ORDINANCE NO. 2015-02-05

AN ORDINANCE OF THE TOWN OF BAYVIEW, TEXAS AMENDING ARTICLE III, SECTION 1 OF ITS ZONING ORDINANCE AND CREATING A SPECIAL USE PERMIT APPLICATION AND APPROVAL PROCESS; DECLARING A PUBLIC PURPOSE; INCORPORATING RECITALS; PROVIDING A REPEALER; PROVIDING FOR SEVERABILITY; AND, SETTING AN EFFECTIVE DATE.

WHEREAS, The Town of Bayview has adopted municipal zoning ordinances and amendments thereto under the authority provided by Chapter 211, Texas Local Government Code, and in the manner prescribed by the Tex Loc. Gov't. Code Ann. § 211.006; and

WHEREAS, the Town wishes to amend its Zoning Ordinance to (1) make Religious Institutions and Schools conditionally allowable uses in the Category A single family residential zoning district ("A" District) subject to applying for, obtaining, and maintaining a special use permit; and, (2) create an application and approval process for special use permits to allow for those uses subject to conditions imposed by the Board of Aldermen after public hearing; and,

WHEREAS, the amendments hereto are adopted in the manner provided by Tex. Loc. Gov't. Code Ann. § 211.004 to, among other reasons, promote the health, safety, and general welfare of the community and citizens of Bayview;

NOW BE IT ORDAINED BY THE TOWN OF BAYVIEW:

SECTION 1. AMENDMENT. That from and after the effective date hereof, the following regulations shall apply within the Town of Bayview, to wit:

A. Article III, Section 1, of the Town's Zoning Ordinance is hereby amended to include the following language, "Religious Institutions and Churches, as defined in this Zoning Ordinance, shall be conditionally allowable uses in the "A" District subject to applying for, obtaining, and maintaining a special use permit.

B. The Town's Zoning Ordinance is also amended to create a special use permit application and approval process, as follows:

1. Definition and Purpose.

a. A special use permit is a grant of a use of land and/or a structure in a zoning district to a Religious Institution, a School, or another use that is not specifically authorized, without limitation or condition, by ordinance in the applicable zoning district. A special use permit may be granted to allow compatible and orderly uses, which may be suitable only in certain locations in a zoning district and subject to certain conditions.

b. A special use permit is a zoning action to consider granting an additional use to a specific piece of property but not to change the underlying zoning of the land. A special use permit is subject to the same procedures for an amendment and change in zoning as specified in state law and town ordinances.

c. A Religious Institution is a permanent facility used on a regular basis for religious assembly, worship, activities, and religious instruction. Use of a structure for occasional secular, non-commercial, activities does not result in loss of the status as a Religious Institution, so long as the primary use of the structure is for religious activities and any income derived from any occasional secular, non-commercial activities is assigned primarily to the maintenance and development of the structure as a place to conduct religious activities, *i.e.*, not any income derived as a profit. For purposes of this ordinance this definition does not include home meetings or other religious activities conducted in a person's privately occupied primary residence or on property that is occasionally used for such activities.

d. A School is a permanent facility under public, private, or denominational sponsorship, that offers a course of instruction for students in one or more grades from kindergarten through grade twelve having a curriculum accredited by the State of Texas equivalent to a public elementary or secondary school, including elementary, middle, or junior high, and senior high schools, but excluding trade or commercial schools. For purposes of this ordinance this definition does not include home schooling of a person's children in a person's privately occupied primary residence

2. Application

a. Authority to File Application for a Special Use Permit

i. Each application shall be made by the legal owner of the property, and, if a proposed use is to be provided by a person or legal entity other than the legal owner of the property, then such person or legal entity shall also sign such application. As a result, each proponent of each proposed use in the application must sign the application. If a person is signing on behalf of a legal entity, then such person must provide a corporation resolution of such entity demonstrating that such person has the formal legal authority to act on behalf of that entity. For example, an application to use the property as a School shall bear the signature of a person having the formal legal authority to act on behalf of and bind the School. An application may also be for more than one (1) the allowed uses described herein, but any application under this ordinance is subject to section 4(b) herein.

ii. The permit shall be issued only to the applicant(s) for the proposed use(s).

iii. If the use is terminated by the person to whom the permit is issued under section 2.a.(ii), the permit is invalidated.

iv. If the person receiving a permit issued under section 2.a.(ii) ceases having either ownership of the property, or the legal authority to use the property for the purpose expressed in the application, then the permit is invalidated.

b. Application Requirements.

An application for a special use permit shall be made in writing, filed with the Town Secretary, and be accompanied by the documentation and site plan required by section 1(B)(2)(b) and section 1(B)(2)(d) herein. In addition, an application must:

i. Be dated

ii. Include a brief general description of the proposed uses.

iii. Identify each party to the proposed use as described above and include complete contact information for the persons legally authorized to bind those entities.

iv. Bear the original signature of the person described above whose signature shall attest that the information provided is true and accurate.

v. Be accompanied by all of the documentation described herein, a site plan that presents the information described below, and a check payable to the Town of Bayview for the amount of the application fee specified below.

The Town Secretary shall file the administratively complete application and the Mayor shall schedule and serve notice of a public hearing thereon before any vote by the Board of Aldermen on whether to grant the application and issue a special use permit.

c. General

i. Any applicant receiving a special use permit in accordance with this ordinance, must comply with Bayview Zoning Ordinance Article V, "C" District Commercial to the same extent as would be required if the subject real property was situated in the "C" District.

d. Site Plan and Other Documentation

i. Map showing the location of the property, all adjoining properties, and all streets leading to the property;

ii. Plat showing the property boundaries and legal description;

iii. Location of off street parking facilities to include dimensions, number of spaces, arrangement, landscaping, and finish materials;

iv. Location and description of any shared parking for mixed uses;

v. Location of all buildings, improvements, fences, signs, and dumpsters;

vi. Means of ingress and egress to public streets and adjacent properties shown with fire, safety and ADA compliance features;

vii. Traffic management plan and written certification by a registered Professional Engineer or other qualified person with the requisite certification from the State of Texas or a political subdivision thereof that the roads and streets leading to the site are suitable for the average and peak traffic loads considering level of service requirements consistent with those established by Cameron County for development in rural areas;

viii. Visual screening; see Bayview Zoning Ordinances Article V section 8; Screening Parking Lots at Property Edge;

ix. Noise control features;

x. Location, size, and description of signage; see Bayview Zoning Ordinances Article V Section 12 Signs (A), (B)

xi. Location and area of coverage of all outside lighting, including spill-over onto adjacent public and private properties; see Bayview Zoning Ordinances Article V Section 9 Outdoor lighting).Section 10 Architectural Lighting of Building Facades

xii. Drainage features and any modifications to existing drainage characteristics, existing and proposed surface water entry and discharge locations, and any detention or retention facilities.

xiii. Septic system design criteria and written certification by a registered Professional engineer or other qualified person that the system capacity is adequate for the expected loads. Issuance if an On Site Sewage Facility permit by a Town of Bayview or Cameron County Health Department official certified by TCEQ will satisfy this requirement;

xiv. Intended uses to be permitted and written certification by a registered Professional Engineer or other person certified by the State of Texas that the proposed design and construction features for all structures satisfy all applicable State of Texas and Cameron County requirements and standards for buildings that are to be used as schools;

xv. Setbacks from lot lines, resacas, and right of ways: See Bayview Zoning Ordinances Article V Section 5 Lot size and setbacks.

xvi. Plans to ensure adequate utilities;

xvii. Certificate of Maximum Occupancy from Cameron County Fire Marshall; and

xviii. Any other information requested by the Town that is required to demonstrate compliance with the Town's ordinances. See Bayview Zoning Ordinances Article II and Article V.

e. Religious Institution Documentation

i. Federal and State tax exemption certification showing IRS/Texas acceptance of the organization as a Religious Institution which is necessary to document the representation that the organization is a Religious Institution; it also will serve as the basis for removing real property owned by the Religious Institution from the Town's tax rolls;

ii. Articles of Incorporation showing how the Religious Institution is structured and legally established;

iii. Types, frequency and times of day reasonably anticipated for recurring activities and the nature of occasional activities that will take place at the site. Such activities are limited to those related to the normal operations of the Religious Institution as encompassed by the definition of a Religious Institution by section 1(B)(1)(c) herein;

iv. Congregation information showing the approximate number of persons who will be present at the site for each type of activity and the maximum number of people that can reasonably be expected to be on site at any one time; and,

v. Evidence of sufficient paved parking showing at least one (1) parking space for every three (3) seats in the primary assembly space of the Religious Institution: See Bayview Zoning Ordinances Article V. Section 8 Screening of Parking Lots at Property Edges.

f. School Documentation

i. Articles of Incorporation showing how the School is structured and legally established;

ii. Bylaws or other documents indicating how the School intends to operate within the context of the Town's ordinances;

iii. Description of the types, frequency, and times of day for regular and occasional school activities showing the nature of activities that will take place at the site and to verify that they are, in fact, directly related to school operations rather than prohibited commercial activities only allowable in the "C" District.

iv. Description of the School population showing the number of students, teachers, administrators, employees, and other parties associated with the school church and the average number of persons who will be at the location for each type of activity;

v. Vehicle information showing the types (i.e. buses, commercial vans, passenger vehicles) and approximate number of vehicles of each type that are expected to be used by the School at any given time, as well as the approximate number of personal vehicles on the premises during student drop-off and pick-up periods. Include the approximate number of students that are driving to school; and,

vi. Evidence of sufficient parking as required by the State of Texas or local law or regulations.

3. Public Hearing

The Board of Aldermen shall conduct a public hearing on the special use permit application following the procedures specified by statue for zoning changes.

4. Action on Application

a. Adverse impact

The Board of Aldermen shall deny any special use permit application that is submitted and pending before it unless it finds the proposed use will not adversely affect traffic, public health, public utilities, public safety, and the general welfare.

b. Incompatibility

The Board of Aldermen shall deny a special use permit application if it finds that:

i. The proposed use, alone or in conjunction with existing uses or another proposed use, results in a change of the character of use, or in the level of density or intensity of use, not compatible with the adjacent property; or

ii. The proposed use would contribute to the loss, deterioration, destruction, or degradation of existing neighborhood integrity.

c. Board of Aldermen discretion

The Board of Aldermen has the discretion to approve, approve with conditions, or deny any application for a special use permit. The Board of Aldermen at the time of approving a special use permit shall state any conditions in the special use permit. No special use permit shall be effective, unless and until the applicant for the special use permit shall deliver to the Town Secretary, within thirty (30) days of the grant of the special use permit by the Board of Aldermen, a signed written statement declaring that the applicant accepts and agrees to comply with and be bound by the terms of the special use permit. In the event such written, signed declaration is not so delivered, then the special use permit shall not be effective and shall

automatically expire. If the applicant fails to maintain the property and all of the requirements that caused the special use permit to be approved, the Board of Aldermen can revoke the permit at any time.

5. Time Limit.

If a building permit is required but not obtained within one year from the grant of a special use permit by the Board of Aldermen, then the special use permit shall automatically expire. In addition, if a certificate of occupancy is not obtained within one year from the grant of a special use permit by the Board of Aldermen, then the special use permit shall automatically expire.

6. Conditions Precedent to Occupancy.

a. Conditions to be Stated

The Board of Aldermen may impose conditions on any special use permit. All conditions imposed in a special use permit that can be satisfied before initial occupancy shall be satisfied before a Certificate of Occupancy is issued by the Town for the use of the premises included in the special use permit. Such conditions as are articulated in writing at the time the special use permit is granted shall not be construed as conditions precedent to the grant of the special use permit but shall be construed as conditions precedent of the issuance of a Certificate of Occupancy. Any special use permit issued by the Town without the written specification of the conditions upon which it was granted shall be revocable by the Board of Aldermen unless the special use permit was specifically granted with no conditions and so states on its face.

b. Conditions Binding

All conditions specified in the Permit and accompanying Town of Bayview documentation shall be binding for the duration of the use.

c. Revocation

Failure to fully adhere to the conditions specified in the Permit may result in revocation of the Permit.

d. Notification of Changes

The Permit Holder shall immediately notify the Town in writing of any development that results in a material change to any of those conditions. Failure to do so reasonably promptly may result in the Board of Aldermen revoking the special use permit.

7. Note on Map.

The final action taken by the Board of Aldermen shall be noted, as soon as practicable, on the Town's official zoning map, and in any other pertinent administrative records as to the location of the property and the type of use authorized by each special use permit granted.

8. Fee Required.

The Board of Aldermen shall not hear nor act on an application for a special use permit until the application has been declared administratively complete by the Town Secretary after review by the Town Attorney and receipt of an initial non-refundable application, review, and processing fee in the amount of $600 with the understanding that an additional fee may be assessed to cover any additional documented costs in excess of that amount subject to advance notice to the applicant.

That fee is separate from any fees associated with required building permits and inspections.

9. Conditions Precedent.

The Board of Aldermen shall not act on an application for a special use permit until the conditions set forth above have been satisfied and after requisite notice of the public hearing is served and the hearing conducted in accordance with Texas law

10. Effective Period

Special Use Permits, after approval by the Board of Aldermen, shall be signed by the Mayor and will be effective until the use is discontinued or abandoned, the property is rezoned, or the permit is withdrawn or revoked by the Board of Aldermen. Permits are non- transferable.

SECTION 2. PUBLIC PURPOSE. The Board of Aldermen finds that amendments to the Town of Bayview Zoning Ordinance made in the manner prescribed herein are in the public interest and are necessary to carry out a power granted by law.

SECTION 3. INCORPORATION OF RECITALS. The Board of Aldermen finds the recitals contained in the preamble to this ordinance are true and correct and has incorporated them as findings in fact.

SECTION 4. REPEALER. All ordinances, orders, and resolutions or parts thereof in conflict herewith are repealed to the extent of such conflict.

SECTION 5. SEVERABILITY. If any provision of this ordinance is found by a court of competent jurisdiction to be invalid or unconstitutional, or if the application of this ordinance to any person or circumstance is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or application.

SECTION 6. EFFECTIVE DATE. The ordinance shall be effective after approval by the Board of Aldermen.

ORDERED AND APPROVED this 5th day of February, 2015.

TOWN OF BAYVIEW, TEXAS

By:_____

Hon. Tom Rodino
Mayor

ATTEST:

_____

Susan Heinz
Town Secretary