

ORDINANCE 00-20

AN ORDINANCE AMENDING ORDINANCE 187, AS AMENDED, THE ZONING ORDINANCE OF THE TOWN OF PONDER, TEXAS", BY REVISING AND ADOPTING SECTION 3-ZONING DISTRICTS ESTABLISHED, SECTION 4-ZONING DISTRICT MAP, SECTION 5-ZONING DISTRICT BOUNDARIES, SECTION 6-ZONING OF NEWLY-ANNEXED TERRITORY, SECTION 7-COMPLIANCE WITH ZONING REGULATIONS, SECTION 8-DEFINITIONS, SECTION 9-DISTRICT REGULATIONS, SECTION 10-HEIGHT, AREA AND SETBACK REGULATIONS, SECTION 11-PD-PLANNED DEVELOPMENT REGULATIONS, SECTION 12-HISTORIC DISTRICT SUFFIX, SECTION 13-SUPPLEMENTAL DISTRICT REGULATIONS, SECTION 14-SPECIFIC USE PERMITS, SECTION 15-OFF-STREET PARKING AND LOADING REQUIREMENTS, SECTION 16-ACCESSORY BUILDING REGULATIONS, SECTION 17-SIGN REGULATIONS, SECTION 18-LANDSCAPING, SECTION 19-NON-CONFORMING USES AND STRUCTURES, SECTION 20-PLANNING AND ZONING COMMISSION, SECTION 21-ZONING BOARD OF ADJUSTMENT, SECTION 22-BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY, SECTION 23-CHANGES AND AMENDMENTS TO ALL ZONING DISTRICTS AND ADMINISTRATIVE PROCEDURES, SECTION 24-SCHEDULE OF FEES, CHARGES AND EXPENSES, SECTION 25-DEMOLITION PERMITS; PROVIDING A PENALTY OF VIOLATIONS THEREOF; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Ponder, Texas is a Type A General Law Municipality located in Denton County, Texas, created in accordance with the provisions of the Texas Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the City Council of the Town of Ponder has previously adopted Ordinance 187, the Zoning Ordinance of the Town of Ponder, as amended; and

WHEREAS, the City Council now deems it necessary to amend the zoning regulations as provided herein; and

WHEREAS, a public hearing was duly held by the Planning and Zoning Commission of the Town of Ponder on the 6th day of September, 2000, and by the City Council of the Town of Ponder on the 6th day of September, 2000, with respect to the amendment of the Zoning Ordinance as required by law.

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

SECTION 1

That Ordinance Number 187, the Town of Ponder Zoning Ordinance, is hereby repealed in its entirety and replaced with the following:

SECTION 2 TITLE

This ordinance shall be known and may be cited as “The Town of Ponder Zoning Ordinance”.

SECTION 3 PURPOSE

Zoning regulations and districts are herein established in accordance with a Comprehensive Plan for the purpose of promoting the health, safety, morals and general welfare of the citizens of the Town. They are designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers, to ensure adequate light and air, to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. They have been established with reasonable consideration for the character of each district and its peculiar suitability for the particular uses specified; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Town.

SECTION 22
ZONING BOARD OF ADJUSTMENT

22.1 Creation, Membership and procedures:

- A. Zoning Board of Adjustment Established: A Zoning Board of Adjustment is hereby reestablished in accordance with the provisions of Texas Local Government Code, Section 211.008, as amended, regarding the zoning of cities and with the powers and duties as provided in said Code.
- B. Membership The Zoning Board of the Adjustment shall consist of five (5) members, each to be appointed by the Town Council for a term of two (2) years and removable for cause by the appointment authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member, whose place becomes vacant for any cause, in the same manner as the original appointment was made. Three (3) members shall serve until January 1 of odd-numbered years, as heretofore appointed, and two (2) members, as heretofore appointed, shall serve until January 1 of even-number years, and thereafter each member reappointed for each new appointee shall serve for a full term of two (2) years unless removed as hereinabove provided. The Town Council may also appoint four (4) alternate members of the board who shall serve in the absence of one or more of the regular members when requested to do so by the chairman of the Board, so that all cases to be heard by the Board will always be heard by a minimum number of four (4) members. These alternate members, when appointed, shall serve for the same period as the regular members, which is for a term of two (2) year's, and any vacancy shall be filled in the same manner and they shall be subject to removal by the same means and under the same procedures as the regular members.
- C. Hearings: The hearings of the Board shall be public. 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 permit is pending, and shall also hear any other parties in interest. All hearings are to be heard by at least four (4) members of the Board.
- D. Meetings: Regular meetings of the Board shall be held at such times as the Board may determine. Special meetings of the Board shall be held at the call of the chairman or at the written request of two regular members of the Board, said request to be submitted to the Chairman.
- E. Rules and Regulations: 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 vote, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Town Secretary and shall be public record. The Board shall act by resolution in which four (4) members must concur. 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. All of its resolutions and orders shall be in accordance therewith.

22.2 Powers and Duties of Board.

- A. Appeals Based on Error: The Board shall have the power to hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by an administrative official of the town of the enforcement of this ordinance.
- B. 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:
1. Permit the erection and use of a building or the use of premises for railroads if such uses are in general conformity with the Master Plan and present no conflict or nuisance to the adjacent properties.
 2. Permit a public utility or public service or structure in any zoned district, or a public utility or public service building of a ground area and of a height at variance with those provided for in the zoned district in which such public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety or general welfare.
 3. Grant a permit for the extension of a use, height or area regulation into an adjoining zoned district where the boundary line of the zoned district divides a lot in a single ownership on the effective date of this ordinance.
 4. Permit the reconstruction of a non-conforming building which has been damaged by explosion, fire, act of God or the public enemy, to the extent of more than fifty percent (50%) of its fair market value, where the Board finds some compelling necessity requiring a continuance of the nonconforming use and primary purpose of continuing the nonconforming use is not to continue a monopoly.
- C. Limitation on Reapplications: When the Board has denied a proposal, no new applications of similar nature shall be accepted by the Board or scheduled for twelve (12) months after the date of Board denial. Applications which have been withdrawn at or before the Board meeting may be resubmitted at any time for hearing before the Board.
- D. Vote of Four Members Required- The concurring vote of four members of the Board is necessary to:
1. reverse an order, requirement, decision or determination of an administrative official;

2. decide in favor of an applicant on a matter on which the Board is required to pass; or
3. authorize a variance from the terms of the zoning ordinance.

22.3 Appeals

- A. Procedure: Appeals may be taken to and before the Zoning Board of Adjustment by any person aggrieved, or by an officer, department, board or bureau in the town. Such appeal shall be made by filing in the office of the Town Secretary a notice of appeal and specifying the grounds thereof. The office or department from which the appeal is taken shall forthwith transmit to the Board all of the papers constituting the record from which the action appealed was taken.
- B. Stay of Proceedings: An appeal shall stay all proceedings in furtherance of the action appealed from unless the Building Inspector shall certify to the Zoning Board of Adjustment that, by reason of facts in the certificate, a stay would 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 or by a court of equity, after notice to the office from whom the appeal was taken.
- C. Notice of Hearing on Appeal: 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 petitioner and to the owners of property lying within two hundred (200) feet 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 town. Depositing of such written notice in the mail shall be deemed sufficient compliance therewith.
- D. Decision by Board: The Board shall decide the appeal within a reasonable time. Upon the hearing, any party may appear in person or by agent or attorney. 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 all powers of the officer or department from whom the appeal is taken.

22.4 Variances

The Board shall have the power to authorize upon appeal in specific cases such variances from the terms of this ordinance as 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, including the following:

- A. Permit a variance in the yard requirements of any zoned district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of the provisions due to an irregular shape of the lot or topographical or other

conditions, provided such variance will not seriously affect any adjoining property or the general welfare.

- B. Authorize, upon appeal, whenever a property owner can show that a strict application of the terms of this ordinance relating to the construction or alteration of buildings or structures will impose upon him unusual and practical difficulties or particular hardship, such variances from the strict application of the terms of this ordinance as are in harmony with its own general purpose and intent, but only when the Board is satisfied that granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the Comprehensive Plan as established by this ordinance and at the same time, the surrounding property will be properly protected.
- C. The Board shall have the power to hear and decide appeals where it is alleged there is error of law in any order, requirements, decision or determination made by the Building Inspector in the enforcement of this ordinance. Except as otherwise provided herein, the Board shall have, in addition, the following specific powers:
1. To permit the erection and use of a building or the use of premises for railroads if such uses are in general conformance with the Master Plan and present no conflict or nuisance to adjacent properties.
 2. To permit a public utility or public service or structure in any district, or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety or general welfare.
 3. To grant a permit for the extension of a use, height or area regulation into an adjoining district, where the boundary line of the district divides a lot in a single ownership on the effective date of this ordinance.
 4. To permit the reconstruction of a non-conforming building which has been damaged by explosion, fire, act of God or the public enemy, to the extent of more than ninety percent (90%) of its fair market value, where the Board finds some compelling necessity requiring a continuance of the nonconforming use.
 5. To waive or reduce the parking and loading requirements in any of the districts, when (1) the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities; or (2) when such regulations would impose an unreasonable hardship upon the use of the lot. The Board shall not waive or reduce such requirements merely for the purpose of granting an advantage or a convenience.

- D. A written application for variance shall be submitted together with the required fee, accompanied by an accurate legal description, maps, site plans, drawings and any necessary data, demonstrating:
1. that special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district;
 2. that literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
 3. that the special conditions and circumstances do not result from the actions of the applicant;
 4. that granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures or buildings in the same district; and no non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

22.5 Changes

The Board shall have no authority to change any provisions of this ordinance and its jurisdiction is limited to hardship and borderline cases which may arise from time to time. The Board may not change the district designation of any land either to a more or less restrictive zone.

It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the administrative official, that such questions shall be presented to the Board only on appeal from the decision of the Building Official and that recourse from the decisions of the Zoning Board of Adjustment shall be to the courts as provided by the laws of the State of Texas.

22.6 Council acting in the capacity of a Zoning Board of Adjustment

In the event five (5) knowledgeable citizens of the Town of Ponder cannot be found to serve on the Zoning Board of Adjustment, the Council shall act in the capacity of a Zoning Board of Adjustment. Revised 07-12-04.

**SECTION 32
ENGROSSMENT AND ENROLLMENT**

The City Secretary of the Town of Ponder is hereby directed to engross and enroll this Ordinance by copying the caption, penalty clause, and effective date clause of this Ordinance in the minutes of the Town Council and by filing the Ordinance in the Ordinance records of the City.

**SECTION 33
PUBLICATION CLAUSE**

That the City Secretary is hereby directed to publish the caption, penalty clause, publication clause and effective date clause of this Ordinance for two (2) days in the official newspaper of the Town of Ponder, Texas, as authorized by Section 52.011 of the Local Government Code.

**SECTION 34
EFFECTIVE DATE**

This ordinance shall be effective upon the posting and/or publication of its caption as required by law and the Town Secretary is hereby directed to implement such posting and/or publication.

AND IT IS SO ORDAINED:

PASSED AND APPROVED BY A VOTE OF 4 TO 0 , THIS 15th DAY OF March , 2001.

APPROVED:

MAYOR, TOWN OF PONDER, TEXAS

ATTEST:

TOWN SECRETARY

APPROVED AS TO LEGAL FORM:

**ATTORNEY FOR THE TOWN OF PONDER, TEXAS
TOWN OF PONDER, TEXAS**