

ORDINANCE NO. 13-2005

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 23, Subpart E, "Zoning," of the Abilene Municipal Code be amended as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PASSED ON FIRST READING this 10th day of March A.D. 2005.


A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 23rd day of March, 2005, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m., on the 14th day of April, 2005, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.


PASSED ON SECOND AND FINAL READING THIS 14th day of April, A.D. 2005.

ATTEST:



CITY SECRETARY



MAYOR
APPROVED:


CITY ATTORNEY

ORDINANCE NO. 13-2005

EXHIBIT "A"

Section 23-356.2. BOARD OF ADJUSTMENT

DELETE: 23-356.2.F Records

The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or if absent or failing to vote indicating such fact and shall keep a record of its examination and other official actions, all of which shall be filed with the Planning Director and shall be a public record.

ADD: 23-356.2.F. Records

The Board Adjustment shall make finding of fact upon each question for each of the criteria for variance or special exception stipulated in subsections G.5 and H.5 below, shall keep minutes of its proceedings, showing the vote of each member upon each question or if absent or failing to vote indicating such fact, and shall keep a record of its examination and other official actions, all of which shall be filed with the Planning Director and shall be a public record.

DELETE: 23-356.2.G.

(5) Action by the Board on a Special Exception: The Board shall deny a request for special exception unless it determines that the requested exception:

- (a) Will establish only those uses permitted under the Ordinance pertaining to the zoning district involved.
- (b) Will be wholly compatible with the use and permitted development of adjacent property, either as filed or subject to such requirements as the Board finds to be necessary to protect and maintain the stability of adjacent properties.
- (c) Will place no undue burden on public facilities. Public facilities to be considered shall include, but are not limited to streets and alleys, water and sewer utilities, schools and parks.
- (d) That the location of the proposed activities and improvements are clearly defined on the site plan filed by the applicant, where required.
- (e) That approval of the special exception is clearly in harmony with the general purposes and intent of this Ordinance and, furthermore, provides for substantial justice.

ADD: 23-356.2.G.

(5) Action by the Board on a Special Exception: The Board shall deny a request for special exception unless it determines that the requested exception complies with each of the following:

- (a) Will be wholly compatible with the use and permitted development of adjacent property, either as filed or subject to such requirements as the Board finds to be necessary to protect and maintain the stability of adjacent properties.

- (b) Will place no undue burden on public facilities. Public facilities to be considered shall include, but are not limited to streets and alleys, water and sewer utilities, schools and parks.
- (c) That approval of the special exception is clearly in harmony with the general purposes and intent of this Ordinance and, furthermore, provides for substantial justice.

DELETE: 23-356.2(H)

- (5) Action by the Board on a Request for Variance: The purpose of granting a variance is to modify the application of this Ordinance as it applies to a specific piece of property which, because of peculiar circumstances applicable only to the property, prevent its being used on the same basis as other property in the same zoning district. In reaching its decision to grant a variance, the Board shall determine that all the following conditions are present:
 - (a) That special conditions and circumstances exist which are peculiar to the land or improvements in question and which are not applicable to other lands or buildings in the same zoning district. Such conditions or circumstances shall not be the result of actions taken by the applicant.
 - (b) That, due to special conditions and peculiarities of the land or improvements in question, literal interpretation of the provisions of this Ordinance would result in unnecessary hardship (other than financial) to the owner of the land and prohibit reasonable use of said land.
 - (c) That the granting of the variance will not be contrary to the public interest. Evidence shall be made that granting a variance is consistent with the intent of this Ordinance, is in harmony herewith, and will not be injurious to neighboring properties or otherwise detrimental to the public welfare.
 - (d) That the granting of the variance will not allow activities in any district prohibited by the provisions of that district. This Ordinance is declared to be a definition of the public interest regarding land use and structural arrangement. Under no circumstances shall a variance be granted which permits a use not generally or by special exception permitted in a zoning district by the terms of this Ordinance.
 - (e) That the granting of the variance will not permit a lower degree of flood protection than the flood protection elevation specified for the particular area, except as otherwise allowed under stormwater management regulations.
 - (f) That the granting of the variance will not permit standards lower than those required by State Law.
 - (g) That by comparison with the general good served by literal enforcement of this ordinance, the hardship (other than financial) which would be alleviated by granting the request for variance is of greater significance.

- (h) That nonconforming use of neighboring land or improvements thereto in the same district, as well as permitted use of land or improvements thereto in other districts, are not considered grounds for issuance of a variance.

ADD: 23-356.2(H)

- (5) Action by the Board on a Request for Variance: The purpose of granting a variance is to modify the application of this Ordinance as it applies to a specific piece of property which, because of peculiar circumstances applicable only to the property, prevent its being used on the same basis as other property in the same zoning district. Under no circumstances shall a variance be granted which permits a use not generally or by special exception permitted in a zoning district by the terms of this Ordinance. In reaching its decision to grant a variance, the Board shall determine that all the following conditions are present:
 - (a) That, due to special conditions and peculiarities of the land or improvements in question, literal interpretation of the provisions of this Ordinance would result in unnecessary hardship (other than financial) to the owner of the land and prohibit reasonable use of said land.
 - (b) That the granting of the variance will not be contrary to the public interest and will not be injurious to neighboring properties or otherwise detrimental to the public welfare.
 - (c) That granting a variance is consistent with spirit and intent of this Ordinance and is in harmony herewith.