

Zoning Case 2023-010

An Ordinance of the City of Plano, Texas, amending Article 5 (Variances and Appeals of Administrative Decisions) and Article 7 (Nonconformities) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as heretofore amended, to adopt a broadly applicable process for making determinations of status as a nonconforming use or structure and for appealing those determinations; 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 14th day of August 2023, for the purpose of considering a change in the Zoning Ordinance; and

WHEREAS, the City Secretary of 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 14th day of August 2023; and

WHEREAS, the City Council is of the opinion and finds that such change should be adopted, 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.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. Subsection 5.200.1 (Appeals) of Section 5.200 (Jurisdiction) of Article 5 (Variances and Appeals of Administrative Decisions) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, such subsection to read in its entirety as follows:

.1 Appeals

Hear and decide appeals where it is alleged there is error on any order, requirement, decision, or determination made by an administrative officer in the enforcement of this ordinance. For purposes of this Article, "administrative officer" means the person within a city department having the final decision-making authority within the department relative to the enforcement issue. This excludes appeals specifically heard elsewhere by provisions in this ordinance.

Section II. Section 5.300 (Appeals) of Article 5 (Variances and Appeals of Administrative Decisions) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, such section to read in its entirety as follows:

5.300 Appeals of Order, Requirement, Decision, or Determination related to the Zoning Ordinance

.1 The Board of Adjustment may take action in accordance with Sec. 5.200.1.

.2 Appeals to the Board of Adjustment, which are Related to a Specific Application, Address, or Project

A. Any of the following persons may appeal to the Board of Adjustment a decision made by an administrative official:

i. a person who:

a. filed the application that is the subject of the decision;

b. is the owner or representative of the owner of the property that is the subject of the decision; or

c. is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or

ii. any officer, department, board, or bureau of the municipality affected by the decision.

B. The Board of Adjustment will determine whether a person has standing to appeal, if standing is challenged by the applicant, owner, an aggrieved person as described in Subpart 5.300.2.A.i above, or the city. The Board will base its determination of standing upon the criteria above. The matter of standing will be decided at the time of the hearing on the appeal.

.3 Such appeal must be made not later than the 20th day after the order, requirement, decision or determination has been rendered by the administrative officer, by filing with the administrative officer and with the Board of Adjustment a Notice of Appeal on a form provided by the City. The administrative official must immediately forward to the Board of Adjustment all the documents constituting the record of the action that is appealed.

.4 An appeal stays all proceedings of the action unless the administrative officer certifies to the Board of Adjustment that by reason of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property.

In such case, proceedings are not stayed, unless a restraining order is granted by the Board of Adjustment or by a court of record on petition.

- .5 The Board must give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The Board must hear and decide the appeal at the next meeting for which notice can be provided and not later than the 60th day after the date the appeal is filed.
- .6 Interpretations may be considered consistent with the language in Section 1.1100.

Section III. Subsection 5.400.2 of Section 5.400 (Action of the Board of Adjustment) of Article 5 (Variances and Appeals of Administrative Decisions) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, such subsection to read in its entirety as follows:

- .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 an administrative officer, 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.

Section IV. Article 7 (Nonconformities) of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2015-5-2, as the same has been heretofore amended, is hereby further amended, such additional section to read in its entirety as follows:

7.600 Determination of Nonconforming Status and Administrative Official Decision

The process for determination of nonconforming status is overseen by the Director of Planning. In their absence, a designee may be appointed.

.1 Informal Determination

City staff makes initial, informal determinations of whether a nonconforming use or structure exists under the provisions of the Zoning Ordinance. The informal determination is not appealable, and is considered valid unless a formal decision is requested.

.2 Formal Decision

The property owner may request a formal decision as to whether a nonconforming use or structure exists on their property from the Director of Planning.

- A. The Director of Planning will meet with the requesting property owner, tenant, or designated representative within twenty (20) business days of the

date on which the request for a formal decision was filed with the Director of Planning, unless otherwise agreed by the parties.

- B. Based upon the evidence presented at such meeting, the Director of Planning will provide a formal, written decision within twenty (20) business days. The formal decision and related evidence are public records.

.3 Appeal

The formal decision of the Director of Planning may be appealed to the Board of Adjustment under Article 5 of this Ordinance.

Section V. 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 VI. 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 VII. 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 VIII. 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 IX. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED on the 14th day of August, 2023.

John B. Muns, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY