any person aggrieved, or by any officer, department, or board of the city. Such appeal shall be made by filing with the office of the board a notice of appeal and specifying the grounds thereof. The office or department from which the appeal is taken shall forthwith transmit to the board of adjustment all of the papers constituting the record upon which the action appealed from was taken. ~~All cases to be heard by the board of adjustment shall always be heard by a minimum number of six (6) members.~~

Sec. 31-72. - Stay of proceedings.

An appeal shall stay all proceedings in furtherance of the action appealed from unless the ~~b~~Building ~~inspector~~Official shall certify to the board of adjustment that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of equity, after notice to the officer from whom the appeal is taken and on due cause shown.

Sec. 31-73. - Notice of hearing on appeal.

The board shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and shall mail notices of such hearing to the petitioner and to the owners of property lying within two hundred (200) feet of any point of the lot or portion thereof on which a variation is desired, and to all other persons deemed by the board to be affected thereby, such owners and persons being determined according to the current tax rolls of the city and depositing of such written notice in the mail shall be deemed sufficient compliance therewith.

Sec. 31-74. - Decision by board.

The board shall decide the appeal within a reasonable time. Upon the hearing, any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end, shall have all powers of the officer or department from whom the appeal is taken. The concurring vote of ~~six~~ seven (~~6~~7) members of the board shall be necessary to reverse any order, requirement, decision or determination of the officer or department from which the appeal is taken, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variation in this chapter.

Sec. 31-75. - Subpoena witnesses, etc.

The board shall have the power to subpoena witnesses, administer oaths, and punish for contempt, and may require the production of documents, under such regulations as it may establish.

Sec. 31-76. - Appeals based on error.

The board shall have the power to hear and decide appeals where it is alleged there is error of law in any order, requirement, decision, or determination made by the ~~b~~Building ~~inspector~~Official in the enforcement of this chapter.

Sec. 31-77. - Special exceptions.

- (a) The board shall have the power to hear and decide special exceptions to the terms of this chapter upon which the board is required to pass as follows or elsewhere in this chapter, to:
- (1) Permit the erection and use of a building or the use of premises for railroads.
 - (2) Permit a public utility or public service use or structure in any district, or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety or general welfare.
 - (3) Permit a transitional use between a business or industrial and a residential district where the side of a lot in district "R-1," "SF-2," or "R-2" abuts upon a lot zoned for business or industrial purposes as follows:
 - a. On a lot in district "R-1" or "SF-2," which sides upon a lot zoned for business or industrial purposes, the board may permit a two-family dwelling on a lot with an area of not less than six thousand (6,000) square feet.
 - b. On a lot in district "R-2," which sides upon a lot zoned for business or industrial purposes, the board may permit a four-family dwelling on a lot with an area of not less than six thousand (6,000) square feet.
 - c. Provided, however, that in no case shall any transitional use have a width of more than one hundred (100) feet.
 - (4) Grant a permit for the extension of a use, height or area regulation into an adjoining district, where the boundary line of the district divides a lot in a single ownership on the effective date of the ordinance from which this article is derived.
 - (5) Permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God, or the public enemy, to the extent of more than fifty (50) percent of its fair market value, where the board finds some compelling necessity requiring a continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly.
 - (6) Waive or reduce the parking and loading requirements in any of the districts whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.
 - (7) Permit land within three hundred (300) feet of a multifamily dwelling to be improved for the parking spaces required in connection with a multifamily

dwelling, but only when there is positive assurance that such land will be used for such purpose during the existence of the multifamily dwelling.

(8) Determine whether an industry should be permitted within district "M-1," light industrial, and district "M-2," heavy industrial, because of the methods by which it would be operated and because of its effect upon uses within surrounding zoning districts.

(9) Determine in cases of uncertainty the classification of any use not specifically named in this chapter.

(b) The Board shall have the power to hear and decide appeals to staff determinations regarding the construction of unique commercial buildings or custom homes that do not conform to the standards in article VI of this chapter. In considering such request, the board shall consider whether the proposed design meets the intent, if not the letter, of the architectural and site design standards set forth in this chapter.

(b)(c) Any special exception requested pursuant to this section will only be granted upon the affirmative vote of at least seven (7) concurring members.

Sec. 31-78. - Variances.

Upon the affirmative vote of at least seven (7) concurring members, the board shall have the power to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done, including the following:

- (1) Permit a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographical or other conditions, provided such variance will not seriously affect any adjoining property or the general welfare.
- (2) Authorize upon appeal, whenever a property owner can show that a strict application of the terms of this chapter relating to the use, construction or alteration of buildings or structures or the use of land will impose upon him unusual and practical difficulties or particular hardship, such variances from the strict application of the terms of this chapter as are in harmony with its general purpose and intent, but only when the board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected.

Sec. 31-79. - Administrative approval of minor encroachments.

- (a) This section establishes authority for administrative authorization of certain minor encroachments into zoning setback areas.
- (b) The building official, or his designee, may grant an administrative variance of a building or other permanent improvement encroachment of eight (8) inches or less into a front, side, or rear zoning setback area.
- (c) In order to administratively approve such a variance, the building official must find that the encroachment does not:
 - a. obstruct light, air, movement, or traffic visibility;
 - b. lead to overcrowding of land or undue concentration of population;
 - c. increase fire risk;
 - d. violate a building or safety code; or
 - e. pose any hazards to or hardships upon the public.
- (d) The building official shall refer to the board any request involving an encroachment exceeding eight (8) inches into the required setback.
- (e) A property owner or building may receive only one administrative variance in any 12-month period. Subsequent requests must be reviewed by the board.
- (f) The building official's denial of an administrative variance may be appealed to the board by filing a written notice of appeal within 10 calendar days of the building official's decision.

Sec. 31-80. – Variances to Fire Prevention Code

The board of adjustment shall serve as the city's fire prevention board of adjustment and appeals as provided for in the fire prevention code adopted pursuant to Chapter 11 of this Code. The board shall have those powers enumerated in Section 11-122 of this Code.

Sec. 31-81 – Dangerous Buildings and Construction Standards

The board of adjustment shall serve as the city's board of adjustment and appeals. The board shall have the jurisdiction and those powers enumerated in Chapter 8, Article II, Division, 3 of this Code.

Sec. 31-82 – Aviation Board of Adjustment

The board of adjustment shall serve as the city's aviation board of adjustment. The board shall have those powers enumerated in Section 7-59 of this Code.

Sec. 31-803. - Jurisdiction limited.

The board shall have no authority to change any provisions of this chapter and its jurisdiction is limited to hardship and borderline cases that may arise from time to time.

Sec. 31-814. - Administrative fee.

A fee in accordance with the adopted fee schedule shall be paid to the city at the same time any application is made either to the board of adjustment requesting the board to take any action, or to the building official requesting an administrative variance. If an applicant wishes to appeal the building official's denial of an administrative variance, the fee originally paid for the building official's review shall also cover the appeal to the board. The purpose of such fee is to defray the cost to the city for the administration and handling of such requests. The fee is nonrefundable.

Secs. 31-825—31-120. - Reserved.

SECTION IV. That should any section or part of this ordinance be declared unconstitutional or invalid for any reason, it shall not invalidate or impair the validity, force, or effect of any other section or parts of this ordinance.

SECTION V. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION VI. That this ordinance shall take effect on January 1, 2026.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 2nd day of December 2025, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, § 551.001 et seq.

APPROVED:

Debbi Nash-King, MAYOR

ATTEST:

Laura J. Calcote, CITY SECRETARY

APPROVED AS TO FORM

Holli C. Clements, CITY ATTORNEY