

ORDINANCE NO. 2022-4361


AN ORDINANCE AMENDING APPENDIX A, “UNIFIED DEVELOPMENT ORDINANCE,” ARTICLE 2, “DEVELOPMENT REVIEW BODIES,” SECTION 2.3 “ZONING BOARD OF ADJUSTMENT,” SUBSECTION 2.3.D “POWERS AND DUTIES,” AND ARTICLE 3, “DEVELOPMENT REVIEW PROCEDURES,” SECTION 3.17, “WRITTEN INTERPRETATION,” SECTION 3.19, “VARIANCE,” AND SECTION 3.20, “ADMINISTRATIVE APPEAL” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS RELATING TO THE POWERS, DUTIES, AND PROCESSES OF THE ZONING BOARD OF ADJUSTMENT; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

- PART 1:** That Appendix A, “Unified Development Ordinance,” Article 2, “Development Review Bodies,” Section 2.3 “Zoning Board of Adjustment,” Subsection 2.3.D “Power and Duties,” and Article 3, “Development Review Procedures,” Section 3.17, “Written Interpretation,” Section 3.19, “Variance,” and Section 3.20, “Administrative Appeal” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A,” Exhibit “B,” Exhibit “C,” and Exhibit “D”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

PASSED, ADOPTED and APPROVED this 9th day of June, 2022.

ATTEST:




City Secretary

APPROVED:



Mayor

APPROVED:



City Attorney

Exhibit A

That Appendix A, “Unified Development Ordinance,” Article 2, “Development Review Bodies,” Section 2.3, “Zoning Board of Adjustment” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

D. Powers and Duties.

The Zoning Board of Adjustment shall have the following powers and duties:

1. Variances.

To hear and decide requests for variance from the setback, parking number or dimensions, parking island number or dimensions, sign (excluding sign regulations in the ETJ), maximum height, or lot size or dimension requirements of this UDO. Also, to hear and decide drainage variances (excluding landscaping provisions) in accordance with Chapter 105 “Floods,” Article II “Flood Hazard Protection” of the City of College Station Code of Ordinances when strict application of the provisions of the ordinance would result in unnecessary hardship.

Specifically excluded from the variance process are requests for relief from a site plan requirement imposed by the Administrator when the requirement was necessary to gain compliance with the criteria for approval of a site plan in Section 3.6.E Site Plan Review Criteria. Such requests will be heard and decided by the Design Review Board.

Also excluded are roadway and infrastructure construction criteria and other subdivision regulations contained with Article 8, Subdivision Design and Improvements. Such requests shall require waivers granted by the Planning and Zoning Commission.

2. Administrative Appeals.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, interpretation, or determination made by the Administrator or his designee in the enforcement of this UDO.

3. Official Zoning Map.

To interpret the intent of the Official Zoning Map where uncertainty exists because the physical features on the ground vary from those on the Official Zoning Map.

4. Nonconformities.

To hear and decide requests for the completion, enlargement, extension, or structural alteration of buildings and structures devoted to non-conforming uses in accordance with Section 9.2 ‘Nonconforming Uses’ of this UDO.

5. Special Exceptions.

To hear and decide requests for special exceptions for the parking of vehicles on residential yards in accordance with Chapter 38 ‘Traffic and Vehicles,’ Article II ‘Stopping, Standing, and Parking,’ Section 38-43 ‘Parking, standing, or storing of recreational vehicles, trailer, or trucks in residential areas’ of the City of College Station Code of Ordinances.

6. Distance Requirements

To hear and consider deviations from the distance requirements for the keeping of domestic livestock, fowl, and rabbits in accordance with Chapter 6 ‘Animals,’ Article V ‘Livestock, Birds, Exotic Animals and Wild Animals’ of the City of College Station Code of Ordinances.

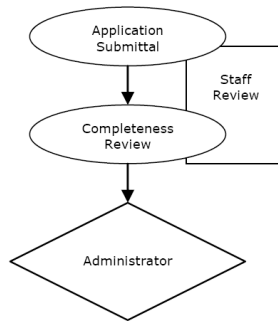
7. Easterwood Field Airport Zoning.

To hear and decide requests for appeals, special exemptions, and variances in accordance with the Easterwood Field Airport Zoning Ordinance.

Exhibit B

That Appendix A, “Unified Development Ordinance,” Article 3, “Development Review Procedures,” Section 3.17, “Written Interpretation” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

A. Applicability.



The Administrator shall have authority to make all written interpretations concerning the provisions of this UDO.

B. Request for Interpretation.

A request for interpretation shall be submitted to the Administrator in a form established by the Administrator and made available to the public.

C. Interpretation by Administrator.

1. The Administrator shall:
 - a. Review and evaluate the request in light of the text of this UDO, the Official Zoning Map, the Comprehensive Plan, the Subdivision Regulations, and any other relevant information;
 - b. Consult with other staff, as necessary; and
 - c. Render an opinion.
2. The interpretation shall be provided to the applicant in writing.

D. Official Record.

The Administrator shall maintain an official record of interpretations. The record of interpretations shall be available for public inspection during normal business hours.

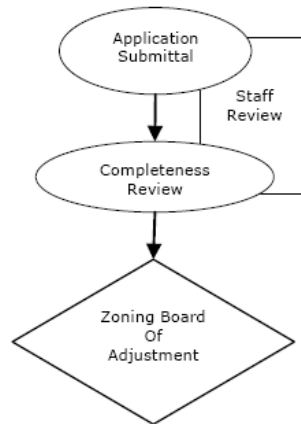
E. Appeal.

Appeals of written interpretations made by the Administrator shall be filed only by a party affected by the written interpretation with the Zoning Board of Adjustment or for appeals of written interpretations of the Subdivision Regulations, the Planning and Zoning Commission, within twenty (20) days of the decision in accordance with the procedures found in the Administrative Appeals Section in Article 3 of this UDO. If no appeal is filed within twenty (20) days, the written interpretation shall be final.

Exhibit C

That Appendix A, “Unified Development Ordinance,” Article 3, “Development Review Procedures,” Section 3.19, “Variance” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

A. Purpose.



The Zoning Board of Adjustment shall have jurisdiction to hear requests for a variance from the terms of this UDO. The Zoning Board of Adjustment shall be authorized to grant a variance from the terms hereof if, and only if, they find that the strict enforcement of this UDO would create a substantial hardship to the applicant by virtue of unique special conditions not generally found within the City, and that the granting of the variance would preserve the spirit and intent of the Ordinance and would serve the general interests of the public and the applicant. Variances may be granted only when in harmony with the general purpose and intent of this UDO so that public health, safety, and welfare may be secured and substantial justice done.

B. Applicability.

The Zoning Board of Adjustment shall have the authority to grant variances from the standards in this UDO except for waivers of the standards in Article 8, Subdivision Design and Improvements, which may be made by the Planning and Zoning Commission during the subdivision process, and requests for relief from a site plan requirement imposed by the Administrator when the requirement was necessary to gain compliance with the criteria for approval of a site plan in the Site Plan Review Section in Article 3 of this UDO, which may be made by the Design Review Board. Any variance request up to ten (10) percent may be treated as an Administrative Adjustment subject to the requirements of the Administrative Adjustment Section in Article 3 of this UDO.

C. Application.

A complete application for a variance shall be submitted to the Administrator as set forth in the General Approval Procedures Section in Article 3 of this UDO.

D. Action by the Zoning Board of Adjustment.

1. Public Hearing.

Following notice in accordance with the General Approval Procedures Section in Article 3 of this UDO, the Zoning Board of Adjustment shall hold a public hearing.

2. Variance Review.

Upon completion of the public hearing and after review of the variance application subject to the criteria listed in Section E below, the Zoning Board of Adjustment shall make a written finding and give its approval, approval with limitations, or disapproval of the variance.

E. Criteria for Approval of Variance.

1. Required Findings.

The Zoning Board of Adjustment may authorize a variance from the requirements of this UDO when an unnecessary hardship would result from the strict enforcement of this UDO. In granting a variance, the Zoning Board of Adjustment shall prescribe only limitations that it deems not prejudicial to the public interest. In making the required findings, the Zoning Board of Adjustment shall take into account the nature of the proposed use of the land involved, the existing use of land in the vicinity, the possibility that a nuisance will be created, and the probable effect of such variance upon traffic conditions and upon public health, convenience, and welfare of the vicinity. No variance shall be granted unless the Board makes affirmative findings in regard to all of the following criteria:

a. Extraordinary Conditions.

That there are extraordinary or special conditions affecting the land involved such that strict application of the provisions of this UDO will deprive the applicant of the reasonable use of his land. For example, the variance is justified because of topographic or other special conditions unique to the property and development involved, in contradistinction to the mere inconvenience or financial disadvantage.

b. Other Property.

That these conditions do not generally apply to other property in the vicinity.

c. Enjoyment of a Substantial Property Right.

That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.

d. Hardships.

That the hardship is not the result of the applicant's own actions.

The Board may consider the following as grounds to determine whether compliance with this ordinance as applied to a structure that is the subject of the variance would result in unnecessary hardship:

- 1) The financial cost of compliance is greater than fifty percent (50%) of the appraised value of the structure as shown on the most recently approved municipal tax roll;

- 2) Compliance would result in a loss to the lot on which the structure is located of at least 25 percent (25%) 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 City ordinance, building code, or other requirement;
- 4) Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- 5) The City considers the structure to be a nonconforming structure.

e. **Subdivision.**

That the granting of the variance will not have the effect of preventing the orderly subdivision of other land in the area in accordance with the provisions of this UDO.

f. **Flood Hazard Protection.**

That the granting of the variance will not have the effect of preventing flood hazard protection in accordance with Article 8, Subdivision Design and Improvements.

g. **Comprehensive Plan.**

That the granting of the variance would not substantially conflict with the Comprehensive Plan and the purposes of this UDO.

h. **Utilization.**

That because of these conditions, the application of the UDO to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

i. **Substantial Detriment.**

That the granting of the variance will not be detrimental to the public health, safety, or welfare, or injurious to other property in the area, or to the City in administering this UDO.

2. **Limitations.**

The Zoning Board of Adjustment may not grant a variance where the effect would be any of the following:

- a. To allow the establishment of a use not otherwise permitted in the applicable zoning district;
- b. To increase the density of a use, above that permitted by the applicable district;
- c. To extend physically a nonconforming use of land; or
- d. To change the zoning district boundaries shown on the Official Zoning Map.

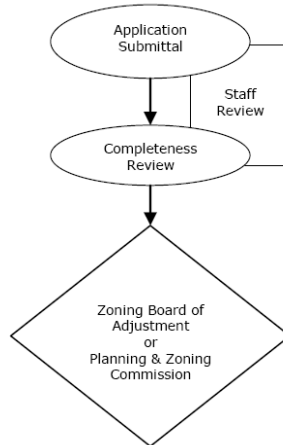
3. **Profitability Not to Be Considered.**

The fact that property may be utilized more profitably should a variance be granted may not be considered grounds for a variance.

Exhibit D

That Appendix A, “Unified Development Ordinance,” Article 3, “Development Review Procedures,” Section 3.20, “Administrative Appeal” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

A. Applicability.



1. Appeals to the Zoning Board of Adjustment may be taken by any person aggrieved by, or any officer or department affected by, specific points found in any of the following final decisions of the Administrator:
 - a. Written interpretations of the text of this UDO; or
 - b. Denial of Building Permit or site plan based on interpretation of Article 7, General Development Standards.
2. Appeals to the Planning and Zoning Commission may be taken by any person aggrieved by, or any officer or department affected by specific points found in the Administrator's written interpretations of the text of the Subdivision Regulations.

B. Effect of Appeal.

An appeal to the ZBA stays all legal proceedings in furtherance of the action appealed from, unless the Administrator from whom the appeal is taken certifies to the Zoning 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 or by a Court of record on application, on notices to the officer from whom the appeal is taken, and on due cause shown.

C. Deadline for Submission of Application.

An appeal from any final decision of the Administrator or Director of Planning and Development Services shall be filed with the Administrator within twenty (20) days after the date the decision is made. If no appeal is filed within twenty (20) days, the decision shall be final.

D. Application.

A complete application for an administrative appeal shall be submitted to the Administrator as set forth in the General Approval Procedures Section in Article 3 of this UDO.

E. Record of Administrative Decision.

The Administrator shall forthwith transmit to the Zoning Board of Adjustment or the Planning and Zoning Commission, as appropriate, all the papers constituting the record of the action appealed.

F. Hearing.

The Zoning Board of Adjustment or Planning and Zoning Commission, as appropriate, shall set a reasonable time for the appeal hearing and give public notice as set forth in the General Approval Procedures Section in Article 3 of this UDO, as well as due notice to the parties in interest. The Board or Commission shall decide the appeal at their next meeting for which notice can be provided following the hearing and not later than the sixtieth (60th) day after the date the appeal is filed.

G. Final Action by Zoning Board of Adjustment or Planning and Zoning Commission.

The Zoning Board of Adjustment or Planning and Zoning Commission, as appropriate, may only consider the specific interpretive language of the Administrator and may reverse or affirm wholly or partly, or may modify the interpretation appealed from. In any case, the Board or Commission shall only present findings regarding specific errors made in the Administrator's interpretation.