

**Ordinance No. 2012.09
Village of Salado
County of Bell
State of Texas
October 4, 2012**

**ZONING BOARD OF ADJUSTMENT MEMBERS
ZONING AMENDMENT**

AN ORDINANCE AMENDING THE SALADO ZONING ORDINANCE, NO. 2012.05, RELATED TO THE CHANGING OF NUMBER OF ZBA MEMBERS FROM SEVEN TO FIVE AND THE ADDITION OF ALTERNATE MEMBERS AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; REPEALER; SEVERABILITY; EFFECTIVE DATE; PROPER NOTICE & HEARING.

WHEREAS, the Board of Aldermen of the Village of Salado finds that the reduction in the number of ZBA members is a procedure that warrants inclusion in the Village's Zoning Ordinance; and

WHEREAS, the Board of Aldermen finds that the restrictions contained herein are adequate measures to safeguard the community; and

WHEREAS, the Board of Aldermen is authorized to make amendments to the Zoning Ordinance in conformance with Chapter 211 of the Texas Local Government Code.

NOW THEREFORE, BE IT ORDAINED BY THE VILLAGE OF SALADO BOARD OF ALDERMEN:

1. ENACTMENT

Section 2.3 of the Village of Salado Zoning Ordinance are hereby amended in accordance with *Attachment A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Ordinance and any struck-through text shall be deleted from the Ordinance, as stated on *Attachment A*.

2. REPEALER

A. All Ordinances or parts of Ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

3. SEVERABILITY

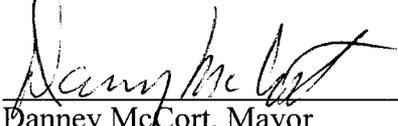
It is hereby declared to be the intention of the Board of Aldermen that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

4. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed 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 Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

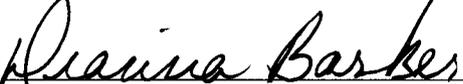
PASSED AND APPROVED on this, the 4th day of October, 2012, by a vote of 4 ayes, 0 nays, and 0 abstentions of the Board of Aldermen.

THE VILLAGE OF SALADO, TEXAS



Danney McCort, Mayor

ATTEST:



Dianna Barker, Village Secretary

Village of **Salado**
Texas

ZONING ORDINANCE

October 2012
Attachment "A"

Section 2.3: Zoning Board of Adjustments

A. Creation:

1. There is hereby created a Zoning Board of Adjustments, hereafter referred to as the "ZBA", for the purpose, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of this Ordinance that are consistent with the general purpose and intent of this Ordinance. The ZBA may be composed of the members of the Board of Aldermen of the Village of Salado as authorized by Chapter 211.008(g) of the Local Government Code.

B. Members; Terms of Office:

1. The Zoning Board of Adjustments may consist of members of the Board of Aldermen, and shall operate in accordance with Sections 211.008 through 211.011 of the Texas Local Government Code, as amended. The Board of Aldermen may also choose by a simple majority vote to appoint Zoning Board of Adjustments members.
2. The ZBA shall consist of five (5) people residing within the Village of Salado. Up to 4 alternate members may be appointed to serve in the absence of one or more of the regular board members on an alternating basis such that all alternate members have equal opportunities to serve on the board. Alternate members shall be appointed in the same manner as regular members.
3. Each person nominated by the Board of Aldermen to be a ZBA member or alternate must be approved by a simple majority vote of the Board of Aldermen before being appointed as a member of the Board.
4. All appointments to the ZBA shall serve as a member or alternate for a term of office of two (2) years. Members may be reappointed with no limitation on the number of terms one member may serve. The Zoning Board of Adjustments shall elect a Chairperson and a Vice-Chairperson from among its membership, and each officer shall hold office until replaced by a simple majority vote of the full ZBA. The Mayor/Village Administrator's designee shall serve as Secretary to the Zoning Board of Adjustments, and shall keep minutes of all meetings held by the Board.
5. The Zoning Board of Adjustments shall have the power to make the rules, regulations and bylaws for its own government.

Members of the board may be removed from office for cause, and after a public hearing, by a simple majority vote of the Board of Aldermen. Failure to attend three (3) consecutive scheduled meetings shall be deemed sufficient cause for removal.

Members desiring to resign as a board member or alternate shall submit a notification of such intent to the Board of Aldermen. The Board of Aldermen will act upon that request at its next scheduled meeting.

C. Meetings:

1. Meetings of the Zoning Board of Adjustments shall be held at the call of the Chairperson or Secretary and at such other times as the ZBA may determine. All meetings of the ZBA shall be open to the public. All cases to be heard by the Zoning Board of Adjustments shall always be heard by at least seventy-five percent (75%) of the members.
2. When meeting as the Zoning Board of Adjustments, the ZBA cannot function as the Board of Aldermen. Zoning Board of Adjustments hearings must be separate from Board of Aldermen hearings.

D. Authority of Zoning Board of Adjustments:

1. The Board of Adjustments shall have the authority, granted in Sections 211.008 through 211.011 of 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 this Ordinance;
 - b. Authorize, in specific cases, a variance from the terms of this 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 this Ordinance is observed and substantial justice is done;
 - c. In exercising its authority under Subsection 1 above, the Zoning Board of Adjustments 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 seventy-five percent (75%) of the full Zoning Board of Adjustments 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 review under this Zoning Ordinance;
 - (3) Authorize a variance from the terms of this Zoning Ordinance; or
 - (4) Hear and decide special exceptions to this Zoning Ordinance.

E. Limitations on Authority of Zoning Board of Adjustments:

1. The Zoning Board of Adjustments may not grant a variance authorizing a use other than those permitted in the district for which the variance is sought, except as provided in Section 2.3.F below.
2. The Zoning Board of Adjustments shall have no power to grant or modify Conditional Use Permits authorized under Section 3.17 of these regulations.
3. The Zoning Board of Adjustments shall have no power to grant a zoning amendment. In the event that a written request for a zoning amendment is pending before the Planning and Zoning Commission or the Board of Aldermen, the Zoning Board of Adjustments shall neither hear nor grant any variances with respect to the subject property until final disposition of the zoning amendment.
4. The Zoning Board of Adjustments shall not grant a variance for any parcel of property or portion thereof upon which a site plan, construction plat, or final plat, where required, is pending on the agenda of the Commission and, where applicable, by the Board of Aldermen. All administrative and procedural remedies available to the applicant shall have been exhausted prior to hearing by the Zoning Board of Adjustments.

F. Variances:

1. The Zoning Board of Adjustments may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance. In granting a variance, the Board shall prescribe only conditions that it deems necessary for, or desirable to, the public interest. In making the findings herein below required, the Board shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work within the proposed use, and the probable effect such variance will have upon traffic conditions and upon the public health, safety, convenience and welfare of the community.

2. Conditions Required for Variance:

a. No variance shall be granted without first having given public notice and having held a public hearing on the written variance request in accordance with this Ordinance and unless the Zoning Board of Adjustments finds:

- (1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of the land; and
- (2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
- (3) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; and
- (4) That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Ordinance.

b. Such findings of the Zoning Board of Adjustments, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the Zoning Board of Adjustments meeting at which such variance is granted. Variances may be granted only when in harmony with the general purpose and intent of this Ordinance so that the public health, safety and welfare may be secured and that substantial justice may be done.

3. Findings of Undue Hardship:

a. In order to grant a variance, the Zoning Board of Adjustments must make written findings that an undue hardship exists, using the following criteria:

- (1) That literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property; and
- (2) That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district; and
- (3) That the relief sought will not injure the permitted use of adjacent conforming property; and
- (4) That the granting of a variance will be in harmony with the spirit and purpose of these regulations.

b. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely upon economic gain or loss, nor shall it permit any person the privilege of developing a parcel of land not permitted by this Ordinance to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

- c. The applicant bears the burden of proof in establishing the facts that may justify a variance.
4. **Special Exceptions for Nonconforming Uses and Structures:** Upon written request of the property owner, the Zoning Board of Adjustments may grant special exceptions to the provisions of Section 2.3, limited to the following, and in accordance with the following standards:
 - a. Expansion of a nonconforming use within an existing structure provided that, in the case of a nonconforming residential use, such expansion does not increase the number of dwelling units to more than the number existing when the use first became nonconforming; or
 - b. Expansion of the gross floor area of a nonconforming structure provided that such expansion does not decrease any existing setback.
 - c. Change from one nonconforming use to another, re-construction of a nonconforming structure that has been totally destroyed, or resumption of a nonconforming use previously abandoned, only upon finding that the failure to grant the special exception deprives the property owner of substantially all use or economic value of the land.
 - d. In granting special exceptions under this Section 2.3, the ZBA may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which the nonconforming use may continue to operate or exist before being conformed to the standards of the zoning ordinance.

G. Appeals to the Zoning Board of Adjustments:

1. The appellant must file with the Zoning Board of Adjustments and the official from whom the appeal is taken a written notice of appeal specifying the grounds for the appeal. The appeal must be filed within sixty (60) days after the decision has been rendered. Upon receiving the notice, the official from whom the appeal is taken shall immediately transmit to the Zoning Board of Adjustments all papers constituting the record of action that is appealed. 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 Adjustments 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 Zoning Board of Adjustments or a court of record on application, after notice to the official, if due cause is shown. The appellant party may appear at the appeal hearing in person or by agent or attorney. The Zoning Board of Adjustments shall decide the appeal within four (4) weeks after the written request (notice of appeal) was received, after which time the written request shall be deemed automatically approved if no formal action is taken. The Zoning Board of Adjustments 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 may make the correct order, requirement, decision or determination.
2. A member or members of the Zoning Board of Adjustments may not bring an appeal on behalf of a property owner other than himself/herself to the Zoning Board of Adjustments. An appeal must be requested by the owner of the property being considered.

H. Procedures:

1. **Application and Fee:** An application for a variance by the Zoning Board of Adjustments shall be made in writing using forms prescribed by the Village, and shall be accompanied by an application fee, a site plan and such additional information as may be requested in writing in order to properly review the application. Such information may include, but is not limited to, plat plans, site building plans, photographs, topographic contour maps, and other similar documents. All drawings must be to scale.
2. **Review and Report by the Village:** The Mayor/Village Administrator or his/her designee, shall visit the site where the proposed variance will apply and the surrounding area, and shall report his or her findings to the Zoning Board of Adjustments.
3. **Notice and Public Hearings:** The Zoning Board of Adjustments shall hold a public hearing for consideration of the written variance request no later than forty-five (45) days after the date the application for action, or an appeal, is filed. Notice of the public hearing shall be provided to all property owners within two hundred feet (200') of the affected property at least ten (10) days prior to the public hearing, and also published in the official local newspaper at least ten (10) days prior to the public hearing.
4. **Action by the Zoning Board of Adjustments:** The Zoning Board of Adjustments shall not grant a variance unless it finds, based upon evidence, that each of the conditions in Section 2.3.F has been established. The Zoning Board of Adjustments may impose such conditions, limitations and safeguards as it deems appropriate upon the granting of any variance. Violation of any such condition, limitation or safeguard shall constitute a violation of this Ordinance.

I. Finality of Decisions; Judicial Review:

1. All decisions of the Zoning Board of Adjustments are final and binding. However, any person aggrieved by a decision of the Zoning Board of Adjustments may present a verified petition to a court of record which states that the decision of the Zoning Board of Adjustments is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented within ten (10) days after the date the decision is filed in the Village Secretary's office. Subject to the provisions of Chapter 211.011 of the Texas Local Government Code, only a court of record may reverse, affirm or modify a decision of the Zoning Board of Adjustments.