

**ORDINANCE NO. 356**

**AN ORDINANCE AMENDING ORDINANCE NUMBER 310 OF THE CITY OF MAGNOLIA, TEXAS HERETOFORE INITIALLY PASSED AND APPROVED ON THE 12<sup>TH</sup> DAY OF NOVEMBER, 2002, BY ADDING THERETO A NEW SECTION 8 ENTITLED "VARIANCE PROCEDURE" AND PROVIDING FOR STANDARDS AND GUIDELINES FOR THE GRANTING OF A VARIANCE TO ANY PART OR PROVISION OF ORDINANCE NUMBER 310, IF THE SAME BE FOUND NECESSARY BY THE CITY COUNCIL IN ORDER TO AVOID INJUSTICE AND TO INSURE PRESERVATION OF THE PURPOSES AND INTENT OF ORDINANCE NUMBER 310, AND MAKING CERTAIN FINDINGS OF FACT AND CONCLUSIONS.**

**WHEREAS**, the City Council of the City of Magnolia has heretofore adopted a comprehensive subdivision ordinance, being Ordinance Number 310 on the 12<sup>th</sup> day of November, 2002, and

**WHEREAS**, said Ordinance Number 310 provides for certain developmental controls and limitations including setbacks and other provisions requiring certain minimum open space standards to insure adequate air and light to protect the health, safety and well-being of the residents, citizens and inhabitants, and

**WHEREAS**, after extensive study and review the City Council of the City of Magnolia has determined that said ordinance should contain a mechanism to grant variances if the same are found necessary whether initiated by third party petition or by the City Council without motion or petition, and

**WHEREAS**, a notice of a public hearing, as contained in the agenda for this meeting, was given in accordance with law by posting the same at the place reserved and designated for notices of public meetings and public activities and prior to the adoption of this ordinance; and

**WHEREAS**, the Mayor or Mayor Pro-Tem of the City of Magnolia having called to order the required public hearing and as such the Mayor, City Attorney or other designated official, having read or explained in public the terms and provisions of the proposed ordinance and as such all persons desiring to be heard were heard in accordance with law as to all provisions of the proposed ordinance, **AND NOW THEREFORE**,

**BE IT ADOPTED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS:**

1. The City Council of the City of Magnolia having reviewed the findings of fact and conclusions as herein set out and adopts the same for inclusion in this ordinance if the same had been repeated verbatim herein.

2. Ordinance Number 310 of the City of Magnolia, Texas is hereby amended by adding thereto a new Section 8 entitled "Variance Procedure" and shall provide as follows:

### **SECTION 8 VARIANCE PROCEDURE**

The terms and provisions of this ordinance may be varied by action of the City Council of the City of Magnolia as shall be initiated either by the City Council on its own motion or upon application of any interested party as hereinafter provided.

An application for a variance shall be filed with the City in such form as shall be from time to time required by the City and shall be accompanied by a fee in an amount as set by the City and shall further be accompanied by a title report issued by a title insurance company which shall be determinative of ownership of the subject property.

If an application for a variance shall be filed, a public hearing shall first be held prior to any final action thereon by the City Council. The required public hearing may be held immediately before final action on the proposed variance by the City Council. Notice of the required public hearing shall be given in the agenda posted in accordance with the Texas Open Meetings Law.

A variance may be granted to the terms and provisions of this ordinance by the City Council of the City of Magnolia, Texas upon appropriate consideration at a public meeting upon finding that the granting of the intended variance shall not be contrary to the purposes and intent of Ordinance Number 310 as was originally adopted, and shall further find and determine:

- a. That the applicant for the variance is the true and record owner of the subject property.
- b. The ordinance as written will cause an undue hardship to the applicant and that a literal interpretation of the ordinance as drafted shall not cause undue and unnecessary hardship to any other person nor constitute a taking of property without just compensation.
- c. That the granting of a variance shall not constitute injury or the taking of property held or owned by third persons.

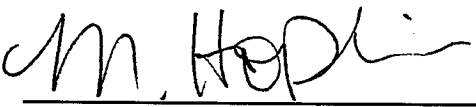
d. That because of unique and special circumstances, including size, shape, configuration, location of utility connections, and other developmental factors a literal enforcement of Ordinance Number 310 as drafted will result in undue and unintended harm.

The City Council may consider and grant a variance after appropriate facts have been presented in public session and a finding is made that a variance shall be granted in accordance with the guidelines as set out herein. Variances shall be granted by minute order passed by the affirmative vote of sufficient members of the City Council as shall be necessary to pass ordinances and resolutions. All variances as granted shall be reduced to writing, signed by the Mayor or Mayor Pro Tem and attested to by the City Secretary and filed for record in the office of the County Clerk of Montgomery County, Texas.

PASSED AND APPROVED THIS THE 9<sup>th</sup> DAY OF November, 2004.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
Asst. City Secretary



# *City of Magnolia*

P.O. BOX 396  
MONTGOMERY COUNTY  
MAGNOLIA, TEXAS 77353-0396  
281-356-2266  
Fax 281-259-7811



## **CERTIFICATION FOR VARIANCE TO AN INTEREST IN REAL PROPERTY AND DEVELOPMENT RIGHTS**

**STATE OF TEXAS  
COUNTY OF MONTGOMERY  
CITY OF MAGNOLIA**

Pursuant to the authority granted to the City Council of the City of Magnolia, Texas as contained in Ordinance Number 356, the City Council of the City of Magnolia did on the 19<sup>th</sup> day of November, 2004 hear and consider an application by the property owner(s) named below for a variance to certain terms and provisions of the subject ordinance relating to subdividing of land, and regulations, did therefore on a motion made by Councilor Williams and seconded by Councilor Chumley, affirmatively passed by a vote of 4 ayes in favor and 0 nos against a motion granting a variance as herein set out:

**PROPERTY OWNER AS STATED BY APPLICANT (IF NO NAME SPECIFIED  
THE APPLICANT SHALL BE DEEMED TO BE THE SEVERAL OWNERS OF  
THE PROPERTIES AS HEREIN LEGALLY DESCRIBED):**

**LEGAL DESCRIPTION OF PROPERTY AFFECTED BY VARIANCE:**


**VARIANCE GRANTED:**

**TERM OF VARIANCE (ALL VARIANCES ARE PERPETUAL UNLESS A TIME  
IS OTHERWISE PROVIDED AND STATED HEREIN):**

Signed and executed by the undersigned Mayor of the City of Magnolia, Texas as an official record of the action taken by the City Council of the City of Magnolia, Texas at a meeting of the City Council of the City of Magnolia, Texas on the 15day of March, 2005.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
Acting City Secretary of the City of Magnolia, Texas

(Seal)

ORDINANCE NO. 310

AN ORDINANCE OF THE CITY OF MAGNOLIA, TEXAS, PROVIDING MINIMUM REQUIREMENTS FOR YARDS AND OPEN SPACES (BUILDING LINES); PROVIDING EXCEPTIONS FOR LOTS LOCATED WITHIN "OLD TOWN MAGNOLIA"; PROVIDING A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; AND PROVIDING FOR SEVERABILITY.

\* \* \* \* \*

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS:

**Section 1. Definitions.** For the purposes of this Ordinance the following words, terms and phrases shall have the meanings ascribed thereto:

- 1.01 **Building** shall mean a structure designed or built for the support, shelter, protection, housing, or enclosure of persons, animals, chattels, or property of any kind.
- 1.02 **Building line** shall mean an imaginary line, running parallel with applicable lot lines or street easement or roadway right-of-way lines, and beyond which no building or structure may be located other than fences, sidewalks, driveways, uncovered patios, or utility facilities placed by companies authorized to do so pursuant to franchise, license, or other authorization of the City or other governmental entity having jurisdiction thereover. Provided, however, no fence shall be authorized beyond a front building line except as specifically authorized herein. In measuring a building line adjacent to a street easement or roadway right-of-way, the nearest boundary of the street easement or roadway right-of-way shall be used.
- 1.03 **Commercial Tract** shall mean any lot, tract or parcel of land the main or primary use of which is other than a Residential Use as defined herein.
- 1.04 **Old Town Magnolia** shall mean the area bounded by 10<sup>th</sup> Street, Sanders Street, Commerce Street, and Magnolia Boulevard, and all lots fronting either side of Magnolia Boulevard within such area.
- 1.05 **Residential Tract** shall mean a lot, tract or parcel of land the main or primary use of which upon which is for a Residential Use as defined herein.
- 1.06 **Residential Use** shall mean the use of a lot, tract or parcel of land for single family residential dwelling or duplex dwelling purposes.

- 1.07 **Structure** shall mean anything constructed or erected which requires location on the ground or is attached to something having a location on the ground, whether above, below, or at grade.

**Section 2. Building Set-Back Requirements for Commercial Tracts.** It shall be unlawful for any person to cause or permit the construction or placement of any building or structure on a Commercial Tract except in accordance with the minimum Building Lines set forth below:

- 2.01 **Front.** The front Building Line shall be not less than twenty-five feet (25').
- 2.02 **Side, generally.** There shall be no side Building Line except where a side property line abuts a Residential Tract, in which case the side Building Line shall be not less than ten feet (10').
- 2.03 **Side, corner lots.** The Building Line on the side of a corner lot adjacent to a side street shall be not less than ten feet (10').
- 2.04 **Rear, generally.** The rear building line shall be not less than twenty feet (20'), except where the rear property line abuts a street, the rear Building Line shall be not less than twenty five feet (25').

**Section 3. Building Set-Back Requirements for Residential Tracts.** It shall be unlawful for any person to cause or permit the construction or placement of any building or structure on a Residential Tract except in accordance with the minimum Building Lines set forth below:

- 3.01 **Front.** The front Building Line shall be not less than twenty-five feet (25').
- 3.02 **Side, generally.** The side Building Line shall be not less than five feet (5').
- 3.03 **Side, corner lots.** The Building Line on the side of a corner lot adjacent to a side street shall be not less than ten feet (10').
- 3.04 **Rear, generally.** The rear building line shall be not less than ten feet (10'), except where the rear property line abuts a street, the rear Building Line shall be not less than twenty five feet (25').

**Section 4. Encroachment by Projections.** Open and unenclosed building projections such as outside stairways, fire escapes, balconies, terraces, awnings, eaves and roof extensions, or ornamental features may project over a Building Line for a distance not to exceed

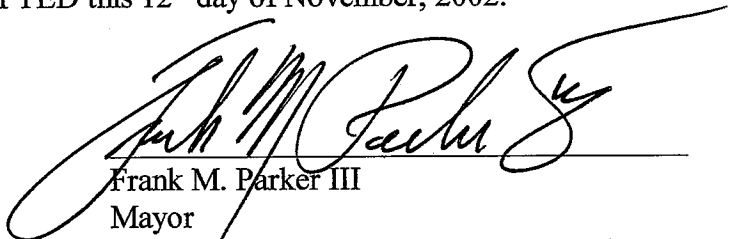
five feet (5'). Provided however, no such projection shall ever extend closer than five feet (5') from any lot line.

**Section 5.** **Exception for Old Town Magnolia.** Notwithstanding the provisions of Sections 2 through 4 above, there shall be no building set back requirements, or Building Lines, applicable to any lot, tract or parcel of land within Old Town Magnolia, as that term is defined in Section 1 above.

**Section 6.** Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2000. Each day of violation shall constitute a separate offense.

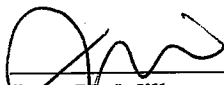
**Section 7.** In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Magnolia, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED, AND ADOPTED this 12<sup>th</sup> day of November, 2002.



Frank M. Parker III  
Mayor

ATTEST:



Jane H. Miller  
City Secretary



## AFFIDAVIT OF PUBLICATION

BEFORE ME, the undersigned authority, on this day personally appeared Elizabeth Davis who on her oath stated:

### CITY OF MAGNOLIA ORDINANCE 310

An Ordinance of the City of Magnolia, Texas, providing minimum requirements for yards and open spaces (building lines); providing exceptions for lots located within "Old Town Magnolia"; providing a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof; and providing for severability.

I am the Bookkeeper for the TOMBALL MAGNOLIA TRIBUNE a newspaper published in Harris County, Texas and now the facts stated in this affidavit. The attached matter is a true and correct copy of the publication of the citation of which it purports to be copy, as the same appeared in such newspaper in the respective issues of:

nov. 25, 2002

                    , 2002

*Elizabeth Davis*  
Elizabeth Davis, Billing Department

Subscribed and sworn to this 27 day of November, 2002

