

ORDINANCE NO. 1816

CITY OF LEXINGTON, NEBRASKA

ORDINANCE NO. 1816

AN ORDINANCE TO AMEND SECTIONS 24A-24, 24A-26, 28-37, 28-38.1, AND 28-41.1 OF THE LEXINGTON CITY CODE, RELATING TO FEES CHARGED FOR SUB-DIVISION PLATS, ADMINISTRATIVE SURVEY PLATS, ZONING CHANGES, SPECIAL USE PERMIT AND VARIANCES. TO REPEAL ORIGINAL SECTIONS 24A-24, 24A-26, 28-37, 28-38.1, AND 28-41.1, TOGETHER WITH ALL ORDINANCES OR SECTIONS OF ORDINANCES IN CONFLICT HEREWITH. TO PROVIDE FOR AN EFFECTIVE DATE AND FOR PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA, AS FOLLOWS:

Section 1. That Section 24A-24 of the Lexington City Code is hereby amended to read as follows:

Section 24A-24. Fees for Submission of Plats.

The following fees shall be paid by all persons or corporations submitting preliminary plats for approval by the Planning Commission. In addition to any other fee or fees required by law and prior to filing of the preliminary plat with the Planning Commission, the subdivider shall pay to the City Treasurer a processing fee. This shall not be refundable. The fee shall be computed on the basis of \$60.00, plus \$2.50 per lot for the first ten (10) lots in a plat, and \$1.00 per lot for each lot in excess of ten (10) lots. The City Treasurer, upon receipt of the proper fee, shall issue to the subdivider two (2) copies of the receipt, one of which the subdivider shall transmit to the Planning Commission at the time of filing of the preliminary plat.

Section 2. That Section 24A-26 of the Lexington City Code is hereby amended to read as follows:

Section 24A-26. Administrative Survey Plat.

(1) Administrative Approval; City Engineer; When Permitted. The City Engineer is hereby empowered to administratively approve an instrument effecting a subdivision when the following conditions exist:

- (a) No new streets or private roadway is dedicated, accepted or needed within the area of the new lots.
- (b) The area affected by the instrument effecting a subdivision is wholly contained within the boundaries of a previous subdivision which has been platted and recorded.
- (c) The new lots shall meet all zoning requirements of the zoning district in which they are situated.
- (d) The instrument effecting a subdivision shall create no more than four (4) lots from any prior lot, tract or parcel of land. If said four (4) lots have been created by prior administrative approval, any further subdivision shall be done by filing and processing a plat as otherwise provided in this Chapter. Exceptions to the foregoing restriction shall be permitted only to allow adjustment of lot lines in case of mistake or error. All new lots shall continue to be described in terms of the pre-existing lot description.
- (e) Any easements required for utilities, drainage and any other improvements shall be provided.

(2) Administrative Approval; Procedure. The City Engineer shall be provided the following information:

- (a) A statement from the County Treasurer showing that all general real estate taxes assessed against the land within the proposed subdivision or any part thereof have been paid in full.
- (b) A statement from the City Treasurer showing that all special assessment installment payments are current as applied to said proposed subdivision.
- (c) A statement showing the method of apportioning any such installments against the new lots.

(3) Administrative Approval; Survey. If the City Engineer determined that a survey of the area affected is necessary in order to determine whether the proposed subdivision will comply with this Article, a survey of the lots

affected, showing the boundaries proposed to be created by such instrument shall be submitted to the City Engineer by the subdivider. Such survey shall be drawn at a minimum scale of one inch (1") to one hundred feet (100') by a licensed land surveyor and shall show the boundaries of the new lots superimposed over the existing lot boundaries. The survey shall also show the location of all existing buildings and the location of all existing utilities serving the land within the boundaries of the survey. Upon approval of the instrument effecting subdivision, the survey as provided in this section shall be filed with the Dawson County Register of Deeds.

(4) Administrative Approval; Approval or Denial by City Engineer. If the City Engineer determines that an instrument effecting subdivision meets the requirements of this Article, his approval shall be endorsed upon such instrument effecting subdivision. Upon denial of the request if such approval is not given, the subdivider may submit the proposed sub-division to the Planning Commission by filing a preliminary plat and as otherwise provided in this Chapter.

(5) Administrative Approval; Prior Instruments Approved. Any instrument in writing, which has been filed in the office of the Dawson County Register of Deeds prior to the effective date of this Ordinance, which in any manner purports to effect a subdivision of real property, regulated by this Chapter, and the instrument, or the record thereof, fails to comply with any requirements of this Chapter, such instrument shall be fully legal, valid and binding and effectual for all purposes to the same extent as though such instrument had, in the first instance, been in all respects duly approved, and provided an action has not been commenced in a Court of competent jurisdiction to set such instrument aside within 180 days from and after the effective date of this Ordinance.

(6) Upon filing a request for administrative approval of an instrument effecting a subdivision, a fee of \$35.00 shall be paid.

Section 3. That Section 28-37 of the Lexington City Code is hereby amended to read as follows:

Section 28-37. General.

Application for amendment, revision or change of the zoning district map or for a special use permit may be made by any person, or his agent, who owns the land sought to be rezoned or specially used. If such application is made by the owner's agent, the agent shall enter upon the application the name and current mailing address of the owner.

Applications for amendment, revision or change of any portion of this chapter may be made by any interested person. All applications shall be made on forms prescribed by the City Clerk-Treasurer and duly filed with the City-Clerk Treasurer.

A fee of \$60.00 shall accompany each application for amendment, revision or change of the zoning district. An accurate sketch of the land in question, drawn to scale on a sheet of 8½" x 11", and a legal description thereof shall accompany the application.

Immediately upon receipt of such application and fee, the Clerk-Treasurer shall note thereon the date of filing and make a permanent record thereof. All such applications shall be set down for hearing not later than the second regular monthly meeting of the Planning Commission following the application. Any such hearing may, for good cause, at the request of the applicant or in the discretion of the Planning Commission be continued for a definite time to be specified in the record of the Planning Commission. Notice of such hearing shall be published at least one time in the official newspaper of the City, such notice

to be published not less than ten (10) days prior to the date of the hearing before the Planning Commission.

In addition to the publication of the Notice herein prescribed, a Notice shall be posted in a conspicuous place on or near the property on which action is pending. Said Notice shall be not less than two (2) feet in height and four (4) feet in width with white or yellow background, and black letters not less than two (2) inches in height, and be substantially the same as the published Notice. Such posted Notice shall be so placed upon such premises that it is easily visible from the street nearest the same and shall be so posted at least ten (10) days prior to the date of such hearing. It shall be unlawful for anyone to remove, mutilate, destroy or change such Notice prior to such hearing. Any person so doing shall be deemed guilty of a misdemeanor. The record title holders of any real estate included in such proposal, and all record title holders of land within three hundred (300) feet of the land involved in such proposal, shall be served with a written Notice substantially the same as the published Notice. Service to non-resident title holders shall be made by certified mail to the last known address of said title holder. Such Notice shall be mailed at least ten (10) days prior to such hearing. In addition, the Clerk-Treasurer shall notify the Board of Education having jurisdiction in the area containing the property, for the purpose of securing a recommendation from the Board relative to the zoning change. Such recommendation from the Board of Education shall be advisory only and failure to submit a recommendation within thirty (30) days shall be construed as approval of the proposal as submitted.

Following the final hearing of such application, the Planning Commission shall approve or deny the same, at the earliest reasonable time, and shall transmit an accurate written summary of the proceedings to the City Clerk-Treasurer.

Following receipt of the summary of the action of the Planning Commission, the City Clerk shall cause the proper posting and publication to be done for a public hearing by the City Council and shall submit the same to the City Council for consideration at the next regular meeting following the date of publication as allowed by law; at which time, final action approving or disapproving the recommendation of the Planning Commission shall be taken; provided, that the Council may for good cause or upon the request of the applicant, continue its hearing upon such application or take the same under advisement after hearing, for final decision at a later date, and in any case the record shall show the reason for such continuance or withholding of final action.

Recommendations for amendment, revision, change or repeal of this chapter, zoning district map, rules or regulations, may also be made by the Planning Commission upon its own motion or by the City Council; provided, that the same are first submitted to the Planning Commission for hearing and recommendation. In either case, final action by the City Council shall be taken only after hearing upon publication notice and recommendation, whether favorable or otherwise, by the Planning Commission, in the manner hereinbefore provided.

In case of a protest against such change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending three hundred (300) feet therefrom, and of those directly opposite thereto extending three hundred (300) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths (3/4) of all the members of the legislative body.

Section 4. That Section 28-38.1 of the Lexington City Code is hereby amended to read as follows:

Section 28-38.1. Application for Special Use Permit, Notice of Public Hearing.

The application for a special use permit shall be made by the property owner or his designated agent and filed in writing with the Planning Commission on forms provided, and shall contain information and exhibits as may be required under other sections. Not more than sixty (60) days after filing such application a hearing shall be held on the application, unless otherwise withdrawn or postponed upon written request by the applicant. Notice of hearing shall be held in accordance with Section 28-37. A fee of \$60.00 payable to the City of Lexington shall be charged to partially defray cost of review and processing for each application for a special use permit, except that the fee shall be waived for any governmental agency.

Section 5. That Section 28-41.1 of the Lexington City Code is hereby amended to read as follows:

Section 28-41.1. Powers-Generally; Variances.

The Board of Adjustment shall, subject to such appropriate conditions and safeguards as may be established by the legislative body, have only the following powers:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures;

(2) To hear and decide, in accordance with the provisions of any zoning regulations, requests for interpretation of any map; and

(3) Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and



exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this act would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution. No such variance shall be authorized by the board unless it finds that:

- (a) The strict application of the zoning regulation would produce undue hardship;
- (b) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- (c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance;
- (d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

(4) Appeals and applications for variance shall be made by the property owner or his designated agent and filed in writing with the Board of Adjustment on forms provided. A fee of \$25.00 payable to the City of Lexington shall be charged to partially defray cost of review and processing for each appeal or application.

(5) No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations. In exercising the above mentioned powers such board may, in conformity with the provisions of Sections 19-901 to 19-905, reverse or affirm wholly or

or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

Section 6. That original Sections 24A-24, 24A-26, 28-37, 28-38.1 and 28-41.1, together with all other ordinances or sections of ordinances in conflict herewith are hereby repealed.

Section 7. This ordinance shall be published in pamphlet form and take effect as provided by law.

PASSED AND APPROVED this 12th day of November, 1986.

CITY OF LEXINGTON, NEBRASKA

By Robert L. Hawks  
Mayor

ATTEST:

Leon E. Malachuk  
City Clerk

