

ORDINANCE NO. 3847
Zoning Text Amendment No. 2006-5

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE MESQUITE ZONING ORDINANCE ADOPTED ON SEPTEMBER 4, 1973, AND RECODIFIED ON NOVEMBER 21, 1988, BY DELETING SECTION 5-402 IN ITS ENTIRETY AND ADDING A NEW SECTION 5-402 THEREBY MODIFYING OR ADDING STANDARDS REGARDING THE BOARD OF ADJUSTMENT; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

WHEREAS, in order that the intended purposes of the Mesquite Zoning Ordinance are best served, it has been determined necessary to amend certain language of said ordinance; and

WHEREAS, the Planning and Zoning Commission did give public notice and did hold public hearings regarding proposed revisions and has recommended amendment of the ordinance; and

WHEREAS, the City Council did give public notice and did hold a public hearing regarding the proposed amendment.

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

SECTION 1. That the Mesquite Zoning Ordinance adopted on September 4, 1973, and recodified on November 21, 1988, be and the same is hereby amended by deleting Section 5-402 in its entirety and adding a new Section 5-402 thereby modifying or adding standards regarding the Board of Adjustment to read as follows, said Ordinance in all other respects to remain in full force and effect:

5-402 BOARD OF ADJUSTMENT

A Board of Adjustment is hereby created and may also be called the Board.

A. PURPOSE AND SCOPE

The Board of Adjustment is created and vested with power and authority to carry out the responsibilities as set out herein for the purpose of rendering full justice and equity to the general public in the application of the terms of this ordinance.

B. MEMBERSHIP

- 1. *Regular Members*** The Board shall consist of five regular members to be appointed by the City Council.

2. ***Alternate Members*** The Council shall appoint at least two but no more than four alternate Board members to serve in the absence of regular members. An alternate member is subject to removal in the same manner as a regular member. When more than two alternates are appointed, the additional members shall be known as reserve alternates and shall not be subject to the attendance requirements set out below.
3. ***Terms of Office*** The regular, alternate and reserve alternate members shall be appointed for two-year terms and shall serve until their successors are appointed and qualified. The terms of three regular members, one alternate member and one reserve alternate member shall end on January 1st of each odd-numbered year and the terms of two regular members, one alternate member and one reserve alternate member shall end on January 1st of each even-numbered year.
4. ***Removal*** The Council may remove a member for cause on a written charge after public hearing as provided by State law.
5. ***Vacancies/ Succession*** Vacancies shall be filled by the City Council for the unexpired term. A Board member may serve no more than three consecutive terms. An appointment of one year or more shall constitute a term.
6. ***Attendance*** Any member, including any alternate member, who has not attended more than 75 percent of the regularly scheduled meetings in any 12-month period shall automatically resign and cease to hold office, and the Council shall fill the vacancy for the unexpired term.

C. ORGANIZATION AND RULES

The Board shall adopt rules to govern its proceedings in accordance with this ordinance and the State law.

1. ***Meetings*** Meetings of the Board shall be held at the call of the Chairperson and at other times as determined by the Board. The Chairperson or the acting chairperson may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public.
2. ***Elections*** The Board shall hold an organizational meeting each year and shall elect a Chairperson, Vice-Chairperson and Secretary from among the members. The Board may elect such other officers as it deems necessary either from among the membership or staff representatives assigned to work with the Board.
3. ***Quorum*** Each case before the Board shall be heard by at least four members.
4. ***Votes Required*** The concurring vote of four members of the Board is necessary to:

- a. Reverse an order, requirement, decision or determination of an administrative official.
- b. Approve a Special Exception on which the Board is required to act under this ordinance.
- c. Authorize a variance from the terms of this ordinance.
- d. Decide in favor of an applicant on any matter on which the Board is required to pass under this or any other ordinance requiring the Board to act.

Administrative and procedural matters shall require a simple majority vote of the members present.

**5. *Minutes/
Records***

The Board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The minutes of each meeting shall include an enumeration of the reasons for which any variance is granted. The Board shall keep records of its proceedings and other official actions. The minutes and records shall be filed in the Planning Division office and are public records.

**6. *Disqualification
from Voting***

A member shall disqualify himself from voting whenever he finds that he has a personal or a monetary interest in the property under appeal or that he will be directly affected by the decision of the Board.

A member may disqualify himself from voting whenever any applicant or his agent has sought to influence the vote of the member on the application other than in the public hearing.

**7. *Training and
Competency***

As a condition of membership on the Board, the members shall participate in such training and education as may be required by law or ordinance. From time to time, the Community Development Director shall provide additional training and education opportunities for the members of the Board in order to maintain and improve their knowledge and competence in matters pertaining to the Board.

D. DUTIES AND POWERS

Except as provided in this ordinance, the Board is hereby charged with the duty and invested with the authority to:

1. *Interpretation*

Hear and decide appeals that allege error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance.

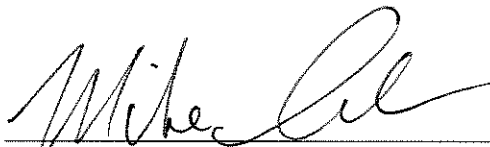
2. ***Special Exceptions*** Hear and decide special exceptions to the terms of the ordinance when the ordinance requires the Board to do so.
3. ***Variances*** Authorize in specific cases a variance from the terms of this ordinance if the variance is not contrary to the public interest and, due to special conditions, the literal enforcement of the provisions of the ordinance would result in unnecessary hardship and so that the spirit of this ordinance is observed and substantial justice done. Variances as to permitted uses shall not be allowed.
4. ***Other*** Hear and decide upon other matters which may be delegated to the Board by this or any other ordinance of the City.

SECTION 2. That all ordinances, or portions thereof, of the City of Mesquite 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 not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph, phrase or section of this ordinance be held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional and shall not affect the validity of the Mesquite Zoning Ordinance as a whole.

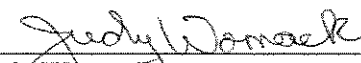
SECTION 4. That the need to regulate proper development of the City of Mesquite and in order to protect the public interest, comfort and general welfare of the City of Mesquite, creates an urgency and emergency for the preservation of the public health, safety and welfare and requires that this ordinance 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 18th day of December, 2006.



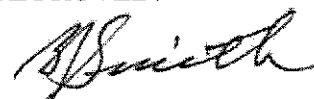
Mike Anderson
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B. J. Smith
City Attorney