

DATE: July 20, 2021

TO: Honorable Mayor & City Council

FROM: M. Nathan Barbera, Chair, Planning & Zoning Commission 

SUBJECT: Results of Planning & Zoning Commission Meeting of July 19, 2021

AGENDA ITEM NO (2) - ZONING CASE 2021-013

APPLICANT: CITY OF PLANO

Request to amend Article 5 (Variances and Appeals of Administrative Decisions), Article 8 (Definitions), Section 11.1000 (Neighborhood Conservation Overlay Districts), and related sections of the Zoning Ordinance pertaining to recent state legislative actions and to ensure compliance with state law. Project #ZC2021-013.

APPROVED: 7-0 **DENIED:** _____ **TABLED:** _____

Speaker Card(s) Received Support: 0 Oppose: 0 Neutral: 0

Petition Signatures Received: Support: 0 Oppose: 0 Neutral: 0

Other Responses: Support: 0 Oppose: 0 Neutral: 0

STIPULATIONS:

Recommended for approval as follows (additions are indicated in underlined text; deletions are indicated in strikethrough text).

Amend Article 5 (Variances and Appeals of Administrative Decisions), such article to read as follows:

5.100 Board of Adjustment

The composition and appointment of the Board of Adjustment shall be in compliance with Chapter 16 of the Code of Ordinances.

5.200 Jurisdiction

The Board of Adjustment has jurisdiction to consider the following:

- .1 ~~Each case must be heard by at least 75% of the members of the Board of Adjustment.~~ **Appeals.** Hear and decide appeals where it is alleged there is error on any order, requirement, decision, or determination made by the Building Official in the enforcement of this ordinance.

- .2 ~~When in its judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially or permanently injured, the Board of Adjustment may, in specific cases, after written notice and public hearings, and subject to appropriate conditions and safeguards, authorize or order the following:~~
- ~~A. Hear and decide appeals where it is alleged there is error on any order, requirement, decision, or determination made by the Building Official in the enforcement of this ordinance.~~
 - ~~B. Permit the reconstruction, extension, or enlargement of a building occupied by nonconforming uses, on the lot or tract occupied by such building, provided such reconstruction does not prevent the return of such property to a conforming use.~~
 - ~~C. Require the discontinuance of nonconforming uses of land or structure under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance. All actions to discontinue a nonconforming use of land or structure shall be taken with 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 of Adjustment 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.~~

Nonconforming Use. Permit the reconstruction, extension, or enlargement of a building occupied by nonconforming uses, on the lot or tract occupied by such building, provided such reconstruction does not prevent the return of such property to a conforming use.

- .3 **Amortization.** Require the discontinuance of nonconforming uses of land or structure under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance. All actions to discontinue a nonconforming use of land or structure shall be taken with 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 of Adjustment 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.

.4 Variance. Consider permitting a variance from the terms of the Zoning Ordinance.

- A. A variance will not be considered by the Board of Adjustment if any of the following conditions apply:
- i. The variance seeks to authorize a use other than those permitted in the district for which the variance is sought.
 - ii. The variance seeks to authorize any person a privilege in developing a parcel of land not permitted by this ordinance to other parcels of land in the same zoning district.
 - iii. A petition or request for a variance shall not be heard or granted with regard to any parcel of property or portion thereof upon which the preliminary site plan approval, , site plan, preliminary plat, or final plat, that is when required by this ordinance or the Subdivision Ordinance for any parcel of property or portion thereof, has not been. finally acted upon by both the Planning & Zoning Commission and, where required, by the City Council. The subject lot, parcel of property, or portion thereof does not have a site plan and/or plat approved, as required under the city's development ordinances.
 - iv. No plan has been approved at or beyond the preliminary site plan phase of development.
 - v. The administrative procedures and requirements of this ordinance and the Subdivision Ordinance, with regard to both Planning & Zoning Commission and the City Council consideration and action, on preliminary site plans, site plans, preliminary plats, and final plats, have not been exhausted prior to requesting a variance from the terms of this ordinance.
- B. The Board of Adjustment may permit such variance from the terms of the Zoning Ordinance that will not be contrary to the public interest if: and where, because of special conditions, the enforcement of this ordinance or its amendments would result in an unnecessary hardship, except as provided in Sec. 5.200.2D.ii, Sec. 5.200.2D.iii or Sec. 5.200.2D.iv. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this ordinance to other parcels of land in the district. No variance may be granted if it results in an unnecessary hardship, as herein defined, on another parcel of land.
- i. The variance will observe the spirit and intent of this ordinance, align with that will not be contrary to the public interest, and comport with substantial justice;
 - ii. The interpretation of the provisions in this ordinance or its amendments would deprive the petitioner of rights commonly

enjoyed by other properties in the same zoning district that comply with the same provisions;

- iii. No variance may be granted if it ~~The variance does not results in an unnecessary encumbrance~~ hardship, as herein defined, on another parcel of land;
- iv. The variance is not based solely on economic gain or loss, except that a variance based solely on economic gain or loss may be granted consistent with section vi. below; and
- v. A ~~The variance shall~~ does not ~~be granted to relieve~~ relief to a self-created or personal hardship except to the extent that the self-created or personal hardship arises from factors or grounds that may be considered under section vi. below.
- vi. Because of special conditions, including restricted area, shape, topography, or physical features that are peculiar to the subject parcel of land, the ~~a literal enforcement of this ordinance or its amendments would result in an unnecessary hardship.~~

The Board may consider the following as grounds to determine whether compliance with this ordinance would result in unnecessary hardship: ~~In order to make a finding of hardship and to grant a variance from this ordinance, the Board of Adjustment must determine that:~~

- ~~a. The requested variance does not violate the intent of the ordinance or its amendments.~~
- a. The financial cost of compliance is greater than 50% of the appraised value of the structure as shown on the most recent appraisal roll.
- b. Compliance would result in a loss to the lot on which the structure is located on at least 25% of the area on which development may physically occur.
- c. Compliance would result in the structure not being in compliance with another requirement of the Zoning Ordinance, building code, or other requirement.
- d. Compliance would result in the unreasonable encroachment on an adjacent property or easement.
- e. The City considers the structure to be a nonconforming structure.
- i. ~~The hardship is in no way the result of the petitioner's own actions.~~

- ~~ii. The interpretation of the provisions in this ordinance or its amendments would deprive the petitioner of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.~~
- ~~B. No variance may authorize a use other than those permitted in the district for which the variance is sought.~~
- ~~C. A petition or request for a variance shall not be heard or granted with regard to any parcel of property or portion thereof upon which a preliminary site plan, site plan, preliminary plat, or final plat, when required by this ordinance or the Subdivision Ordinance for any parcel of property or portion thereof, has not been finally acted upon by both the Planning & Zoning Commission and, where required, by the City Council.~~
- ~~D. The administrative procedures and requirements of this ordinance and the Subdivision Ordinance, with regard to both Planning & Zoning Commission and the City Council consideration and action, on preliminary site plans, site plans, preliminary plats, and final plats, must be exhausted prior to requesting a variance from the terms of this ordinance.~~

5.300 Appeals

- .1** The Board of Adjustment may take action in accordance with Sec. ~~5.200.1~~. Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, or board of the municipality affected by any decision of the Building Official. Such appeal shall be made within 15 days after the decision has been rendered by the Building Official ~~administrative officer~~, by filing a Notice of Appeal specifying the grounds thereof with the ~~officer from whom the appeal is taken~~ Building Official and with the Board of Adjustment. The Building Official ~~officer from whom the appeal is taken~~ shall forward to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.
- .2** An appeal shall stay all proceedings of the action appealed from unless the Building Official ~~officer from whom the appeal is taken~~ certifies to the Board of Adjustment, 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 of Adjustment or by a court of record on petition, upon notice to the Building Official ~~officer from whom the appeal is taken~~ and on due cause shown.

5.400 Action of the Board of Adjustment

- .1** In exercising its powers, the Board of Adjustment may, in conformity with the provisions of Section 211.009(b) of the Texas Local Government Code, reverse 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 petitioner.
- .2** Each case must be heard by at least 75% of the members of the Board of Adjustment. The concurring vote of 75% of the members of the Board of Adjustment shall be necessary to revise any order, requirement, decision, or determination of ~~any such administrative official~~ the Building Official, or to decide in favor of the petitioner on any matter upon which it is required to pass under this ordinance or to approve any variance under this ordinance.
- .3** The date of filing of the decision in the office of the Board of Adjustment shall be the date the Board of Adjustment announces its decision either orally or in writing to the petitioner.
- .4** An appeal of the Board of Adjustment's decision must be in accordance with Chapter 211 of the Texas Local Government Code as the same may be amended from time to time. ~~The date of filing of the decision in the office of the Board of Adjustment shall be the date the Board of Adjustment announces its decision either orally or in writing to the petitioner.~~
- .5** No appeal to the Board of Adjustment for the same variance, on the same property, shall be allowed prior to the expiration of 2 years from a previous ruling by the Board of Adjustment unless other property in the immediate vicinity has within the 2-year period been rezoned, granted a similar variance request by the Board of Adjustment, or such that the physical conditions have changed. These circumstances shall permit the rehearing of an appeal by the Board of Adjustment prior to the expiration of the 2 year period, but shall not compel the Board of Adjustment, after a hearing, to grant a variance.
- .6** If the court reverses or modifies the Board of Adjustment's decision, the Board of Adjustment may elect to appeal that decision.

Amend Section 8.200 (Terms Defined) of Article 8 (Definitions), such new definitions to read as follows:

Heritage Resource Overlay District

A type of overlay district used to designate a local historic landmark or local historic district as referenced in Section 211.0165 of the Texas Local Government Code.

Historic Landmark or District

See "Heritage Resource Overlay District"

Amend Section 11.1000 (Neighborhood Conservation Overlay District) of Article 11 (Overlay Districts), such section to read as follows:

.7 Relationship to State Law

Neighborhood conservation districts are not local historic districts under Texas Local Government Code Section 211.0165, as amended.

MS/kob

cc: Jeanna Scott, Building Inspections Manager

CITY OF PLANO
PLANNING & ZONING COMMISSION

July 19, 2021

Agenda Item No. 2

Public Hearing: Zoning Case 2021-013

(Submitted Under the Interim Comprehensive Plan)

DESCRIPTION:

Request to amend Article 5 (Variances and Appeals of Administrative Decisions), Article 8 (Definitions), Section 11.1000 (Neighborhood Conservation Overlay Districts), and related sections of the Zoning Ordinance pertaining to recent state legislative actions and to ensure compliance with state law. Project #ZC2021-013.

SUMMARY:

The proposed changes are in conformance with recently adopted house and senate bills and reorganize some existing standards for better clarity. The amendments are in conformance with the recommendations of the Comprehensive Plan. Staff recommends approval as noted in the recommendation below in strikethrough and underlined text. A version of the recommended changes with no strikethrough or underlined text is also attached to this report.

REMARKS:

The 87th Texas Legislature passed House Bill 1475 (HB 1475) and Senate Bill 1585 (SB 1585), which require ordinance updates. HB 1475 establishes grounds for the Board of Adjustment to determine unnecessary hardships in addition to the criteria the City currently considers for variance requests to the regulations of the Zoning Ordinance. SB 1585 requires 100% property owner consent for a property to be designated or included in a historic district or a three-quarter vote by the governing board or commission. At the June 7, 2021, Planning & Zoning Commission meeting, the Commission called a public hearing to consider necessary amendments to the Zoning Ordinance.

Both HB 1475 and SB 1585 will become effective September 1, 2021. The bills are attached to this staff report for reference. The impacts and recommended changes have

been reviewed for consistency with the statute by staff from the Planning and Building Inspections Departments and the City Attorney's Office. The Heritage Commission has also reviewed the recommended changes associated with SB 1585 and recommended approval (6-0).

Conformance to the Comprehensive Plan

This zoning request was reviewed for conformance with the *Interim Comprehensive Plan (1986 based)* adopted in August 2020. Applicable texts that support the proposed amendments to the Zoning Ordinance are as follows:

Land Use Element

Strategies for Theme I – Livable City

Strategy A.1 – Regularly monitor, review, and update the Comprehensive Plan, Zoning Ordinance, and related documents to ensure their effectiveness in meeting the needs of the community.

Strategies for Theme II – City of Organized Development

Strategy B.6 – Make amendments to the Zoning Ordinance (text and atlas) based on the strategies of the Comprehensive Plan. This consideration should include evaluation of the following:

- Intent of the plan in its entirety;
- Physical character of the property affected;
- Adequacy of public facilities (existing and proposed); and
- Relationship to adjacent land uses (existing and proposed).

Urban Design Element

Strategies for Theme III – City in Transition

Strategy C.5 – Continue to provide for the designation of individual properties and districts as “Heritage Resources” to preserve structures that are historically significant to Plano. Also, continue to establish appropriate design guidelines for each district and review improvements to those properties in accordance with them.

The *Interim Comprehensive Plan* does not provide specific procedures for updates. It does support them; therefore, the proposed amendments are in conformance with the Interim Comprehensive Plan.

HB 1475 (Board of Adjustment Bill)

This bill defines criteria for which the Board of Adjustment may determine an unnecessary hardship has resulted from conformance with the regulations of the Zoning Ordinance. The five stated criteria serve as a guideline that the Board may choose to follow when considering variance requests and are supplemental to the standards currently within the ordinance, which the Board is required to follow. While the criteria within the bill are supplemental to the existing standards, there is one instance of conflicting language that must be resolved:

1. The financial cost of compliance is greater than 50 percent of the appraised value of the structure, as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code.

The Zoning Ordinance currently prohibits economic gain or loss from being considered for an unnecessary hardship. The existing regulation is proposed to be revised to allow for financial cost to be considered if meeting the requirements of state law.

To comply with this new state law, Article 5 (Variances and Appeals of Administrative Decisions) is proposed to include the criteria provided in the bill.

Additionally, the proposed amendments significantly reorganize the information and provide better clarity of existing standards in this Article.

SB 1585 (Historic District Bill)

This bill extends the requirements from a 2019 state law related to the designation of historic landmarks to now include the designation of historic districts. The most significant impact of the bill is a requirement that the proposed designation of a heritage district must:

1. Include the written consent of all property owners within the proposed designation;
or
2. Be approved by a three-fourths vote of the governing body of the municipality (City Council) and the zoning, planning, or historical commission of the municipality (for Plano, the Planning & Zoning Commission or Heritage Commission).

To accommodate these new requirements, staff prepared various amendments to the city's Heritage Preservation Ordinance (Chapter 16, Article VI of the Code of Ordinances), which the Heritage Commission considered at its June 29 meeting. These amendments are separate from the Zoning Ordinance and do not require a recommendation from the

Planning & Zoning Commission, but they are related to proposed changes as part of this agenda item.

In addition to studying impacts to heritage district designation, staff studied whether or not the requirements of SB 1585 also apply to the recently approved Neighborhood Conservation Overlay District (NCD) regulations adopted as Section 11.1000 of the Zoning Ordinance in 2020. NCD designation is intended to protect aspects of overall form and character deemed important by a neighborhood, for example a common setback, typical building heights, or building orientation towards a common open space, rather than preserving specific architectural styles or details of individual buildings. Although NCDs benefit the city's overall preservation goals, the regulations were intentionally placed within Article 11 of the Zoning Ordinance instead of the Heritage Preservation Ordinance due to differences in general purpose and administrative procedures with heritage districts.

To reinforce that the purpose and effect of NCD regulations are not to function as a "local historic district" under SB 1585, Section 11.1000 (Neighborhood Conservation Overlay District) of the Zoning Ordinance is proposed to be updated to include language clarifying NCD relation to state law. Additionally, Section 8.200 (Terms Defined) is proposed to be updated to add the terms "Heritage Resource Overlay District" and "Historic Landmark or District (Local)" to clarify further the distinction between NCD and historic districts per state law.

SUMMARY:

The proposed changes are in conformance with recently adopted house and senate bills and reorganize some existing standards for better clarity. The amendments are in conformance with the recommendations of the Comprehensive Plan. Staff recommends approval as noted in the recommendation below in strikethrough and underlined text. A version of the recommended changes with no strikethrough or underlined text is also attached to this report.

RECOMMENDATION:

Recommended for approval as follows (additions are indicated in underlined text; deletions are indicated in strikethrough text).

Amend Article 5 (Variances and Appeals of Administrative Decisions), such article to read as follows:

5.100 Board of Adjustment

The composition and appointment of the Board of Adjustment shall be in compliance with Chapter 16 of the Code of Ordinances.

5.200 Jurisdiction

The Board of Adjustment has jurisdiction to consider the following:

- .1 ~~Each case must be heard by at least 75% of the members of the Board of Adjustment.~~ **Appeals.** Hear and decide appeals where it is alleged there is error on any order, requirement, decision, or determination made by the Building Official in the enforcement of this ordinance.
- .2 ~~When in its judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially or permanently injured, the Board of Adjustment may, in specific cases, after written notice and public hearings, and subject to appropriate conditions and safeguards, authorize or order the following:~~
 - A. ~~Hear and decide appeals where it is alleged there is error on any order, requirement, decision, or determination made by the Building Official in the enforcement of this ordinance.~~
 - B. ~~Permit the reconstruction, extension, or enlargement of a building occupied by nonconforming uses, on the lot or tract occupied by such building, provided such reconstruction does not prevent the return of such property to a conforming use.~~
 - C. ~~Require the discontinuance of nonconforming uses of land or structure under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance. All actions to discontinue a nonconforming use of land or structure shall be taken with 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 of Adjustment 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.~~

Nonconforming Use. Permit the reconstruction, extension, or enlargement of a building occupied by nonconforming uses, on the lot or tract occupied by such building, provided such reconstruction does not prevent the return of such property to a conforming use.

.3 **Amortization.** Require the discontinuance of nonconforming uses of land or structure under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance. All actions to discontinue a nonconforming use of land or structure shall be taken with 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 of Adjustment 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.

.4 **Variance.** Consider permitting a variance from the terms of the Zoning Ordinance.

A. A variance will not be considered by the Board of Adjustment if any of the following conditions apply:

- i. The variance seeks to authorize a use other than those permitted in the district for which the variance is sought.
- ii. The variance seeks to authorize any person a privilege in developing a parcel of land not permitted by this ordinance to other parcels of land in the same zoning district.
- iii. A petition or request for a variance shall not be heard or granted with regard to any parcel of property or portion thereof upon which the preliminary site plan approval, , site plan, preliminary plat, or final plat, that is when required by this ordinance or the Subdivision Ordinance for any parcel of property or portion thereof, has not been finally acted upon by both the Planning & Zoning Commission and, where required, by the City Council. The subject lot, parcel of property, or portion thereof does not have a site plan and/or plat approved, as required under the city's development ordinances.
- iv. No plan has been approved at or beyond the preliminary site plan phase of development.
- v. The administrative procedures and requirements of this ordinance and the Subdivision Ordinance, with regard to both Planning & Zoning Commission and the City Council consideration and action, on preliminary site plans, site plans, preliminary plats, and final plats, have not been exhausted prior to requesting a variance from the terms of this ordinance.

B. The Board of Adjustment may permit such variance from the terms of the Zoning Ordinance that will not be contrary to the public interest if: and where, because of special conditions, the enforcement of this

~~ordinance or its amendments would result in an unnecessary hardship, except as provided in Sec. 5.200.2D.ii, Sec. 5.200.2D.iii or Sec. 5.200.2D.iv. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this ordinance to other parcels of land in the district. No variance may be granted if it results in an unnecessary hardship, as herein defined, on another parcel of land.~~

- ~~i. The variance will observe the spirit and intent of this ordinance, align with that will not be contrary to the public interest, and comport with substantial justice;~~
- ~~ii. The interpretation of the provisions in this ordinance or its amendments would deprive the petitioner of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions;~~
- ~~iii. No variance may be granted if it The variance does not results in an unnecessary encumbrance hardship, as herein defined, on another parcel of land;~~
- ~~iv. The variance is not based solely on economic gain or loss, except that a variance based solely on economic gain or loss may be granted consistent with section vi. below; and~~
- ~~v. A The variance shall does not be granted to relieve relief to a self-created or personal hardship except to the extent that the self-created or personal hardship arises from factors or grounds that may be considered under section vi. below.~~
- ~~vi. Because of special conditions, including restricted area, shape, topography, or physical features that are peculiar to the subject parcel of land, the a literal enforcement of this ordinance or its amendments would result in an unnecessary hardship.~~

~~The Board may consider the following as grounds to determine whether compliance with this ordinance would result in unnecessary hardship: In order to make a finding of hardship and to grant a variance from this ordinance, the Board of Adjustment must determine that:~~

- ~~a. The requested variance does not violate the intent of the ordinance or its amendments.~~
- ~~a. The financial cost of compliance is greater than 50% of the appraised value of the structure as shown on the most recent appraisal roll.~~

- b. Compliance would result in a loss to the lot on which the structure is located on at least 25% of the area on which development may physically occur.
 - c. Compliance would result in the structure not being in compliance with another requirement of the Zoning Ordinance, building code, or other requirement.
 - d. Compliance would result in the unreasonable encroachment on an adjacent property or easement.
 - e. The City considers the structure to be a nonconforming structure.
 - i. ~~The hardship is in no way the result of the petitioner's own actions.~~
 - ii. ~~The interpretation of the provisions in this ordinance or its amendments would deprive the petitioner of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.~~
- ~~B. No variance may authorize a use other than those permitted in the district for which the variance is sought.~~
- ~~C. A petition or request for a variance shall not be heard or granted with regard to any parcel of property or portion thereof upon which a preliminary site plan, site plan, preliminary plat, or final plat, when required by this ordinance or the Subdivision Ordinance for any parcel of property or portion thereof, has not been finally acted upon by both the Planning & Zoning Commission and, where required, by the City Council.~~
- ~~D. The administrative procedures and requirements of this ordinance and the Subdivision Ordinance, with regard to both Planning & Zoning Commission and the City Council consideration and action, on preliminary site plans, site plans, preliminary plats, and final plats, must be exhausted prior to requesting a variance from the terms of this ordinance.~~

5.300 Appeals

- .1 The Board of Adjustment may take action in accordance with Sec. ~~5.200.1~~. Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, or board of the municipality affected by any decision of the Building Official. Such appeal shall be

made within 15 days after the decision has been rendered by the Building Official ~~administrative officer~~, by filing a Notice of Appeal specifying the grounds thereof with the ~~officer from whom the appeal is taken~~ Building Official and with the Board of Adjustment. The Building Official ~~officer from whom the appeal is taken~~ shall forward to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.

- .2 An appeal shall stay all proceedings of the action appealed from unless the Building Official ~~officer from whom the appeal is taken~~ certifies to the Board of Adjustment, 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 of Adjustment or by a court of record on petition, upon notice to the Building Official ~~officer from whom the appeal is taken~~ and on due cause shown.

5.400 Action of the Board of Adjustment

- .1 In exercising its powers, the Board of Adjustment may, in conformity with the provisions of Section 211.009(b) of the Texas Local Government Code, reverse 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 petitioner.
- .2 Each case must be heard by at least 75% of the members of the Board of Adjustment. The concurring vote of 75% of the members of the Board of Adjustment shall be necessary to revise any order, requirement, decision, or determination of ~~any such administrative official~~ the Building Official, or to decide in favor of the petitioner on any matter upon which it is required to pass under this ordinance or to approve any variance under this ordinance.
- .3 The date of filing of the decision in the office of the Board of Adjustment shall be the date the Board of Adjustment announces its decision either orally or in writing to the petitioner.
- .4 An appeal of the Board of Adjustment's decision must be in accordance with Chapter 211 of the Texas Local Government Code as the same may be amended from time to time. ~~The date of filing of the decision in the~~

~~office of the Board of Adjustment shall be the date the Board of Adjustment announces its decision either orally or in writing to the petitioner.~~

- .5 No appeal to the Board of Adjustment for the same variance, on the same property, shall be allowed prior to the expiration of 2 years from a previous ruling by the Board of Adjustment unless other property in the immediate vicinity has within the 2-year period been rezoned, granted a similar variance request by the Board of Adjustment, or such that the physical conditions have changed. These circumstances shall permit the rehearing of an appeal by the Board of Adjustment prior to the expiration of the 2 year period, but shall not compel the Board of Adjustment, after a hearing, to grant a variance.
- .6 If the court reverses or modifies the Board of Adjustment's decision, the Board of Adjustment may elect to appeal that decision.

Amend Section 8.200 (Terms Defined) of Article 8 (Definitions), such new definitions to read as follows:

Heritage Resource Overlay District

A type of overlay district used to designate a local historic landmark or local historic district as referenced in Section 211.0165 of the Texas Local Government Code.

Historic Landmark or District

See "Heritage Resource Overlay District"

Amend Section 11.1000 (Neighborhood Conservation Overlay District) of Article 11 (Overlay Districts), such section to read as follows:

.7 Relationship to State Law

Neighborhood conservation districts are not local historic districts under Texas Local Government Code Section 211.0165, as amended.

AN ACT

relating to municipal board of adjustment zoning variances based on unnecessary hardship.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 211.009, Local Government Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) In exercising its authority under Subsection (a)(3), the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

(1) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;

(2) 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;

(3) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;

(4) compliance would result in the unreasonable encroachment on an adjacent property or easement; or

(5) the municipality considers the structure to be a

1 nonconforming structure.

2 SECTION 2. Section [211.009](#)(b-1), Local Government Code, as
3 added by this Act, applies only to an appeal filed with a municipal
4 board of adjustment on or after the effective date of this Act.

5 SECTION 3. This Act takes effect September 1, 2021.

H.B. No. 1475

President of the Senate

Speaker of the House

I certify that H.B. No. 1475 was passed by the House on May 8, 2021, by the following vote: Yeas 133, Nays 6, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1475 was passed by the Senate on May 24, 2021, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to requirements for the designation of a property as a historic landmark and the inclusion of a property in a historic district by a municipality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 211.0165, Local Government Code, is amended to read as follows:

Sec. 211.0165. DESIGNATION OF HISTORIC LANDMARK OR DISTRICT.

SECTION 2. Section 211.0165, Local Government Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (b), a municipality that has established a process for designating places or areas of historical, cultural, or architectural importance and significance through the adoption of zoning regulations or zoning district boundaries may not designate a property as a local historic landmark or include a property within the boundaries of a local historic district unless:

(1) the owner of the property consents to the designation or inclusion; or

(2) if the owner does not consent, the designation or inclusion of the owner's property is approved by a three-fourths vote of:

(A) the governing body of the municipality; and

(B) the zoning, planning, or historical commission of the municipality, if any.

(a-1) If a municipality has more than one commission described by Subsection (a)(2)(B), the municipality shall designate one of those commissions as the entity with exclusive authority to approve the designations of properties as local historic landmarks and the inclusion of properties in a local historic district under that paragraph.

(b) If the property is owned by an organization that qualifies as a religious organization under Section 11.20, Tax Code, the municipality may designate the property as a local historic landmark or include the property in a local historic district only if the organization consents to the designation or inclusion.

(c) The municipality must provide the property owner a statement that describes the impact that a historic designation or inclusion in a local historic district of the owner's property may have on the owner and the owner's property. The municipality must provide the statement to the owner not later than the 15th day before the date of the initial hearing on the historic designation or inclusion in a local historic district of the property of:

(1) the zoning, planning, or historical commission, if any; or

(2) the governing body of the municipality.

SECTION 3. Section 211.0165, Local Government Code, as amended by this Act, applies only to a proposal to include a

1 property in a historic district or to designate a property as a
2 local historic landmark made on or after the effective date of this
3 Act.

4 SECTION 4. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1585 passed the Senate on
April 21, 2021, by the following vote: Yeas 26, Nays 5.

Secretary of the Senate

I hereby certify that S.B. No. 1585 passed the House on
May 23, 2021, by the following vote: Yeas 142, Nays 2, one
present not voting.

Chief Clerk of the House

Approved:

Date

Governor