

FILE NUMBER: DCA212-007(LL)

DATE INITIATED: Fall 2022

TOPIC: Development Code Amendment to consider amendments to the two-year limitation applicability, standards to grant a waiver, and related regulations

COUNCIL DISTRICT: All

CENSUS TRACTS: All

PROPOSAL: Consideration of amending Chapter 51A of the Dallas Development Code, Section 51A-4.701(d), "Two year limitation," to revise the applicability of the two-year limitation, standards to grant a waiver, and related regulations.

SUMMARY: The proposed code amendments modify the two-year limitation between a final decision of approval or denial of an application for a change in zoning or boundary line adjustment and a subsequent request and the standards to be considered to grant a waiver. These modifications are intended to align Dallas more closely with other area cities and further the City's goal to undergo regulatory review to remove barriers to growth and development.

ZOAC RECOMMENDATION: Approval of ZOAC's proposed amendments.

STAFF RECOMMENDATION: Approval of staff's proposed amendments.

CODE AMENDMENT WEBPAGE:

<https://dallascityhall.com/departments/pnv/Pages/Code-Amendments.aspx>

BACKGROUND INFORMATION:

- On May 11, 2022, City Plan Commission (CPC) approved the request of Chair Joanna Hampton, Vice Chair Brent Rubin, and Commissioner Michael Jung to initiate a public hearing to consider a code amendment of the Dallas Development Code, Section 51A-4.701(d), “Two year limitation,” to revise the applicability of the two-year limitation, the standard for the waiver of two-year limitation, and related regulations.
- On November 15, 2022 and January 17, 2023, staff presented recommendations for two-year limitations to ZOAC. At the meeting, ZOAC asked staff to consider additional items to be considered to grant a waiver.
- On January 31, 2023, ZOAC motioned to move the item forward to CPC with an alternate recommendation to staff’s recommendations.

STAFF ANALYSIS:

CPC initiated the code amendment to review the current two-year waiting period required between a final decision of approval or denial of an application for a change in zoning or boundary line adjustment and a subsequent application for a change in zoning or boundary line adjustment. A two-year waiting period is not required for minor amendments to site, landscape, or development plans and original development plans. However, any change to an approved site, landscape, or development plan that does not qualify for a minor amendment would be subject to the two-year waiting period since significant changes to approved plans are required to go through the zoning process.

The current two-year waiting period between an approved zoning or specific use permit (SUP) application on a property creates challenges because relief from the waiting period is only granted with a waiver from CPC. The CPC waiver process adds at least a month to a minimum two public hearings by CPC and Council that are already required for a zoning change, including an SUP and a boundary adjustment.

To grant a waiver under the existing parameters, the commission must consider what is meant by “changed circumstances regarding the property sufficient to warrant a new hearing”. The meaning of this phrase has historically been interpreted in a variety of ways ranging from physical changes to the land or existing structures which have been altered outside the property owner’s control (e.g. tornado, fire damage, flooding, etc.) to changes that are not physically discernable such as a change in interpretation, property owner, or market conditions. These differing interpretations have complicated the waiver process and therefore warrants review.

Analyses of Previous Two-Year Waiver Requests

Most waiver applications are made so that a subsequent application and public hearings could occur to correct inconsistencies in the preceding zoning or SUP ordinance, adjust for changes in market conditions, or because an SUP was granted within two years on the same property, often for an unrelated use to the new application requiring a waiver.

Staff researched two-year waivers that were filed from 2018 to 2022 and found five out of 13 waivers that were submitted as a result of final action decisions of denial (with prejudice). Of the 13 waiver applications that were submitted, 12 (92.3%) waivers were approved. Of those five waiver applications, two were granted approval by CPC within one month of filing and two were denied within one month of filing the application. Of those two denied by CPC, one was ultimately granted (overturned) upon an appeal to City Council within six months of filing the application. One waiver application was granted within two months of filing the application.

Exempting Approvals from the Two-Year Waiting Period

ZOAC recommended to maintain applying the waiting period for approvals whereas staff does not. Staff recommends an exemption for approvals for an SUP or for a change in zoning district classification or boundary from the two-year limitation. Staff's recommendation to exempt approvals from a waiting period will have at least four significant impacts as described below:

1. Exempting approvals from the waiting period would eliminate 61.5%, or eight out of 13 waiver applications, based on the waivers submitted between 2018 and 2022 – significantly reducing the number of waiver applications. This reduction in the number of waiver applications submitted will save time for staff and the commission.
2. Exempting approvals from the waiting period will save time for the property owner because the waiver process adds a minimum of one month in addition to the zoning change process which could take an additional three to six months when there is no backlog of cases. This additional time to go through a waiver process could negatively impact further development of a property. Staff's recommendation supports the goal to undergo regulatory review to remove barriers to growth and development, particularly in areas that are experiencing accelerated economic growth and vitality or a resurgence of growth and development. It also directly correlates to the Economic Development Policy (EDP) to analyze and improve development review processes to encourage predictability in order to meet the larger goal of leveraging a diverse range

of commercial and industrial development opportunities in all areas of the city to meet 10-year demand for business growth.

3. Exempting approvals from the waiting period would align with 13 out of 15 cities compared. The comparison shows that only Atlanta and El Paso require approvals to have a waiting period. Austin, Baltimore, Boston, Buffalo, Columbus, Fort Worth, Houston, Minneapolis, Philadelphia, San Antonio, San Diego, San Francisco, and San Jose do not require approvals to have any waiting period. Eliminating the waiting period for approvals would help to make Dallas competitive and ultimately better positioned for more development opportunities in a competitive climate.
4. Exempting approvals from a waiting period will realign previous decisions for approval with previous decisions for denial without prejudice instead of the current requirement which requires previous decisions for approval to wait like previous final decisions of denial (with prejudice). In rare circumstances when portions of a previous request that were not included in the previous approval are resubmitted within two years of the previous final decision, CPC and Council still retain the option to work with the applicant to find consensus, deny the subsequent request without prejudice, or deny the subsequent request with prejudice and impose a two-year waiting period before another subsequent request can be made. This concern should not outweigh the consequences of requiring previous decisions of approval to get a waiver.

Ultimately, staff has found insufficient reasons to maintain a two-year waiting period for approvals alongside denials (with prejudice). Therefore, staff recommends that properties that were granted a specific use permit or approved for a change in zoning district classification or boundary should not be required to wait two years before making a subsequent request.

Additional Criteria to Grant Two-Year Waivers

ZOAC recommended to add a long list of standards to evaluate the waiver requests. Staff does not agree that standards to grant a waiver should be included in the code amendment or ultimately specified in the regulations. Staff believes that the applicant should instead provide justification for such waiver on a case-by-case basis.

Staff also notes that the standards for waivers in comparison cities is very limited and therefore, staff is concerned that an exhaustive list of criteria for waivers is inconsistent with most other cities, and may cause unexpected consequences, and add processing time for staff to gather information necessary to present to the commission to consider the additional criteria.

In lieu of the long list of standards recommended by ZOAC, staff supports only one change to the standards of “changed circumstances regarding the property sufficient to warrant a new hearing”. Staff recommends this change as, “The commission may waive the two-year limitation if there are changed circumstances ~~[regarding the property]~~ sufficient to warrant a new hearing” since the meaning of this phrase has historically been interpreted to be limited to physical changes to the land or existing structures which have been altered outside the property owner’s control (e.g. tornado, fire damage, flooding, etc.). This interpretation has created conflicts between staff and CPC. Staff’s recommended amendment is expected to resolve most of these conflicts and will allow the applicant to present how physical or nonphysical changes warrant a new hearing.

Time period elapsed since previous final decision

Staff would support a reduction to the duration of the two-year time period to wait to submit subsequent applications in lieu of the suggestion to consider the time period that elapsed since the previous final decision and the waiver request. Since the time period that elapsed since the previous final decision is not specific as to how long of a waiting period would be appropriate, staff does not recommend this be added to the factors to consider.

Regarding the duration of the required waiting period, of the 15 typical comparison cities nation-wide, Columbus, Minneapolis, and San Diego had no waiting period required; San Antonio only had a six-month waiting period; Fort Worth, Houston, Philadelphia, San Francisco, El Paso, Baltimore, Buffalo, and San Jose had a one-year waiting period; and Austin had a one-and-one-half year waiting period. Only two other cities of our comparison cities, Atlanta and Boston, require a two-year waiting period like Dallas. Therefore, a one-year waiting period would align with a majority of comparison cities.

Unanimity of the previous decision

Staff does not support ZOAC’s recommendation to consider whether the vote for the previous final decision was or was not unanimous on a previous decision. From a policy point of view, Council or CPC’s decisions being viewed as final is important and should be respected. If applicants are able to go back and use the unanimity (or lack thereof) of the previous vote as a reason to get around the original decision, then that takes away from the finality of all decisions by the bodies that are not unanimous.

Nature and degree of public responses received

Staff does not support ZOAC's recommendation to consider the nature and degree to which public responses to previous final decisions were received because neither the nature nor degree can be objectively judged outside the context of the original decision. Further, gathering previously submitted emails and responses to give to the applicant would put additional burdens on staff. Additionally, staff makes professional recommendations based on the merits of the applications and, if this item is adopted, it could result in staff recommending denial of waiver requests when any responses to the previous request are received.

Although the notification requirements in the Dallas Development Code meet all state and local requirements, the number of responses received often fails to capture all of those who wish to respond. The number of responses received are often diminished because of a multitude of reasons. For example, there could be a delay due to time spent in the US Postal Service system. Homeowners may be out of town when the notice arrives and they often only have a few days to put it back in the mail. Property owners may have changed since the annual tax roll was published and the new owners do not receive the notice. The property owner may be a corporation that may not recognize the significance of notification or respond in a timely manner and other various reasons.

Responses collected also rarely include business owners for various reasons, condominium owners because they must vote as a whole through the condominium governance, and other property owners that missed one of the required elements to catalog the response (e.g. the time must be written on responses to be registered). The largest excluded stakeholder on notifications and responses collected are from residential and commercial renters since the requirements for collecting responses set forth in the Dallas Development Code are narrowly focused on property owners. Therefore, staff considers establishing previously collected responses as a standard to waive the waiting period (or not) as inequitable and out of context.

Additionally, property owners who had originally sent responses in opposition rarely update their original position before the deadline passes to update the register of responses. Outdated responses often occur when the community and applicant come to a consensus by the conclusion of the request. A response in opposition may have arisen originally due to a lack of understanding of all the details of the request before the case is heard, and then there is support for the request upon learning the details or a response in opposition may have simply been a plea for more time to understand the request. Therefore, responses received should be considered a partial representation of public input and is not recommended to be specified as a standard to grant a waiver in code.

Refining Terminology:

The remaining proposed amendments include many changes that simply refine the existing interpretation. For example, the word “subsequent” is proposed to replace “further”. Although no significant changes in interpretation were discovered with this proposed change, staff believes “subsequent” is a more refined and appropriate word in this context and was seen in some comparison cities. The remainder of the changes proposed are considered improvements to the existing requirements but are not significant changes to current practices and interpretations.

Summary of Staff Recommendations

Staff recommends removing the two-year limitation for approvals of a change in zoning district classification or boundary, which includes decisions to grant SUPs. Exempting approvals from the two-year waiting period will significantly reduce the number of two-year waiver applications presented to CPC. Exempting approvals from the two-year waiting period is expected to have a direct impact on development and economic growth; particularly in areas that are experiencing accelerated economic growth and vitality or a resurgence of growth and development. Staff’s recommended amendments will also align Dallas more closely with other area cities. Additionally, staff believes that no standards to grant a waiver should be provided in the Dallas Development Code and that the applicant should instead provide the justification for the waiver on a case-by-case basis.

ZOAC Recommended Amendments to §51A-4.701. Zoning Amendments

Note: ~~Strikeouts~~ are words being removed. Underlined words are words being added.

(d) Two-year [~~Two-year~~] limitation.

ZOAC Recommendation:

(1) Except as provided in Subsections (d)(2) and (d)(3), after a final decision is reached by the commission or city council either granting or denying a request for a change in a zoning district classification or boundary, no subsequent [~~further~~] applications may be considered for that property for two years from the date of the final decision.

(2) If the commission or the city council renders a final decision of denial without prejudice, or if the city council grants a specific use permit and imposes a time limit of two years or less, the two-year [~~two-year~~] limitation is waived.

Staff Recommendation:

(1) Except as provided in Subsections (d)(2) and (d)(3), after a final decision is reached by the commission or city council [~~either granting or~~] denying a request for a change in a zoning district classification or boundary, no subsequent [~~further~~] applications may be considered for that property for two years from the date of the final decision.

(2) If the commission or the city council renders a final decision of denial without prejudice, [~~or if the city council grants a specific use permit and imposes a time limit of two years or less,~~] the two-year [~~two-year~~] limitation is waived.

(3) A property owner may apply for a waiver of the two-year [~~two-year~~] limitation in the following manner:

(A) The applicant shall submit the [~~his~~] request in writing to the director. The director shall inform the applicant of the date on which the commission shall consider the [~~his~~] request and shall advise the applicant of the [~~his~~] right to appear before the commission.

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ZOAC Recommendation:

(B) The commission may consider the following factors when determining whether to waive the two-year limitation and grant a new hearing:

(i) I[t]here are changed circumstances regarding the property [sufficient to warrant a new hearing.];

(ii) T[t]he length of time that has elapsed since the previous zoning decision;

(iii) Whether the previous final decision for a change in a zoning district classification or boundary of the property was city-initiated;

(iv) Whether the previous final decision was for a specific use permit;

(v) Whether significant and material changes between the previous and subsequent requests are expected, including but not limited to:

(aa) a change in land area,

(bb) the nature of the subsequent request, or

(cc) new circumstances or information has been discovered that were unforeseeable;

(vi) Whether the previous final decision for a change in a zoning district classification or boundary of the property was or was not unanimous;

(vii) The nature and degree of public support for or opposition to the prior final decision; or

(viii) Other factors in which granting a waiver is or is not contrary to the public interest.

Staff Recommendation:

(B) The commission may waive the two-year limitation if there are changed circumstances ~~[regarding the property]~~ sufficient to warrant a new hearing.

(C) A simple majority vote by the commission is required to grant the request. If a waiver ~~[rehearing]~~ is granted, the applicant shall follow the procedure for a ~~a[n]~~ zoning amendment per ~~[tø]~~ this article or a request for a change in a zoning district classification or boundary.

~~(D)~~~~(C)~~ If the commission denies the request, the applicant may appeal in writing to the city council by filing an appeal with the director.

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**OTHER CITIES COMPARISON
FOR TWO YEAR LIMITATION FOR SUBSEQUENT APPLICATIONS
(TABLE 1 OF 2)**

| | Dallas | Atlanta | Austin | Baltimore | Boston | Buffalo | Columbus | El Paso |
|--|--|--|--|--|--|---|----------|--|
| Application (Subsequent) Limitation | Y | Y | Y | Y | Y | Y | N | Y |
| Waiting Time Period (in Years) | 2 | 2 | 1-1/2 | 1 | 2 | 1 | N/A | 1 |
| Decision Impacted | Approvals/ Denials – change in a zoning district classification or boundary | Applications for any change affecting same property or any part thereof | Denials – zone or rezone to a property or a portion of the property to the same or a less restrictive zoning district | Denials – the same applications for the same properties for variances and conditional uses | Denials - SUP's or permits | Denials | N/A | Change of zoning for a given property |
| Waiver | Y | Y | N | Y | Y | Y | N/A | Y |
| Exceptions | 1. Denial w/o prejudice 2. If SUP is granted with imposed time limit of two years or less (2 yr. time limit is waived) or 3. Property owner may apply for waiver in writing | Planning Bureau or Council may initiate a change on same property not less than 1 year (1 yr. time frame may not be waived) | N/A | Substantial new evidence is available | 1. Unanimous vote of board of 3 members; or 2. Vote of 4 members of a board of 5 members; or 3. Two-thirds vote of a board of more than five members | Substantial new evidence or a mistake of law or of fact | N/A | Y |
| Conditions | 1. Applicant must submit waiver request in writing to Director; | N/A | Applicant may not file another application within 1-1/2 yrs. if application: | Application must include: 1. Detailed description of how application is | 1. Specific and material changes in conditions upon which | Applicant must submit detailed statement justifying consideration | N/A | A finding that a substantial change in conditions has occurred |

**OTHER CITIES COMPARISON
FOR TWO YEAR LIMITATION FOR SUBSEQUENT APPLICATIONS
(TABLE 1 OF 2)**

| | Dallas | Atlanta | Austin | Baltimore | Boston | Buffalo | Columbus | El Paso |
|--------------------------------|---|---------|---|--|--|---------|----------|---------|
| Conditions (cont'd) | <p>2. Changed circumstances that warrant a new hearing; and</p> <p>3. A vote of a simple majority of the Commission</p> | | <p>1. Is not recommended by the Land Use Commission as requested by applicant and withdrawn by applicant before Council votes on application;</p> <p>2. Is not recommended by Land Use Commission as requested by applicant and is denied by Council;</p> <p>3. Is amended by applicant before Land Use Commission makes recommendation and applicant withdraws application before Council votes on</p> | <p>substantially different request or how substantially new evidence justifies consideration</p> | <p>decision was made;</p> <p>2. Describes such changes in record of proceedings; and</p> <p>3. Unless all but one of the members of the planning board consents thereto and after notice to parties in interest of such time and place of proceedings of such question of consent will be considered</p> | | | |

**OTHER CITIES COMPARISON
FOR TWO YEAR LIMITATION FOR SUBSEQUENT APPLICATIONS
(TABLE 1 OF 2)**

| | Dallas | Atlanta | Austin | Baltimore | Boston | Buffalo | Columbus | El Paso |
|---|------------------------|---|--|---|----------------|--|----------|------------------------|
| Conditions (cont'd) | | | application; or 4. Is amended by the applicant before the Land Use Commission makes a recommenda tion and Council denies the application. | | | | | |
| Reapplication Decision Maker | Planning Commission | City Council may approve ordinance to waive 2 yrs. | N/A | Zoning Administrator must summarily deny if Administrator finds that application is not appropriate for hearing | Planning Board | Ordinance Administrator may deny if Administrator determines no grounds to justify consideration of a hearing | N/A | Planning Commission |

**OTHER CITIES COMPARISON
FOR TWO YEAR LIMITATION FOR SUBSEQUENT APPLICATIONS
(TABLE 2 OF 2)**

| | Dallas | Ft. Worth | Houston | Minneapolis | Philadelphia | San Antonio | San Diego | San Francisco | San Jose |
|--|---|--------------------------|---------|-------------|--------------|-------------|-----------|--|---|
| Application (Subsequent) Limitation | Y | Y | Y | N | Y | Y | N | Y | Y |
| Waiting Time Period (in Years) | 2 | 1 | 1 | N/A | 1 | 6 mos. | N/A | 1 | 1 |
| Decision Impacted | Approvals/ Denials – change in a zoning district classification or boundary | Denials (with prejudice) | Denials | N/A | Denials | Denials | N/A | Planning Code, General Plan, conditional use or variance | Denials – same zoning or rezoning for same property or any part thereof |
| Waiver | Y | Y | N | N/A | Y | N | N/A | N | N |
| Exceptions | 1. Denial w/o prejudice 2. If SUP is granted with imposed time limit of two years or less (2 yr. time limit is waived) or 3. Property owner may apply for waiver in writing | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |

**OTHER CITIES COMPARISON
FOR TWO YEAR LIMITATION FOR SUBSEQUENT APPLICATIONS
(TABLE 2 OF 2)**

| | Dallas | Ft. Worth | Houston | Minneapolis | Philadelphia | San Antonio | San Diego | San Francisco | San Jose |
|-------------------------------------|--|---|---------|-------------|--|-------------|-----------|---------------|----------|
| Exceptions (cont'd) | 4. Applicant requests withdrawal at 5 full working days before the date of the hearing | | | | | | | | |
| Conditions | | Original Applicant must: submit a written statement of substantially changed conditions | N/A | N/A | Zoning Board must hold a public hearing limited to two issues: 1. whether the Dept. of License and Inspections (L&I) properly applied the One Year Rule; and 2. whether because of materially changed circumstances, the application should be considered not withstanding the One Year Rule | N/A | N/A | N/A | N/A |
| Reapplication Decision Maker | | City Council | N/A | N/A | Zoning Commission | N/A | N/A | N/A | N/A |