

ORDINANCE NO. 3813

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 11 OF THE CODE OF THE CITY OF MESQUITE BY DELETING SECTION 11-150 IN ITS ENTIRETY AND ADDING A NEW SECTION 11-150 THEREBY AMENDING THE VARIANCE AND APPEAL PROCEDURES TO THE STORMWATER AND FLOOD PROTECTION ORDINANCE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 11 of the Code of the City of Mesquite is hereby amended by deleting Section 11-150 in its entirety and adding a new Section 11-150 to read as follows, in all other respects said Code and Chapter to remain in full force and effect.

Sec. 11-150. Variance and appeal procedures.

- (a) *Variances.* Variances to the Stormwater and Flood Protection Ordinance shall be submitted to the City Engineer. In considering the variance request the City Engineer shall review the technical, environmental, financial, social and aesthetic merits of the variance request and shall consider the following relevant factors:
- (1) Whether the variance request increases the potential danger to life and/or property due to drainage, flooding or erosion damage;
 - (2) Whether the variance will increase threats to public safety, create additional public expense and/or create nuisances;
 - (3) Whether the variance will conflict with state or federal laws or regulations;
 - (4) Whether the variance increases the susceptibility of the proposed or an existing facility or its contents or surrounding property to flood damage;
 - (5) Whether the variance will result in increased flood heights, create erosive velocities, increase frequency of flooding or duration of flooding or create other adverse impacts to other property owners unless the adverse impact is approved by the affected property

owners and documentation of this approval in a form approved by the City Attorney and City Engineer is submitted to the City.

- (6) Whether the variance preserves or expands natural floodplain, greenbelts and associated buffer areas of aesthetic and/or environmental value;
- (7) Whether the variance request preserves adequate buffer distances to development and infrastructure from areas of potential flooding or erosion;
- (8) Whether the variance will decrease floodplain valley storage;
- (9) Whether the variance provides adequate heavy equipment access for periodic maintenance of drainage facilities and other infrastructure;
- (10) Whether the variance request decreases the safety of access to property or facilities in times of flood for ordinary and emergency vehicles;
- (11) Whether there are available alternate locations for the proposed facility that would not require a variance;
- (12) Whether the proposed facility requires a waterfront location, where applicable;
- (13) Whether the variance is compatible with adjacent existing and proposed floodplain and drainage improvements;
- (14) Whether the variance increases the danger that materials may be swept onto other lands to the injury of others;
- (15) Whether the variance will likely increase costs of providing governmental services during and after storm events, including maintenance and repair of public infrastructure such as streets, bridges, storm sewer and channels, water, sanitary sewer, gas, electrical, telephone and other public amenities;
- (16) Whether the variance request assists in the preservation of the historical character of structures or sites listed on the National Register of Historic Places or the State Inventory of Historic Places; and
- (17) Whether the variance requested is the minimum necessary to afford relief.

Upon consideration of the factors listed above and the purposes of this ordinance, the City Engineer will issue a report to the Development Review Committee summarizing his findings and recommendations for approval, approval with conditions or denial. As part of the recommendation the City Engineer may attach such conditions to the granting of the variance as deemed necessary to further the purposes of this ordinance and the public welfare.

The Development Review Committee shall review the City Engineer's report, recommendations and conditions, hear other evidence or testimony as it deems pertinent and provide comments to the City Engineer. After receipt of such, the City Engineer will make a recommendation to the City Manager, or his designee, to approve the variance, approve the variance with conditions or deny the variance request.

The City Manager shall review the City Engineer's report, recommendations and conditions, hear other evidence or testimony as he deems pertinent and approve the variance, approve the variance with conditions or deny the variance request. The decision of the City Manager, or his designee, shall be provided in writing to the applicant requesting the variance.

The City Engineer shall maintain the records of all variance requests, including technical information, and shall report variances granted to the Federal Emergency Management Agency upon its request.

(b) *Appeals.* The decision of the City Manager may be appealed to the City Council. The City Council shall have the authority to sustain, reverse or modify the decision of the City Manager. The decision of the City Council under this section shall be final and recorded in the minutes of the City Council meeting.

(1) *Time limits.* A variance granted pursuant to this section shall expire one year from the date of the granting of the variance if a permit is not approved and issued within that time and work begun. Should a building permit be issued and diligent work ceases for a period of more than 90 days, the variance approval shall lapse and be deemed void.

SECTION 2. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court, shall be punished by a fine not to exceed Two Thousand (\$2,000.00) Dollars for each offense.

SECTION 5. That the present ordinances of the City of Mesquite are inadequate in regulating the variance and appeal procedures to the stormwater and flood protection ordinance creates an urgency and an emergency for the preservation of the public health, safety and welfare, and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

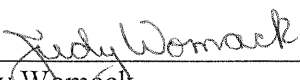
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 7th day of August, 2006.

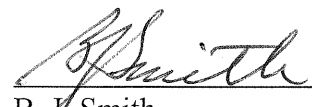


Mike Anderson
Mayor

ATTEST:

APPROVED:



Judy Womack
City Secretary

B. J. Smith
City Attorney