

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 12-03

AN ORDINANCE AMENDING PROSPER'S ZONING ORDINANCE NO. 05-20; REZONING A TRACT OF LAND CONSISTING OF 3.00 ACRES, MORE OR LESS, SITUATED IN THE COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 147, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, HERETOFORE ZONED AGRICULTURAL (A) IS HEREBY REZONED AND PLACED IN THE ZONING CLASSIFICATION OF PLANNED DEVELOPMENT-COMMERCIAL (PD-C); DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Council of the Town of Prosper, Texas (the "Town Council") has investigated and determined that Zoning Ordinance No. 05-20 should be amended; and

WHEREAS, the Town of Prosper, Texas ("Prosper") has received a request from Prosper Business Park, LP ("Applicant") to rezone 3.00 acres of land, more or less, situated in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas; and

WHEREAS, the Town Council has investigated into and determined that the facts contained in the request are true and correct; and

WHEREAS, all legal notices required for rezoning have been given in the manner and form set forth by law, and public hearings have been held on the proposed rezoning and all other requirements of notice and completion of such zoning procedures have been fulfilled; and

WHEREAS, the Town Council has further investigated into and determined that it will be advantageous and beneficial to Prosper and its inhabitants to rezone this property as set forth below.

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

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendments to Zoning Ordinance No. 05-20. Zoning Ordinance No. 05-20 is amended as follows: The zoning designation of the below-described property containing 3.00 acres of land, more or less, situated in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, (the "Property") and all streets, roads and alleyways contiguous and/or adjacent thereto is hereby rezoned as Planned Development-Commercial (PD-C). The property as a

whole and the boundaries for each zoning classification are more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes as if set forth verbatim.

The development plans, standards, and uses for the Property in this Planned Development District shall conform to, and comply with 1) the statement of intent and purpose, attached hereto as Exhibit "B"; 2) the planned development standards, attached hereto as Exhibit "C"; 3) the concept plan, attached hereto as Exhibit "D"; 4) and the development schedule, attached hereto as Exhibit "E", which are incorporated herein for all purposes as if set forth verbatim. Except as amended by this Ordinance, the development of the Property within this Planned Development District must comply with the requirements of all ordinances, rules, and regulations of Prosper, as they currently exist or may be amended.

Three original, official and identical copies of the zoning exhibit map are hereby adopted and shall be filed and maintained as follows:

- a. Two (2) copies shall be filed with the Town Secretary and retained as original records and shall not be changed in any matter.
- b. One (1) copy shall be filed with the Building Official and shall be maintained up-to-date by posting thereon all changes and subsequent amendments for observation, issuing building permits, certificates of compliance and occupancy and enforcing the Zoning Ordinance. Reproduction for information purposes may from time-to-time be made of the official zoning district map.

Written notice of any amendment to this Planned Development District shall be sent to all property owners within two hundred feet (200') of the specific area to be amended.

SECTION 3: No Vested Interest/Repeal. No developer or property owner shall acquire any vested interest in this Ordinance or in any other specific regulations contained herein. Any portion of this Ordinance may be repealed by the Town Council in the manner provided for by law.

SECTION 4: Unlawful Use of Premises. It shall be unlawful for any person, firm or corporation to make use of said premises in some manner other than as authorized by this Ordinance, and shall be unlawful for any person, firm or corporation to construct on said premises any building that is not in conformity with the permissible uses under this Zoning Ordinance.

SECTION 5: Penalty. Any person, firm, corporation or business entity violating this Ordinance or any provision of Prosper's Zoning Ordinance No. 05-20, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense.

The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state and federal law.

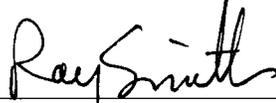
SECTION 6: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 7: Savings/Repealing Clause. Prosper's Zoning Ordinance No. 05-20 shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the appeal prevent a prosecution from being commenced for any violation if occurring prior to the repealing of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 8: Effective Date. This Ordinance shall become effective from and after its adoption and publications as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS ON THIS 24th DAY OF JANUARY, 2012.

APPROVED AS TO FORM:



Ray Smith, Mayor

ATTESTED TO AND
CORRECTLY RECORDED BY:



Amy Piukana, Town Secretary



DATE OF PUBLICATION: 2-1-12, Prosper Press

LEGAL DESCRIPTION

BEING a tract of land situated in the Collin County School Land Survey, Abstract No. 147, Town of Prosper, Collin County, Texas and being all of Lot 2, Block A of the Warren / Avant-Garde Addition, an addition to the Town of Prosper, as recorded in Cabinet 2006, Page 615 of the Plat Records of Collin County, Texas and all of a tract of land described in a deed to Prosper Business Park, L.P. as recorded in Instrument No. 1790310 of the Official Public Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING at a PK nail set for corner in the center of West First Street, 90' right-of-way, said point being the northwest corner of a tract of land described in a deed to James Bryant as recorded in Volume 591, Page 64 and in Volume 594, Page 192 of the Deed Records of Collin County, Texas;

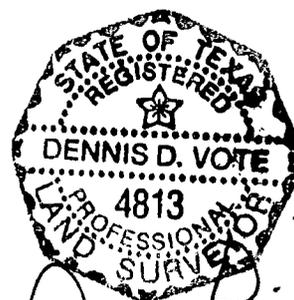
THENCE S 00 deg. 45 min. 03 sec., W, along the west line of said Bryant tract of land, the west line of a tract of land described in a deed to Donald E. Goodwin as recorded in Volume 3507, Page 484 of the Deed Records of Collin County Texas, and the east line of Lot 1, Block A of said Warren / Avant-Garde Addition, a distance of 701.41 feet to a 1/2-inch iron rod set at the southeast corner of said Lot 1, Block A and the northeast corner of said Lot 2, Block A and at the POINT OF BEGINNING;

THENCE S 00 deg. 45 min. 03 sec., W, along the east line of said Lot 2, Block A and the west line of said Goodwin tract, a distance of 387.52 feet to a 1/2-inch iron rod set at the southeast corner of said Lot 2, Block A and at the northeast corner of a tract of land described in a deed to Molinar Enterprises, LLC as recorded in Instrument No. 20080630000793560 of the Official Public Records of Collin County, Texas;

THENCE N 89 deg. 32 min. 59 sec. W, along the south line of said Lot 2, Block A and the north line of said Molinar Enterprises tract, a distance of 335.23 feet to a 1/2-inch iron rod set at the southwest corner of said Lot 2, Block A and at the northwest corner of said Molinar Enterprises tract;

THENCE N 00 deg. 09 min. 35 sec. E, along the west line of said Lot 2, Block A, a distance of 387.52 feet to a 1/2-inch iron rod set at the northwest corner of said Lot 2, Block A and at the southwest corner of said Lot 1, Block A;

THENCE S 89 deg. 32 min. 59 sec. E, along the north line of said Lot 2, Block A and the south line of said Lot 1, Block A, a distance of 339.23 feet to the POINT OF BEGINNING and containing 130,680 sq. ft. or 3.0000 acres of land.



Dennis D. Vote
Nov. 10, 2011

Exhibit "B"
450 Business Park Drive
Prosper, TX 75078
Eric Hover, Owner/Representative

Prosper Business Park, LP.
Planned Development District
Statement of Intent and Purpose

Prosper Business Park intends to develop this site to suite the business of Avant-Garde Organics, which consists of wholesale distribution of Organic Home and Garden Products, online retail sales, and residential and commercial "Easy Garden" installation and service. Prosper Business Park also has 6000 square feet in which it leases to commercial tenants. Our intent is to develop the Open Storage area to contain the necessary components of the "Easy Garden" business, establish the final perimeter landscape plan for the property, and to put forth a site that will enhance the Town of Prosper.

The emphasis on securing the Open Storage area and providing a visually pleasant appearance by use of landscaping and fencing. All open storage will be well screened from view both from Business Park Drive and neighboring properties.

Exhibit "C"
Prosper Business Park, LP
PD - Commercial District

Conformance with the Town's Zoning Ordinance and Subdivision Ordinance: Except as otherwise set forth in these Development Standards, the regulations of the Town's Zoning Ordinance (No. 05-20 as it currently exists or may be amended) and the Town's Subdivision Ordinance (No. 03-05 as it exists or may be amended) shall apply to the property.

1. COMMERCIAL DISTRICT - Prosper Business Park

1.1 REGULATIONS:

A. Size of Yards:

1. Minimum Front Yard: Thirty (30) feet.

2. Minimum Side Yard:

A. Five (5) feet for open storage/covered storage areas.

B. Fifteen feet (15) for buildings. The minimum side yard setback may be eliminated for attached buildings on separate lots as shown on an approved site plan.

C. Thirty (30) feet adjacent to Business Park Drive.

D. Ten (10) side yard for west property line.

3. Minimum Rear Yard:

A. Five (5) feet for open storage/covered storage areas.

B. Fifteen feet (15) for buildings. The minimum side yard setback may be eliminated for attached buildings on separate lots as shown on an approved site plan.

B. Size of Lots:

1. Minimum Size of Lot Area: Ten thousand (10,000) square feet.

2. Minimum Lot Width: One hundred (100) feet.

3. Minimum Lot Depth: One hundred (100) feet.

C. Maximum Height: Two (2) stories, not greater than forty (40) feet.

D. Lot Coverage: Fifty (50) percent.

E. Floor Area Ratio: Maximum 0.5:1

1.2 PERMITTED USES:

A. **Compliance with State and Federal Law:** No uses shall be allowed which are prohibited by State law or which operate in excess of State or Federal environment or pollution standards as determined by the U.S. Environmental Protection Agency, Texas Air Control Board, Texas State Department of Health, or the Texas Water Commission, as the case.

B. **Open Storage:** Not more than twenty (20) percent of the lot or tract may be used for the open storage of products such as fertilizer and bagged products, materials such as but not limited to mulch, limited amounts of landscape stone, masonry mortar, trees, shrubs, annuals or fencing, or equipment such as lawn equipment or materials trailers/containers. Live goods such as fruit/citrus trees, vegetable plants, herbs and the like to be stored in hoop and poly or shade cloth greenhouses, all of which shall be screened from adjoining properties or streets. The screening will consist of nine (9) foot tall Architectural Metal fencing on the east, south, and west sides. The screening along the north side of the open storage area shall be integrated into the required screening along the shared property line with Lot 1 (430 Business Park Drive) within two years of ordinance adoption or a nine (9) foot tall Architectural metal fence shall be constructed along the north side of the open storage area. Landscaping to be installed outside the east fence with three (3) Crepe Myrtles, 3 caliper inch and minimum 5 feet in height along the east property line 15 foot landscape set back. Our current dumpster will be placed in the Open Storage Area behind the gate on the west drive and completely screened by the fence.

C. High Risk or Hazardous Uses:

1. The uses listed in 1.2(D) below are permitted in the Commercial District, provided that such uses shall not disseminate dust, fumes, gas, noxious odor, smoke, glare, or other atmospheric influence beyond the boundaries of the property on which such use is located and which produces no noise exceeding the average intensity of noise of street traffic at that point and provided that such use does not create fire hazards on surrounding property.
2. "High risk or hazardous" uses are not permitted in the Commercial District. In this section, "high risk or hazardous" use means any use whose operation, in the opinion of the Fire Chief, involves a much higher than average risk to public health and safety. These uses include but are not limited to facilities where significant amounts of radiation, radioactive materials, highly toxic chemicals or substances, or highly combustible or explosive materials are present, used, produced, stored, or disposed of.

D. **Permitted Uses:** The permitted uses on the subject property are those uses allowed under the Commercial District as outlined in the Town's Zoning Ordinance No. 05-20, as it exists or may be amended with the following addition:

Temporary greenhouses as shown on Exhibit D.

1.3 **Paving Materials permitted in open storage area:** Gravel, crushed rock and / or four inch concrete shall be permitted paving material in the open storage area located behind all screening and gates. All additional fire lanes shall be constructed of concrete and shall meet the Town of Prosper's paving standards.

1.4 **Perimeter Landscaping:** The plan set forth below will serve as our final perimeter landscape plan.

A. East Property Line

1. North of North Circle Drive, adjacent to Architectural Metal Fence: Three (3) crepe myrtle's, minimum 5 feet tall at time of planting, each being three (3) caliper inch, and spaced at a minimum of fifteen (15) feet apart from one another, and 3-5 gallon shrubs planted at a ratio of one shrub for every two feet.

2. Area Between North and South Circle Drive: Five (5) four (4) inch caliper Live Oak trees spaced a minimum of thirty (30) feet on center.

3. South of South Circle Drive: Three (3) four (4) inch caliper Live Oak trees spaced a minimum of thirty (30) feet on center.

B. North Property Line: The north property line border contains utilities for town water line to the existing building. No perimeter landscaping is permitted in the utility easement.

C. West Property Line: The existing building was constructed 10 foot from the west property line and contains utilities for septic and electric. No perimeter landscaping is permitted in the utility easement.

D. South Property Line: Along the southwest property line is the drainage ditch that collects the run off from the concrete drive. Utilities for the existing building's septic system run along this border as well. No perimeter landscaping is permitted in the utility easement.

E. Landscaping: Additional landscaping, south of North Circle Drive, to be planted along the east landscape set back line before the completion of the construction of the future two lane commercial collector (Business Park Drive) or with future build out of the property, whichever comes first. Additional plantings to be at a ratio of one shrub for every two feet of frontage. Irrigation will be installed for the landscaped areas. All requirements for 5 gallon shrubs will be amended to 3-5 gallon shrubs, three (3) feet high at time of planting.

Exhibit "E"
450 Business Park Drive
Prosper, TX 75078
Eric Hover, Owner/Representative

Prosper Business Park, LP.
Planned Development District
Development Schedule:

It is anticipated that the development of the Open Storage will begin within one week after approval and issuance of any or all permits.

As the demand grows for additional commercial tenant space we will develop the remaining buildings on the property. It is anticipated that this total build out will occur within the next 10 to 20 years.