
ORDINANCE 2023-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS TEXAS, AMENDING THE NEW BRAUNFELS CODE OF ORDINANCES, CHAPTER 98, PLANNING, TO REVISE THE NAME AND DUTIES OF THE ZONING BOARD OF ADJUSTMENT; AMENDING CHAPTER 106, SIGNS, TO RENAME THE ZONING BOARD OF ADJUSTMENT AND TO GRANT THIS BOARD THE AUTHORITY TO HEAR AND GRANT REQUESTS FOR A VARIANCE FROM THESE REGULATIONS AND ADMINISTRATIVE APPEALS OF INTERPRETATIONS OF THIS CHAPTER, AND TO APPROVE CONDITIONAL SIGN PERMITS, RENAMED BY THIS AMENDMENT TO ALTERNATIVE SIGN PLAN; AMENDING CHAPTER 144 TO RENAME THE ZBA AND TO EXTEND THEIR AUTHORITY TO INCLUDE THE SIGN ORDINANCE; AND AMENDING APPENDIX D TO PROPERLY RENAME THE CONDITIONAL SIGN PERMIT ON THE FEE SCHEDULE; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of New Braunfels, Texas, finds it necessary to establish rules and regulations governing the use of land in the city limits; and

WHEREAS, the City Council has directed that regulations dealing with the use and development of land be reviewed by the Planning Commission to make recommendations concerning improving those regulations; and

WHEREAS, the Planning Commission held a public hearing on November 7, 2023 and recommended approval of the amendments to Chapter 98, Planning, Chapter 106, Signs, Chapter 144, Zoning, and Appendix D, Fee Schedule; and

WHEREAS, the City Council finds that amending these ordinances to rename the Zoning Board of Adjustment and to increase their duties regarding the review and

approval of signs is in the best interest of serving the citizens of New Braunfels; now therefore:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

Section 1

THAT Chapter 98, Planning, Article III is hereby amended with additions as underlines and deletions as strikeouts as follows:

ARTICLE III. ~~ZONING~~ BOARD OF ADJUSTMENT¹

Sec. 98-56. Created; organization.

- (a) *Created; composition; term, removal of members; filling of vacancies.* There is hereby created and established a ~~zoning~~ board of adjustment (BOA), which shall consist of five members to be appointed by the city council. Such members shall serve for two-year staggered terms. The city council shall also appoint four alternate members of the ~~zoning~~ board of adjustment, any of which shall serve in the absence of one of the regular members when requested to do so by the city manager or ~~his~~ the city manager's designee. The alternate members shall serve for two-year staggered terms. Both regular and alternate members may be removed from office for cause by the city council upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member or alternate member whose term becomes vacant. All cases to be heard by the ~~zoning~~ board of adjustment shall always be heard by a minimum number of four members.
- (b) *Officers; compensation.* The ~~zoning~~ board of adjustment shall meet and organize as soon as practicable and shall elect one of its members as chairman. The ~~zoning~~ board of adjustment shall serve without compensation.
- (c) *Rules and procedure.* The ~~zoning~~ board of adjustment shall adopt rules necessary for its government and procedure, not inconsistent with the terms of this chapter and with the provisions of the Texas Local Government Code § 211.008 et seq.
- (d) *Power and duty.* The Board of Adjustment (BOA) may, in appropriate cases and subject to appropriate conditions and safeguards, grant special exceptions and variances to the terms of sections 144 and 106, decide appeals from decisions of administrative officials, and perform other duties as assigned by City Council in

¹Cross reference(s)—Administration, ch. 2; zoning, app. A; powers and duties of board of adjtment, app. A, § 20.

State law reference(s)—Board of adjustment, ~~V.T.C.A.~~, Local Government Code § 211.008 et seq.

harmony with the BOA's general purpose and intent and in accordance with general or specific rules herein contained.

- (~~d~~e) *Meetings.* Meetings of the ~~zoning~~ board of adjustment shall be held at the call of the ~~chairman~~ chairperson, and at such other times as the board may determine. Such ~~chairman~~ chairperson, or in ~~his~~ the chairperson's absence the acting ~~chairman~~ chairperson, may administer oaths and compel attendance of witnesses. All meetings of the board shall be open to the public. 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 filed in the planning and development services department and shall be a public record.

Section 2

THAT Chapter 106, Signs, is hereby amended with additions as underlines and deletions as strikeouts as follows:

Sec. 106-8. Variance and appeal.

- (a) ~~Construction board of appeal~~ Variances and appeals. The ~~construction b~~ Board of ~~a~~ Adjustment shall have the authority to hear and grant requests for a variance from these regulations and administrative appeals of interpretations of this chapter. A variance ~~to~~ from the standards of this chapter will be considered an exception to the regulations rather than a right.
- (b) *Limitation on variances for signs.* No variance application(s) shall be accepted for prohibited signs listed in section 106-11 or sign standards established by the city council in an ordinance that establishes a zoning change with additional restrictions, such as a special use permit, or planned development district. Additionally, application(s) for variances from or appeals of interpretations of the building codes are through a different process.
- (c) *Variance and appeal process.* Variances or appeals of interpretations of this chapter shall be processed and considered in the same manner and with the same fees as a variance or appeal as specified in the zoning ordinance.
- (d) ~~Conditional sign permit~~ Alternative Sign Plan. Notwithstanding anything in this chapter to the contrary, the erection of a sign or signs may be approved pursuant to this section under an ~~conditional sign permit~~ alternative sign plan approved by a simple majority of the ~~city council~~ board of adjustment. The purpose of this section is to allow for a specialized review of signs which may not be appropriate generally without certain restrictions, but which, if controlled as to the number, size, height,

color, location, lighting, or relation to adjacent properties, would promote the health, safety, and welfare of the community. ~~Conditional permitting of signs~~Alternative sign plans shall not be based upon the content of the sign, but ~~is~~are intended to allow for the evaluation of the physical impact of the proposed sign on adjacent properties and are to ensure adequate mitigation of potentially unfavorable factors, such as the number, size, height, color, location, lighting, and other potentially unfavorable impacts.

- (e) *Application.* An application for an alternative sign plan ~~conditional-sign-permit~~ shall be submitted to the planning and development services department and shall include all documents necessary to obtain a building permit.
- (f) ~~Conditional-sign-permit~~ Alternative Sign Plan and Sign Variance fees. ~~The a~~Application fees ~~for a conditional-sign-permit~~ shall be per appendix D of ~~this~~the City's Code of Ordinances.

(Ord. No. 2008-78, § 1(Exh. A), 12-15-08; Ord. No. 2018-21, § 4, 3-26-18)

Section 3

THAT Chapter 144, Zoning, is hereby amended with additions as underlines and deletions as strikeouts as follows:

Sec. 144-2.2. ~~Zoning b~~Board of ~~a~~Adjustment (ZBOA).

~~2.2-1. Power and duty. The zoning board of adjustment (ZBA) may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions and variances to the terms of this chapter and decide appeals from decisions of administrative officials, in harmony with its general purpose and intent and in accordance with general or specific rules herein contained.~~

2.2-~~1~~21. ~~ZBA~~ Board of Adjustment (BOA) procedures. The ~~ZBA~~BOA shall operate in accordance with ~~V.T.C.A. the Texas~~ Local Government Code §§ 211.008—211.011 and shall adopt rules in accordance with the provisions of this chapter. Meetings of the ~~ZBOA~~ shall be held at the call of the chair~~man~~ and at such times as the ~~ZBOA~~ may determine. Such chair~~man~~, or in the chair's ~~his~~ absence the acting chair~~man~~, may administer oaths and compel the attendance of witnesses. All meetings of the ~~ZBOA~~ shall be open to the public. The ~~ZBOA~~ 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 ~~ZBOA~~ and shall be a public record. The concurring vote of four members (or 75 percent) of the ~~ZBOA~~ shall be necessary to

reverse any order, requirement, decision, or determination of any such administrative official, 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.

2.2-~~3~~2. *Variances.*

(a) *Authority.* The ZBQA may authorize a variance from these regulations only upon finding:

- (1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of land;
- (2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
- (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;
- (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 chapter;
- (5) That an undue hardship exists; and
- (6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations.

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 in developing a parcel of land not permitted by this chapter 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.

(b) *Procedures for variance.*

- (1) Application for variance shall be made by the owner of real property (or authorized agent) to the planning department on forms provided by the planning department.
- (2) Fee and sign. The fee for variance requests and related signs shall be per appendix D of this Code (see also subsection 144-2.2-5).
- (3) No variance shall be granted without first having given public notice and having held a public hearing on the variance request in accordance with section 144-2.2-5. The deliberations and determinations of the ZBQA, together with the specific facts upon which such determinations are based, shall be incorporated into the official minutes of the ZBQA meeting at which the variance application is decided.

2.2-~~4~~3. *Special exceptions.*

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- (a) *Authority and procedures.* The ZBOA may grant the following special exceptions to these regulations, upon written request of the property owner, subject to the standards applicable to each exception hereinafter set forth. An application for a special exception shall be decided in accordance with the procedures applicable to a variance, as set forth in section 144-2.2-5.
- (b) *Temporary mobile storage units.* The ZBOA may, at the request of the property owner, renew a temporary mobile storage unit permit for one additional 90-day period in accordance with section 144-5.24. The property owner's request must be made prior to expiration of the initial 180-day permit period. The ZBOA must find that a request for a special exception for this temporary time extension meets each of the six following criteria:
- (1) The special exception will be in harmony with the spirit and purpose of the chapter.
 - (2) The public welfare and convenience will be substantially served.
 - (3) The neighboring properties will not be substantially injured by such proposed use.
 - (4) The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.
 - (5) The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.
 - (6) The subject property is in compliance with all codes and ordinances.
- The above findings of the ZBOA shall be incorporated into the official minutes of the board meeting in which the special exception is authorized.
- (c) *Nonconforming uses and structures.* The ZBOA may grant special exceptions to the provisions of this chapter pertaining to non-conforming status, limited to the following, and in accordance with the following standards. In granting special exceptions under this subsection, the ZBOA 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 brought into conformance with the standards of this chapter.
- (1) Expansion of the land area of a nonconforming use, up to a maximum of 30 percent;
 - (2) Expansion of the gross floor area of a nonconforming structure, up to a maximum of 30 percent, provided that such expansion does not decrease any existing setback and does not encroach onto adjacent property, and such expansion will bring the structure closer into compliance with this

chapter, or if it will otherwise improve or enhance public health, safety or welfare; or

- (3) 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.
- (4) Reconstruction and occupancy of a nonconforming structure, or a structure containing a nonconforming use and/or the restoration of a building site that is nonconforming as to development standards (including, but not limited to, parking arrangement, landscaping, etc.), when a structure has been damaged by fire, flood or other calamity to the extent of more than 75 percent of the replacement cost of the building or structure at the time such damage. Such action by the ZBOA shall have due regard for the property rights of the person or persons affected, and shall be considered in regard to the public welfare, character of the area surrounding such structure, and the conservation, preservation and protection of property.
- (d) *Semipublic parking areas in residential districts.* To permit in residential districts semipublic parking areas for occupants of apartment houses, multiple dwellings, hotels, apartment hotels, fraternity or sorority houses, lodging houses, members of clubs, and visitors to or patrons of hospitals, institutions, or places of public assembly, provided that such parking areas are located not more than 400 feet therefrom, and provided that such parking areas be improved as required in this chapter.

2.2-~~54~~. Variance and special exception notice.

- (a) *Notice and public hearing.* The ZBOA shall hold a public hearing for consideration of the variance or special exception request no later than 45 calendar days after the date the application for action is filed. Written notice of the public hearing for a variance or special exception shall be provided to all property owners, via U.S. mail, within 200 feet of the affected property at least ten calendar days prior to the public hearing. The applicant may appear at the hearing in person or by agent or attorney.
- (b) *Sign.* In addition to the mailed notification, a variance or special exception sign shall be placed adjacent to each public street or right-of-way, abutting the subject property, or if the property does not front a public street or right-of-way, to the closest public street or right-of-way, located in the middle of the frontage, and within three feet of the curb or the pavement, or as prescribed by the planning and development [services](#) department at the time of application. One sign shall be required for the first 100 feet of frontage of the tract, and, thereafter, one additional sign for every 200 feet of frontage, or fraction thereof,

except that no more than three signs shall be required on each roadway frontage. If the tract has less than 200 feet of frontage per roadway, then only one sign is required per road. All signs shall be clearly visible to the public from the adjacent public streets. The applicant shall post the sign(s) at least 15 days prior to the ZBOA meeting and maintain said sign(s) in good condition and in place until final action. If the sign(s) is not posted 15 days prior to the ZBOA meeting, the applicant's case shall be withdrawn and rescheduled. In the event that a sign(s) is removed from the property or damaged, the applicant shall be responsible for purchasing a replacement sign(s) and installing it immediately. The sign(s) shall be furnished by the city and a fee shall be charged the applicant per Appendix D of this Code.

2.2-~~65~~5. *Appeals*. Appeals to the ZBOA may be taken by any person aggrieved, or by any officer, department, board or bureau of the city affected by any decision of the building official or other administrative officer concerning the interpretation or implementation of this chapter.

- (a) *Stays of proceedings*. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the ZBOA, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the officer from whom the appeal is taken and due cause shown.
- (b) *Procedure for appeal*. The appellant must file with the planning and community development department a written notice of appeal specifying the grounds for the appeal and pay a fee per Appendix D of this Code. The notice of appeal shall be filed within 45 calendar days after the decision has been rendered. Upon receiving the notice, the official from whom the appeal is taken shall immediately transmit to the ZBOA all papers constituting the record of action that is appealed. The chair of the ZBOA or any two members may call a special meeting to consider appeals.
- (c) *Action by the ZBOA*. The ZBOA shall decide the appeal within 30 calendar days after the written request (i.e., notice of appeal) was received. 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 may make the correct order, requirement, decision or determination, and for that purpose the ZBOA has the same authority as the administrative official.

2.2-~~76~~6. *Burden of proof*. The applicant bears the burden of proof in establishing the facts that may justify a variance, a special exception, an appeal, or any other action in his/her favor by the ZBOA.

2.2-87. *Waiting period.* No application to the ZBOA for the same or a related variance, or special exception, or appeal on the same piece of property shall be allowed for a waiting period of 180 calendar days following denial of an application by the ZBOA unless other property in the immediate vicinity has, within the 180-day waiting period, been changed or acted upon by the ZBOA or the city council so as to alter the facts and conditions upon which the previous denial was based. Such changes of circumstances shall permit the re-hearing of a variance, or special exception, or appeal request by the ZBOA, but such circumstances shall in no way have any force in law to compel the ZBOA, after a hearing on the matter, to grant a subsequent variance, or special exception or appeal request. Any subsequent variance, or special exception or appeal request shall be considered entirely on its own merits and on the specific circumstances related to the subject property.

2.2-98. *Petition to a court of record.* Any person or persons jointly or severally aggrieved by any decision of the ZBOA, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is unlawful, in whole or in part, specifying the unlawful grounds. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the ZBOA.

- (a) *Writ of certiorari.* Upon the presentation of such petition the court may allow a writ of certiorari directed to the ZBOA to review such decision of the ZBOA and shall prescribe therein the time within which a return thereto must be made and served upon the petitioner's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.
- (b) *Certified or sworn copies.* The ZBOA shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
- (c) *Testimony.* If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.
- (d) *Costs.* Costs shall not be allowed against the ZBOA unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

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- (e) *Preference.* All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

(Ord. No. 2012-49, § 1(Exh. A), 9-10-12; Ord. No. 2017-80, § 1, 10-23-17; Ord. No. 2018-21, § 2, 3-26-18; Ord. No. 2023-06 , § 3, 2-27-23)

Sec. 144-5.24. Temporary mobile storage units.

5.24-15. Appeal procedures.

- (a) Enforcement of this section may be appealed to the **zoning** board of adjustment.
- (b) Appeal actions.
- (1) Any appeal shall be submitted by the applicant within 30 days of the denial.
 - (2) The appeal shall be scheduled for consideration on the next available agenda of the **zoning** board of adjustment.
 - (3) The **zoning** board of adjustment shall review the appeal and shall approve, approve subject to certain conditions, or disapprove the appeal.
 - (4) The **zoning** board of adjustment shall determine final approval or disapproval of all appeals.

(Ord. No. 2012-49, § 1(Exh. A), 9-10-12; Ord. No. 2018-21, § 2, 3-26-18; Ord. No. 2021-91 , § 4, 12-13-21; Ord. No. 2023-06 , § 11, 2-27-23)

Section 4

THAT Appendix D, Fee Schedule, is hereby amended with additions as underlines and deletions as strikeouts as follows:

APPENDIX D FEE SCHEDULE

Sec. A. Schedule of development fees.

SIGNS	
Sign permit – Free standing	\$2.50 per square feet (\$50.00 min.)
Banners – Temporary, on premise/building	\$50.00
Conditional <u>Alternative</u> sign permits <u>plans</u> and sign variances	\$750.00
Temporary Community Signs	\$50.00
Temporary over street banners	\$50.00 plus \$125.00 each location

SECTION 5

THAT, it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 6

THAT all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 7

THAT all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

SECTION 8

THAT in accordance with the provisions of the City Charter, this Ordinance may be read and published by descriptive caption only. This Ordinance has been publicly available in the office of the City Secretary prior to its adoption.

SECTION 9

THAT this Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, and filing with the City Secretary's Office. This Ordinance must also be published in a newspaper of general circulation at least one time within ten (10) days after its final passage, as required by the City Charter of the City of New Braunfels, Texas.

PASSED AND APPROVED: First reading this the 27th day of November, 2023.

PASSED AND APPROVED: Second reading this the 11th day of December, 2023.

CITY OF NEW BRAUNFELS

Neil Linnartz, Mayor

ATTEST:

Gayle Wilkinson, City Secretary

APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney