

**ORDINANCE NO. 2021-O-150**

**AN ORDINANCE OF THE CITY OF ATHENS, TEXAS, AMENDING CHAPTER 22, ARTICLE II, SECTION 22-9(f)(3) & SECTION 22-9(f)(4) OF THE CITY CODE OF ORDINANCES REGARDING FINDINGS OF UNDUE HARDSHIP FOR VARIANCE CASES, PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.**

**WHEREAS**, on the 1<sup>st</sup> day of November 2021, the Planning and Zoning Commission of the City of Athens, Texas after due notice and hearing did hereby vote to recommend approval of the amendment of the Zoning Ordinance regarding findings of undue hardship of Zoning Board of Adjustment variance cases per Texas H. B. 1475.

**WHEREAS**, on the 8<sup>th</sup> day of November 2021, the City Council of the City of Athens, Texas after due notice as required by law, held a public hearing for the said amendment to Chapter 22 of the City Code of Ordinances and heard from those opposed to said modification and those in favor of same. After the close of the public hearing, the ordinance amendment was read aloud for the first time as required by Article III, Section 3.11 of the City of Athens Charter.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, TEXAS**

Section 1. The City Council hereby authorizes the amendment of Chapter 22, Article II, Section 22-9(f)(3) and Section 22-9(f)(4) as shown below. For clarity, the text to be amended within the ordinance is shown in highlights.

**Sec. 22-9. Zoning board of adjustments (ZBA).**

(f) *Variances.*

(3) *Findings of undue hardship.* In order to grant a variance, the board must make written findings that an undue hardship exists, using the following criteria:

a. ~~That literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property; and~~

b. ~~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~~

c. ~~That the relief sought will not injure the permitted use of adjacent conforming property; and~~

d. ~~That the granting of a variance will be in harmony with the spirit and purpose of these regulations.~~

a. The cost of compliance with the zoning ordinance is greater than 50 percent of the appraised value of the structure as shown on the most recent certified appraisal roll; or

b. Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur; or

- c. Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement; or
  - d. Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
  - e. The municipality considers the structure to be a nonconforming structure.
- (4) A variance or special exception 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 or special exception may be granted which results in undue hardship upon another parcel of land.

Section 2. Should any clause, phrase, sentence section of this Ordinance be deemed invalid or unconstitutional by a court of competent jurisdiction, said finding shall not affect the remaining clauses, phrases, sentences or sections of this Ordinance.

Section 3. Any ordinance, resolution or order previously passed and/or adopted by the City Council, or any part thereof, if found to be in conflict with the provisions of this Ordinance, shall be resolved in favor of the terms and conditions of this Ordinance, and any prior conflicting ordinance, resolution or order or any part thereof, is hereby repealed to the extent of said conflict.

Section 4. This ordinance shall be and become effective from and after its adoption and publication in accordance with the provisions of the Charter of the City of Athens, Texas.

First reading on the 8<sup>th</sup> day of November 2021.

**PASSED, APPROVED and ADOPTED** this the **29<sup>th</sup>** day of **November 2021** at a regular meeting of the City Council of the City of Athens, Texas, with the following record vote:

Toni Clay, Mayor	Aye
Aaron Smith, Mayor Pro Tem	Aye
Robert Gross, Councilmember	Aye
SyTanna Freeman, Councilmember	Aye
Mark Carroll, Councilmember	Aye
Voted in favor of the motion	5
Voted against the motion	0
Motion carried	5-0

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Toni Clay, Mayor

ATTEST:

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Bonnie Hambrick, City Secretary