

## **Zoning Case 2021-013**

**An Ordinance of the City of Plano, Texas, amending Article 5 (Variances and Appeals of Administrative Decisions), Article 8 (Definitions), Section 11.1000 (Neighborhood Conservation Overlay Districts), and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as heretofore amended, pertaining to recent state legislative actions and to ensure compliance with state law; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date.**

**WHEREAS**, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 9th day of August 2021, for the purpose of considering a change in the Zoning Ordinance; and

**WHEREAS**, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

**WHEREAS**, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 9th day of August 2021; and

**WHEREAS**, the City Council is of the opinion and finds that such change would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

**IT IS, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** Amend Article 5 (Variances and Appeals of Administrative Decisions) of the Comprehensive Zoning Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, 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 **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 **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. 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 if:

- i.** The variance will observe the spirit and intent of this ordinance, align with 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.** The variance does not result in an unnecessary encumbrance on another parcel of land;
- iv.** The variance is not based solely on economic gain or loss, except for compliance with vi. below; and
- v.** The variance does not grant 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, 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:

- 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 of 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.

### **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, by filing a Notice of Appeal specifying the grounds thereof with the Building Official and with the Board of Adjustment. The Building Official 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 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 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 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.
- .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.

**Section II.** Amend Section 8.200 (Terms Defined) of Article 8 (Definitions) of the Comprehensive Zoning Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, such new definitions read as follows:

**Historic 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".

**Section III.** Amend Section 11.1000 (Neighborhood Conservation Overlay District) of Article 11 (Overlay Districts) of the Comprehensive Zoning Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, such new subsection 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.

**Section IV.** All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**Section V.** The repeal of any ordinance or part of ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

**Section VI.** Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

**Section VII.** It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

**Section VIII.** This Ordinance shall become effective after publication on September 1, 2021.

**PASSED AND APPROVED THIS THE 9TH DAY OF AUGUST 2021.**

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John B. Muns, MAYOR

ATTEST:

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Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

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Paige Mims, CITY ATTORNEY