

## Preservation of Prevailing Building Lines and Lot Sizes

Reid C. Wilson  
Wilson, Cribbs & Goren, P.C.  
2500 Fannin  
Houston, Texas 77002  
713/222-9000

### I. INTRODUCTION

In a city without zoning, land use regulation tends to be fragmented and reactionary. The City of Houston has a land use regulation scheme composed of numerous “rifle shot” ordinances regulating very specific development activities, but in a non-comprehensive manner. Among the primary land use regulations in the City of Houston is the Subdivision Ordinance (Chapter 42), enforcement of private residential deed restrictions (Section 10-551, et seq.) and the right of residential neighborhoods to create a special building lot line area or special minimum lot size area.

The City of Houston’s subdivision regulations do not, *per se*, regulate land use. However, in the enforcement of subdivision regulations, the City will not approve a residential replat which would have the effect of violating existing deed restrictions relating to lot size, setback, and size, type and number of structures per lot. No other restrictions are enforced. Section 10.551 implements the authority granted to the City of Houston in Tex. Loc. Gov’t Code § 212.131 et seq.

The City imposes restrictions on development in established residential neighborhoods by imposing minimum setbacks and lot sizes under certain circumstances. This article describes the procedures necessary to implement those minimum setbacks and lot sizes.

### II. PREVAILING BUILDING LINE

In 1999, the City established a procedure to permit preservation of the character of existing block faces in residential neighborhoods in urban areas that do not have building lines established by deed restrictions. Any situation where all the lots in the proposed areas are not deed restricted is a candidate. A “special building line requirement area,” when approved by the City, mandates a minimum setback line from the street, whether or not this setback line is more restrictive than other City regulations.

#### A. **Application Requirements** –

- i. A proposed area, including at least one block face. A block face is either side of a street and the intersection of one street to the next street (or the cul-de-sac of a dead-end street);
- ii. Sketch showing lots, addresses and land use in the proposed area;

- iii. Setback lines for each lot in the area;
- iv. Petition signed by an owner; and
- v. Evidence of support (which ultimately will require a petition signed by the owners).

B. **Process.**

- i. Notice to Owners – 10 days after receipt of a complete application, the Planning Department will provide notice to all owners in the area (according to tax rolls) by U.S. Mail. Notice will also be provided by 2 signs.
- ii. Protest –
  - a. Owners may protest by filing a written notice with the Planning Department within 15 days of the date of the notice letter (not receipt of the notice letter).
  - b. If no protest, and the owners of 51% or more of lots or tracts within the area sign a petition supporting the application, the Planning Department will administratively approve any application meeting the applicable requirements, then refer the application to City Council for final approval.
- iii. Notice of Public Hearing -- If there is a protest, or any of the following requirements are not satisfied, the Planning Department will set the application for a public hearing before the Planning Commission. The Planning Commission shall schedule the public hearing within 30 days after the Planning Department refers the application to it. Notice of the public hearing will be given to each owner at least 15 days before the scheduled date. Owners may present comments in person or in writing at the public hearing.
- iv. Conduct of Public Hearing -- At the public hearing, any member of the public may speak or present information. After close of the public hearing, the Planning Commission will consider whether to recommend the application for approval by City Council. The Commission shall recommend the application if it meets the following criteria:
  - 1. Area boundaries include all properties within at least 1 block face;
  - 2. At least 50% of the lots are developed with single family residential units;
  - 3. There is “sufficient support” for the application (majority signing a petition is not required);
  - 4. Approval furthers “the goal of preserving the prevailing building line character of the area”; and
  - 5. The area has a “prevailing constructed building line”. “Prevailing constructed building line” requires 75% of the single family residential properties within the area to have a constructed building line measured from the property line to the closest point of any building (including garages or carports) that varies by less than 5’

from “the most frequent constructed building line”. The actual “prevailing building line” shall be the most frequently occurring constructed building line. The “most frequently constructed building line” is the most prevalent line.

Simply put,  $\frac{3}{4}$  of the houses (excluding non-single family structures or vacant lots) must have a setback line within a 5’ variation from the setback line which is most frequently occurring.

C. **Approval**

- i. If the Commission does not recommend the application for City Council approval, the decision is final.
- ii. If the Planning Commission recommends the application to City Council, the City Council shall consider the application (based on the foregoing criteria), but without another public hearing. The application can be approved by a majority vote of City Council, incorporated into an ordinance.
- iii. A certified copy of the ordinance is recorded in the Real Property Records by the Planning Department.
- iv. The ordinance is effective for 20 years, unless earlier terminated by City Council (how the City Council would earlier terminate special building lines in a requirement area is not stated).

D. **Pending Development**

- i. If a complete valid building permit, subdivision plat or development plat application is filed before the building line application is filed with the Planning Department, the developer is not subject to the special building line requirement.
- ii. If a complete, valid building permit, subdivision plat or development plat application is filed after the building line application, the developer is subject to the special building line requirement unless the application is incomplete or there is no prevailing constructed building line.
- iii. If a complete, valid building permit, subdivision plat or development plat application is filed before the building line application, the developer is not subject to the special building line requirement.

E. **Variance** – Section 42-81(f) provides for variances from prevailing special building line requirements.

F. **No Action** – If the City Council does not take action on an application within 180 days after filing, any intervening applications for building permits, subdivision plats or development plats are not subject to the special building line requirement.

### III. PREVAILING LOT SIZES

In 2001, the City provided a procedure to permit preservation of the character of existing block faces in residential neighborhoods in urban areas that do not have lot sizes established by deed restrictions. Any situation where all the lots in the proposed areas are not deed restricted is a candidate. A “special minimum lot size area,” when approved by the City, mandates a minimum lot size, whether or not this lot size exceeds other City regulations.

#### A. **Application Requirements** –

- i. A proposed area, including at least one block face. A block face is either side of a street and the intersection of one street to the next street (or the cul-de-sac of a dead-end street);
- ii. Sketch showing lots, addresses and land use in the proposed area;
- iii. Size of each lot in the area;
- iv. Petition signed by an owner; and
- v. Evidence of support (which ultimately will require a petition signed by the owners).

#### B. **Process.**

- i. **Notice to Owners** – 10 days after receipt of a complete application, the Planning Department will provide notice to all owners in the area (according to tax rolls) by U.S. Mail. Notice is also provided by 2 signs.
- ii. **Protest** –
  - a. Owners may protest by filing a written notice with the Planning Department within 15 days of the date of the notice letter (not receipt of the notice letter).
  - b. If no protest, and the owners of 51% or more of lots or tracts within the area sign a petition supporting the application, the Planning Department will administratively approve any application meeting applicable requirements, then refer the application to City Council for final approval.
- iii. **Notice of Public Hearing** – If there is a protest, or any of the following requirements are not satisfied, the Planning Department will set the application for a public hearing before the Planning Commission. The Planning Commission shall schedule the public hearing within 30 days after the Planning Department refers the application to it. Notice of the public hearing will be given to each owner at least 15 days before the date. Owners may present comments in person or in writing at the public hearing.
- iv. **Conduct of Public Hearing** – At the public hearing, any member of the public may speak or present information. After close of the public hearing, the Planning Commission will consider whether to recommend the application for approval by City Council. The Commission shall recommend the application if it meets the following criteria:

1. Area boundaries include all properties within at least 1 block face;
2. At least 60% of the lots are developed with not more than two single family residential units;
3. There is “sufficient support” for the application (majority signing a petition is not required);
4. Approval furthers “the goal of preserving the prevailing lot size character of the area”; and
5. The area has a “prevailing lot size”. “Prevailing lot size” requires 75% of the lots within the area (*exclusive of corner lots*) to have a lot size that varies by less than 10% from “the average size of the lots” in the area.

Simply put,  $\frac{3}{4}$  of the lots (not including corner lots) must be within 10% of the average of those lots.

C. **Approval**

- i. If the Commission does not recommend the application for City Council approval, the decision is final.
- ii. If the Planning Commission recommends the application to City Council, the City Council shall consider the application (based on the foregoing criteria), but without another public hearing. The application can be approved by a majority vote of City Council, incorporated into an ordinance.
- iii. A certified copy of the ordinance is recorded in the Real Property Records by the Planning Department.
- iv. The ordinance is effective for 20 years, unless earlier terminated by City Council (how the City Council would earlier terminate special building line in a requirement area is not stated).

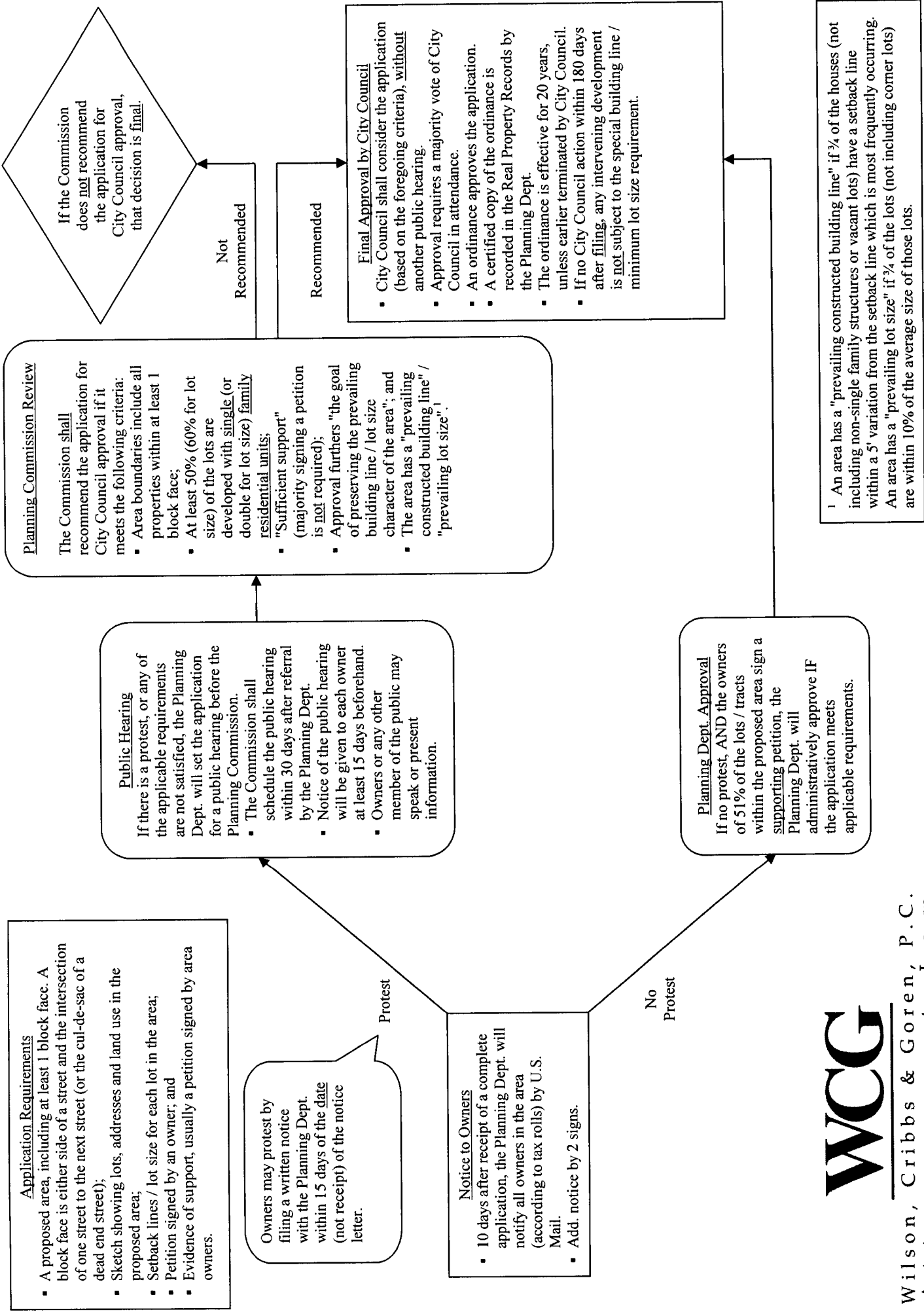
D. **Pending Development**

- i. If a complete valid building permit, subdivision plat or development plat application is filed before the lot size application is filed with the Planning Department, the developer is not subject to the minimum lot size requirement.
- ii. If a complete, valid building permit, subdivision plat or development plat application is filed after the lot size application, the developer is subject to the minimum lot size requirement unless the application is incomplete or there is no prevailing lot size.
- iii. If a complete, valid building permit, subdivision plat or development plat application is filed before the lot size application, the developer is not subject to a minimum lot size requirement.

- E. **Variance** – Section 42-81(h) provides for variances from prevailing lot size requirements.

- G. **No Action** – If the City Council does not take action on an application within 180 days after filing, any intervening applications for building permits, subdivision plats or development plats are not subject to the minimum lot size requirement.

# PREVAILING LOT SIZE AND SETBACK PROCESS



**Application Requirements**

- A proposed area, including at least 1 block face. A block face is either side of a street and the intersection of one street to the next street (or the cul-de-sac of a dead end street);
- Sketch showing lots, addresses and land use in the proposed area;
- Setback lines / lot size for each lot in the area;
- Petition signed by an owner; and
- Evidence of support, usually a petition signed by area owners.

Owners may protest by filing a written notice with the Planning Dept. within 15 days of the date (not receipt) of the notice letter.

**Notice to Owners**

- 10 days after receipt of a complete application, the Planning Dept. will notify all owners in the area (according to tax rolls) by U.S. Mail.
- Add. notice by 2 signs.

**Public Hearing**

If there is a protest, or any of the applicable requirements are not satisfied, the Planning Dept. will set the application for a public hearing before the Planning Commission.

- The Commission shall schedule the public hearing within 30 days after referral by the Planning Dept.
- Notice of the public hearing will be given to each owner at least 15 days beforehand.
- Owners or any other member of the public may speak or present information.

**Planning Dept. Approval**

If no protest, AND the owners of 51% of the lots / tracts within the proposed area sign a supporting petition, the Planning Dept. will administratively approve IF the application meets applicable requirements.

**Planning Commission Review**

The Commission shall recommend the application for City Council approval if it meets the following criteria:

- Area boundaries include all properties within at least 1 block face;
- At least 50% (60% for lot size) of the lots are developed with single (or double for lot size) family residential units;
- "Sufficient support" (majority signing a petition is not required);
- Approval furthers "the goal of preserving the prevailing building line / lot size character of the area"; and
- The area has a "prevailing constructed building line" / "prevailing lot size".<sup>1</sup>

**Final Approval by City Council**

- City Council shall consider the application (based on the foregoing criteria), without another public hearing.
- Approval requires a majority vote of City Council in attendance.
- An ordinance approves the application.
- A certified copy of the ordinance is recorded in the Real Property Records by the Planning Dept.
- The ordinance is effective for 20 years, unless earlier terminated by City Council.
- If no City Council action within 180 days after filing, any intervening development is not subject to the special building line / minimum lot size requirement.

<sup>1</sup> An area has a "prevailing constructed building line" if ¾ of the houses (not including non-single family structures or vacant lots) have a setback line within a 5' variation from the setback line which is most frequently occurring. An area has a "prevailing lot size" if ¾ of the lots (not including corner lots) are within 10% of the average size of those lots.