

ORDINANCE 99-32

AN ORDINANCE OF THE CITY OF COMMERCE, AMENDING SECTION 16, TITLED BOARD OF ADJUSTMENT, OF THE CODE OF ORDINANCE OF THE CITY OF COMMERCE, TEXAS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith AND CONTAINING A SAVINGS CLAUSE;

BE IT ORDAINED BY THE CITY OF COMMERCE, TEXAS:

SECTION 1. AMENDMENT.

Section 16, titled Board of Adjustment of the Code of Ordinances of the City of Commerce, Texas, is hereby amended so that said Section 16 shall hereafter read as follows:

Sec. 16 Board of adjustment.

16-110 - Organization.

There is hereby created a board of adjustment consisting of five members, who are residents of the city, each to be appointed by resolution of the city council for a term of two years. The city council shall nominate one of the members as chairman, and the chairman shall appoint a vice-chairman, neither of whom shall serve more than a two-year term. The city council shall also appoint, by resolution, four alternate members who are residents of the city, who shall serve in the absence of one or more of the regular members. Two members and two alternate members, as heretofore appointed, shall serve two years; three members and two alternate members, as heretofore appointed, shall serve three years; thereafter, each member and each alternate member reappointed, or each new appointee, shall serve for a full term of two years unless removed as provided in Sec. 16-120. All appointees shall serve without compensation and may not hold an elective office of the State of Texas or political subdivision thereof.

16-120 - Removal from office and vacancies.

Members of the board of adjustment may be removed by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member, whose place becomes vacant for any cause, in the same manner as the original appointment was made.

16-130 - Quorum.

For the purpose of transacting any business, four members of the board of adjustment shall constitute a quorum and actions of the board shall be approved by a majority vote, except that a concurring vote of four members of the board shall be required to make a favorable determination for an application on any

matter upon which it is required to pass under this ordinance or to effect any variation in this ordinance.

16-140 – Function.

The board shall adopt rules to govern its proceedings; provided, however, that such rules are not inconsistent with this ordinance. Meetings of the board shall be called on an as-needed basis; however, meetings shall not be held more than once per month. 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 and shall keep records of its official actions, which shall be a public record.

16-150 - Powers and Duties.

The board shall have powers and duties as follows:

16-151 Administrative Appeal.

The board shall hear and decide appeals made by any person aggrieved, or by an officer, department, or board of the municipality affected by any decision of any administrative official of the city in the enforcement of this Ordinance. Such appeal shall be made within 15 days' time after the decision has been rendered by the administrative official by filing an application with the Community Development Department.

An appeal shall stay all proceedings of the action appealed from, unless the official responsible for the decision on which the appeal is made certifies to the board of adjustment, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property.

16-152 Variance.

The board shall hear and decide appeals in specific cases for variances from the terms of this ordinance, where such variance will not be contrary to the public interest, and, where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship and the granting of the variance would provide substantial justice conforming with the spirit and intent hereof.

16-160 Notice of hearing.

The board of adjustment shall hold a public hearing on any appeal made and written notice of such public hearing shall be sent to the applicant and all other persons who are owners, as shown on the last city tax roll, of real property lying within 200 feet of the property on which the appeal is made. Such notice shall be given not less than 10 days before the date set for hearing. Such notice may be served by depositing the same in the city post office, properly addressed and postage paid.

Notice shall also be given by publishing the same in the official newspaper of the city at least 15 days prior to the date set for hearing, which notice shall state the time and place of such hearing.

16-170 Procedure.

At a public hearing relative to any appeal for a variance, any interested party may appear in person or by agent or by attorney. The burden of proof shall be on the applicant to establish the necessary facts to justify the action of the board of adjustment on any appeal. Any special exception or variance granted or authorized by the board of adjustment under the provisions of this ordinance shall authorize the issuance of a building permit, or a certificate of occupancy, as the case may be, for a period of 180 days from the date of the favorable action of the board unless said board shall in its action approve a longer period of time and so show such specific period in the minutes of its action. If the building permit and/or certificate of occupancy shall not have been issued within said period as the board may specifically grant, then the special exception or variance shall be deemed to have been waived and all rights thereunder terminated. Such termination and waiver shall be without prejudice to a subsequent appeal to said board in accordance with regulations herein contained.

16-180 Jurisdiction.

When, in its judgement, the appropriate use of the neighboring property will not be substantially or permanently injured and the public convenience and welfare will be substantially served, the board of adjustment may, in specific cases, after public notice and public hearing, and subject to appropriate conditions and safeguards, authorize the following special exceptions to the regulations herein established:

16-181 *Permit the reconstruction, extension or enlargement of a building occupied by nonconforming use on the lot or tract occupied by such building, provided such reconstruction does not prevent the eventual return of such property to a conforming use.*

16-182 *Permit such modifications of the height, yard setback, area, coverage, floor area ratio and parking regulations as may be necessary to secure appropriate development of a parcel of land.*

16-183 *Decide any question involving the interpretation of any provisions of this ordinance wherein uncertainty has arisen concerning the intent of specific requirements of the ordinance having due regard for the purpose of the zoning ordinance as set out in Section 2-100 herein.*

16-184 *Require the discontinuance of nonconforming uses, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance, and having due regard for the property rights of the persons affected when considered in the light of the public*

welfare and the character of the area surrounding the designated nonconforming use and the conservation and preservation of property. The board shall, from time to time on its own motion or upon cause presented by interested property owners, inquire into the existence, continuation or maintenance of any nonconforming use within the city.

16-190 Actions of the board.

In conformity with the provisions of the statutes of the State of Texas as existing or hereafter amended, the board may exercise its powers to revise or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made and shall have all the powers of the officer from whom the appeal is taken, including the power to impose reasonable conditions to be complied with by the applicant.

16-191 -*The concurring vote of four members of the board shall be necessary to revise any order, requirement, decision or determination of any such administrative official, or to decide in favor of the application on any matter upon which it is required to pass under this ordinance or to affect any variance in said ordinance.*

16-192 -*Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department or board of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 10 days after the filing of the decision in the office of the board and not thereafter.*

SECTION 2. All ordinances and parts of ordinances inconsistent with or in conflict with the provisions of this Ordinance shall be and the same are hereby expressly repealed.

SECTION 3. If any section, subsection, word, sentence, or phrase of this ordinance is declared to be invalid it shall not effect the validity of this ordinance.

PASSED AND APPROVED on the **FIRST READING** at a regular meeting of the City Council of the City of Commerce, Texas on this the 19th day of October 1999.

PASSED AND APPROVED on the **SECOND READING** at a regular meeting of the City Council of the City of Commerce, Texas on this the 2nd day of November 1999.

ATTEST:

CITY OF COMMERCE:

Marty Morrison
Marty Morrison, City Secretary

John R. Sands
John R. Sands, Mayor

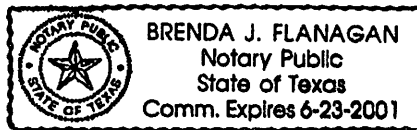
(seal)

I, Marty Morrison, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of an ordinance, and that the same has not been repealed and is in full force and effect.

Marty Morrison
Marty Morrison, City Secretary

(seal)

Sworn to and subscribed before me, on this the 3rd day of November -
1999 to certify which witness my hand and seal of office.



Brenda J. Flanagan
Notary Public, State of Texas

(seal)