

ORDINANCE NUMBER 2013-03

**AN ORDINANCE AMENDING SECTION 154.05 OF THE CITY CODE
REGULATING NONCONFORMING USES, STRUCTURES AND LOTS; AND
AMENDING SECTION 154.28 REGARDING VARIANCES UNDER THE CITY
ZONING CODE**

The City Council of the City of Harris City hereby ordains as follows:

SECTION 1:

That Title XV, Section 154.05 of the City Code is hereby amended to read in its entirety as follows:

§ 154.05 NONCONFORMING USES AND STRUCTURES.

(A) *Generally.* This chapter establishes separate and distinct districts, each of which is appropriate for certain specified uses and conditions. It is the purpose of this section to provide for the regulation of existing structures, uses, and lots that do not conform to the requirements of the district in which they are located and to specify the requirements, circumstances, and conditions under which the nonconforming structure, use, or lot may be continued. In furtherance of the goals and purpose of this chapter, it is also the intent of this section that all nonconforming uses shall eventually be eliminated or made to comply with the provisions of this chapter.

(B) “Improvement” means making the non-conforming use better, more efficient, or more aesthetically pleasing, including any change that does not replicate what pre-existed, but does not include expansion, enlargement, or intensification.

(C) Any structure or use, including mobile homes, lawfully existing upon the effective date of this chapter shall not be expanded, enlarged, or intensified, but may be continued at the size and in a manner of operation existing upon the date, including through repair, replacement, restoration, maintenance or improvement, except as hereinafter specified or subsequently amended.

(D) Nothing in this chapter shall prevent the placing of a permanent structure or part thereof in a safe condition when the structure or part thereof is declared to be unsafe by the city provided the necessary repairs shall not constitute more than 50% of the fair market value of the structure. The value shall be determined by the County Assessor.

(E) When any lawful nonconforming use, structure or land in any district has been

changed to a conforming use, it shall not thereafter be changed to any nonconforming use.

(F) Whenever a lawful nonconforming building, structure, or use shall have been damaged by fire or other peril to the extent of greater than 50% of its fair market value, the value as determined by the County Assessor, excluding land value, the right to continue or replace any non-conforming use is terminated, except if a valid and complete building permit application has been submitted to the city within 180 days after the property was damaged in which case the replacement shall be for a use in accordance with the provisions of this chapter.

(G) Whenever a lawful nonconforming use of a building or structure or land is discontinued for a period of twelve months, any future use of the building or structure or land shall be in conformity with the provisions of this chapter.

(H) Normal maintenance of a building or other structure containing or related to a lawful nonconforming use is permitted, including necessary non-structural repairs and incidental alterations which do not expand, enlarge, increase, extend or intensify the nonconforming use.

(I) A lawful nonconforming use may be changed only to a use of the same or more restricted classification, and not to another nonconforming use.

(J) A lot or parcel of land that is non-conforming and that is not improved with a principal use is not entitled to be developed with a principal use if it has been in common ownership with adjacent land, including land that is across a street, or if it has been part of a larger parcel of land, at any time after adoption of the standard that causes the lot to be non-conforming.

SECTION 2:

That Title XV, Section 154.28 of the City Code is hereby amended to read in its entirety as follows:

§ 154.28 VARIANCES.

(A) A variance may be granted from the requirements of this ordinance including those placed on nonconformities. A variance is only permitted when it is in harmony with the general purposes and intent of this ordinance and when the variance is consistent with the comprehensive plan. A variance may be granted when the applicant establishes that there are practical difficulties in complying with this ordinance. Practical difficulties means that the property owner proposes to use the property in a reasonable manner not permitted by this ordinance, the plight of the land owner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, would not alter the essential

character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties also includes inadequate access to direct sunlight for solar energy systems. Inadequate access means the failure to achieve reasonable access to direct sunlight, not optimal or maximal access. Variances must be granted for earth sheltered construction as defined in state law, when in harmony with this ordinance. The city may impose conditions in granting of a variance. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

(1) Applications provided by the city must be completed in writing prior to any consideration of variance petitions. Fees for variances are established by ordinance adopted by the City Council.

(2) The Board of Appeals and Adjustments may require the applicant to provide ten copies of plans, maps, surveys, and the like, as deemed necessary, to ensure proper review and consideration of variance petitions.

(3) After filing an application, the City Clerk shall set a date for a public hearing before the Board of Appeals and Adjustments. Notice of the hearing shall be posted and published at least ten days prior to the date of the hearing, and notice shall be mailed to each property owner within 350 feet of the property to which the variance relates. Defects in the notice or failure to notify individual property owners shall not invalidate the proceedings, provided a good faith effort was made to comply with these provisions.

(4) Upon hearing the request, the Board of Appeals and Adjustments shall either approve or deny the variance and shall state the reasons for the action. Conditions for approval may be attached to any variance granted.

(5) Findings. The Board of Appeals and Adjustments must find as follows in the granting of a variance from this chapter.

(a) Granting a variance will not adversely affect the public health, welfare and safety and will not be detrimental or injurious to property or improvements in the neighborhood.

(b) Strict interpretation or enforcement would result in a practical difficulty or unnecessary hardship that is not self created, that is inconsistent with the intent of this chapter and the comprehensive plan.

(c) There are exceptional or extraordinary circumstances or conditions applicable to the property, use or facilities that do not apply generally to other properties in the same district.

(d) Granting of the variance will not allow a use which is otherwise not a permitted use in the zoning district in question.

(6) A variance granted but not used shall become void one year after its effective date.

(B) *Variance appeal procedures.*

(1) Within 30 days of the action of the Board of Appeals and Adjustments, the applicant or an affected property owner may file an appeal to the City Council to the decision of the Board of Appeals and Adjustments.

(2) The City Council shall set a date for a public hearing, within 45 days of receipt of the appeal, to consider and act upon the appeal.

SECTION 3:

This ordinance shall take effect and be in force from and after its publication in the official newspaper of the City of Harris.

Diane Miller
Mayor

ATTEST:

Joanne Dargay
City Clerk

Published in the _____ this _____ day of _____, 2013.