



# City of Pearland

P. O. Box 2068 • Pearland, Texas 77588-2068 • 485-2411

January 5, 1989

Honorable Mayor and Councilmembers  
City Hall  
Pearland, Texas

*to  
E-B  
1-4-89*

Dear Members:

In a regular meeting held on December 20, 1988, the Planning and Zoning Commission considered the following amendments to Land Use and Urban Development Ordinance No. 509 and amendment of the Land Use District Map:

#### REZONING OF VARIOUS SUBDIVISIONS:

It was moved by Al Lentz to approve the rezoning of subdivisions as follows: Green Tee Subdivision Townhouse Reserve, Blocks 3, 7, and 1/2 of 8, Section I and 1/2 of Block 8, Section II from R-3 to R-4; Corrigan Subdivision, Sections 1-5 from R-4 to R-2; Willowick Subdivision from R-4 to R-2; Springfield Subdivision from R-3 to R-2; and Sherwood Subdivision from no zone indicated to R-2. The motion was seconded by Clyde Starns. Motion passed 5 to 0.

#### AMENDMENT OF MINIMUM PARKING STALL WIDTHS

It was moved by Benny Frank, seconded by Helen Beckman, that the 10' stall width be changed to a 9' stall width. Motion passed 5 to 0.

The Commission is submitting this for Council's consideration.

Sincerely,

Leroy Savoie, Chairman  
Planning and Zoning Commission

LS/EB:pv

**MINUTES OF A REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF PEARLAND, TEXAS, HELD ON JANUARY 10, 1989, AT 7:30 P. M. IN THE COUNCIL CHAMBERS, CITY HALL, 3519 LIBERTY DRIVE, PEARLAND, TEXAS**

The meeting was called to order with the following present:

Chairman	Leroy Savoie
Vice Chairman	Al Lentz
Member	Benny Frank
Member	Mary Starr
Member	Helen Beckman
Member	Clyde Starns
Member	James Garner
Code Enforcement Officer	Ernesto Buenrostro
Assistant City Secretary	Pat Vaught

**APPROVAL OF MINUTES**

It was moved by Benny Frank, seconded by Helen Beckman, that the minutes of the meeting of December 20, 1988, be approved as presented.

Motion passed 5 to 0, with Members James Garner and Mary Starr abstaining.

**UNFINISHED BUSINESS**

**MOTION TO REMOVE FROM TABLE APPROVAL OF PRELIMINARY PLAT OF LOSSEN SUBDIVISION**

It was moved by Benny Frank, seconded by Clyde Starns, to remove this item from the table for consideration.

Motion passed 6 to 0, with Mary Starr abstaining and excusing herself from the Chambers during the consideration of this agenda item due to possible conflict of interest.

**APPROVAL OF PRELIMINARY PLAT OF LOSSEN SUBDIVISION, 0.9984 ACRE TRACT OUT OF THE W.D.C. HALL LEAGUE, ABSTRACT #70, AS RECORDED IN VOLUME 748, PAGE 668 OF THE DEED RECORDS OF BRAZORIA COUNTY (2005 E. BROADWAY)**

Code Enforcement Officer Ernesto Buenrostro presented a letter from City Attorney Robert Talton written in response to the Commission's request for interpretations at their last meeting.

The questions addressed were as follows: does the Planning and Zoning Commission have the authority to grant variances to setback requirements addressed in the subdivision ordinance; should the 25' side building line parallel to Hamm Road be measured from the east or west boundary of the 20' roadway easement; and if there is a need to

grant variances for encroachment during the platting process does the Commission or the Zoning Board of Adjustment have the responsibility to grant building line variances.

A lengthy discussion ensued concerning possible future building, conforming and non-conforming structures, building lines, rear and side yard requirements, rebuilding restrictions, easements, rights-of-way, hardships on the applicant and variances that could be granted by the Commission or the Zoning Board of Adjustment.

Code Enforcement Officer Buenrostro stated the Staff would like to recommend that the right-of-way on Hamm be dedicated so that the future subdivision of lots north of Hamm will be platted accordingly and so that the existing pavement edge is not on the property line and there will be a 60' wide right-of-way corridor. There followed a discussion of ownership of the property and the owner's signature on the final plat. Mr. Buenrostro stated he would check with the city attorney on this matter.

It was determined that the plat should be approved as it relates to the subdivision ordinance only.

It was moved by Al Lentz that the preliminary plat of Lossen Subdivision be approved with the following stipulations: (1) the 20' roadway easement as shown along Hamm Road be changed to a dedication of right-of-way to the City and no longer shown as an easement, (2) the area of lots A & B be changed to reflect the net area of the lots, that being defined as that area of the lot exclusive of the right-of-way dedications, (3) that the 25' building line along Hamm Road on Lot A be changed to a 20' building line with a 45 degree angle transition adjacent to Lot B and (4) that the 25' building line along Lot B remain the same.

Code Enforcement Officer Ernesto Buenrostro suggested that the motion be amended to include the submission of an up-to-date title certificate.

The maker of the motion so amended the motion. The motion was seconded by Helen Beckman.

The motion passed 6 to 0, with Mary Starr abstaining and absent from the Chamber at this time.

**APPROVAL OF FINAL PLAT OF LOSSEN SUBDIVISION, 0.9984 ACRE TRACT OUT OF THE W.D.C. HALL LEAGUE, ABSTRACT #70, AS RECORDED IN VOLUME 748, PAGE 668 OF THE DEED RECORDS OF BRAZORIA COUNTY (2005 E. BROADWAY)**

It was moved by Clyde Starns, seconded by Benny Frank, that the Final Plat of Lossen Subdivision be approved subject to the same stipulations as the preliminary plat.

Motion passed 6 to 0, with Mary Starr abstaining and absent from the chamber at this time.

Mary Starr returned to Council Chambers at this time.

**GENERAL DISCUSSION**

In a general discussion, the Commission discussed the procedures related to amendments to Ordinance No. 509 which led to a request by the Commission to the city attorney for clarification as to the procedure as outlined in Section 28 of Ordinance No. 509.

**ADJOURN**

The meeting adjourned at 9:15 P. M.

Minutes approved as submitted and/or corrected this 16 day of January,  
A. D., 1989.

LeRoy J. Looie  
Chairman

ATTEST:

Pat Vaught  
Assistant City Secretary



# City of Pearland

P. O. Box 2068 • Pearland, Texas 77588-2068 • 485-2411

Tom Reid, Mayor  
Al Lentz, Councilman  
Terry Gray, Councilman  
James E. Bost, Councilman  
Dennis Frauenberger, Councilman  
Richard Tetens, Councilman  
Ronald J. Wicker, City Manager

TO: Bill Thomasset, Director of Public Works  
FROM: Ernesto Buenrostro, Code Enforcement Officer  
SUBJECT: Planning & Zoning Commission Meeting of January 10, 1989  
DATE: January 12, 1989

At the meeting of January 10, 1989, a motion was made by Al Lentz that the Preliminary Plat of Lossen Subdivision be approved with the following stipulations: (1) the 20' roadway easement as shown along Hamm Road be changed to a dedication of right-of-way to the City and no longer shown as an easement, (2) the area of lots A & B be changed to reflect the net area of the lots, that being defined as that area of the lots exclusive of the right-of-way dedications, (3) that the 25' building line along Hamm Road on Lot A be changed to a 20' building line with a 45 degree angle transition adjacent to Lot B and (4) that the 25' building line along Lot B remain the same.

The motion was amended to include the submission of an up-to-date title certificate. The maker of the motion so amended the motion. The motion was seconded by Helen Beckman. Motion passed 6 to 0, with Mary Starr abstaining and absent from the chamber at this time.

It was moved by Clyde Starns, seconded by Benny Frank, that the Final Plat of Lossen Subdivision be approved subject to the same stipulations as the preliminary plat. Motion passed 6 to 0, with Mary Starr abstaining and absent from the chamber at this time.

In a general discussion, the commission discussed various aspects of the revisions to the sign ordinance.

The above is submitted for your information.

xc: Dick Qualtrough  
Engineering Division

ROBERT E. TALTON

*Attorney at Law*

308 So. SHAVER  
PASADENA, TEXAS 77506  
PHONE (713) 475-9314

TO: Ernie Buenrostro, Jr.  
Code Enforcement Officer

FROM: Robert E. Talton,  
City Attorney

DATE: January 10, 1989

RE: Variances for Preliminary Plats as to Lossen  
Subdivision

This memorandum is offered pursuant to your inquiry of December 22, 1988 relating to the subdivision of Lot 1 in the Yost Addition concerning the two buildings located on the tract which will be non-conforming, if the plat is approved. In response to this, you have made four inquiries which will be addressed in order:

Your first inquiry asked "Does the Planning and Zoning Commission have the authority to grant variances to set back requirements addressed in the subdivision ordinance"?

Section 27-1(b) of the Code of Ordinances of the City of Pearland states that "before any plan, plat, or re-plat of a subdivision or addition of land in the city or within five (5) miles of the city shall be recorded with the county clerk, it shall first be approved by the Planning and Zoning Commission".

Therefore, in order for a plat to be approved it must first go the Planning and Zoning Commission. Thereafter, under Section 27-3 of the Code of Ordinance of the City, the subdivider must first discuss with the Planning Department and Building Inspector before preparing the preliminary plat of their proposed subdivision and to secure a copy of the rules and regulations covering subdivisions of land.

Section 27-3(A)(3) Variances. This section authorizes the Commission to grant a variance from these regulations when, in its' opinion, undue hardship will result from requiring strict compliance. In granting a variance, the Commission shall prescribe only conditions that it deems necessary to or desirable in the public interest. There are guidelines which are set out in the ordinance which allow the Planning and Zoning Commission to do so if they find that these four conditions apply. [See Section 27-3(A)(3)]

Therefore, if the Planning and Zoning Commission determines that a variance should be granted and that the applicant meets the requirements, then they may make a variance of the set back line requirements. The building set back line requirement is a part of the subdivision ordinance under Ordinance No. 27-4(D) (1) (a).

The second issue is "Should the twenty-five foot side building line parallel to Hamm Road be measured from the East or West boundary of the 20' roadway easement?". The definition of a building set back line is defined as "a line which marks the set back distance from the property line, and establishes the minimum required front, side, or rear yard space of a lot." The property line is the property line of the owner. A right-of-way easement is no more than a right of a city or person to use that easement for that specific purpose. The owner is still the fee simple owner of the property. Under this definition, the set back line would be measured from the fee simple property line of the owner and not the right-of-way easement since the owner is still the fee simple owner of the property.

Another point that the Commission may want to consider is the requirement of a right of way dedication along Hamm Road instead of the right of way easement. This will change the measuring of the property line.

Question number three is "When there is a need to grant variances for encroachments during the plating process, does the Planning and Zoning Commission or the Zoning Board of Adjustment have the responsibility to grant building line variances"?

Under the subdivision ordinance pertaining to plats, the Planning and Zoning Commission, as I have stated in the first question, has the authority to grant variances to set back requirements in the initial plat process.

Thereafter, in the event that the Planning and Zoning Commission grants a variance to a non-conforming building, that does not mean that the building is conforming. Under Section 26 of Ordinance 509 labeled the "Land Use and Urban Development Ordinance" of the City of Pearland, Texas, if a non-conforming use building shall be destroyed or damaged more than fifty percent of its current replacement value, then the Zoning Board of Adjustments may or may not grant a permit for the repair but not for enlargement of the building. [See Section 26-3]. Under the non-conforming use, the non-conforming use may not be enlarged unless it is brought to a conforming use. There cannot be a non-conforming use changed to another non-conforming use.

The time to address the variances as to building lines after the plating process is for the Zoning Board of Adjustments to grant such building line variances if the request is in accordance to Section 27.2 of the Land Use and Urban Development Ordinance of the City of Pearland, Texas.

Your last question has to do with the administrative and legal relief that an applicant has in the event that the outcome is contrary to the applicant's plans. It is according to whether it is the Planning and Zoning Commission or the Board of Adjustments which rejects the aggrieved party. If the party is rejected by the Planning and Zoning Commission, then the next appeal is to the City Council. [See Sec. 28.6 of the Land Use and Urban Development Ordinance]. If the Zoning Board of Adjustment rejects the person, then the appeal is to a court of record. [See V.T.C.A. Local Government Code §211.011].

Sincerely yours,

  
Robert E. Talton

C37:30

AGENDA - REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF PEARLAND, TEXAS, TO BE HELD ON JANUARY 10, 1989, AT 7:30 P. M. IN THE COUNCIL CHAMBERS, CITY HALL, 3519 LIBERTY DRIVE, PEARLAND, TEXAS

- I. CALL TO ORDER
- II. APPROVAL OF MINUTES: Meeting of December 20, 1988
- III. UNFINISHED BUSINESS:
  - A. MOTION TO REMOVE FROM TABLE APPROVAL OF PRELIMINARY PLAT OF LOSSEN SUBDIVISION.
  - B. CONSIDERATION AND POSSIBLE ACTION - APPROVAL OF PRELIMINARY PLAT OF LOSSEN SUBDIVISION, 0.9984 ACRE TRACT OUT OF THE W.D.C. HALL LEAGUE, ABSTRACT #70, AS RECORDED IN VOLUME 748, PAGE 668 OF THE DEED RECORDS OF BRAZORIA COUNTY (2005 E. BROADWAY).
  - C. CONSIDERATION AND POSSIBLE ACTION - APPROVAL OF FINAL PLAT OF LOSSEN SUBDIVISION, 0.9984 ACRE TRACT OUT OF THE W.D.C. HALL LEAGUE, ABSTRACT #70, AS RECORDED IN VOLUME 748, PAGE 668 OF THE DEED RECORDS OF BRAZORIA COUNTY (2005 E. BROADWAY).
- IV. NEW BUSINESS: None
- V. ADJOURN

POSTED: 6 DAY OF January, A. D., 1989, 5:00 P.M.  
REMOVED: 11 DAY OF January, A. D., 1989.