

DATE: July 20, 2010
TO: Honorable Mayor & City Council
FROM: James Duggan, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of July 19, 2010

**AGENDA ITEM NO. 6 - PUBLIC HEARING
ZONING CASE 2010-06
APPLICANT: CITY OF PLANO**

Request to amend Section 1.600 (Definitions) of Article 1 (General Regulations), Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses), Section 3.400 (Lot Regulations), Subsection 3.801 of Section 3.800 (Height Regulations), and Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations), and related sections of the Zoning Ordinance pertaining to church and rectory uses and other religious uses and facilities.

APPROVED: 8-0 **DENIED:** _____ **TABLED:** _____

STIPULATIONS:

Recommended for approval as follows: (Additions are indicated in underlined text; deletions are indicated in strikethrough text.)

1. Amend Section 1.600 (Definitions) of Article 1 (General Regulations) to read as follows:

1.600 Definitions

~~Church and Rectory~~ Religious Facility – A building ~~for regular assembly for religious worship which is used primarily for such purpose~~ used primarily for religious assembly and worship and those accessory activities which are customarily associated therewith, and the place of residence for ~~ministers, priests, nuns, or rabbis~~ religious personnel on the premises.

2. Amend Section 3.400 (Lot Regulations) of Article 3 (Supplementary Regulations) to read as follows:

3.400 Lot Regulations

3.401 Independent living facilities, assisted living facilities, long-term care facilities, continuing care facilities, community centers, hospitals, ~~churches~~, colleges, universities, trade and commercial schools, and public, private, and parochial schools located in any residential district shall have a minimum site area of two acres ~~and shall have access to a street with a minimum 36 feet of pavement width.~~

3.402 Religious facilities, independent living facilities, assisted living facilities, long-term care facilities, continuing care facilities, community centers, hospitals, colleges, universities, trade and commercial schools, and public, private, and parochial schools located in any residential district shall have access to a street with a minimum 36 feet of pavement width.

~~3.402~~ 3.403 Through lots are hereby prohibited.

~~3.403~~ 3.404 Where residential lots have frontage on streets at opposite ends of the lot, a screening wall or other permanent barrier shall be constructed on the property line so that access is denied to one of the adjacent streets.

~~3.404~~ 3.405 In the case where excess right-of-way is dedicated by plat for the purpose of construction an overpass and where such right-of-way exceeds the normal right-of-way required by the Thoroughfare Plan for the adjacent street, development which occurs on the property from which the excess right-of-way was dedicated may utilize the dedicated excess right-of-way in computing floor area ratio and lot coverage.

3. Amend Subsection 3.801 of Section 3.800 (Height Regulations) of Article 3 (Supplementary Regulations) to read as follows:

3.800 Height Regulations

3.801 In all zoning districts and planned developments, water standpipes and tanks, ~~church steeples~~ religious facility architectural features, bell towers, domes and spires on school buildings and institutional buildings, the roofs of auditoriums and sanctuaries of one story construction, and public safety structures may be erected to exceed the district's maximum height. Side and rear yards shall be increased by two additional feet, and the front yard shall be increased by one additional foot, for each foot that such structures exceed the district's maximum height where adjacent to residential districts. The increase in the required yard shall apply only to the portion of the structure that causes the increased yard requirements. See Sections 3.600 and 3.700 for additional side and rear yard setbacks in nonresidential zoning districts.

4. Amend Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations) to read as follows:

3.1107 Schedule of Off-Street Parking

Amend parking requirements for religious facility as follows:

~~Church~~ Religious Facility – One space ~~for~~ per each every five seats persons accommodated in the main ~~sanctuary~~ assembly area(s). (No maximum number of parking spaces.)

5. Any reference to ‘church’ and/or ‘church and rectory’ in the Zoning Ordinance shall be changed to ‘religious facility.’

FOR CITY COUNCIL MEETING OF: August 9, 2010 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

EH/dc

CITY OF PLANO
PLANNING & ZONING COMMISSION

July 19, 2010

Agenda Item No. 6

Public Hearing: Zoning Case 2010-06

Applicant: City of Plano

DESCRIPTION:

Request to amend Section 1.600 (Definitions) of Article 1 (General Regulations), Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses), Section 3.400 (Lot Regulations), Subsection 3.801 of Section 3.800 (Height Regulations), and Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations), and related sections of the Zoning Ordinance pertaining to church and rectory uses and other religious uses and facilities.

REMARKS:

Recently, staff has had several discussions with the Planning & Zoning Commission regarding the city's definition and related ordinance provisions associated with church and rectory uses. The Zoning Ordinance defines church and rectory as "a building for regular assembly for religious worship which is used primarily for such purpose and those accessory activities which are customarily associated therewith, and the place of residence for ministers, priests, nuns, or rabbis on the premises." After examining the Zoning Ordinance and receiving direction from the Planning & Zoning Commission, staff believes it is necessary to update the ordinance to ensure that it is more aligned with state and federal laws and to address today's wide range of religious land uses.

LEGAL CONSIDERATIONS:

Religious Land Use and Institutionalized Persons Act (RLUIPA)

The federal Religious Land Use and Institutionalized Persons Act (RLUIPA) was enacted in 2000 in order to prevent zoning and development discrimination against religious institutions. This legislation has caused municipalities to rethink their ordinances for religious institutions to ensure that the ordinances are consistent with RLUIPA. There are two basic provisions to RLUIPA:

1. The “substantial burden” provision prohibits a municipality from imposing or implementing a land use regulation in a manner that imposes a “substantial burden” on “religious exercise” unless such a burden is justified by a “compelling governmental interest” and unless it is the least restrictive means of furthering that interest. Religious exercise is defined to include “the use, building or conversion of real property for the purpose of religious exercise.” For a burden on religion to be “substantial,” the government regulation must be significantly oppressive and place more than an inconvenience on religious exercise. For example, requiring a permit to erect, expand, or operate a place of worship is probably not a substantial burden; however, failing to consider an application for a permit from a religious group might be.
2. The “equal terms” provision requires that a municipality may not treat “a religious assembly or institution on less than equal terms than another religious assembly or a nonreligious assembly or institution.” In other words, cities should not create ordinances which in practice treat religious institutions, regardless of denomination, differently than nonreligious uses, or that treat religious uses differently than comparable assembly or institutional uses.

Texas Religious Freedom Restoration Act (RFRA)

Enacted in 1999, the Texas RFRA prohibits a government from substantially burdening the exercise of religion unless that government can show that there is a compelling governmental interest and that regulation is the least restrictive means of furthering that interest.

Legal Assessment of Plano’s Zoning and Development Regulations

In July 2008, Duncan Associates completed a legal assessment of the city’s Zoning Ordinance. In their examination of religious institutions, Duncan found that “there is nothing in [Plano’s] zoning ordinance that appears to even come close to a substantive violation of the letter or spirit of RLUIPA as it has been construed in the courts.” However, Duncan made two recommendations that the city may want to consider. The first is to change the term “church.” Duncan suggested that a more common, inclusive term/phrase such as “religious facility” might be more appropriate. The second is to classify churches according to their size. The purpose of this second recommendation would be to allow only smaller churches within single-family residence zoning districts. Plano has not distinguished churches based upon size and this has allowed many worship facilities to locate within the city. While some cities regulate churches based upon size, the courts appear to be ruling more favorably towards churches since the time the Duncan assessment was completed. Should Plano continue to not regulate churches based upon size, Duncan recommends that the city may wish to consider addressing the regulation of various accessory uses that are related to religious institutions.

ISSUES:

Term

The term “Church and Rectory” is outdated and in many cases inaccurate. In order to include all religious activities regardless of religious preference in a single term, staff suggests changing the term to “Religious Facility,” which is more common, inclusive wording.

Definition of “Church and Rectory” and Accessory Uses

The city’s current definition is “a building for regular assembly for religious worship which is used primarily for such purpose and those accessory activities which are customarily associated therewith, and the place of residence for ministers, priests, nuns, or rabbis on the premises.” This definition, although functional, is outdated as well. The definition should address all religious uses and not single out a particular religion. Therefore, the Commission developed the following definition:

“A building used primarily for religious assembly and worship and those accessory activities which are customarily associated therewith, and the place of residence for religious personnel on the premises.”

The Commission considered providing examples of specific accessory uses within the definition itself, but ultimately decided against that practice because of the wide range of accessory uses that are typically associated with various religious uses. Additionally, the Commission has recommended that the city remain favorable in its regulation of accessory uses and continue to allow the accessory uses in conjunction with the church use by right in all zoning districts since churches are allowed by right in all districts.

Permitted Zoning Districts

At this time, church and rectory uses are permitted by right in all of Plano’s zoning districts. Given past discussions with the Commission, the direction provided to staff has been that this not be changed since adequate provisions are already in place to protect residential neighborhoods, such as maximum lot coverage, parking requirements, access to a street with a minimum pavement width, etc.

Minimum Lot Size

Section 3.401 of the Zoning Ordinance requires churches to have a minimum of two acres when developing within a residential zoning district. The reason for this is to allow for future building and parking needs due to increased attendance and typical church expansion. This provision is not solely applied to churches but is also applied to independent living facilities, assisted living facilities, long-term care facilities, continuing care facilities, community centers, hospitals, colleges, universities, trade and commercial schools, and public, private, and parochial schools when located in residential districts.

There have been several variance requests to this minimum site acreage provision. Although the requirement is also applied to uses other than churches, and it is not a clear violation of state or federal law, staff believes that the city may continue to be challenged on this provision in the future. Staff recommends removing the minimum lot size requirement for churches since adequate provisions are already in place to protect residential neighborhoods, such as maximum lot coverage, parking requirements, access to a street with a minimum pavement width, etc.

Access to a Street with a Minimum Pavement Width

Section 3.401 of the Zoning Ordinance also requires churches to have access to a street with a minimum pavement width of 36 feet when the church is located within a residential zoning district. This provision is also applied to independent living facilities, assisted living facilities, long-term care facilities, continuing care facilities, community centers, hospitals, colleges, universities, trade and commercial schools, and public, private, and parochial schools. Religious facilities may create heavy traffic flows concentrated within a few hours during their normal worship times. The purpose of this requirement is to ensure that there is access to a street with adequate pavement width to handle excessive traffic flows during these times. The Commission recommended that this provision remain.

Housing for the Homeless

Recently the city has received an inquiry regarding the allowance for churches to sponsor or operate homeless shelters. Many churches support and encourage the feeding and housing of homeless, as these activities are congruent with their religious beliefs. Currently, these uses are defined as either household care facility or household care institution depending on the number of individuals housed. In previous discussions with the Commission, staff thought it might be appropriate to separate the homeless shelter use from the other household care uses and allow them as accessory uses for religious facilities only.

If homeless shelters associated with churches are a use that the city believes it needs to address individually, staff recommends that the shelters be allowed as an accessory use to religious uses only and not allowed for fraternal, social, and institutional uses since these types of organizations can operate shelters in accordance with the city's current household care facility and household care institution uses. In that instance, staff suggests the following definition for a "temporary accessory housing shelter:"

"A not-for-profit temporary housing shelter operated as an accessory use to a religious facility only, providing free lodging for indigent individuals or families with no regular home or residential address. A temporary accessory housing shelter shall house a maximum of 20 individuals at one time, and shall operate for a maximum of 30 days per calendar year. This definition shall not include household care facility and household care institutions."

In previous discussions, the Commission suggested the possibility of creating limits on the number of individuals allowed; restricting the time an individual is allowed to remain in a shelter; imposing a lot size regulation; and creating a provision for bathroom facilities. Staff believes that creating such limits on a temporary accessory housing shelter would prove difficult to monitor and enforce.

After further examination, staff believes that housing for the homeless should remain classified as either household care facility or household care institution because these classifications already exist within the Zoning Ordinance and have limits placed upon them based upon the number of persons housed. Furthermore, if an applicant believes that they cannot abide by the limits on the number of persons set forth in the household care definitions, particularly household care facilities since they are limited to eight persons plus two care-givers, the applicant currently has the opportunity to apply for a variance with the Board of Adjustment (BOA). Staff believes that the existing household care definitions and related variance process are sufficient to meet the needs of churches seeking to provide housing for the homeless.

Parking

Currently, the Zoning Ordinance requires churches to provide parking at “one space per every five seats in the main sanctuary.” The Commission directed staff that the current parking ratio calculation at one per five is appropriate, but recommended amending the method of calculation from “seats” to more all-encompassing language. Staff is recommending that parking for religious facilities be calculated as follows:

“One space per every five persons accommodated in the main assembly area(s).”

This verbiage is similar to the existing calculation for assembly uses. During the review process, the applicant will note on the site plan the number of persons that can be accommodated whether it is fixed seating or some other seating method, and then staff can verify the required parking is being provided.

Special Exception

In previous discussions, the Commission and staff discussed the possibility of creating a special exception process in order to allow for development requests for religious facilities that do not comply with existing regulations. A special exception process, which is authorized by state law, would allow for requests for alternate development proposals that do not comply with current development regulations to be considered, instead of the current variance process already provided for in the Zoning Ordinance. Presently, the BOA has the authority to hear and grant variances if certain criteria are met. Given the limited number of variance requests reviewed by the BOA for churches, staff believes that the established variance process is sufficient to handle any variance issues that may arise pertaining to churches. Additionally, this same process is available for similar assembly-type uses.

RECOMMENDATION:

Recommended for approval as follows: (Additions are indicated in underlined text; deletions are indicated in strikethrough text.)

1. Amend Section 1.600 (Definitions) of Article 1 (General Regulations) to read as follows:

1.600 Definitions

~~Church and Rectory~~ Religious Facility – A building ~~for regular assembly for religious worship which is used primarily for such purpose~~ used primarily for religious assembly and worship and those accessory activities which are customarily associated therewith, and the place of residence for ~~ministers, priests, nuns, or rabbis~~ religious personnel on the premises.

2. Amend Section 3.400 (Lot Regulations) of Article 3 (Supplementary Regulations) to read as follows:

3.400 Lot Regulations

3.401 Independent living facilities, assisted living facilities, long-term care facilities, continuing care facilities, community centers, hospitals, ~~churches,~~ colleges, universities, trade and commercial schools, and public, private, and parochial schools located in any residential district shall have a minimum site area of two acres and ~~shall have access to a street with a minimum 36 feet of pavement width.~~

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~~3.402~~ 3.403 Through lots are hereby prohibited.

~~3.403~~ 3.404 Where residential lots have frontage on streets at opposite ends of the lot, a screening wall or other permanent barrier shall be constructed on the property line so that access is denied to one of the adjacent streets.

~~3.404~~ 3.405 In the case where excess right-of-way is dedicated by plat for the purpose of construction an overpass and where such right-of-way exceeds the normal right-of-way required by the Thoroughfare Plan for the adjacent street, development which occurs on the property from which the excess right-of-way was dedicated may utilize the dedicated excess right-of-way in computing floor area ratio and lot coverage.

3. Amend Subsection 3.801 of Section 3.800 (Height Regulations) of Article 3 (Supplementary Regulations) to read as follows:

3.800 Height Regulations

3.801 In all zoning districts and planned developments, water standpipes and tanks, ~~church steeples~~ religious facility architectural features, bell towers, domes and spires on school buildings and institutional buildings, the roofs of auditoriums and sanctuaries of one story construction, and public safety structures may be erected to exceed the district's maximum height. Side and rear yards shall be increased by two additional feet, and the front yard shall be increased by one additional foot, for each foot that such structures exceed the district's maximum height where adjacent to residential districts. The increase in the required yard shall apply only to the portion of the structure that causes the increased yard requirements. See Sections 3.600 and 3.700 for additional side and rear yard setbacks in nonresidential zoning districts.

4. Amend Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations) to read as follows:

3.1107 Schedule of Off-Street Parking

Amend parking requirements for religious facility as follows:

~~Church~~ Religious Facility – One space ~~for~~ per each every five ~~seats~~ persons accommodated in the main ~~sanctuary~~ assembly area(s). (No maximum number of parking spaces.)

5. Any reference to 'church' and/or 'church and rectory' in the Zoning Ordinance shall be changed to 'religious facility.'

Zoning Case 2010-06

An Ordinance of the City of Plano, Texas, amending Section 1.600 Definitions of Article 1 (General Regulations), Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses), Section 3.400 (Lot Regulations), Subsection 3.801 of Section 3.800 (Height Regulations), and Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations), and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, pertaining to church and rectory uses and other religious uses and facilities; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 9th day of August, 2010, for the purpose of considering a change in the Zoning Ordinance; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 9th day of August, 2010; and

WHEREAS, the City Council is of the opinion and finds that such change would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

IT IS, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. Amend Section 1.600 (Definitions) of Article 1 (General Regulations) of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended, such section to read as follows:

1.600 Definitions

Religious Facility – A building used primarily for religious assembly and worship and those accessory activities which are customarily associated therewith, and the place of residence for religious personnel on the premises.

Section II. Amend Section 3.400 (Lot Regulations) of Article 3 (Supplementary Regulations) of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended, such section to read as follows:

3.400 Lot Regulations

3.401 Independent living facilities, assisted living facilities, long-term care facilities, continuing care facilities, community centers, hospitals, colleges, universities, trade and commercial schools, and public, private, and parochial schools located in any residential district shall have a minimum site area of two acres.

3.402 Religious facilities, independent living facilities, assisted living facilities, long-term care facilities, continuing care facilities, community centers, hospitals, colleges, universities, trade and commercial schools, and public, private, and parochial schools located in any residential district shall have access to a street with a minimum 36 feet of pavement width.

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3.404 Where residential lots have frontage on streets at opposite ends of the lot, a screening wall or other permanent barrier shall be constructed on the property line so that access is denied to one of the adjacent streets.

3.405 In the case where excess right-of-way is dedicated by plat for the purpose of construction an overpass and where such right-of-way exceeds the normal right-of-way required by the Thoroughfare Plan for the adjacent street, development which occurs on the property from which the excess right-of-way was dedicated may utilize the dedicated excess right-of-way in computing floor area ratio and lot coverage.

Section III. Amend Subsection 3.801 of Section 3.800 (Height Regulations) of Article 3 (Supplementary Regulations) of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended, such subsection to read as follows:

3.800 Height Regulations

3.801 In all zoning districts and planned developments, water standpipes and tanks, religious facility architectural features, bell towers, domes and spires on school buildings and institutional buildings, the roofs of auditoriums and sanctuaries of one story construction, and public safety structures may be erected to exceed the district's maximum height. Side and rear yards shall be increased by two additional feet, and the front yard shall be increased by one additional foot, for each foot that such structures exceed the district's maximum height where adjacent to residential districts. The increase in the required yard shall apply only to the portion of the structure that causes the increased yard requirements. See Sections 3.600 and 3.700 for additional side and rear yard setbacks in nonresidential zoning districts.

Section IV. Amend Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations) of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended, such subsection to read as follows:

3.1107 Schedule of Off-Street Parking

Amend parking requirements for religious facility as follows:

Religious Facility – One space per every five persons accommodated in the main assembly area(s). (No maximum number of parking spaces.)

Section V. That the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended such that any reference to “church” and/or “church and rectory” in the Comprehensive Zoning Ordinance shall be changed to “religious facility.”

Section VI. All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section VII. The repeal of any ordinance or part of ordinances affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

Section VIII. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section IX. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

Section X. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 9TH DAY OF AUGUST, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY