

**ZONING BOARD OF ADJUSTMENT
MEETING AGENDA
CITY HALL, 3200 DIANA DRIVE
JUNE 15, 2021 at 6:00 PM**

1. CALL TO ORDER

2. EXECUTIVE SESSION

A. Executive Session: Pursuant to the Open Meetings Act, Chapter 551, Texas Government Code, Section 551.071. Refer to posted list attached hereto and incorporated herein. **Executive Session may be held, under these exceptions, at any time during the meeting that a need arises for the Zoning Board of Adjustment to seek advice from the City Attorney as to the posted subject matter of this Zoning Board of Adjustment meeting.**

B. Reconvene: Action necessary on items discussed in Executive Session

3. PUBLIC COMMENTS

This is the public's opportunity to address the Zoning Board of Adjustment on any matter not posted on the agenda. Citizen comments emailed to Cathy Bourg (cbourg@richlandhills.com) on an item either listed on this agenda or not listed on this agenda will be heard at this time.

REGULAR AGENDA

4. Approve minutes from the April 6, 2021 Zoning Board of Adjustment meeting.

5. Consider ZBA 2021-0424 a request for an Appeal of an Administrative Decision that the property described as Lot 3, Block 3 Willman Addition, City of Fort Worth, Tarrant County, Texas otherwise known as 7285 Glenview Drive, Richland Hills, Texas 76180 had lost its legal non-conforming use rights **PUBLIC HEARING**

6. ADJOURNMENT

CERTIFICATE

I hereby certify that the above agenda was posted on this the 10th day of June, by 5:30 p.m., on the official bulletin board at the Richland Hills City Hall, 3200 Diana Drive, Richland Hills, Texas.

Cathy Bourg
Cathy Bourg
City Secretary



ACCESSIBILITY STATEMENT

The Facility is wheelchair accessible. If you plan to attend this meeting and you have a disability that requires special arrangements at the meeting, please notify the City Secretary 48 hours in advance of the meeting so that reasonable accommodations can be made. City of Richland Hills (817) 616-3810.

Memorandum

To: Richland Hills Zoning Board of Adjustment

From: Cathy Bourg, City Secretary

Date: June 15, 2021

Subject: Minutes from the April 6, 2021 Zoning Board of Adjustment Meeting

Agenda Item:

Approval of April 6, 2021 Zoning Board of Adjustment Meeting Minutes

Background Information:

N/A

Financial Considerations:

N/A

Legal Review:

N/A

Board/Citizen Input:

N/A

Attachments:

April 6, 2021 Draft Minutes

Suggested Motion:

Motion to approve the minutes from the April 6, 2021 Zoning Board of Adjustment meeting

**ZONING BOARD OF ADJUSTMENT
APRIL 6, 2021
DRAFT MINUTES**

Roll Call:

Members present

Jorge Cisneros, Chair
Sanjay Mathew, Place 2

G.W. Estep, Place 5

Members absent

Chris Utchell, Place 4

Members present via Zoom

Ashly Schilling, Place 3

Staff present

Candice Edmondson, City Manager
Cathy Bourg, City Secretary
Alecia Kreh, City Attorney

The Zoning Board of Adjustment meeting is open to the public and citizens are welcome to attend. However, due to the current Coronavirus (COVID-19) outbreak in our area and in an effort to abide by social distancing recommendations, we encourage citizens wishing to participate in the meeting to email comments to City Secretary Cathy Bourg at cbourg@richlandhills.com by 5:00 p.m. on Tuesday, April 6th. Your comment will be read aloud during Item 4 Public Comments.

Some members of the Zoning Board of Adjustment may be unable to attend and will be participating by video conference or phone. If you would like to join and participate in the meeting by video conference or phone, you may do so via the following options:

- **Online via Zoom:** Go to zoom.us, Join a Meeting, and enter Meeting ID 899 9489 2647 and the host will allow you to enter the virtual meeting. The host will ask you what item you would like to speak on, and you will be called upon when that item is presented to address the Zoning Board of Adjustment.
- **By Phone:** Please call (346) 248-7799 and enter Meeting ID 899 9489 2647 and provide your name and address. The host will ask you what item you would like to speak on, and you will be called upon when that item is presented to address the Zoning Board of Adjustment.

1. CALL TO ORDER

Chairman Cisneros called the meeting to order at 6:07 p.m.

2. ADMINISTER OATHS OF OFFICE

Karen Evans, Administrative Secretary administer the Oaths of Office to the following Commission Members:

- Jorge Cisneros – Place 1
- Sanjay Mathew – Place 2
- G.W. Estep – Place 5
- Ashly Schilling – Place 3 (Via Zoom)

3. EXECUTIVE SESSION

A. Executive Session: Pursuant to the Open Meetings Act, Chapter 551, Texas Government Code, Section 551.071. Refer to posted list attached hereto and incorporated herein. Executive Session may be held, under these exceptions, at any time during the meeting that a need arises for the Zoning Board of Adjustment to seek advice from the City Attorney as to the posted subject matter of this Zoning Board of Adjustment meeting.

Motion: Motion was made by Member Estep and seconded by Member Schilling to convene into Executive Session. Time: 6:11 p.m.

Motion carried by a vote of 4-0.

B. Reconvene: Action necessary on items discussed in Executive Session

Chairman Cisneros reconvened into open session. Time 6:25 p.m.

4. PUBLIC COMMENTS

None

REGULAR AGENDA

5. Approve minutes from the October 6, 2020 Zoning Board of Adjustment meeting.

Motion: Motion was made by Member Mathew and seconded by Member Schilling to approve the October 6, 2020 Zoning Board of Adjustment meeting minutes.

Motion carried by a vote of 4-0.

6. Consider ZBA Case #2020-0789 a request for zoning variance under Section 6.12 of Chapter 90 of the Richland Hills Code of Ordinances to allow for an encroachment of the building into the required side yard setbacks on the north and south sides of property described as Block 6, Lot 10, Richland Park,

Addition to the City of Richland Hills, Tarrant County, Texas, otherwise known as 3010 Elm Park Street, Richland Hills, Texas 76118 PUBLIC HEARING

Candice Edmondson, City Manager gave a presentation regarding ZBA 2021-0189 a request for zoning variance to allow for an oversized accessory structure on the property described as Lot 1A, Block L, Richland Hills Addition, an addition to the City of Richland Hills, Tarrant County, Texas otherwise known as 7132 Bridges Avenue, Richland Hills, Texas 76118.

The property at 7132 Bridges Avenue is a 0.97-acre lot with a 2,795 square foot single family residence in the SF-E zoning district. The property is owned by Khaled Khader. Mr. Khader is requesting a zoning variance in order to build a 30'-7" x 70'-4" (2,100 square foot) accessory structure on an existing concrete pad. The proposed structure will be constructed of metal siding which is allowable under current state law. The height of the structure is shown to be 15'- 3 1/2" at roof peak. In order to build the accessory structure as proposed, Mr. Khader will need a variance to Subsection 4.02.01 which states that:

- a) An accessory structure shall not exceed a height of 15 feet; and
- b) An accessory structure shall not exceed 50 percent of the floor area of the principal building

The primary residence is 2,795 square feet. The proposed accessory structure at 2,100 square feet is 75% of the principal building. Fifty percent of the primary residence would be 1,398 square feet, so the proposed accessory structure exceeds the 50 percent requirement by 702 square feet.

Chairman Cisneros opened the Public Hearing – Time: 6:32 p.m.

Stacy Reddy, 7012 Hardisty Street spoke in favor of the zoning variance.

Chairman Cisneros closed the Public Hearing – Time: 6:34 p.m.

Khaled Khader, the applicant answered questions from the board members.

Motion: Motion was made by Member Mathew and seconded by Member Schilling to approve for a zoning variance to allow for construction of a 30' x 50' enclosed accessory structure with a roof height of 15' – 3 1/2". This approval does not include the additional 30' x 20' covered area.

Motion failed by a vote of 3-1. Member Estep against

Motion: Motion was made by Member Estep and seconded by Member Schilling to approve Motion to approve ZBA 2021-0189 a request for zoning variance to allow for an oversized accessory structure on the property described as Lot 1A, Block L, Richland Hills Addition, an addition to the City of Richland Hills, Tarrant County, Texas otherwise known as 7132 Bridges Avenue, Richland Hills, Texas 76118.

Motion failed by a vote of 2-2. Members Mathew and Schilling against

Motion: Motion was made by Member Estep to approve Motion to approve ZBA 2021-0189 a request for zoning variance to allow for an oversized accessory structure on the property described as Lot 1A, Block L, Richland Hills Addition, an addition to the City of Richland Hills, Tarrant County, Texas otherwise known as 7132 Bridges Avenue, Richland Hills, Texas 76118.

Motion died for lack of a second

Motion: Motion was made by Member Mathew and seconded by Member Schilling to approve for a zoning variance to allow for construction of a 30' x 50' enclosed accessory structure with a roof height of 15' – 3 ½". This approval does not include the additional 30' x 20' covered area.

Motion failed by a vote of 4-0.

7. ADJOURNMENT

Motion: Motion was made by Member Schilling and seconded by Member Mathew to adjourn.

Motion carried by a vote of 4-0.

There being no further business to come before the Zoning Board of Adjustment, Chairman Cisneros declared the meeting adjourned at 6:51 p.m.

ATTEST

Cathy Bourg, City Secretary

APPROVED

Jorge Cisneros, Chairman

Memorandum

To: Richland Hills Zoning Board of Adjustment

From: Candice Edmondson, City Manager

Date: June 15, 2021

Subject: Appeal of an Administrative Decision – 7285 Glenview Drive

Agenda Item:

Consider ZBA 2021-0424 a request for an Appeal of an Administrative Decision that the property described as Lot 3, Block 3 Willman Addition, City of Fort Worth, Tarrant County, Texas otherwise known as 7285 Glenview Drive, Richland Hills, Texas 76180 had lost its legal non-conforming use rights **PUBLIC HEARING**

Background Information:

The property at 7285 Glenview Drive is a 1,211 square foot single-family residence on 0.38 acres owned by Sherry and Robert Leavitt. The Leavitts have owned the property since 2019. The property was previously owned by Mrs. Leavitt's parents, Percy and Gloria Taylor. The Taylor's purchased the home in 1950 and used it as their primary residence until their passing.

Mrs. Leavitt recently came to the city inquiring about using the property as a single-family rental home. Based on utility records for the property, it appeared that the property had been vacant for almost two years. As a result, it was determined that the property had lost its "legal nonconforming" use as a single-family residence.

Because the property had been a single-family residence prior to the adoption of the Comprehensive Zoning Plan in May 2014, the property was classified as a "legal nonconforming" use since it had been an approved use at one time (Richland Hills Code of Ordinances Section 1.06.02). Per Section 1.06.04 of the Richland Hills Code of Ordinances, *"if a nonconforming use shall cease operations for a period of more than six months, then such nonconforming use shall be deemed to be permanently discontinued."*

Prior to adoption of the City's current Comprehensive Zoning Plan, the property at 7285 Glenview Drive was zoned Commercial - General (Ord. 848-98 adopted October 27, 1998). The property is currently zoned Mixed Use and requires an approved Specific Use Permit (SUP) for a single-family residence.

Mrs. Leavitt went through the SUP process in April 2021. The Planning & Zoning Commission approved the SUP request 5-0 at their April 15, 2021 meeting. However, the City Council denied the SUP request 5-0 at their April 26, 2021 meeting and the Specific Use Permit was not granted.

Mrs. Leavitt is seeking an Appeal of an Administrative Decision that the property was vacant for more the six months and subsequently lost its “legal nonconforming” use rights.

Attachments:

Property Photos

Nonconforming Use Determination Letter

Section 1.06 – Nonconforming Uses, Structures and Lots

Section 6.11 – Appeals and the Appeal Process

Letter from Mrs. Leavitt

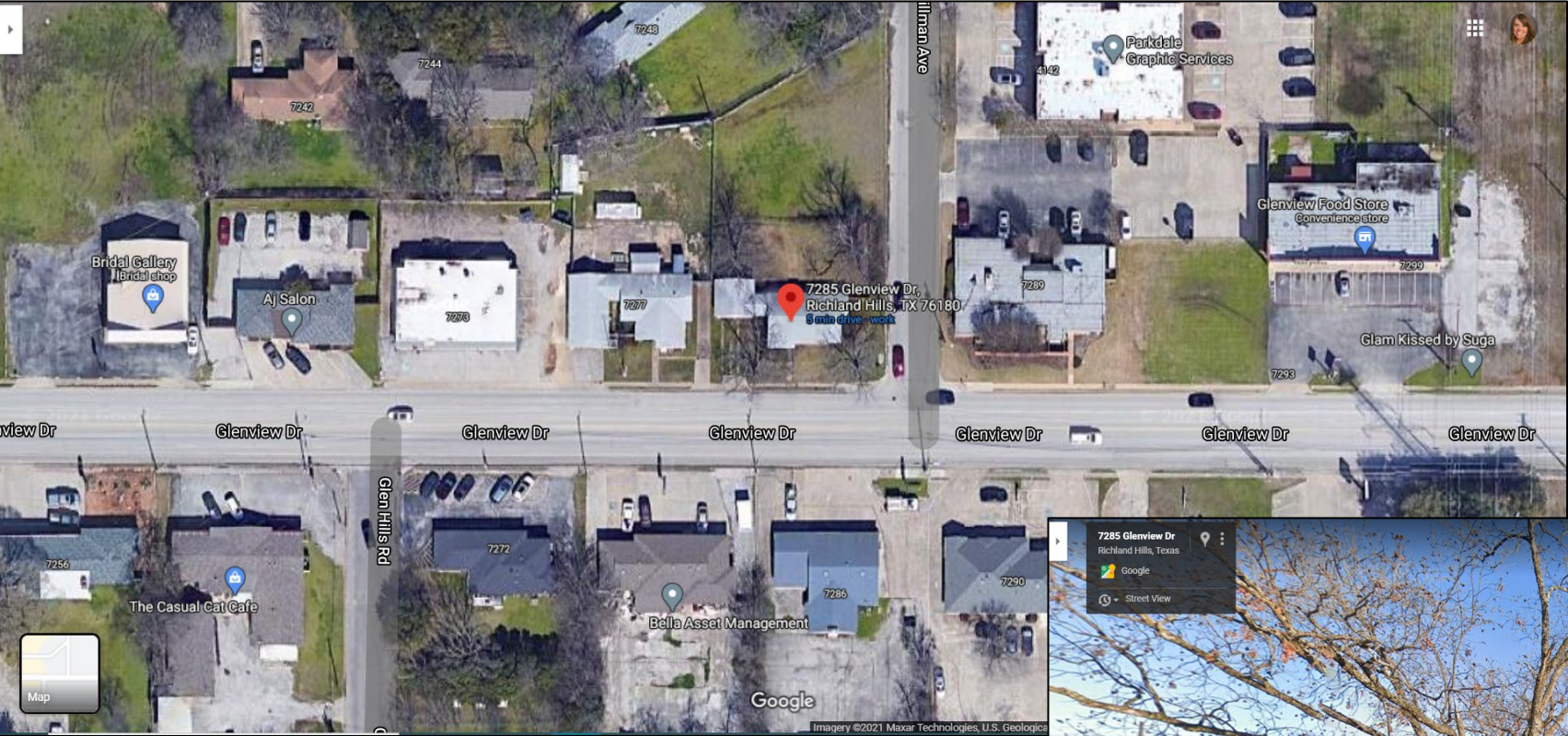
Suggested Motion:

Motion to *(reverse, affirm or modify)* the Administrative Decision that the property described as Lot 3, Block 3 Willman Addition, City of Fort Worth, Tarrant County, Texas otherwise known as 7285 Glenview Drive, Richland Hills, Texas 76180 had lost its legal non-conforming use rights

7285 Glenview Drive



7285 Glenview Drive





CITY OF RICHLAND HILLS, TEXAS

(817) 616-3806 • 3200 DIANA DRIVE • RICHLAND HILLS, TEXAS 76118

May 13, 2021

Mrs. Sherry Leavitt
511 Holly Court
Keller, Texas 76248

Re: Nonconforming Use Determination – 7285 Glenview Drive Richland Hills,
Texas 76180

Dear Mrs. Leavitt,

You recently went through the process of obtaining a Specific Use Permit (SUP) for a single-family residence in the Mixed Use zoning district. Your SUP request was denied by City Council on April 26, 2021.

As previously discussed, the reason you were required to go through the SUP process was because the property was rezoned to Mixed Use in May 2014 and an approved Specific Use Permit would be required to have a residence in the Mixed Use district. Though your family has owned the property since 1950 and a single-family residence has been maintained there, it was determined that the residence was vacated around October 2018 based on water utility records.

From October 2018 to July 2020 the average water usage was around 160 gallons per month, with 0 gallons of usage most of those months, indicating that the residence was vacant. City staff also completed water meter service inspections in August 2019 and December 2019 and made notes on the work order that the residence appeared vacant.

Because the property had been a single-family residence prior to the adoption of the Comprehensive Zoning Plan in May 2014, the property was classified as a "legal nonconforming" use since it had been an approved use at one time (Richland Hills Code of Ordinances Section 1.06.02).



CITY OF RICHLAND HILLS, TEXAS

(817) 616-3806 • 3200 DIANA DRIVE • RICHLAND HILLS, TEXAS 76118

Per Section 1.06.04 of the Richland Hills Code of Ordinances, *"if a nonconforming use shall cease operations for a period of more than six months, then such nonconforming use shall be deemed to be permanently discontinued."* Based on water usage and information provided by city staff, it has been determined that the property located at 7285 Glenview Drive had been vacant for more than six (6) months and, therefore, single-family residence as a nonconforming use is permanently discontinued and will require approval of a Specific Use Permit in the future.

According to Section 6.10(C)(1)(2) of the Richland Hills Code of Ordinances, *"the owner and/or operator of the abandoned nonconforming use may submit a written application to the board to have the nonconforming rights reinstated. Written application for reinstatement of nonconforming rights must be made within ten (10) business days after the zoning administrator issues the written notice of determination that a use has been permanently abandoned."*

If you wish to appeal the determination of nonconforming use, written application must be submitted to the Community Development Department by May 23, 2021.

If you have any questions or concerns, please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in dark blue ink that reads "Candice Edmondson".

Candice Edmondson
City Manager

Section 1.06. Nonconforming uses, structures and lots

1.06.01. Intent of Provisions

(A) *Existence of nonconformities*

- (1) The purpose of this section is to establish provisions for the allowance and potential alteration of uses, lots, and/or structures that do not conform to currently applicable standards or regulations, but that were in conformance with standards in place at the time of their inception, and have been rendered nonconforming due to a change in the applicable standards and regulations.
 - (a) Nonconformities occur in three general categories, or combinations thereof:
 1. Nonconforming lots as described in subsection 1.06.02.(A)(1) below. For example, a nonconforming lot can be nonconforming as to lot area or dimension requirement.
 2. Nonconforming structures as described in subsection 1.06.02.(A)(1) below. For example, a nonconforming structure can be nonconforming as to a dimension requirement, masonry requirement, or landscaping requirement.
 3. Nonconforming uses are uses as described in subsection 1.06.02.(A)(1) below. For example, a nonconforming use can be the actual use, or the parking requirement associated with that particular use.
- (2) It is the declared intent of this section that nonconforming uses and structures eventually be eliminated and be required to comply with the regulations of the Zoning Ordinance, having due regard for the property rights of the person affected, the public welfare, and the character of the surrounding area.

1.06.02. Establishment of Legal Nonconforming Status

- (A) *Existence.* For purposes of interpretation of this subsection, any uses, structures, or lots that in whole or part are not in conformance with current zoning standards shall be considered as follows:
- (1) *Legal nonconforming.* Those uses, structures, or lots that in whole or part are not in conformance with current zoning standards, but were legally established at a prior date at which time they were in conformance with applicable standards. Such uses, structures or lots may be maintained or potentially altered subject to the provisions of this subsection.
 - (2) *Illegal status.* Those uses, structures, or lots that in whole or part are not in conformance with current zoning standards and were not in conformance with applicable standards at the time of their inception shall not be considered legal nonconforming, but shall be considered illegal uses, structures, or lots and shall not

be approved for any alteration or expansion, and shall undertake necessary remedial measures to reach conformance with current standards, or be discontinued.

- (B) *Time of adoption.* Any use, platted lot, or structure that is a lawful use at the time of the adoption of any amendment to this Ordinance but by such amendment is placed in a district wherein such use, platted lot, or structure is not otherwise permitted shall be deemed legal nonconforming.

1.06.03. Burden of Demonstration

The burden of establishing that any nonconformity is a legal nonconformity as defined in this subsection shall be borne by the owner or proponent of such nonconformity.

1.06.04. Continuing Lawful Use of Property and Existence of Structures

- (A) *Discontinuance of nonconforming use*

(1) If a nonconforming use shall cease operations for a period of more than six months, then such nonconforming use shall be deemed to be permanently discontinued. Unless the board of adjustment reinstates the nonconforming rights pursuant to section 6.10 Reinstatement of Nonconforming Rights of this Ordinance, such a use shall not be instituted on that parcel or other parcel in any district that does not permit the discontinued use.

(2) For the purpose of this paragraph, to "cease operations" shall mean to intentionally terminate operations of the nonconforming use. Any nonconforming use that does not involve a permanent type of structure or operation and that is moved from the premises shall be considered to have been discontinued, regardless of intent.

- (B) *Reinstatement of nonconforming use rights.* An owner and/or operator of a nonconforming use that has been deemed permanently abandoned pursuant to subsection (A) above, may request that the nonconforming rights to the use be reinstated pursuant to section 6.10 Reinstatement of Nonconforming Rights of this Ordinance.

- (C) *Prohibited expansion or reoccupation.* A nonconforming use or structure shall not be expanded, reoccupied with another nonconforming use, or increased as of the effective date of this Ordinance except as provided in section 1.06.06. below.

- (D) *Existing platted lots are conforming lots.* Any existing lot platted prior to May 6, 2014, which was legally conforming, shall be deemed a conforming lot.

1.06.05. Changing Uses and Nonconforming Rights

- (A) *Nonconforming use to conforming use.* Any nonconforming use may be changed to a conforming use, and once such change is made, the use shall not be changed back to a nonconforming use.
- (B) *Nonconforming use to another nonconforming use.* A nonconforming use may not be changed to another nonconforming use.

- (C) *Conforming use in a nonconforming structure.* Where a conforming use is located in a nonconforming structure, the use may be changed to another conforming use by the process outlined in section 1.06.06. below.

1.06.06. Expansion of Nonconforming Uses and Structures

An expansion of a nonconforming use or structure is allowed in accordance with the following:

- (A) *Nonconforming use expansion in existing building*
- (1) A nonconforming use located within a building may be extended throughout the existing building, provided:
 - (a) No structural alteration may be made on or in the building except those required by law to preserve such building in a structurally sound condition; and
 - (b) The number of dwelling units or rooms in a nonconforming residential use shall not be increased so as to exceed the number of dwelling units or rooms existing at the time said use became a nonconforming use.
 - (2) Nonconforming use within a building shall not be extended to occupy any land outside the building.
- (B) *Off-street loading, parking, and landscaping requirements.* Requirements for parking and landscaping for a nonconforming structure shall be as stated in the supplementary ordinances.
- (C) *Residential lot exemption.* The minimum residential lot areas for the various zoning districts shall be in accordance with their respective districts, except that a lot having less area than herein required that was an official "lot of record" prior to May 6, 2014 may be used for a single-family dwelling.
- (D) *Nonconforming building expansion with conforming uses.* Buildings or structures that do not conform to the area regulations or development standards in this Ordinance but where the uses are deemed conforming shall not increase the gross floor area greater than ten percent from the date when the building became nonconforming. The expansion must be conforming.
- (E) *Reuse of abandoned or vacant buildings by conforming uses allowed.* Buildings or structures that have been vacant or abandoned for more than six months and do not meet the current area regulations or development standards shall be allowed to be reoccupied only by a conforming use.

1.06.07. Restoration of Nonconforming Structures

- (A) *Total destruction.* If a nonconforming structure is destroyed by fire, the elements, or other cause, it may not be rebuilt except to conform to the provisions of this Ordinance.

- (B) *Partial destruction.* In the case of partial destruction of a nonconforming structure up to 51 percent of its total appraised value as determined by the Appraisal District, reconstruction will be permitted, but the existing square footage or function of the nonconforming structure cannot be expanded.

1.06.08. Movement of Nonconforming Structures

- (A) *Relocation of a nonconforming structure within a platted lot.* Nonconforming structures may be relocated within the same platted lot.
- (B) *Compliance.* Nonconforming structures shall comply with all setback and screening requirements once relocated.

1.06.09. Completion of Structures

Nothing herein contained shall require any change in the plans, construction, or designated use of the following:

- (A) *Approved building.* A building or structure for which a building permit has been issued or a site plan approved prior to May 6, 2014.
- (B) *Building in the approval process.* A building or structure for which a complete application for a building permit was accepted by the building official on or before the effective date of these regulations, provided however, that such building permit shall comply with all applicable ordinances in effect on the date such application was filed.

(Ord. No. 1273-14, § 1(Exh. A), 5-6-2014)

Section 6.11. Appeals and the Appeal Process

6.11.01. Appeal of an Administrative Decision

- (A) The board of adjustment may 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 V.T.C.A., Local Government Code § 211.007, as it exists or may be amended.
- (B) 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.

6.11.02. Appeal of a Building Permit Site Plan Decision

Any person aggrieved by the decision of the zoning administrator on a site plan for a building permit may appeal to the planning and zoning commission and city council.

- (A) *Notice of appeal.* Notice of such appeal shall be given within 30 business days after the decision of the planning and community development department, and the department shall cause the appeal to be set for hearing before the planning and zoning commission and city council.
- (B) *Planning and zoning commission recommendation on appeal.* The planning and zoning commission shall make a recommendation to the city council on the site plan.
- (C) *City council decision on appeal.* The city council shall take action to approve, approve with conditions, or deny the site plan.

(Ord. No. 1273-14, § 1(Exh. A), 5-6-2014)

May 18, 2021

City of Richland Hills
Community Development Department
3200 Diana Drive
Richland Hills, Texas 76118

Re: Appeal of Nonconforming Use Determination – 7285 Glenview Drive Richland Hills, Texas
76180

I am contesting the basis that the city manager used to determine that the above property was vacant. Based on the letter, dated May 13, 2021, from Candice Edmondson, her determination was based solely on water records. This determination decision along with what was used to make this determination was never explained to me to allow me an opportunity to explain the situation. If the city officials had not withheld this information from me and fully explained to me why I needed to submit an application for an SUP, I would have provided a more in depth explanation of my personal situation that further explains that the property was never vacant and would have provided that in writing to the City Council, as it is very personal and not a situation I should be forced to share with the public. Because of this, the city is forcing me to share my personal situation with a zoning board and others that may be in attendance of the appeal hearing, when I should have been asked about the property before the city made their determination.

The term vacant, means the property has been abandoned, void of all furniture, clothing, personal items and no one looking after the property. This was never the case for my house, 7285 Glenview Drive. My daughter had been living in the house with my mother, her grandmother, before she passed. My mother passed in July 2018, my daughter continued to live in the house until October 2018, at which time, my brother who served as executor demanded that she move out until the will was probated and executed. All contents remained in the house untouched, including my daughter's furniture and a good portion of her clothes. My husband and I made weekly visits to the house, and continued with all maintenance, house and lawn. We had to wait until the will was probated, which was done in Feb 2019. At that time my daughter began staying in the house again. She did not spend every night at the house, as her job requires extensive out of town travel, and at times she did stay overnight at her friend's house. My brother demanded several times that our daughter vacate the property using several different reasons, and began to make living at the house very uncomfortable for her. We hired a lawyer and started legal proceedings against him. All actions have to take place following different time periods that have passed since the will was probated. These legal proceedings are still very much active today. The house and property has been continually maintained since 1950. It has never been abandoned or left vacant.

Regarding the water meter records. The deed was transferred to me in June 2019 and the utilities transferred to me in August and September 2019. In December 2019 and again in 2020, we called the water department as we felt the water meter was not working properly since our water bill stayed the same minimum amount. When the city water service man did come out, he did not knock on the door, but left a sticky note on the mailbox stating there was a leak on our side. I have all records of the water bills since the utilities were transferred to me and only show 4 months of no water usage since August 21, 2019. These months were November 2019, January 2020, February 2020, and March 2020. I am not surprised at this as during this time frame, my daughter was in and out of the house until her friend started living with her at the house. The house has never been vacant and has never had no water usage for more than 6 consecutive months.

Chronology of Events with the City of Richland Hills:

I contacted the City of Richland Hills in August 2018 and received confirmation via email from Kay Duffy, dated August 16, 2018, that per the City's lawyer, the 7285 Glenview residence could be used as a residential rental since I was inheriting the house, not purchasing it and per the email I only needed to obtain a permit. This email made no mention of Richland Hills Code of Ordinances Section 1.06.04 "If a nonconforming use shall cease operations for a period of more than six months, then such nonconforming use shall be deemed to be permanently discontinued."

In March 2021, I submitted the required Certificate of Occupancy application with the required \$100 fee. I received an email stating the P&Z committee was reviewing my request, at which time I provided a copy of the email from Kay Duffy stating per city's lawyer, the residence could be used as a rental. On March 22, 2021, Karen Evans sent me an email that I must file for a SUP (Specific Use Permit). I filed this application with the \$300 fee.

April 15, 2021, I explained to the Planning and Zoning Committee that the 7285 Glenview Dr house is my childhood home and my parents purchased it in 1950. It has always been occupied as a residence and has never been sold. I had always understood from my parents that we were grandfathered in when the zoning on Glenview was changed, but if it were ever sold, it would have to be sold as commercial. Thus, since I knew I would be inheriting the house, I contacted the city to verify that since I was inheriting the property, I could use it as rental. Please see the enclosed email from Kay Duffy, employee of Richland Hills at the time stating she reviewed my request with the city's lawyer. The P&Z committee approved my SUP request.

April 26, 2021, I presented my case just like I did to the P&Z committee to the City Council. It was at this time one of the City Council members asked me if I understood what I was asking. I explained again that I was instructed to file an SUP in order to use my childhood home that I inherited as a residential rental. I also explained that I did not understand why I even have to go through this process since I already had a letter from the city stating it could be used as a rental. A city council member asked the City Manager about the water usage of the property. This was the first time anyone made mention of the Richland Hills Code of Ordinances Section

1.06.04 "If a nonconforming use shall cease operations for a period of more than six months, then such nonconforming use shall be deemed to be permanently discontinued."

I then figured out what was happening and why I was told by the city to go through the SUP process.

Sincerely,

A handwritten signature in cursive script that reads "Sherry Leavitt". The signature is written in dark ink and is positioned below the word "Sincerely,".

Sherry Leavitt
511 Holly Ct
Keller, TX. 76248
817-706-0262

From: Kay Duffy kduffy@richlandhills.com
Subject: 7285 Glenview Dr
Date: August 16, 2018
To: Sherry@texasleavitts.com

Sherry,

Sorry, I hadn't gotten back to you sooner from our phone conversation, but I wanted to verify with our City's Lawyer before I got back to you. Per the City's Lawyer, since you inherited the house and it has not been sold, it can be rented as residential.

You just need to file a permit with the city.

Thank You,

Kay Duffy
City of Richland Hills
Development Manager
3200 Diana Dr
Richland Hills, TX 76118
817-616-3770
817-616-3765

<Image001.png>

City of Richland Hills
Community Development Department
3200 Diana Drive
Richland Hills, Texas 76118

Re: This letter serves as a supplement to the letter drafted by Sherry Leavitt and delivered May 18, 2021, regarding an appeal of nonconforming use determination of 7285 Glenview Drive, Richland Hills, Texas 76180, to the board of adjustment pursuant to Richland Hills Code of Ordinances §6.11.01. Appeal of an Administrative Decision.

Issue

The nonconforming use for the Property located at 7285 Glenview Drive ("the Property") was never intentionally ceased for a period exceeding six (6) months, therefore the single-family residence use should have never been permanently discontinued. Furthermore, the denial of the Specific Use Permit ("SUP") was in error.

Analysis

A. §1.06- Non-Conforming Uses, Structures and Lots

The Code of Ordinances make an exception for property such as that of Ms. Sherry Leavitt. Specifically, an allowance and potential alteration of uses, lots, and/ or structures that do not conform to currently applicable standards or regulations, but at one time were in conformity with standards in place at the time of their inception but have since been rendered nonconforming due to a change in the applicable standards or regulations.

The property has been maintained as a residential, single-family property since being purchased, in 1950. At that time, the home was zoned as residential property. In May 2014, this property was zoned as mix-use. On May 13, 2021, Candice Edmundson advised Ms. Leavitt that she would need a SUP permit to maintain her residential property in this mixed-use area, even though the property complied with § 106.02 as having legal nonconforming status. Specifically, despite being wholly or partly in non-conformance with the current zoning use, the Property was legally established at a prior date at which time it was in conformance with applicable standards. Additionally, any use, platted lot, or structure that is a lawful use at the time of the adoption of any amendment to this Ordinance but by such amendment is placed in a district wherein such use, platted lot, or structure is not otherwise permitted shall be deemed legal nonconforming.¹ As such, the use as a single-family, residential home should be allowed to continue. This is a family home that has been devised to Ms. Leavitt as her childhood home. This property has never been sold and has always remained in the possession of Ms. Leavitt or her parents as residential property. Therefore, the decision by the city council to permanently discontinue the "legal nonconforming" use and subsequently requiring Ms. Leavitt to file a SUP was erroneous.

B. §1.06.04 Continuing lawful use of Property and Existence

The Code of Ordinances states that "If a nonconforming use shall cease operations for a period of more than six months, then such nonconforming use shall be deemed to be

¹ Code of Ordinances Chapter 90 § 1.06.02(B)

permanently discontinued.” To “cease operations” shall mean to intentionally terminate operations of the nonconforming use.

There has never been an intent to discontinue the use of the Property as a single-family, residential home. This is a family home, owned since 1950, and devised to Ms. Leavitt as her childhood home. This property has never been sold and has always remained in the possession of Ms. Leavitt or her parents as residential property. Specifically, there was never a period of six months in which the property was not used as a single-family residence for a family member. Nor a period of six months in the Property was intentionally, vacated with no intent to return. As such, there was never a period where Ms. Leavitt “ceased operations” of their nonconforming use of the Property as a single-family residential property.

C. Denial by the City Counsel

The City Council first arbitrarily erroneously determined that Ms. Leavitt had discontinued use of the Property. Based on this erroneous determination they required a SUP be filed. The SUP was later denied. The denial of Ms. Leavitt’s SUP request to continuing using her home as a single-family dwelling was based partially on the fact that water usage fell below an average usage rate and partially on two reports from utility inspectors who stated the property “appeared vacant.” Ms. Leavitt has documented proof that this decision was based on faulty information. Specifically, Ms. Leavitt has water bills dating back to 2019 which show only a four (4) month period of no water usage. These months were November 2019, January 2020, February 2020, and March 2020, specifically.

i. Water usage

In October 2018, the current family member residing in the Property, moved out for a period of four (4) months. Specifically, from October 2018 until February 2019. This was never meant to be a permanent vacancy of the property. This move was only to ensure that the true title owner to the Property could be determined by a will probate. The family always intended to return the Property and use it as a single-family home, evidenced by the fact that all the contents, clothing, furniture, and appliances remained inside the home. Weekly visits were made to the home. Yard maintenance was conducted, and any structural repairs were made during this time. The water usage during a two (2) year period was about 160 gallons per month. A clear indication that someone was using the utility service. The water meter was never disconnected from the property and the utility bill was paid. There were never any disconnect notices served on the Property. In fact, inspectors were called to the Property at the request of Ms. Leavitt, to ensure the meter was functioning properly. There was never an intentional period of more than six (6) months where the property had no running water and thus indicated it was vacant.

ii. Inspector’s report

In August 2019 and December 2019, at the request of the homeowners, city utility staff inspectors were called to the property to ensure the water meters were functioning as intended. The inspectors made no effort to knock on the Property door and have no firm proof that the property was “vacated” except personal suspicions. In fact, Ms. Leavitt was waiting on the inspector to arrive so that a determination could be made as to why the water bill had not fluctuated for several months. Instead of attempting to locate the

resident that called them to the property, the inspector chose to leave a sticky note on the mailbox. The inspector formulated their opinions from a brief observation taken *outside* of the Property. Their opinions that the Property “appeared vacant” were wrong.

Conclusion

The City of Richland Hill’s City Council made an error when they permanently discontinued the “legal nonconforming” use of 7285 Glenview Drive Richland Hills, Texas 76180. Because the property had been a single-family residence prior to the adoption of the Comprehensive Zoning Plan in May 2014 and never “ceased operations” of that use for a period which exceeded six (6) months, Ms. Leavitt would like to formally appeal this decision in accordance with §6.10 and §6.11.01 of the Richland Hills Code of Ordinances. Specifically, Ms. Leavitt is requesting these decisions be reversed and she be allowed to continue using her property as a single-family residential unit as she and her family have done since 1950.

Sincerely,

A handwritten signature in cursive script that reads "Sherry Leavitt". The signature is written in dark ink and is positioned above the printed name.

Sherry Leavitt

enclosure: Letter from Sherry Leavitt delivered May 18, 2021.