

ORDINANCE NO. 4167-03-2015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, AMENDING LEWISVILLE CITY CODE SECTIONS 6-54, 17-3, AND 17-35; ADDING A NEW SECTION 6-77; CREATING A PROCESS FOR COMPLIANCE FOR PROPERTIES IMPACTED BY THE I-35 WIDENING PROJECT; REDEFINING CERTAIN TERMS RELATING TO NONCONFORMITY; MODIFYING BOARD OF ADJUSTMENT AUTHORITY AND MEMBERSHIP REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY; PROVIDING A REPEALER; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Lewisville has determined that for the health, welfare and safety of its citizens, certain amendments to the Lewisville City Code, Sections 6-54, 17-3, and 17-35 are necessary;

WHEREAS, the City Council of the City of Lewisville has determined that for the health, welfare and safety of its citizens, adding a new section 6-77 to the Lewisville City Code to create a process for compliance for properties impacted by the I-35 Widening Project, is necessary;

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

SECTION 1. Lewisville City Code, Chapter 6, Section 6-54(a), is hereby amended to add a new subsection (7) and (8) to read as follows:

- “ (7) A Major Impact, as that term is defined by Sec. 6-77 of the Lewisville City Code.
- (8) As otherwise expressly required in Section 6 or Section 17 of the Lewisville City Code.”

SECTION 2. The definition of “Nonconforming Structure” in Lewisville City Code, Chapter 17, Section 17-3, is hereby amended by deleting the current definition in its entirety and in its place inserting the following definition:

“Nonconforming structure shall mean a structure whose size, dimension, and/or placement (i.e. setbacks) were lawful prior to the adoption of or amendment to the current zoning or development regulations, but which fails by reason of such adoption or amendment to conform to the current regulations. A nonconforming structure may only continue subject to Lewisville City Code regulations relating to nonconforming structures.”

SECTION 3. The definition of “Nonconforming Use” in Lewisville City Code, Chapter 17, Section 17-3, is hereby amended by deleting the current definition in its entirety and in its place inserting the following definition:

“Nonconforming use shall mean a use that was lawful prior to the adoption of or amendment to the current zoning regulations, but which fails by reason of such adoption or amendment to conform to the current regulations. A nonconforming use may only continue subject to Lewisville City Code provisions relating to nonconforming uses.”

SECTION 4. Lewisville City Code, Chapter 17, Section 17-33(i)(2), is hereby amended by deleting the current language in its entirety and in its place inserting the following new language:

“(2) Intentional act of owner or owner's agent. The right to rebuild a nonconforming structure ceases if the structure is destroyed, demolished, taken down, or removed by the intentional act of the owner or the owner's agent.”

SECTION 5. Lewisville City Code, Chapter 17, Section 17-35 (Board of Adjustment), is hereby amended by deleting the current language in its entirety and in its place inserting the following new language:

“ Sec. 17-35. - Board of adjustment.

(a) Organization and procedure.

(1) Membership.

- a. The board shall consist of five members and two alternates, each to be appointed or reappointed by the city council.
 - b. Members of the board shall serve for two-year terms of office with appointments beginning July 1.
 - c. Members shall be appointed by places number 1 through 5, with alternates 1 and 2. Places 1, 3, 5 and alternate 1 shall be appointed in odd-numbered years, and places 2, 4, and alternate 2 shall be appointed in even-numbered years so that board memberships will be staggered.
 - d. Each member of the board shall be removable for just cause by city council upon written charges and after a public hearing.
 - e. Vacancies shall be filled by the city council for the unexpired term of any member whose term becomes vacant.
 - f. The board shall elect its own chairman, who shall serve for a period of one year or until his successor is elected.
- (2) *Meetings.* Meetings of the board shall be held at the call of the chairman and at such times as the board may determine.
- (3) *Hearings.*
- a. The hearings of the board of adjustment shall be public; however, the board may go into executive session at any time in accordance with the law.
 - b. The board shall hear the intervention of any owner of property adjacent to, in the rear of, or across the street from, a lot as to which the granting of any building permit is pending, and shall also hear any other parties in interest.
 - c. All hearings are to be heard by at least four members of the board.
- (4) *Rules and regulations.*
- a. 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 records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.
 - b. The board shall act by resolution in which four members must concur.
 - c. The board shall adopt from time to time such additional rules and regulations as it may deem necessary to carry into effect the provisions of the ordinance, and shall furnish a copy of the same to the building official, all of which rules and regulations shall operate uniformly in all cases. All of its resolutions and orders shall be in accordance therewith.
- (b) *Powers and duties of board.*

- (1) *Subpoena witnesses, etc.* The board shall have the power to subpoena witnesses, administer oaths, and require the production of documents, under such regulations as it may establish.
 - (2) *Appeals based on error.* The board shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the building official in the enforcement of Chapter 6 or 17 of the Lewisville City Code.
 - (3) *Special exceptions.* The board shall have the power to hear and decide special exceptions to the terms of this ordinance upon which the board is required to pass as follows or elsewhere in this ordinance:
 - a. Permit the reconstruction of a nonconforming structure in accordance with Sec. 17-33(i) of this ordinance.
 - b. To reinstate nonconforming use rights in accordance with Sec. 17-33(e) of this ordinance.
 - (4) *Variances.* The board shall have the power to authorize variances from the terms of this ordinance if it will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done. For purposes of considering a variance, the term “special conditions” shall mean the existence of a restricted area, shape, topography, or other physical feature that is peculiar to the subject parcel of land and which is not applicable to other parcels of land in the same zoning district. 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 authorize a use other than those permitted in the district for which the variance is sought
- (c) *Appeals.*
- (1) *Procedure.*
 - a. Appeals to the board of adjustment can be made by any person aggrieved or by any officer, department or board of the municipality affected by the final decision of building official in the enforcement of Chapter 6 or Chapter 17 of the Lewisville City Code. Such appeal must be filed within 15 days after the final decision has been rendered, by filing with the building official and with the board of adjustment a notice of appeal specifying the grounds. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

- b. No appeal may be taken with regard to any platted lot until after approval of the final plat by the city council.
- (2) *Stay of proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed from unless the building official shall certify to the board of adjustment that by reason of facts in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which 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 equity, after notice to the office from whom the appeal is taken and on due cause shown.
- (3) *Notice of hearing on appeal.*
 - a. The board shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and shall mail notices of such hearing to the appellant and to the owners of property lying within 200 feet or less street frontage of any point of the lot or portion thereof on which a variation is desired, and to all other persons deemed by the board to be affected thereby, such owners and persons being determined according to the current tax rolls of the city.
 - b. Depositing of such written notice in the mail shall be deemed sufficient compliance therewith.
- (4) *Decision by board.*
 - a. The board shall decide the appeal within a reasonable time. Upon the hearing, any party may appear in person or by agent or attorney.
 - b. The board may reverse or affirm wholly or partly or may modify the order, requirements, decision, or determination as in its opinion ought to be made in the premises, and to that end, shall have the powers of the officer or department from whom the appeal is taken.
 - c. Any persons, jointly or severally, aggrieved by any decision of the board, or any taxpayer or any officer, department or board of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the board of adjustment and not thereafter. The board's decision shall be deemed filed in the office of the board of adjustment on the first business day following the date on which action was taken by the board.
- (5) *Fees.* Each appeal or request for hearing before the board of adjustment shall be accompanied by payment of a nonrefundable fee.”

SECTION 6. Lewisville City Code, Chapter 6 is hereby amended to add a new section 6-77 (Properties Impacted by the Interstate I-35 Widening) to read as follows:

“Sec. 6-77. Properties Impacted by the Interstate I- 35 Widening

(a) Applicability.

- (1) This Section only applies to those developed properties within the city limits with frontage along Interstate 35 that have been physically changed (including but not limited to boundary changes) by a TxDOT acquisition for the I-35 Widening Project, but only if such physical changes create I-35 Deficiencies (the “Impacted Sites”).
- (2) Because Impacted Sites will be left non-compliant with applicable development regulations, this Section has been adopted to provide a process and reasonable time period in which the Impacted Sites must be brought into compliance.
- (3) Notwithstanding anything to the contrary, single family residences on Impacted Sites are exempt from submitting an I-35 modified site plan and engineering site plan and may continue to be used as single family residences despite I-35 Deficiencies so long as the home is not deemed a substandard structure pursuant to Article VII of Chapter 4 of the Lewisville City Code.
- (4) Notwithstanding anything to the contrary, new construction and/or new improvements to an Impacted Site that are not otherwise required for mitigation of I-35 Deficiencies shall not be eligible for staff-approved variances under this Section, must submit an engineering site plan if required by Chapter 6 of the Lewisville City Code, and shall comply with all current regulations and permitting processes just as required of any new development located elsewhere in the City.
- (5) Notwithstanding anything to the contrary, Impacted Sites with buildings that have been vacant for more than one year prior to the date of this ordinance adoption shall be ineligible for an I-35 modified site plan approval process, and shall automatically be classified as Major Impact Sites, which requires submittal of a full engineering site plan.

(b) Definitions

I-35 Deficiencies means any current zoning or development regulation that an Impacted Site no longer meets due to a physical change (including but not limited to boundary changes) related to a TxDOT acquisition for the I-35 Widening Project.

I-35 Widening Project means the state project initiated by TxDOT for the widening of, expansion of, and improvements to the I-35 corridor with construction beginning in 2013 and to be completed in phases.

Impacted Site means a parcel of land described in Sec. 6-77(a).

Major Impact Site means an Impacted Site that is impacted by the I-35 Widening Project to the point where the viability and functionality of the site is affected and/or a building located on the property is in any way affected. The following non-exclusive list shall be considered major impacts, which shall qualify a parcel of land as a Major Impact Site:

- (1) An impact that eliminates more than fifteen percent (15%) of required parking calculated using the standards in place on the date of the most current engineering site plan approval or latest building expansion.
- (2) An impact that eliminates more than fifteen percent (15%) of required landscaping calculated using the standards in place on the date of the most current engineering site plan approval or latest building expansion.
- (3) An impact that requires the destruction, demolition, taking down, removal, or change to any portion of an existing building.
- (4) An impact that creates any unsafe conditions such as inadequate or inoperable fire protection systems, fire apparatus access lanes, sanitary sewer, water lines, electrical service, and/or site access.
- (5) Properties that have been “fully acquired” by TxDOT shall be presumed to qualify as Major Impact Sites. As used here, the term “fully acquired” shall mean that TxDOT pays the owner for the value of the entire property rather than for just a portion of the property.

Minor Impact Site means an Impacted Site that has been impacted by the I-35 Widening Project, but not to the extent where the viability and functionality of the site and/or buildings have been affected. The following non-exclusive list shall be considered minor impacts, which shall qualify a parcel of land as a Minor Impact Site:

- (1) a loss of parking that is less than or equal to fifteen (15) percent of required parking calculated using the standards in place on the date of most current engineering site plan approval or latest building expansion.
- (2) a loss of required landscaping that is less than or equal to fifteen (15) percent of required landscaping area calculated using the standards in place on the date of most current engineering site plan approval or the latest building expansion.
- (3) minor changes to utilities, drainage, driveways, screening, fire lane location, or other development criteria set forth in Chapter 6 that do not increase the degree of a property’s noncompliance such as relocation of existing water or sanitary sewer services with no size increase, closure of existing driveway(s) that does not cause the site to be non-compliant with the City’s Fire Code, changes to driveway width

or radii that do not increase the degree of non-conformity for driveway requirements per Section 6-103, control of access changes to the on-site drainage system that do not exceed the downstream/off-site storm water capacity, changes to existing non-conforming fire lane widths that are physically unable to be widened to current standards as determined by City staff and which meet location requirements.

TxDOT means the Texas Department of Transportation

(c) Required Compliance.

- (1) All Impacted Sites must comply with the Lewisville City Code and be brought into compliance as required herein.
- (2) If any portion of a structure on an Impacted Site must be physically changed, all exterior finish materials on that structure shall be brought into full compliance with Section 6-181 of the Lewisville City Code.
- (3) If an on-premise sign is removed, reconstructed, and/or relocated on the property, the sign must be brought into full compliance with all current sign regulations, including but not limited to, all setback and size requirements, per Chapter 11-Signs.
- (4) No I-35 modified site plan or engineering site plan shall be approved for an Impacted Site unless the Impacted Site is platted.
- (5) At any time conditions on an Impacted Site are deemed unsafe for occupancy or use, all operations on the site shall cease and no occupancy or use of the site shall be allowed until such conditions are remediated.

(d) Process for Compliance. For purposes of this paragraph, the City provides written notice by depositing notice properly addressed with postage paid in the United States mail to the owner of the Impacted Site, as indicated by the most recently approved municipal tax roll.

- (1) Within sixty (60) days after the City provides written notice to the owners of a Minor Impact Site of the need for compliance, the owner shall submit an I-35 modified site plan to the City showing that the Impacted Site does not have any I-35 Deficiencies or depicting all proposed changes to bring their I-35 Deficiencies into compliance with the Lewisville City Code, as amended. The requirements for an I-35 modified plan are as provided in Sec. 6-77(f).
- (2) Within sixty (60) days after the City provides written notice to the owners of a Major Impact Site of the need for compliance, the owners shall submit an engineering site plan to the City depicting all proposed changes to bring their entire property into full compliance with the Lewisville City Code, as amended. The requirements for an engineering site plan are as provided in Sec. 6-73(e) of the Lewisville City Code.

- (3) If an I-35 modified site plan or engineering site plan require variances to bring the Impacted Site into compliance, such variances may be approved by the City Council or the Board of Adjustment, depending on the type of variance sought. The City Manager, or her designee shall also be authorized to approve the following reductions and minor changes for I-35 Deficiencies without further City Council approval:
 - a. A reduction of parking that is less than or equal to fifteen (15) percent of required parking calculated using the standards in place on the date of the most current engineering site plan approval or latest building expansion;
 - b. A reduction of required landscaping that is less than or equal to fifteen (15) percent of required landscaping area calculated using the standards in place on the date of the most current engineering site plan approval or latest building expansion; and/or
 - c. Minor changes to utilities, drainage, driveways, screening, fire lane location, or other development criteria set forth in Chapter 6 that do not increase the degree of a property's noncompliance such as the relocation of existing water or sanitary sewer services with no size increase, closure of existing driveway(s) that does not cause the site to be non-compliant with the City's Fire Code, changes to driveway width or radii that do not increase the degree of non-conformity for driveway requirements per Section 6-103, control of access changes to the on-site drainage system that do not exceed the downstream/off-site storm water capacity, changes to existing non-conforming fire lane widths that are physically unable to be widened to current standards as determined by City staff and which meet location requirements.
- (e) **I-35 Modified Site Plan.** An I-35 modified site plan shall include the following:
 - (1) A cover sheet.
 - (2) A copy of the approved final plat, previously-approved engineering site plan, and/or construction drawings, if any
 - (3) The overall site layout showing general information such as building location, zoning, setbacks, etc. for reference purposes.
 - (4) A title block located at the bottom right hand side of the page to include the project name, addition name, lot, block, total acreage, zoning classification, and address if available (see appendix for engineering site plan title block).
 - (5) A summary table for building square footage, total number of required parking spaces, and right-of-way square footage (if applicable).
 - (6) Staff and utility companies' signature block (see appendix).

- (7) North point arrow (oriented to the top or right of the sheet) and date. Dates of revisions are to be added with each modified set of plans.
- (8) Location map 1"=1,000' (must use city base map).
- (9) Sheet size of 22"x34".
- (10) Scale of 1"=20' maximum for lots up to 3 acres, and 1"=40' maximum for lots exceeding 3 acres. For site plans requiring extensive grading, drainage, other site related improvements, or unusual lot configuration, the City Engineer shall be consulted for designating a scale.
- (11) Name, address, and phone number of the contact person or developer, owner or builder, engineer or surveyor, and architect (if applicable).
- (12) The entire platted lot shall be shown on the I-35 modified site plan.
- (13) Iron rods shall be set or found and shown on the site plan.
- (14) Building setback lines including required setbacks from all water, sanitary sewer, and drainage easements.
- (15) Zoning of adjoining properties.
- (16) Easements, deed restrictions, or encumbrances which impact development of the lot.
- (17) Control of access lines, corner clips, and clear vision areas, if applicable. Refer to Figure 6 (Control of Access Limitations), Figure 7 (Clear Vision Area), and Table 1 (Street Design Criteria).
- (18) Median openings, traffic islands, turning lanes, acceleration and deceleration lanes, if applicable. Refer to section 6-92(m).
- (19) Streets, alleys, and easements adjacent to the site showing right-of-way and limits of paving.
- (20) Existing screening devices.
- (21) Existing landscaping plan, including a summary table showing the number, size, and type of trees and percentage of landscaping for parking areas.
- (22) Construction details for applicable site improvements.
- (23) Existing fire protection including fire hydrants, fire lanes, fire lines, and related devices.
- (24) Finished floor elevation if ADA facilities are affected.
- (25) Variances requested from this ordinance shall be listed on the face of the I-35 modified site plan.
- (26) Note stating existing exterior finish material(s).

- (27) Sealed by either a professional surveyor, architect, landscape architect or engineer licensed by the state of Texas, but must be sealed by a professional engineer licensed by the state of Texas if grading, drainage, private utilities or public infrastructure requires design details.
- (28) Erosion control plan in accordance with the current Texas Pollution Discharge Elimination System (TPDES) requirements.
- (29) Show location of all existing and proposed free standing signage. Refer to Chapter 11 – Signs for requirements and limitations.
- (30) Any other information, drawings, operating data or expert evaluations that city staff determines are necessary to evaluate site impacts.

(f) Enforcement and Compliance Dates.

- (1) During Submittal Process.
 - a. The City shall delay enforcement of code violations for I-35 Deficiencies for Minor and Major Impact Sites for six months after sending the owner the initial letter as set forth in Sec. 6-77(d), but only so long as the owner of the property has submitted a completed I-35 modified plan (for Minor Impact Sites) or an engineering site plan (for Moderate Impact Sites) within sixty (60) days after the City provides the written notice and only so long as the owner has been continuously working in good faith towards submitting any other necessary documents and revisions to the City. Staff may grant one extension to this six-month time period if the owner can show that they have been working in good faith to complete the improvements and delays have been outside of their control.
 - b. Unsafe Conditions. Notwithstanding anything to the contrary, the City shall not delay enforcement against Impacted Sites that the City deems unsafe for occupancy or use. Such Impacted Sites are required to come into immediate compliance or cease operations until they can be brought into compliance.
- (2) After Approval. All improvements shall be completed within six (6) months after the City's approval of the engineering site plan or I-35 modified plan. Staff may grant one extension to this six (6)-month time period if the owner can show that they have been working in good faith to complete the improvements and that delays have been outside of their control.
- (3) After Denial. If a submitted engineering site plan or an I-35 modified plan is denied by staff or by the City Council, code enforcement shall resume immediately."

SECTION 7. REPEALER. Every ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

SECTION 8. SEVERABILITY. If any section, sentence, clause, or phrase of this ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this ordinance, but they shall remain in effect.

SECTION 9. PENALTY. Any person, firm or corporation who violates any provisions of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof in the Municipal Court, shall be subject to a fine of not more than \$2,000.00 for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

SECTION 10. EFFECTIVE DATE. This Ordinance shall take effect and be in full force and effect from and after the date of its passage and publication as required by law.

SECTION 11. EMERGENCY. It being for the public welfare that this Ordinance be passed creates an emergency and public necessity and the rule requiring this Ordinance be read on three separate occasions be, and the same is hereby, waived and this Ordinance shall be in full force and effect from and after its passage and approval and publication, as the law in such cases provides.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF 4 TO 0, ON THIS THE 16th DAY OF MARCH, 2015.

APPROVED:

Dean Ueckert, MAYOR

ATTEST:

Julie Heinze, CITY SECRETARY

APPROVED AS TO FORM:

Lizbeth Plaster, CITY ATTORNEY