

ORDINANCE NO. ZRR-2856

AN ORDINANCE RELATING TO THE UNIFIED DEVELOPMENT ORDINANCE FOR THE CITY OF OVERLAND PARK, KANSAS; AMENDING AND REPEALING EXISTING SECTIONS 18.140.080 AND 18.140.350.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS:

SECTION 1. Overland Park Municipal Code Section 18.140.080 is hereby amended to read as follows:

**18.140.080 Notices to surrounding property owners**

Unless otherwise specifically provided in this Chapter, whenever notice to surrounding property owners is required for consideration of an application, such notice shall be given as follows. The applicant shall mail all notices at least 20 days prior to the hearing, thus notifying such property owner of the opportunity to be heard. Notice shall be mailed to all owners of record of land within 200 feet of the property subject to the application. If the subject property is located adjacent to unincorporated property outside the City's limits, then the area of notification shall be extended to include all unincorporated land within 1000 feet of the subject property. For the purposes of this Chapter, the phrase "adjacent to unincorporated property outside the City's limits" shall mean property which lies upon or touches (1) the City boundary line; or (2) a street or public way, railway or watercourse which lies upon the City boundary line. Such mailed notice shall be given by certified mail, ~~return receipt requested~~, and shall be in letter form stating the time and place of the hearing, a general description of the proposal, the legal description and general street location of the property subject to the proposed change, and a statement explaining that the public may be heard at the public hearing. In cases of applications for which protest petitions may be submitted, the notice shall also contain a statement explaining that property owners required to be notified by this Section shall have the opportunity to submit a protest petition, in conformance with this Ordinance, to be filed with the office of the City Clerk within 14 days after the conclusion of the public hearing. Newspaper clippings of the publication notices shall not be used for the mailed notice. Mailed notices shall be addressed to the owners of the property and not to mere occupants thereof.

When the notice has been properly addressed and deposited in the mail, failure to receive mailed notice shall not invalidate any action taken on the application. Mailed notice may be waived provided that a verified statement specifically indicating such waiver is signed by all property owners within the notification area and filed with the Secretary of the Planning Commission, or the Board of Zoning Appeals, as the case maybe, at least two business days prior to the hearing. Prior to the public hearing, the applicant shall file with the Secretary of the Planning Commission, or the Board of Zoning Appeals, as the case may be, the ~~returned receipts from the certified mailings~~ and an affidavit stating the names and addresses of the persons to whom notice was sent; failure to submit the affidavit prior to the hearing may result in a continuance of the hearing.

It is recommended that an applicant hold a neighborhood meeting with surrounding property owners, homes associations, and neighborhood groups prior to any required public hearing at the

Planning Commission. The purpose of this neighborhood meeting is to create a productive and cooperative relationship with the neighboring property owners. Development proposals may be deferred by the Planning Commission and Governing Body and required to have a public information meeting. The means of notification for the public information meeting may be by letter, telephone, email or other forms of notification. The notification of a public information meeting shall not be sent in the same envelope as the required notification that is sent via certified, ~~return receipt~~ mail.

SECTION 2. Overland Park Municipal Code Section 18.140.350 is hereby amended to read as follows:

**18.140.350 Consideration of variances**

- A. The Board of Zoning Appeals may grant a variance from the specific terms of this ordinance which would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship for the applicant, and provided that the spirit of this ordinance shall be observed, the public safety and welfare secured and substantial justice done of the applicant. Provided, however, that the Board shall not have jurisdiction to grant a variance for property zoned under a planned zoning district or downtown zoning district classification.
  
- B. An application for a variance may only be granted upon a finding by the Board that all of the following conditions have been met:
  - 1. That the variance requested arises from a condition which is unique to the property in question, is not ordinarily found in the same zoning district, and is not created by an action or actions of the landowner or the applicant.
  - 2. That the granting of the variance will not adversely affect the rights of adjacent landowners or residents.
  - 3. That the strict application of the provisions of this ordinance would constitute unnecessary hardship upon the landowner represented in the application.
  - 4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
  - 5. That granting the variance will not be opposed to the general spirit and intent of this ordinance.
  
- C. Variances shall only be considered after a public hearing has been held, following publication notice and notice to surrounding property owners as provided by Sections 18.140.070 and 18.140.080, respectively. A copy of the publication notice shall also be mailed to the applicant and to the Planning Commission. Proof of mailing ~~and return receipts~~ shall be filed under oath by the applicant with the Secretary of the Board of Zoning Appeals prior to the hearing.

SECTION 3. Existing Overland Park Municipal Code Sections 18.140.080.030 and 18.140.350 are hereby repealed.

SECTION 4. This ordinance shall take effect and be in force from and after its publication in an official City newspaper.

PASSED by the City Council this 19<sup>th</sup> day of April, 2010.

APPROVED by the Mayor this 19<sup>th</sup> day of April, 2010.

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Carl Gerlach, Mayor

ATTEST:

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Marian Cook  
City Clerk

APPROVED AS TO FORM:

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J. Bart Budetti  
Senior Assistant City Attorney