

Chapter 1

General Provisions, Administration, and Procedures

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SECTION 1
ENACTING CLAUSE AND PURPOSE

1.1 **ENACTING CLAUSE:**

The Zoning Ordinance, Ordinance No. 84-16, of the Town of Prosper, Texas, as passed and approved on the 9th day of October, 1984, together with all amendments thereto, is hereby amended in its entirety to read as follows:

1.2 **PURPOSE:**

The zoning regulations and districts as herein established have been made in accordance with an adopted comprehensive plan for the purpose of promoting the health, safety, morals and general welfare of the Town of Prosper. They have been designed to lessen the congestion in the streets; to secure safety from fire, panic and other dangers; to insure 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 made with reasonable consideration, among other things, for the character of the 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 consistent with the Comprehensive Plan.

SECTION 2
ZONING DISTRICT MAP

- 2.1 The boundaries of zoning districts set out herein are delineated upon a zoning district map of the Town, adopted as part of this ordinance as fully as if the same were set forth herein in detail.
- 2.2 One original of the Zoning District Map shall be filed in the office of the Town Secretary and labeled as Ordinance number 05-20. This copy shall be the official Zoning District Map and shall bear the signature of the Mayor and attestation of the Town Secretary. This copy shall not be changed in any manner. In case of any question, this copy, together with amending ordinances, shall be controlling.
- 2.3 An additional copy of the original Zoning District Map shall be placed in the office of the Director of Planning. The copy shall be used for reference and shall be maintained up-to-date by posting thereon all subsequent amendments and shall be identified as the official zoning map. Reproductions for informational purposes may be made of the official Zoning District Map.
- 2.4 The district boundary lines shown on the Zoning District Map are usually along streets, alleys, property lines, or extensions thereof. Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:
- A. Boundaries indicated as approximately following the centerline of streets, highways or alleys shall be construed to follow such centerline.
 - B. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
 - C. Boundaries indicated as approximately following city limits shall be construed as following city limits.
 - D. Boundaries indicated as following railroad lines shall be construed to be midway between the right-of-way lines.
 - E. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the centerline of streams, lakes, or other bodies of water shall be construed to follow such centerline, and in the event of change in the centerline, shall be construed to move with such centerline.
 - F. Boundaries indicated as parallel to or extensions of features indicated in Subsections A through E above shall be so construed. Distances not specifically indicated on the original zoning maps shall be determined by the scale of the map.
 - G. Whenever any street, alley, or other public way is vacated by official action of the Town Council or whenever such area is franchised for building purposes, the zoning district line adjoining each side of such street, alley, or other public way shall be automatically extended to the centerline of such vacated street, alley, or way and all areas so involved shall then and henceforth be subject to all regulations of the extended districts.
 - H. The zoning classification applied to a tract of land adjacent to a street shall extend to the centerline of the street, unless as a condition of zoning approval, it is stated that the zoning classification shall not apply to the street.
 - I. Where physical features on the ground are at variance with information shown on the official zoning district map or when there arises a question as to how or whether a parcel of property is zoned and such question cannot be resolved by the application of Subsections A through H, the property shall be considered as classified Agricultural (A) District, in the same manner as provided for newly annexed territory and the issuance of a building permit and the determination of permanent zoning shall be in accordance with the provisions provided in Chapter 1, Section 4 for temporarily zoned areas.

SECTION 3
COMPLIANCE REQUIRED/INTERPRETATION/RULES OF CONSTRUCTION

3.1 COMPLIANCE REQUIRED:

- A. All land, buildings, structures or appurtenances thereon located within the Town that are hereafter occupied, used, erected, altered, graded, developed, removed, placed, demolished, or converted shall be occupied, used, erected, altered, graded, developed, removed, placed, demolished or converted in conformance with the zoning regulations prescribed herein provided or be subject to penalties as per Chapter 5, Section 1.2 of this ordinance.
- B. No land, buildings, structures or appurtenances thereon located shall hereafter be occupied, used, erected, altered, graded, developed, removed, placed, demolished or converted without first receiving all necessary approvals, releases, and/or permits, including, but not limited to site plan approval, plat approval, landscape plan approval, engineering plan approval, grading release, preconstruction conference, paving permit, plumbing permit, electric permit, or building permit.

3.2 INTERPRETATION:

- A. Where the regulations imposed herein are either more restrictive or less restrictive than comparable conditions imposed by any other provision of any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards are the requirements that shall govern.
- B. The provisions of these regulations are not intended to abrogate any easement, covenant or other private agreement, provided that where the requirements of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant or other private agreement, the requirements of these regulations shall govern.
- C. The provisions of these regulations are cumulative and additional limitations upon all other laws and ordinances heretofore passed or which may be passed hereafter governing any subject matter set forth in the provisions of these regulations.
- D. In the event that any property or Zoning District set forth on the Zoning District Map of the Town as provided in Chapter 1, Section 2 of this Ordinance is misnamed, designated incorrectly, the boundaries are incorrect or the property is omitted, in part or in whole, the Zoning District Map may be amended and/or supplemented according to the following rules. Upon notification of error, the Town Council shall give notice of a public meeting to consider correcting the error and at such public meeting, shall consider any comments or any persons desiring to address the Town Council concerning such error, and after due consideration of such comments, the Town Council may amend the Zoning District Map by an affirmative vote of the majority of the Town Council. Upon approval of the correction to the Zoning District Map, said District Map shall be amended to reflect the correction of the error, and the Zoning District Map, as amended and corrected, shall be the official Zoning District Map.

3.3 RULES OF CONSTRUCTION:

The language set forth in these regulations shall be interpreted in accordance with the following rules of construction:

- A. The singular number includes the plural and the plural the singular; and
- B. The present tense includes the past and future tenses and the future the present; and
- C. The word "shall" is mandatory while the word "may" is permissive; and
- D. The masculine gender includes the feminine and neuter; and
- E. The word "person" includes a firm, association, organization, partnership, trust, company, or corporation, as

well as an individual; and

- F. Any word appearing in parentheses directly after a word herein defined shall be construed in the same sense as that word.

SECTION 4
ZONING UPON ANNEXATION

- 4.1 All territory hereinafter annexed into the Town shall be classified as Agricultural (A) District, until permanent zoning is established by the Town Council. The procedure for establishing permanent zoning on annexed territory shall conform to the procedure set forth in Chapter 1, Section 8 of this Ordinance.
- 4.2 In the A District:
- A. No person shall erect, construct, proceed or continue with the erection or construction of any building or structure or cause the same to be done in any newly annexed territory to the Town without first applying for and obtaining a Building Permit or Certificate of Occupancy from the Building Official.
 - B. No permit for the construction of a building or use of land shall be issued by the Building Official other than a permit which will allow the construction of a building or use permitted in the A District, unless and until such territory has been classified in a zoning district other than the A District, by the Town Council in the manner prescribed by law, except as provided in Chapter 1, Section 4.2(C).
 - C. An application for a building permit for any proposed use other than those specified in paragraph B above must be made to the Building Official within three (3) months after annexation and referred to the Town Council for consideration. The applicant shall show that plans and other preparation for developing the property commenced prior to annexation into the Town. The action of the Town Council concerning any such permit shall take into consideration the appropriate land use for the area. The Town Council may, by majority vote, authorize the issuance of a Building Permit or Certificate of Occupancy or may disapprove the application pending permanent zoning.

SECTION 5
CREATION OF BUILDING SITE

- 5.1 No permit for the construction of a building or buildings upon any tract or plot shall be issued until a building site, building tract, or building lot has been created by compliance with one of the following conditions:
- A. The lot or tract is part of a plat of record, properly approved by the Town Council, and filed in the Plat Records of Collin or Denton Counties, Texas as may be applicable by location of property.
 - B. The plat, tract, or lot faces upon a dedicated street and was separately owned prior to annexation to the Town of Prosper, in which event a building permit for only one main building conforming to all the requirements of this Ordinance may be issued on each such original separately owned parcel without first complying with paragraph A preceding.
 - C. The plat or tract is all or part of a site plan officially approved by the Town Council, and compliance has been made with provisions and improvements approved on such site plan for all utility and drainage easements, dedication of streets, alleys and other public improvements required to meet the standards established for the platting of land.
- 5.2 No building hereafter erected, converted or structurally altered shall be used or occupied until a Certificate of Occupancy has been issued by the Building Official which signifies compliance with the appropriate Zoning District.

SECTION 6
CERTIFICATES OF OCCUPANCY AND COMPLIANCE

6.1 CERTIFICATES OF OCCUPANCY SHALL BE REQUIRED FOR ANY OF THE FOLLOWING:

- A. Occupancy and use of a building hereafter erected or structurally altered
- B. Change in use of an existing building to a use of a different classification
- C. Occupancy and use of vacant land, except agricultural use
- D. Change in the use of land to a use of a different classification
- E. Any change in the use of a nonconforming use

No such use, or change of use, shall take place until a Certificate of Occupancy shall have been issued by the Building Official.

6.2 PROCEDURE FOR NEW OR ALTERED BUILDINGS:

Written application for a Certificate of Occupancy for a new building or for an existing building which is to be altered shall be made at the same time as the application for the Building Permit for such building. Said Certificate shall be issued within ten (10) days after a written request for the same has been made to said Building Official or his agent after the erection or alteration of such building or part thereof has been completed in conformity with the provisions of this Ordinance.

6.3 PROCEDURE FOR VACANT LAND OR A CHANGE IN BUILDING USE:

Written application for a Certificate of Occupancy for the use of vacant land, a change in the use of land or a building, or a change in a nonconforming use to a conforming use, as herein provided shall be made to said Building Official for review according to Chapter 1, Section 6.2. If the proposed use is in conformity with the provisions of this Ordinance, the Certificate of Occupancy shall be issued within ten (10) days after the application for same has been made.

6.4 CONTENTS:

Every Certificate of Occupancy shall state that the building or the proposed use of a building or land complies with all provision of the building and fire laws and ordinances. A record of all Certificates of Occupancy shall be kept in file on the office of the Building Official or his agent and copies shall be furnished upon request to any person having proprietary or tenancy interest in the building or land affected.

6.5 TEMPORARY CERTIFICATE:

Pending the issuance of a regular certificate, a temporary Certificate of Occupancy may be issued by the Building Official, subject to any and all necessary conditions, for a period not exceeding six (6) months, during the completion of alterations or during partial occupancy of a building pending its completion. Such temporary certificates shall not be construed as in any way altering the respective rights, duties, or obligations of the owners or of the Town relating to the use or occupancy of the premises or any other matter covered by this Ordinance.

6.6 CERTIFICATES FOR NONCONFORMING USES:

A Certificate of Occupancy shall be required for all lawful nonconforming uses of land or buildings created by adoption of this Ordinance. Application for such Certificate of Occupancy for a nonconforming use shall be filed with the Building Official by the owner or lessee of the building or land occupied by such nonconforming use within one (1) year of the effective date of this Ordinance.

SECTION 7
NONCONFORMING USES AND STRUCTURES (Z09-2)

7.1 Definitions and Applicability

- A. NONCONFORMING STRUCTURE means a structure which does not conform to the regulations (other than the use regulations) of this Ordinance, but which was lawfully constructed under the regulations in force at the time of construction.
- B. NONCONFORMING USE means a use that does not conform to the use regulations of this Ordinance, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.
- C. If (1) a use is established or a structure is constructed outside the Town's limits in accordance with the regulations of another governmental entity, (2) the property on which that use or structure is located is then annexed into the Town limits, and (3) the use or structure does not conform to the Town's regulations, such use or structure shall be considered nonconforming.
- D. If a nonconforming use occupies a nonconforming structure, the more restrictive of the nonconforming use regulations and nonconforming structure regulations shall apply. This means that even if a nonconforming structure can be expanded under Chapter 1, Section 7.2(B) of this Ordinance, if the expansion would also expand the nonconforming use, such expansion shall be prohibited under Chapter 1, Section 7.3(A) of this Ordinance.
- E. An awning and/or canopy is not deemed an expansion of a nonconforming use or structure if it is attached to the exterior wall of a nonconforming structure or a structure housing a nonconforming use, and the awning and/or canopy functions only as an architectural feature.

7.2 Nonconforming Structures

- A. Except as provided in Chapter 1, Section 7.2(B) below, no person may enlarge, extend, repair, alter, or remodel a nonconforming structure if the enlargement, repair, alteration, or remodel will cause the structure to become more nonconforming as to the regulations (other than the use regulations) of this Ordinance.
- B. The following are permitted even if they cause the structure to become more nonconforming:
 - 1. Providing additional off-street loading or off-street parking spaces in relation to a nonconforming structure upon approval of a site plan by the Planning and Zoning Commission pursuant to Chapter 4, Section 1 of this Ordinance; or
 - 2. Altering the exterior facade of the structure upon approval of a facade plan by the Director of Development Services or his/her designee (the "Director"). The Director shall approve the facade plan if the proposed alterations to the exterior facade meet all requirements of this Ordinance. Otherwise, he/she shall deny the alteration of the exterior facade. If denied, the applicant may appeal the decision to the Planning & Zoning Commission and Town Council using the appeal procedure in Chapter 4, Section 1 of this Ordinance; or
 - 3. Increasing the floor area by a maximum of ten percent (10%) or 1,000 square feet, whichever is less, upon approval of a site plan by the Planning & Zoning Commission per Chapter 4, Section 1 of this Ordinance. A person may increase the floor area of a nonconforming structure pursuant to this subsection only once.

Any of the enlargements, repairs, alterations, or remodels described in Chapter 1, Section 7.2(B)(1)-(3) above shall comply with this Ordinance, as amended.

- C. If a nonconforming structure is destroyed by fire, the elements, the intentional acts of the owner, or any other cause, such structure shall not be rebuilt unless it conform to all provisions of this Ordinance, as amended. In the case of partial destruction of a nonconforming structure not exceeding sixty percent (60%) of its reasonable value, reconstruction will be permitted, but the size of the nonconforming structure cannot be expanded unless otherwise allowed under Chapter 1, Section 7.2(B) of this Ordinance.
- D. If a conforming use is located in a nonconforming structure, the use may be changed to another conforming use by securing a Certificate of Occupancy from the Building Official.

7.3 Nonconforming Uses

- A. A nonconforming use shall not be expanded or increased in any manner. An expansion of a nonconforming use includes, but is not limited to (1) providing additional off-street loading or off-street parking for the nonconforming use; and (2) constructing a patio cover, porch, and/or canopy to be used in connection with the nonconforming use. An expansion of a nonconforming use shall not include the addition of an awning and/or canopy as described in Chapter 1, Section 7.1(E) of this Ordinance. (amended by Ord. No. 09-117)
- B. The right to operate a nonconforming use ceases if:
 - 1. the nonconforming use is discontinued for six months or more and the Town Council does not allow the continued operation pursuant to Chapter 1, Section 7.3(E) below; or
 - 2. there is a violation of any of the provisions of this Ordinance or a violation of any ordinance of the Town; or
 - 3. the nonconforming use is changed to a conforming use by rezoning so as to achieve compliance with the provisions of a new or different zoning district; or
 - 4. the nonconforming use is changed to a conforming use; or
 - 5. the right to maintain or operate a nonconforming use is terminated by the Town Council in accordance with Chapter 1, Section 7.3(F) and (G) of this Ordinance; or
 - 6. the operator, owner, or occupant fails to obtain a Certificate of Occupancy in compliance with the terms of Chapter 1, Section 7.3(D) of this Ordinance; (amended by Ord. No. 09-117) or
 - 7. the structure occupied by the nonconforming use is destroyed by fire, the elements, the intentional acts of the owner, or any other cause. In the case of partial destruction of a nonconforming structure not exceeding sixty percent (60%) of its reasonable value, reconstruction will be permitted, but the size or function of the nonconforming use shall not be expanded unless otherwise allowed in Chapter 1, Section 7.3(B) of this Ordinance.
- C. The issuance of a specific use permit does not confer any nonconforming rights. No use authorized by the issuance of a specific use permit may operate after the specific use permit expires or is terminated.
- D. The operator, owner or occupant of any nonconforming use shall, within twelve (12) months after the use became nonconforming, register such nonconforming use by obtaining from the Building Official a Certificate of Occupancy (nonconforming). A Certificate of Occupancy (nonconforming) is required to maintain a nonconforming use status. Failure to timely obtain a Certificate of Occupancy shall terminate the nonconforming use which shall then be subject to and shall comply with all ordinances of the Town.
- E. If an owner and/or operator loses nonconforming rights pursuant to Section 7.3(B)(1) of this Ordinance, the owner and/or operator of the nonconforming use may request that the Town Council reestablish their nonconforming rights. To do so, the owner and/or operator must file a written request within ten days after receiving written notice from the Town that their use no longer has nonconforming rights. Upon receiving the request, the Building Official shall place the request on the agenda for the next available Town Council

meeting. The Town Council may only reestablish the owner's rights to operate a nonconforming use if the owner and/or operator can show there was a clear intent not to abandon the use even though the use was discontinued for six months or more.

F. Amortization of Nonconforming Uses.

1. Determination of Need for Expedited Compliance. Any person, who resides or owns real property in the Town, may request that the Town Council establish a compliance date for a nonconforming use. Upon receiving such a request, the Town Council shall determine whether there is a public necessity for expedited compliance with the zoning regulations. The following factors must be considered by the Town Council in determining the public necessity for expedited compliance:
 - a. The character of the surrounding neighborhood.
 - b. The degree of incompatibility of the use to the zoning district in which it is located.
 - c. The effect of the nonconforming use on the surrounding area and the effect of its cessation on that area.
 - d. The manner in which the use is being conducted.
 - e. The hours of operation of the use.
 - f. The extent to which continued operation of the use may threaten public health or safety.
 - g. The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
 - h. The extent to which public disturbances may be created or perpetuated by continued operation of the use.
 - i. The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
 - j. Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
2. If the Town Council finds there is not a public necessity for expedited compliance with the zoning regulations, the Town Council shall request that the Planning & Zoning Commission initiate a public hearing in accordance with this Ordinance to determine the proper zoning of the property on which the use is located.

G. Determination of Amortization Period.

1. If the Town finds that there is a public necessity for expedited compliance with the zoning regulations, the Town Council shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the structure(s), fixed equipment and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time that the use became nonconforming can be amortized within a definite time period.
2. The following factors must be considered by the Town Council in determining a reasonable amortization period:
 - a. The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use and/or structure became nonconforming.
 - b. Any costs that are directly attributable to the owner and the establishment of compliance date,

including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.

- c. Any return on capital investment since inception of the use and/or use of the structure, including net income and depreciation.
 - d. The anticipated actual recovery of capital investment, including net income and depreciation.
3. If the owner did not have an investment in the use before it became a nonconforming use, the owner is not entitled to an amortization to recover any of the costs set forth in Chapter 1, Section 7.3(G)(1) above. The Town Council, at its sole discretion, however, may give the owner a reasonable time to wind-down its operation.
 4. For purposes of setting a compliance date, the term “owner” shall mean the owner of the nonconforming use at the time of Town Council determination of a compliance date
- H. Compliance Requirement. If the Town Council establishes a compliance date for a nonconforming use and/or structure, the use must cease operations on or before that date, and it may not operate and/or be occupied and/or used thereafter unless it becomes a conforming use.

SECTION 8
CHANGES AND AMENDMENTS TO ALL ZONING ORDINANCES AND DISTRICTS AND ADMINISTRATIVE
PROCEDURES

8.1 **AUTHORITY TO AMEND ORDINANCE:**

- A. The Town Council may from time to time, after public hearings required by law, amend, supplement, or change the regulations herein provided or the boundaries of the zoning districts specified on the Zoning Map. Any Zoning Ordinance regulations may be ordered for consideration by the Planning & Zoning Commission or Town Council. Any Zoning District boundary amendment may be ordered for consideration by the:
 - 1. Town Council;
 - 2. Planning & Zoning Commission; or
 - 3. The owner of the real property (or the authorized representative of an owner of real property)
- B. In no case shall the Town Council act upon any zoning request prior to recommendation by the Planning & Zoning Commission.
- C. Each applicant for zoning or for an amendment or change to the existing provisions of this Zoning Ordinance shall submit a zoning application (available from the Planning Department) to the Planning Department on or before a scheduled submission date and shall be accompanied by payment of the appropriate fee as established by the Town. All applications received on a date other than an official submittal date shall be dated received on the next official submittal date. Applications must be complete for acceptance.
- D. Consideration for a change in any district boundary line or special zoning regulation may be initiated only with written consent of the property owner, by the Planning & Zoning Commission, or by the Town Council on its own motion when it finds that public benefit will be derived from consideration of such matter. In the event the ownership stated on an application and that shown on the Town records are different, the applicant shall submit written proof of ownership acceptable to the Town.
- E. Zoning Application Details: To ensure the submission of adequate information, the Planning staff is hereby empowered to maintain and distribute a list of specific requirements for zoning applications. Upon periodic review, the Planning staff shall have the authority to update such requirements for zoning application details.

8.2 **PUBLIC HEARING AND NOTICE:**

- A. **Zoning Changes:** Prior to making its report to the Town Council, the Planning & Zoning Commission shall hold at least one public hearing on each application. Prior to the tenth (10th) day before the hearing date before the Planning & Zoning Commission, written notice of each public hearing before the Planning & Zoning Commission on a proposed change in a zoning classification shall be sent to each owner, as indicated by the most recently approved Municipal Tax Roll, of property within two hundred (200) feet of the property in which the change in classification is proposed. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail. Notice of Town Council hearing shall be given by publication in the official newspaper of the Town, stating the time and place of such hearing, a minimum of fifteen (15) days prior to the date of the public hearing.
- B. **Text Amendments:** Notice of hearings on proposed changes in the text of the Zoning Ordinance shall be accomplished by one publication not less than fifteen (15) days prior to both the Planning & Zoning Commission and Town Council meetings thereto in the official newspaper of the Town. Changes in Ordinance text that do not change zoning district boundaries do not require written notification to individual property owners.

8.3 **FAILURE TO APPEAR:**

The Planning & Zoning Commission and/or Town Council may deny a zoning application if the applicant or representative fails to appear at one (1) or more hearings before the Planning & Zoning Commission and/or Town Council.

8.4 **COMMISSION CONSIDERATION AND REPORT:**

A. The Planning & Zoning Commission, after the public hearing is closed, may vote to approve, approve with amendments and conditions, table, or deny in whole or in part the application. The Planning & Zoning Commission may table for not more than ninety (90) days from the time it is posted on the agenda until it has had opportunity to consider other proposed changes which may have a direct bearing thereon. Should the applicant wish to submit a request to table prior to the public hearing, the request shall be submitted in writing to the Planning Department a minimum of seven (7) days prior to the meeting. In making their determination, the Planning & Zoning Commission shall consider, among other things, the following factors:

1. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned and their relationship to the general area and the Town as a whole.
2. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area, and shall note the findings.
3. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the Town, and any special circumstances that may make a substantial part of such vacant land unavailable for development.
4. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change.
5. How other areas designated for similar development will be, or are unlikely to be, affected if the proposed amendment is approved, and whether such designation for other areas should be modified also.
6. Any other factors which will substantially affect the health, safety, morals, or general welfare.

If the Planning & Zoning Commission denies the zoning request, it may offer reasons to the applicant for the denial.

B. **Proposal Recommended for Denial by the Commission (Z14-0004):** The affirmative vote of a majority of the Town Council present is required to overrule a recommendation of the Commission that a proposed zoning amendment, supplement, or change be denied, in accordance with the Town Charter, as it currently exists or may be amended. (*Ordinance 14-72; 10/14/14*).

8.5 **TOWN COUNCIL CONSIDERATION:**

A. **Proposal Recommended for Approval by the Commission:** Every proposal which is recommended favorable by the Planning & Zoning Commission shall be automatically forwarded to the Town Council for setting and holding of public hearing thereon. No change, however, shall become effective until after the adoption of an ordinance for same and its publication as required by law.

B. **Town Council Consideration and Action:** Town Council, after the public hearing is closed, may vote to approve, approve with amendments and conditions, table, or deny in whole or in part the application. Should the applicant wish to submit a request to table, the request shall be submitted in writing to the Planning Department a minimum of seven (7) days prior to the meeting.

C. **Three-Fourths Vote (Z14-0007):** If a written protest against a proposed amendment, supplement or change to a zoning regulation or boundary has been filed with the Planning Department, duly signed and acknowledged by the owners of twenty percent (20%) or more, either of the area of the lots or land included

in such a proposed change to a zoning regulation or boundary or the area of the lots, or land, immediately adjoining the area thereof extending two hundred (200) feet therefrom or of those directly opposite thereto extending two hundred (200) feet from the street frontage of such opposite lots, such amendments shall not become effective except by the affirmative vote of three-fourths (3/4) of all members of the Town Council. Written protests shall be subject to the following requirements: (*Ordinance 14-72; 10/14/14*).

1. All protests must be submitted to the Planning Department in writing. Such written protest(s) shall include the zoning case number, the name of the protesting property owner, the address(es) or property description(s) of the property for which the property owner is asserting a protest, the reasons for the property owner's protest such as the zoning classifications or uses to which the property owner is opposed, and the signature of the protesting property owner(s).
 2. The protest must be filed with the Planning Department before 5:00 p.m. of the fourth (4th) working day immediately preceding the date advertised for the Town Council public hearing in the statutory notice published in the official newspaper of the Town. For example, a written protest must be received by 5:00 p.m., on the Wednesday prior to a regularly scheduled Tuesday Town Council meeting. A protest sent through the mail must be received by the Planning Department before the deadline.
 3. In all cases where a protest has been properly signed pursuant to this section, the Town shall presume that the signatures appearing on the protest are authentic and that the persons whose signatures appear on the protest are either owners of the property or authorized to sign on behalf of one or more owners as represented. Upon the advice of the Town Attorney, this presumption shall not be followed in a specific case based on evidence presented.
 4. A person may by written request withdraw his or her signature from the protest at any time prior to the close of the public hearing for the zoning case. If the withdrawal of an owner's signature from a protest reduces the percentage of land area ownership protesting the zoning change to less than twenty percent (20%) of the total area of land, a three-fourths (3/4) vote of the Town Council for approval of the zoning change shall not be required.
 5. In the event that multiple protests and withdrawals are filed on behalf of the same owner, the instrument with the latest date and time of execution controls.
 6. At any time before Town Council action on a zoning case, the filing deadline for a protest is automatically extended whenever the zoning case is postponed or continued to a later date.
- D. **Denial by Town Council:** The Town Council may deny any request with prejudice. If a request has been denied with prejudice, the same or similar request may not be resubmitted to the Town for six (6) months from the original date of denial.
- E. **Final Approval and Ordinance Adoption:** Approval of any zoning change, amendment, or supplement by the Town Council at the scheduled public hearing shall constitute instruction to Town staff to prepare the appropriate ordinance for final formal passage at a subsequent time. If finally approved by the required number of votes, the ordinance shall be executed by the Mayor.

8.6 BOARD OF ADJUSTMENT:

A. Establishment of the Board of Adjustment

1. There is hereby created the Prosper Board of Adjustment (the "Board") and the Board may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the Zoning Ordinance that are consistent with the general purposes and intent of said Ordinance and in accordance with any applicable rules contained in this Ordinance or in rules and regulations adopted by the Board and approved by the Town Council. All rules and regulations adopted by the Board shall be reviewed and approved by the Town Council. The rules and regulations shall be consistent with and not in conflict with this Ordinance or other rules and regulations prescribed by the Town Council. The Board shall function according to the laws of the State of Texas and, when

applicable, the provisions of this Ordinance.

2. The Board shall consist of five (5) members, to be appointed by the Town Council for a term of two (2) years; provided, however, that of the first five (5) appointments made under this Ordinance, three (3) shall be appointed to serve a two (2) year term and two (2) shall be appointed to serve a one (1) year term; and, thereafter, three (3) shall be appointed during odd-numbered years and two (2) shall be appointed during even-numbered years, for said two (2) year term. No Board Member shall serve for more than three (3) consecutive terms or six (6) consecutive years (whichever is less).
 3. When vacancies occur on the Board, the Town Council shall appoint, by majority vote, a replacement to serve the remainder of that term.
 4. Each Board Member may be removed by the Town Council for cause on a written charge after a public hearing. By way of example, any Board Member who is absent from three (3) consecutive regular meetings without explanation acceptable to a majority of the other Board Members is good cause for removal.
 5. Each Board Member shall serve without compensation, but may be reimbursed for actual expenses approved in advance by the Town Council.
 6. The Board shall keep and maintain minutes of any and all proceedings held and shall submit a written report of such proceedings to the Town Council not more than three (3) weeks following each such meeting.
 7. Each case before the Board must be heard by at least four (4) members.
 8. The Board shall have two (2) alternate Board Members appointed by the Town Council to serve in the absence of one (1) or more regular Board Members when requested to do so by the Mayor or Town Administrator. Each alternate Board Member serves for the same period as a regular Board Member and is subject to removal in the same manner as a regular Board Member. A vacancy among the alternate Board Members is filled in the same manner as a vacancy among the regular Board Members. An alternate Board member serves upon the same terms and conditions as a regular Board Member.
- B. Officers (Z14-0014)
1. The Board shall have a Chair and Vice-Chair whose terms shall be one (1) year. At the first scheduled meeting of the Board in October of each year, or as soon as practicable, the first item of business shall be the selection of the Board's Chair and Vice-Chair. The Chair and Vice-Chair shall be appointed by a majority vote of the Board. (*Ordinance 14-72; 10/14/14*).
 2. The Chairperson shall preside over meetings and shall be entitled to vote upon each issue.
 3. The Vice-Chair shall assist the Chair in directing the affairs of the Board. In the absence of the Chair, the Vice-Chair shall assume all duties of the Chair.
- C. By-laws
- The Board shall have the power to develop and revise by-laws for its own governance, which shall be subject to approval by the Town Council. The by-laws shall include provisions for:
1. establishment of meeting dates; and
 2. establishment of an appointment to certain committees made up of Board Members and other lay persons to assist the Board in the conduct of its responsibilities; and
 3. Board members' attendance requirements, not inconsistent with this Ordinance.
- D. Duties and Responsibilities
1. The Board may:

- a. hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of this Ordinance or Section 211.007, Texas Local Government Code ("the Code"), as it exists or may be amended.

In exercising the Board's authority herein, the Board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the Board has the same authority as the administrative official; and

- b. hear and decide special exceptions to the terms of the Zoning Ordinance when the Ordinance requires the Board to do so; and
- c. permit the reconstruction, extension or enlargement of a building occupied by non-conforming uses, on the lot or tract occupied by such building, provided such reconstruction, extension or enlargement does not prevent the return of such property to a conforming use; and
- d. authorize, in specific cases, a variance of height, yard, area, exterior structure, lot coverage, off-street parking and loading requirements from the terms of the Zoning Ordinance, if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the Ordinance would result in unnecessary hardship, and so that the spirit of the Ordinance is observed and substantial justice is done. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by Ordinance to other parcels of land in the Town or the district. No variance may be granted if it results in an unnecessary hardship, as herein defined, on another parcel of land.

In order to make a finding of hardship and to grant a variance, the Board of Adjustment must determine that:

- i. the requested variance does not violate the intent of the Zoning Ordinance or its amendments; and
- ii. special conditions of restricted area, shape, topography, or physical features exist that are peculiar to the subject parcel of land and are not applicable to other parcels of land in the same zoning district; and
- iii. the hardship is in no way the result of the applicant's own actions; and
- iv. the interpretation of the provisions in the Zoning Ordinance or its amendments would deprive the applicant of rights commonly enjoyed by other properties, in the same zoning district, that comply with the same provisions.

No variance may authorize a use other than those uses permitted in the zoning district for which the variance is sought. Also, an application or request for a variance shall not be heard or granted with regard to any parcel of property or portion thereof upon which a Preliminary Site Plan, Site Plan, Preliminary Plat or Final Plat, when required by the Zoning Ordinance, and any amendments thereto, or the Subdivision Ordinance, and any amendments thereto, for any parcel of property or portion thereof, has not been finally acted upon by both the Planning & Zoning Commission and, where required, by the Town Council. The administrative procedures and requirements of the Zoning Ordinance, and any amendments thereto, and the Subdivision Ordinance, and any amendments thereto, with regard to both the Planning & Zoning Commission and Town Council consideration and action, on Preliminary Site Plans, Site Plans, Preliminary Plats, and Final Plats, must be exhausted prior to requesting a variance.

2. The concurring vote of four (4) members of the Board is necessary to:
 - a. Reverse an order, requirement, decision, or determination of an administrative official;

- b. Decide in favor of an applicant on a matter on which the Board is required to pass under the Zoning Ordinance; or
- c. Authorize a variation from the terms of the Zoning Ordinance.

E. Appeal of Board Decision's

Any person or persons, jointly or severally, aggrieved by any decision of the Board, or any taxpayer, or any officer, department or board of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten (10) days after the filing of the decision in the Office of the Board and not thereafter. The date of filing of the decision in the Office of the Board shall be the date the Board announces its decision either orally or in writing to the applicant.

F. Power to Obligate and Finance

The Board shall have no power to obligate the Town in any manner whatsoever. The Board's finances shall be handled in the same manner as any division of the Town Government.

SECTION 9
COMPLETE APPLICATION REQUIREMENT

- 9.1 No request for establishment or amendment of a zoning district, including a request to establish or amend a Planned Development District, or a Conceptual Plan or Development Plan incorporated therein, nor application for a site plan or other permit authorized by these zoning regulations shall be accepted for filing or processing unless such request is accompanied by a completed application and all documents required by and prepared in accordance with the requirements of the Zoning Ordinance and the Subdivision Ordinance. The acceptance or processing by any Town official of a zoning request or zoning permit application prior to the time a complete application is submitted hereby is deemed to be null and void and, upon discovery, shall be grounds for denial or revocation of such application. A typographical error shall not constitute an incomplete application. The applicant will be notified of, and the reasons for, such denial or revocation within ten (10) business days of the official application date.