

ORDINANCE NO.

**AN ORDINANCE MODIFYING CERTAIN DEVELOPMENT REGULATIONS
APPLICABLE TO PROPERTY LOCATED AT 328 HEARTWOOD DRIVE AND
INCLUDED IN SITE PLAN NO. SP-2008-0091D.**

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

PART 1. APPLICABILITY.

This ordinance applies to Site Plan No. SP-2008-0091D, as submitted to the Watershed Protection and Development Review Department on or about February 21, 2008, for property located at 328 Heartwood Drive in Austin, Texas.

PART 2. FINDINGS.

- (1) The existing fence, retaining wall, and associated fill located at 328 Heartwood Drive, as described under Site Plan No. SP-2008-0091D, do not comply with requirements of the Land Development Code related to height and development in the floodplain and Critical Water Quality Zone.
- (2) The hydrological and environmental impacts of the development are minimal and complete removal of the improvements would temporarily result in adverse impacts to the Williamson Creek Watershed.
- (3) The applicant has requested that the improvements be allowed to remain, subject to a reduction of approximately two feet in the height of the fence and retaining wall and a corresponding reduction in the amount of fill located on the property.
- (4) The neighbors in closest proximity to the development are agreeable to allowing the improvements to remain, provided that the applicant:
 - (i) obtains approval of the Federal Emergency Management Agency, which is required as a condition to the floodplain variance also requested by the applicant; and
 - (ii) reduces the height of the fence and retaining wall to conform with the requirements of the Land Development Code.
- (5) The regulations adopted by this ordinance reflect a middle ground between the positions of the parties. The ordinance allows the improvements to remain, subject to FEMA approval, but requires significant modifications

1 reducing the amount of fill on the property and the size of the retaining wall
2 and fence. These modifications will reduce the overall mass of the structure
3 and provide better passage for water in the event of flooding.
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5 **PART 3. DEVELOPMENT STANDARDS, SITE PLAN REVIEW, AND**
6 **INSPECTION.**

7 **A. Development Standards.** Notwithstanding the requirements of City Code
8 Section 25-2-899, Section 25-8-342, and Section 25-8-392, et seq., Site Plan
9 No. SP-2008-0091D may be updated to include a retaining wall, fence, and
10 associated fill subject to the following requirements:

- 11 1. The property may contain no more than 5 feet of fill, as measured at the
12 rear property line and as determined based on the pre-project conditions
13 topography included with Site Plan No. SP-2008-0091D. The maximum
14 elevation of the fill area may not exceed the elevation attained from 5 feet
15 of fill at the rear of the property line.
- 16 2. The retaining wall, excluding the fence placed on top of the wall, may
17 not exceed 6 feet in height, as measured at its highest point at the rear of
18 the property line, and may not exceed 1 foot above the maximum fill
19 elevation.
- 20 3. The fence located on top of the retaining wall may not exceed 3½ feet in
21 height, as measured from the top of the retaining wall at the rear property
22 line. Along the side property lines, the fence height may be increased if
23 the top of the fence is no more than six feet from the ground, as
24 determined based on the pre-project conditions topography included with
25 Site Plan No. SP-2008-0091D. Where the fence height is less than 6 feet,
26 solid pillars similar in dimension and location as currently exist may
27 measure 6 feet in height from the top of the retaining wall.
- 28 4. The existing retaining wall and pillars located on the property may not be
29 expanded in length, width, or height and must be modified as needed to
30 comply with this section. All sections must be constructed in the same or
31 substantially similar manner as the existing fence sections, with wrought
32 iron or similar material in an open configuration that allows for the free
33 passage of water.

34 **B. Site Plan Review and Approval.** The director shall review updates to the site
35 plan submitted prior to the expiration of this ordinance under the following
36 requirements:

1. The director shall approve the site plan if it complies with the requirements of Subsection (A), above, and the applicant has either requested or obtained approval of the Federal Emergency Management Agency (FEMA) for a revision to the Flood Insurance Rate Map (FIRM), as required under Part 4 of Ordinance No. _____.
2. The director shall disapprove the site plan if:
 - a. it does not comply with the requirements of Subsection (A), above; or
 - b. FEMA has denied approval of a revision to the FIRM, as required by Part 4 of Ordinance No. _____.
3. The director shall expeditiously review updates submitted under this section. The applicant may re-submit additional updates as needed at any time prior to expiration of this ordinance.

C. Limitation on Site Plan Release. As required under Part 4 of Ordinance No. _____, the City may not release a site plan for the placement of fill or the construction of a retaining wall or fence on the property until the applicant obtains FEMA approval for a revision to the FIRM and submits, and records with the County, all necessary documentation for the required floodplain easement.

D. Final Inspection. Following release of the site plan and completion of improvements approved under Subsection (B), above, the applicant must obtain a final inspection from the building official. The building official shall approve final inspection if the development is consistent with the approved site plan and all applicable technical code requirements.

PART 4. EXPIRATION. This ordinance expires on June 25, 2011.

PART 5. This ordinance takes effect on _____, 2009.

PASSED AND APPROVED

_____, 2009

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Will Wynn
Mayor

APPROVED: _____

David Allan Smith
City Attorney

ATTEST: _____

Shirley A. Gentry
City Clerk