

ORDINANCE AMENDMENT REVIEW SHEET

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Amendment: C20-2012-015 Special Exceptions

Description: Amend Consider an amendment to an ordinance amending chapter 25-2-476 of the city code relating to granting of special exceptions.

Proposed Language:

The proposed code amendment would add the following language to chapter 25 of the Land Development Code:

- (A) ~~[Subject to the limitations under Subsection (B) of this section, the]~~ The Board of Adjustment ~~[may]~~ shall grant a special exception for an existing residential structure, or portion of an existing structure, that violates a setback required under Chapter 25-2 (*Zoning*) if the board finds that the special exception meets the requirements of this section.
- (B) The Board ~~[may]~~ shall grant a special exception under Subsection (A) of this section if:
- (1) the residential use for which the special exception is sought is allowed in an SF-3 or more restrictive zoning district;
 - (2) the building official performs an inspection and determines that the violation does not pose a hazard to life, health, or public safety; and
 - (3) the Board finds that:
 - (a) the violation has existed for:
 - (i) at least 25 years; or
 - (ii) at least 15 years, if the application for a special exception is submitted on or before June 6, 2013;
 - (b) the use is a permitted use or a nonconforming use;
 - (c) the structure does not share a lot with more than one other primary residence; and
 - (d) granting a special exception would not:
 - (i) alter the character of the area;
 - (ii) impair the use of adjacent property that is developed in compliance with city code; or

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- (iii) grant a special privilege that is inconsistent with other properties in the area or in the district in which the property is located.

Staff Recommendation: Staff recommends this amendment.

Background: Initiated by Council Resolution 20120524-082.

In 2001 and ordinance (20110526-098) was adopted that added "special exceptions" as something that could be heard by the Board of Adjustment. The intent of the ordinance was to allow residents with long-standing minor code violations, that posed no harm or adverse impacts to public health, safety, or welfare, to be granted a special exception so that code enforcement staff could address more significant violations of city code. The present code amendment (C20-2012-015) makes a slight adjustment to the language of section 25-2-476, which addresses special exceptions, by changing the language from "may" to "shall," such the Board of Adjustment is now compelled to grant special exceptions should all of the necessary criteria in 25-2-476(B) be met.

Board and Commission Actions

Planning Commission Subcommittee on Codes and Ordinances – Voted to send this item to full Planning Commission on September 18, 2012. Vote: 4-0.

Planning Commission – A public hearing at Planning Commission has been set for September 25, 2012.

Council Action

City Council – A public hearing at City Council has not yet been set for this item.

Ordinance Number: NA

City Staff: Greg Dutton

Phone: 974-3509

Email: greg.dutton@austintexas.gov

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ORDINANCE NO. _____

1 **AN ORDINANCE AMENDING SECTION 25-2-476 OF THE CITY CODE**
2 **RELATING TO GRANTING OF SPECIAL EXCEPTIONS.**

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4 **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

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6 **PART 1.** City Code Section 25-2-476 (*Special Exceptions*) is amended to read:

7 (A) ~~[Subject to the limitations under Subsection (B) of this section, the]~~ The Board of
8 Adjustment ~~[may]~~ shall grant a special exception for an existing residential
9 structure, or portion of an existing structure, that violates a setback required
10 under Chapter 25-2 (*Zoning*) if the board finds that the special exception meets the
11 requirements of this section.

12 (B) The Board ~~[may]~~ shall grant a special exception under Subsection (A) of this
13 section if:

- 14 (1) the residential use for which the special exception is sought is allowed in an
15 SF-3 or more restrictive zoning district;
- 16 (2) the building official performs an inspection and determines that the violation
17 does not pose a hazard to life, health, or public safety; and
- 18 (3) the Board finds that:
- 19 (a) the violation has existed for:
- 20 (i) at least 25 years; or
- 21 (ii) at least 15 years, if the application for a special exception is
22 submitted on or before June 6, 2013;
- 23 (b) the use is a permitted use or a nonconforming use;
- 24 (c) the structure does not share a lot with more than one other primary
25 residence; and
- 26 (d) granting a special exception would not:
- 27 (i) alter the character of the area;

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- (ii) impair the use of adjacent property that is developed in compliance with city code; or
- (iii) grant a special privilege that is inconsistent with other properties in the area or in the district in which the property is located.

PART 3. This ordinance takes effect on _____, 2012.

PASSED AND APPROVED

_____, 2012

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Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk

RESOLUTION NO. 20120524-082

WHEREAS, certain technical code and zoning violations on residential properties throughout the City of Austin have existed compatibly with the surrounding neighborhoods for many years with no known adverse impact to public health, safety, or welfare; and

WHEREAS, the Austin City Council adopted Ordinance 20110526-098 to address the situations by providing the Board of Adjustment the authority to grant a special exception in limited circumstances without the requirement of a hardship finding; and

WHEREAS, the intent of the City Council by adopting this ordinance was to provide a predictable legal mechanism to grant special exceptions for longstanding code violations that do not threaten public safety or negatively impact surrounding properties; and

WHEREAS, the City Council desires for the Board of Adjustment to grant special exceptions in the instances where the prescribed criteria is met;
NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Council initiates code amendments to the Land Development Code and directs the City Manager to process amendments to Subsections (A) and (B) of Section 25-2-476 (*Special Exceptions*), to read substantially as follows:

§ 25-2-476 SPECIAL EXCEPTIONS.

- (A) [~~Subject to the limitations under Subsection (B) of this section, the~~]
The Board of Adjustment [~~may~~] shall grant a special exception for an

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existing residential structure, or portion of an existing structure, that violates a setback required under Chapter 25-2 (*Zoning*) if the board finds that the special exception meets the requirements of this section.

(B) The Board [~~may~~] shall grant a special exception under Subsection (A) of this section if:

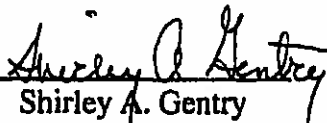
- (1) the residential use for which the special exception is sought is allowed in an SF-3 or more restrictive zoning district;
- (2) the building official performs an inspection and determines that the violation does not pose a hazard to life, health, or public safety; and
- (3) the Board finds that:
 - (a) the violation has existed for:
 - (i) at least 25 years; or
 - (ii) at least 15 years, if the application for a special exception is submitted on or before June 6, 2013;
 - (b) the use is a permitted use or a nonconforming use;
 - (c) the structure does not share a lot with more than one other primary residence; and
 - (d) granting a special exception would not:
 - (i) alter the character of the area;
 - (ii) impair the use of adjacent property that is developed in compliance with city code; or

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- (iii) grant a special privilege that is inconsistent with other properties in the area or in the district in which the property is located.

ADOPTED: May 24, 2012

ATTEST:


Shirley A. Gentry
City Clerk