Village of Volente

ORDINANCE ESTABLISHING THE BOARD OF ADJUSTMENT

ORDINANCE NO. 2005-O-37

AN ORDINANCE OF THE VILLAGE OF VOLENTE, TEXAS, ESTABLISHING THE BOARD OF ADJUSTMENT AND ADOPTING RULES GOVERNING ITS PROCEDURES AND MEETINGS AND PROVIDING FOR THE FOLLOWING: PURPOSE; MEMBERSHIP AND APPOINTMENT; APPOINTMENT OF CHAIR AND VICE-CHAIR; TERMS OF OFFICE; FILLING OF VACANCIES; QUORUMS AND ACTIONS AT MEETINGS; REMOVAL OF MEMBERS; DISQUALIFICATION FROM VOTING; RULES OF PROCEDURE; DUTIES AND POWERS; CONFLICTING PROVISIONS; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Village of Volente ("Volente") is a governmental entity that was incorporated pursuant to the laws of the State of Texas as a Type B General-Law Municipality following an election held on February 1, 2003; and

WHEREAS, under the provisions of Section 211.008 et seq. of the Texas Local Government Code, the Village Council of Volente ("Council") is to appoint a Board of Adjustment; and

WHEREAS, the Council may authorize the Board of Adjustment to make special exceptions to the terms of the zoning ordinance consistent with the general purpose and intent of the ordinance and in accordance with any applicable rules contained in the ordinance.; and

WHEREAS, the Council finds it to be in the best interest of the public safety, health and general welfare of the Village to establish a Board of Adjustment for the Village of Volente;

NOW THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF VOLENTE, TEXAS: THAT THE FOLLOWING RULES SHALL ESTABLISH, REGULATE AND GOVERN THE BOARD OF ADJUSTMENT FOR THE VILLAGE OF VOLENTE, TEXAS.

SEC. 22.201. Purpose.

A Board of Adjustment ("Board") is created to accomplish the following purposes:

(A) To consider and act upon requests by an applicant for a variance from the literal zoning requirements. A variance is defined as permission to depart from the literal requirements of a zoning ordinance by virtue of a

unique hardship on a person's property. If a variance is granted by the Board of Adjustment, it acts as a waiver of the strict requirements of the zoning ordinance. The granting of a variance does not amend the zoning ordinance, but it is granted to a specific property when there are special circumstances justifying deviation from the literal terms of the zoning ordinance.

(B) To consider and act upon requests for a special exception from the zoning requirements. A special exception may only be granted to those regulations identified by the Council to be subject to special exceptions, and only upon a showing of the parameters established by the Council for granting the special exception.

(C) To consider and act upon an appeal of the determination or order of an administrative official on a zoning issue that affects the zoning rights of a person. Upon the filing of an appeal, all proceedings in furtherance of the action being appealed are stayed. If facts show that the stay would cause imminent peril to life or property, the action may be stayed only if a restraining order is granted by the Board, or a district court, after showing due cause.

(D) To consider and make determinations regarding non-conforming uses, including establishing an amortization period for the termination of those uses. In establishing amortization periods for a non-conforming use, the Board may consider the amount an owner has invested in the property, the amount of recoupment of the investment during the amortization period, the availability and location of other sites, and the extent to which the non-conforming use adversely affects the neighboring property.

SEC. 22.202. Membership and Appointment.

The Board shall be composed of five (5) permanent and two (2) alternate members who are qualified voters who reside in the Village. The Council will consider for appointment to the Board those persons who have demonstrated their civic interest, general knowledge of the community, independent judgment, interest in maintaining the integrity of the Village, and availability to attend meetings. The Council shall strive to appoint members who, by reason of their occupations and the areas of the Village in which they reside, will be broadly representative of the community.

SEC. 22.203. Appointment of Chair and Vice-Chair.

The Village Council shall appoint the Chair and Vice-Chair.

SEC. 22.204. Terms of Office; Filling of Vacancies.

The terms of two permanent and one alternate of the members of the Board shall expire on January 1st of each odd-numbered year and the terms of three permanent and one alternate of the members shall expire on January 1st of even-numbered years. Place numbers one through five shall identify the permanent members of the Board and place numbers six and seven shall identify the alternate members of the Board. Board members may be appointed to successive terms. A member of the Board shall serve until his or her successor is appointed and installed. The Council shall fill vacancies for the uncompleted term of any vacant position. Newly appointed members shall be installed at the first regular Board meeting after their appointment.

SEC. 22.205. Removal of Members of the Board.

The Village Council may by majority vote remove a Member of the Board for incompetence, corruption, misconduct, or malfeasance. Any permanent Board member who misses three (3) consecutive meetings within a twelve (12) month time period or one-third (1/3) of all regular meetings shall be deemed to have automatically vacated his/her position on the Board. This section shall not apply to a Board member who applied for and received an excused absence from the Board chairperson prior to the meeting(s) at issue. Any Board member who no longer resides within the corporate boundaries is deemed to have automatically vacated his/her position on the Board.

SEC. 22.206. Motions at Meeting.

(A) A motion may be made by any member other than the presiding officer. The presiding officer may second a motion and may vote on all matters considered by the Board.

(B) A motion to approve any matter before the Board shall require four votes of the members present and voting. Therefore, if only four members are present at the meeting, all four must vote to approve the matter.

SEC. 22.207. Disqualification from Voting.

A member shall disqualify himself/herself from voting whenever the member has a personal or monetary interest in a matter before the Board that is substantially different from the interest of the other citizens of the Village, or if the value of the member's property will be affected in a substantially different manner than other properties within the Village.

SEC. 22.208. Rules of Procedure.

(A) <u>Organization and officers.</u>

<u>(1) Officers</u>.

(a) **The Chairperson, or in his/her absence, the Vice-Chairperson shall preside at all meetings, shall decide all points of order or procedure.**

(b) **In the absence of both the Chairperson and Vice-Chairperson, the Board shall elect an Acting Chair.**

(c) **The Village Secretary shall be custodian of the minutes and other official records, shall attend to the correspondence of the Board and shall cause to be given such notices as are required and in the manner prescribed by law.**

(2) Rules of Order.

Roberts Rules of Order, as amended, shall be the Board's final authority on all questions of procedure and parliamentary law not covered by these Rules of Procedure.

(B) Meetings

(1) Quorum. A quorum shall consist of four members.

(2) Agenda. The Village Secretary shall prepare an agenda for each meeting of the Board, and shall attach to each agenda a report of matters pending further action by the Board. The Village Secretary shall post a copy of the agenda in the Village Hall as required by law for a period of three full calendar days, not counting the day of posting, but which may count the day of the meeting.

(3) Regular Meetings. The Board shall conduct regular meetings from time to time to act upon requests filed pursuant to the jurisdiction of the Board.

(4) Special Meetings. Special meetings for any purpose may be held: on the call of the Chair, or on request of two or more members and by giving written notice to all members deposited in the mail at least 72 hours before the meeting, or as may be scheduled by a majority of the Board at any previous meeting. The convening authority shall determine the time and place of the special meeting.

(5) Public meetings. Any party in interest may appear in his/her own behalf or be represented by an attorney or agent.

(C) Official Records.

(1) **Official Records.** **The official records shall be the minutes of the Board, together with all findings, decisions and other official records of the Board.**

(2) **Recording of Vote.** **The minutes of the Board's proceedings shall show the vote of each member, or indicate a member's absence or failure to vote.**

(3) **Files-Retention.** **All matters coming before the Board shall be filed in the Village's records. Original papers of all requests and proposals shall be retained as a part of the permanent record.**

(4) **Public Record.** **The official records and citizen requests filed for Board action in regular or special meetings shall be on file in the Village Hall and shall be open to public inspection during customary working hours.**

(D) **Application Procedures.**

(1) **Written Request Required.** **Every request or appeal submitted for Board action shall be made in writing. Where appropriate, the Village shall provide application forms. The request or appeal shall be accompanied by all prescribed fees and shall be complete in all respects before the Village shall accept it for filing.**

(2) **Schedules and Instructions.** **Every request or appeal for Board action shall be filed, processed and considered in accordance with this section.**

(3) **Submission and Supporting Information.** **Information supporting a request or appeal before the Board shall be submitted through the Village Secretary in writing or to the Board in public meeting.**

(4) **Withdrawal of Request or appeal.** **When any applicant desires to withdraw his or her request or appeal, he or she may do so by filing a written request with the Village Secretary. Such request shall be effective upon the date of its official receipt, provided, however, that no such request shall be valid after notices have been mailed, except on action of the Board. Withdrawal of a request or appeal at any stage of its processing shall terminate all consideration of it by the Village, and the case file shall be closed.**

SEC. 22.209. Duties and Powers.

The Board is charged with the duty and invested with the authority to:

(A) Inspect property and premises at reasonable hours when required to discharge its responsibilities under the laws of the State and of the Village.

(B) Hear evidence and determine the matters set forth in Section 1 of this Ordinance.

(C) Exercise all the powers of a Board of Adjustment as provided in the Texas Local Government Code.

SEC. 22.210. Appeal

If a person is not satisfied with the decision rendered by the Board of Adjustment, that person's sole remedy lies in pursuing an appeal to a district court. An appeal must be filed with the district court within ten (10) days after the decision of the Board of Adjustment is filed. Review of a Board of Adjustment decision is be a writ of certiorari.

SEC. 22.211. Conflicting Provisions.

In the case of any conflict between the other provisions of this Ordinance and any existing ordinance of the Village, the provisions of this Ordinance will control.

SEC. 22.212. Severability.

If any part of this ordinance, or the application of the same to any person, or set of circumstances is for any reason held to be unconstitutional, invalid, or unenforceable, the validity of the remaining portions of this ordinance shall not be affected thereby and all provisions of this ordinance are declared severable for that purpose.

SEC. 22.213. Effective Date.

This Ordinance shall become effective upon approval of the Village Council.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE VILLAGE OF VOLENTE, TEXAS on this 18th day of January 2005.

Jan Yenawine, Mayor
Village of Volente

Attest:

Jennifer Zufelt, City Secretary

Approved as to Form:

Tom Buckle, City Attorney