



AGENDA

TOWN OF FLOWER MOUND BOARD OF ADJUSTMENT REGULAR MEETING

JANUARY 9, 2019

**FLOWER MOUND TOWN HALL
2121 CROSS TIMBERS ROAD
FLOWER MOUND, TEXAS**

AN AGENDA INFORMATION PACKET IS AVAILABLE
ONLINE AT WWW.FLOWER-MOUND.COM/AGENDACENTER

A. CALL REGULAR MEETING TO ORDER – 6:30 P.M.

B. INVOCATION AND PLEDGE OF ALLEGIANCE

C. ELECTION OF VICE CHAIR

D. PUBLIC COMMENT

To address the Board of Adjustment comment form.

- Turn in form by 6:40 p.m. to Administrative Assistant
- Speakers are limited to 3 minutes, however this can be adjusted by the Chair
- Please state your name and address when speaking

The purpose of this item is to allow the public an opportunity to address the Board on issues that are not the subject of a “Public Hearing” on this agenda. Any item requiring a Public Hearing will allow the public to speak at the time that item appears on this agenda as indicated as a “Public Hearing.”

E. CONSENT AGENDA

This agenda consists of non-controversial or “housekeeping” items and may be approved with a single motion. A member of the Board of Adjustment may request an item(s) be withdrawn from the Consent Agenda by making such request prior to a motion and vote on the Consent Agenda.

Board of Adjustment Meeting Agenda

January 9, 2019

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1. Consider approval of minutes from the regular meeting of the Board of Adjustment held on December 12, 2018.

F. PUBLIC HEARING

2. **(BOA18-0010)** Public hearing to consider a request from Elaine Wells for an appeal of staff's determination that Town Code Section 98-951—98-952, "Subdivision-Use regulations generally and Use classification," applies to the use of the property as a boardinghouse/roominghouse as defined in Code Section 98-2 "Definitions." The property is generally located west of Long Prairie Rd and south of Flower Mound Rd and is locally known as 2900 Northshore Blvd, Lot 28, of the Villages of Northshore Ph 1A Subdivision.

G. ADJOURNMENT

I do hereby certify that the Notice of Meeting was posted on the bulletin board in Town Hall of the Town of Flower Mound, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted by the following date and time: January 4, 2019, by 5:00 p.m., at least 72 hours prior to the scheduled time of said meeting.



Emily Chapman
Administrative Assistant

Pursuant to Section 551.071 of the Texas Government Code, the Board of Adjustment reserves the right to consult in a closed meeting with its attorney and to receive legal advice regarding any item listed on this agenda. The Flower Mound Town Hall and Council Chambers is wheelchair accessible. Requests for accommodations or interpretive services must be made at least 48 hours prior to this meeting by contacting Environmental Services at 972.874.6340.



BOARD OF ADJUSTMENT AGENDA ITEM NO. 1

CONSENT ITEM

DATE: January 9, 2019

FROM: Emily Chapman, Administrative Assistant

ITEM: Consider approval of minutes from the regular meeting of the Board of Adjustment held on December 12, 2018.

BACKGROUND INFORMATION: This agenda item is to consider approval of the minutes from the December 12, 2018, regular meeting of the Board of Adjustment.

CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. A copy of the draft minutes from the December 12, 2018, regular meeting of the Board of Adjustment.

RECOMMENDATION: Move to approve the minutes from the December 12, 2018, regular meeting of the Board of Adjustment.

FLOWER MOUND ZONING BOARD OF ADJUSTMENT MEETING OF DECEMBER 14, 2018

THE FLOWER MOUND ZONING BOARD OF ADJUSTMENT MEETING HELD ON THE 12TH DAY OF DECEMBER 2018, IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS, AT 6:30 P.M.

[Click here](#) for meeting video link.

The Zoning Board of Adjustment met in a regular session with the following members present constituting a quorum:

Stephen Harris	Chairman	
Greg Schultz	Member	Place 1
David Moraine	Member	Place 5
Sky Jay Schoggins	Member	Place 4
Brad Painter	Alternate	Place 6
Denis Toth	Alternate	Place 7
Greg Wilson	Alternate	Place 8

And the following members of Town staff present:

James Donovan	Town Attorney
Joelle Hainley	Building Official
Chris Pamplin	Assistant Building Official
Ved Gupta	Plans Review Manager
Kathy Allgood	Administrative Assistant

A. CALL TO ORDER – REGULAR SESSION

Chairman Harris called the meeting to order at 6:30 p.m.

B. INVOCATION AND PLEDGE OF ALLEGIANCE

Chairman Harris led the Pledge of Allegiance.

C. PUBLIC COMMENT

None

D. CONSENT AGENDA

1. Consider approval of the minutes of the November 14, 2018, Zoning Board of Adjustment meeting.

Board Member Painter made a motion to approve the November 14, 2018, minutes as written. Board Member Toth seconded the motion.

VOTE ON THE MOTION

AYES:	Schultz, Schoggins, Moraine, Harris, Painter
NAYS:	None
ABSTAIN:	None

E. PUBLIC HEARING

1. (BOA18-0009) Hold a public hearing and consider a request from Kyle Anderson for a variance from Section 86-68 (b)(1)(b), "Wall Signs," of the Code of Ordinances. The property is generally located East of Long Prairie Rd and North of Forest Vista Dr. and is locally known as 2628 Long Prairie Rd, Suite 110. Lot 1-R, of the Chaparral Cove Plaza.

Staff Presentation

Chris Pamplin, Assistant Building Official, gave a presentation and answered questions.

Applicant Presentation

Greg Anderson, the applicant's father, 5300 Clear Creek, Flower Mound, TX, presented background information on item 1 and answered any questions presented by the Board.

Public Comment

Tracy Smith, 2701 Merryglen Lane, Flower Mound, TX, spoke in favor of granting the variance.

Chairman Harris closed the Public Hearing at 7:03 p.m.

Board Member Deliberation

1. Board Member Moraine made a motion to approve the variance from Section 86-68 (b)(1)(b), "Wall Signs," of the Code of Ordinances. The property is generally located East of Long Prairie Rd and North of Forest Vista Dr. and is locally known as 2628 Long Prairie Rd, Suite 110. Lot 1-R, of the Chaparral Cove Plaza.
 - A. There are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions, and location that do not generally apply to other property in the same area and under the same zoning districts.
 - B. A variance is necessary to permit the applicant the same rights in the use of this property that are presently enjoyed under the ordinance by other properties in the vicinity and zone, but which rights are denied to the property on which the application is made.
 - C. The granting of the variance on the specific property will not adversely affect the land use pattern as outlined by the Land Use Plan and will not adversely affect any other feature of the Comprehensive master Plan of the Town of Flower Mound.
 - D. The variance, if granted, will be no material detriment to the public welfare of injury to the use, enjoyment, or value of property in the vicinity.

Board Member Painter seconded the motion.

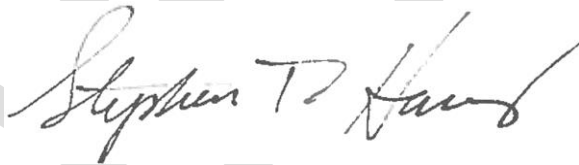
VOTE ON THE MOTION

AYES: Painter, Harris, Moraine, Schoggins, Schultz
NAYS None
ABSTAIN: None

Motion to approve passed with a 5-0-0 vote.

G. ADJOURNMENT OF REGULAR SESSION

Chairman Harris adjourned the meeting at 7:09 p.m. and all were in favor.

A handwritten signature in black ink, appearing to read "Stephen T. Harris", is written over a large, light gray "DRAFT" watermark.

Stephen Harris, Chairman

ATTEST:

A handwritten signature in black ink, appearing to read "Kathy Allgood", is written over a large, light gray "DRAFT" watermark.

Kathy Allgood, Administrative Assistant



BOARD OF ADJUSTMENT MEETING AGENDA ITEM NO. 2

REGULAR ITEM

DATE: January 9, 2019
FROM: Christa Crowe, Property Standards Manager
THROUGH: Matthew Woods, Director of Environmental Services
PRESENTER:

APPLICANT: Elaine Wells

STAFF: Christa Crowe, Property Standards Manager

ITEM: (BOA18-0010) Public hearing to consider a request from Elaine Wells for an appeal of staff's determination that Town Code Section 98-951—98-952, "Subdivision-Use regulations generally and Use classification," applies to the use of the property as a boardinghouse/roominghouse as defined in Code Section 98-2 "Definitions." The property is generally located west of Long Prairie Rd and south of Flower Mound Rd and is locally known as 2900 Northshore Blvd, Lot 28, of the Villages of Northshore Ph 1A Subdivision.

BACKGROUND INFORMATION:

APPLICANT: Elaine Wells
95 Wall Street #1705
New York, NY 10005

LOCATION:

PROPERTY ADDRESS: 2900 Northshore Blvd
Flower Mound, TX 75022
SUBDIVISION: Lot 24, Block F
The Villages of Northshore
ZONING: SFD

STAFF ANALYSIS:

A request has been received from Elaine Wells for an appeal of staff's determination that Town Code Section 98-951—98-952, "Subdivision-Use regulations generally and Use classification," applies to the use of the property as a boardinghouse/roominghouse as defined in Code Section 98-2 "Definitions."

- The request is to reverse staff's determination that the property is being used as a boardinghouse/roominghouse in violation of Town zoning ordinances.
- Staff determined that the owner was operating the property as a boardinghouse/roominghouse as the owner was providing lodging and/or meals for three or more guests for compensation in a zoning district where the boardinghouse/roominghouse use was prohibited. Per Town Code Section 98-2, "boardinghouse/roominghouse means a building, other than a hotel or motel or multifamily

dwelling, where lodging and/or meals for three or more persons are provided for compensation." Per the Subdivision-Use regulations generally and Use classification in Code Section 98-951—98-952, the boardinghouse/roominghouse use type is only permitted in multifamily zoned property. 2900 Northshore Blvd. is not located in a multifamily district. 2900 Northshore is zoned SFD.

The Board of Adjustment may, in conformity with the provisions of the state statutes, as existing or hereafter amended, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and make such order, requirement, decision or determination, in the board's opinion, as ought to be made and shall have all the powers of the officer from whom the appeal is taken.

Citizen Feedback: As of January 4, 2019, staff has received one item of feedback related to this item in favor of supporting staff's initial determination.

ATTACHMENTS:

1. Application
2. Sec. 98-952. - Use classification excerpt
3. Definition
4. Published public hearing notice
5. Property owner notification
6. List of property owners within 200 feet
7. Citizen feedback

APPLICATION - REQUEST FOR VARIANCE OR APPEAL ZONING BOARD OF ADJUSTMENT TOWN OF FLOWER MOUND

DATE: November 30, 2018

I, the undersigned owner or authorized agent of the following described real property located in the Town of Flower Mound, Texas, hereby make application for a request for a variance from the terms of section erroneous administration decision to Section 98 of the Town of Flower Mound Zoning Ordinance.

LOCATION OF PROPERTY

Street Address: 2900 Northshore Blvd, Flower Mound TX 75022Legal Description: Lot/Tract 28, Block F, of Subdivision/Abstract The Villages of Northshore Ph 1A

REQUEST: (If there is additional information which you feel would be helpful to the Board in making a decision, be sure to include this information in your request. If additional space is required to explain your request, please attach the explanation to this application.)

Town officials have made an erroneous administrative decision preventing me from renting my property as I see fit. There are no ordinances or zoning regulations specific to renting properties in Flower Mound, therefore no limitations or restrictions exist. See continuation attached.

A non-refundable application fee of \$250 + \$40 public hearing notice fee are required at the time of application. Fee of \$2.50 per property notice is due upon notification by case manager.

For a variance to be granted by the Board of Adjustment, the Board **must** determine that **all** of the following conditions apply:

- (a) There are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the same area and the same zoning district.
- (b) That a variance is necessary to permit the applicant the same rights in the use of this property that are presently enjoyed under the ordinance by other properties in the vicinity and zone, but which rights are denied to the property on which the application is made.
- (c) That the granting of the variance on the specific property will not adversely affect the land use pattern as outlined by the Master Land Use Plan and will not adversely affect any other features of the Comprehensive Master Plan of the Town of Flower Mound.
- (d) That the variance, if granted, will be not be materially detrimental to the public welfare or injure the use, enjoyment or value of property in the vicinity.

I have read this application form and understand that filing the application and paying the fee does not guarantee an affirmative action by the Board of Adjustment. **I further understand that at least four (4) affirmative votes must be cast in order to receive a variance.**

<u>Elaine Wells</u> Signature of Applicant	Elaine Wells Print Name
<u>95 Wall Street #1705, New York NY 10005</u> Mailing Address	<u>214-354-1368</u> Telephone (Home)
<u>Christa Crowe</u> Staff Member's Signature	<u>12/7/2018</u> Date
	<u>214-354-1368</u> Telephone (Day Number)
	<u>R3064517</u> Receipt Number

BOARD OF ADJUSTMENT DECISION: () DENIED () GRANTED

TERMS AND/OR CONDITIONS: _____

BOARD OF ADJUSTMENT CHAIRMAN: _____ DATE: _____

Filed with office of the Secretary this _____ day of _____, _____.

APPLICATION – REQUEST FOR VARIANCE OR APPEAL
ZONING BOARD OF ADJUSTMENTS
TOWN OF FLOWER MOUND
Continuation of Request for:

Street Address: 2900 Northshore Blvd, Flower Mound TX 75022
Legal Description: Lot 28, Block F, of the Subdivision The Villages of Northshore Phase 1A
Property Owner: Elaine Wells

On May 3, 2018, the Town of Flower Mound (the “Town”) sent me a letter informing me that my property violated the “approved uses for the property per the original planned development district ordinance and Chapter 98-Zoning of the Town’s Code of Ordinances—property to be used for single-family dwelling uses.” The Town determined that my property was being used as a “Boardinghouse or Roominghouse,” because it was being rented as a short-term rental property. This violation notice was restated by the Town on November 26, 2018. I strongly believe the Town’s determination is erroneous.

Per Chapter 98 – Zoning, in Section 98-2, the following definitions can be found:

Boardinghouse or roominghouse means a building, other than a hotel or motel or multifamily dwelling, where lodging and/or meals for three or more persons are provided for compensation.

Dwelling, single-family detached, means a single dwelling unit, other than a mobile home, located on a lot or separate building tract and having no physical connection to a building located on any other lot or tract.

Despite repeated requested, the Town’s official has failed to identify the specific single-family zoning ordinance that applies to my property, e.g., SF-E, SF-30, SF-15, SF-10 or SF-A. It seems SF-10 Single-Family District-10 is the most relevant for my property, which is attached as Exhibit A. I have thoroughly reviewed the Town’s ordinance and have been unable to find any references to rental properties, which has been confirmed by Town officials.

In Exhibit A, you will see as highlighted under the Permitted Uses section, “Dwelling, single-family detached” is listed. There is nothing in this entire section that says a property can or cannot be rented out for one day, one week, one year or any period of time.

I strongly believe the Town’s determination that my property was being used as a Boardinghouse or Roominghouse is erroneous, for the following specific reasons:

1. The ordinance’s definition of Boardinghouse or Roominghouse is too vague to be enforceable nor can it be applied fairly.
 - a. As it reads, all houses, townhouses, and apartments that are being rented out to three or more persons in the Town may be classified as a Boardinghouse or Roominghouse, and should therefore be prohibited. It is unclear if “three or more persons” is speaking

- to the number of occupants or the number of individuals who have rental agreements with the property owner.
- b. Dictionary.com provides the following definitions:
 - i. Boardinghouse: a house at which board or board and lodging may be obtained for payment.
 - ii. Roominghouse: a house with furnished rooms for rent; lodging house.
 - iii. Lodging: accommodation in a house, especially in rooms for rent: to furnish board and lodging.
 - c. Wikipedia defines Boardinghouse as a house (frequently a family home) in which lodgers rent one or more rooms for one or more nights, and sometimes for extended periods of weeks, months, and years. The common parts of the house are maintained by the property-owner, and some services, such as laundry and cleaning, may be supplied. This is more commonly referred to as "room and board." From this definition, there is an implication that the house is owner-occupied while the rooms are being rented.
 - d. Renting my property as a short-term rental was for the entire house, not by room, and the common parts of the house were not maintained and no services were provided. Owners or employees were never present in the property during the rental period.
 - e. Further, while renting my property as a short-term rental, I only rented to an individual person at a time. That renter used the house to accommodate additional occupants, but the rental contract was indeed with just one person.
 - f. It should be noted that there is no time element mentioned within this definition. Town officials have stated that renting out my property for more than 30 days would be acceptable. However, under the existing definition, how would renting out my property for one month or one year be any different than renting it out for one week or one day? Every rental property is temporary in nature. Timeframe is also not mentioned at all in the ordinance.
 - g. It is clear the intent of the ordinance's definition for Boardinghouse or Roominghouse was for the rental of rooms within an owner-occupied house, and not as the Town is now defining and classifying short-term rental properties. Further, it implies three or more "renters" rather than "occupants." In fact, in October 2017, prior to renting my property as a short-term rental, the Town's official specifically asked me if I planned to occupy the house during the rental periods, and when I stated no, she said there was nothing within the ordinance that prohibited me from renting out my property as a short-term rental. No rental restrictions or limits were identified or provided by the Town at that time, and I have been unable to receive anything more specific from the Town except for the reference to Boardinghouse or Roominghouse.
2. Under Section 98.2, the ordinance's definition of dwelling, single family detached does not mention how this type of property is to actually be used as a single family dwelling, e.g., for use by only single families, for living purposes, etc. In fact, the Permitted Uses under this section are quite broad, listing a host of non-single family uses to include churches and day care centers. It definitely does not provide for any limits for renting out single-family properties, whether short or long term. As a short-term rental property, the property was still being used as a single family dwelling, since it was only being rented to families and/or friends who used the house as anyone would, e.g., sleeping, eating, congregating, etc. In *Tarr v. Timberwood Park Owners*

Association, the Texas Supreme Court agreed that the use of short-term rentals was consistent with single-family use. The Town's incorrect classification is simply out of convenience, because the ordinance is completely silent on short-term rentals specifically and rental properties generally. Town officials have verbally agreed with this statement.

3. The Town's ordinances does not include any language on rental properties at all, so it is also completely silent as to any rental durational requirement. Therefore, rental properties, short or long term, cannot be restricted by the Town.
 - a. The Town's official has arbitrarily and subjectively set a limit of at least 30 days to be compliant with the ordinance. Again, this limit cannot be found anywhere within the ordinance and is therefore unenforceable.
 - b. A matter not covered by the ordinance should be treated as not covered.
4. Even if the Town had an ordinance that banned short-term rentals, which it does not, the ordinance would be vulnerable to legal challenges on several constitutional grounds. Imposing such an ordinance on homeowners is an unfair "taking" of property. See *Village of Tiki Island v. Ronquille*. Further, property owners have a vested property right in renting a property for any period of time. Both constitutional and Texas statutory requirements forbid an abrupt taking of such right.
 - a. Exhibit B – news article regarding Austin's case.
 - b. Exhibit C – Texas Attorney General's press release/opinion.

In closing, the Town has infringed upon my property rights by:

1. Conveniently misclassifying my property as a Boardinghouse or Roominghouse, because it is the only reference within the ordinance that comes close to restricting my use of my property;
2. Arbitrarily setting rental term limits for the property that are not defined in the ordinance, and is therefore unenforceable; and
3. Treating my property differently and unfairly as compared to all other property owners who have and are renting out their properties.

This erroneous decision is causing me severe financial harm and hardship. This is unfair and unjust, especially considering the ordinance is completely silent on all forms of rental properties, and as a short-term rental, my property was indeed used for single-family purposes. It is strongly requested that the Board immediately reverse the Town's decision. Thank you for your consideration.



Elaine Wells

November 30, 2018

EXHIBIT A

DIVISION 7. - SF-10 SINGLE-FAMILY DISTRICT-10

Sec. 98-391. - Purpose and intent.

The SF-10 single-family district-10 is designed primarily for single-family detached development on lots of one-quarter acre or larger. It is intended for application in areas designated "medium density" on the land use map of the comprehensive master plan. In addition to the use and area regulations of this division, development in the SF-10 single-family district-10 shall be in compliance with all other applicable provisions of this chapter.

(Code 1989, ch. 12, § 3.12(a))

Sec. 98-392. - Permitted uses.

The following uses shall be permitted in the SF-10 single-family district-10, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory use, general, subject to section 98-972

Church or rectory

Community center, public

Day care home

Dwelling, single-family detached

Fire station

Garage sale, subject to section 98-982

Golf course, public

Home occupation, subject to section 98-984

Local utility line

Model home

Off-street parking, accessory

Park or playground, public

Public building, shop or yard

Railroad track

Recreation center, public

School, elementary or secondary

Sewage pump station

Swimming pool, public

Swimming pool, private, subject to section 98-996

Telephone equipment station

Water well, storage or pump station

(Code 1989, ch. 12, § 3.12(b); Ord. No. 08-01, § 8, 2-5-2001)

Sec. 98-393. - Specific uses.

The following uses shall be permitted in the SF-10 single-family district-10 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Cemetery or mausoleum

College or university

Communication tower, commercial, subject to 98-977

Convent or monastery

Country club, private, subject to 98-978

Day care center

Electrical line/substation, high voltage, subject to section 98-979

Hospital

Museum, library or art gallery, public

Private franchise utility (not listed)

Stadium or playfield, public

Transmission pipeline, subject to section 98-997

(Code 1989, ch. 12, § 3.12(c))

Sec. 98-394. - Temporary uses.

The following uses shall be permitted in the SF-10 single-family district-10 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974

Field office, temporary

Sales trailer, temporary, subject to section 98-993

Temporary special event, subject to section 98-976

(Code 1989, ch. 12, § 3.12(d); Ord. No. 76-03, § 7, 11-3-2003

Sec. 98-395. - Minimum and maximum dimensions.

- (a) *Minimum lot area per dwelling.* The minimum lot area per dwelling unit in the SF-10 single-family district-10 shall be 10,000 square feet, subject to section 98-1023.
- (b) *Minimum lot width.* The minimum lot width for residential uses in the SF-10 single-family district-10 shall be 70 feet, subject to section 98-1024.
- (c) *Minimum floor area per unit.* The minimum floor area per dwelling unit in the SF-10 single-family district-10 shall be 1,800 square feet, subject to section 98-1025.
- (d) *Minimum front yard.* The minimum front yard for all uses in the SF-10 single-family district-10 shall be 25 feet, subject to section 98-1026.
- (e) *Minimum side yard.* The minimum side yard in the SF-10 single-family district-10 shall be ten feet for all uses, subject to section 98-1027.
- (f) *Minimum rear yard.* The minimum rear yard in the SF-10 single-family district-10 shall be 25 feet, subject to section 98-1028.
- (g) *Maximum lot coverage.* The maximum lot coverage in the SF-10 single-family district-10 shall be 40 percent for all uses, subject to section 98-1029.
- (h) *Maximum floor area ratio.* There shall be no maximum floor area requirement in the SF-10 single-family district-10.
- (i) *Maximum height.* The maximum height of buildings and structures in the SF-10 single-family district-10 shall be three stories or 35 feet for all uses, subject to section 98-1031.

(Code 1989, ch. 12, § 3.12(e)—(m)).

EXHIBIT B

The Texas Tribune
May 25, 2018

Texas Supreme Court sides with short-term renters, likely bolstering state's fight against Austin's ordinance

Friday's ruling doesn't directly address regulations implemented by some Texas cities restricting homeowners' use of services like Airbnb. But it bolsters the case against the City of Austin's short-term rental ordinance in several major ways, lawyers said.

The Texas Supreme Court has sided with short-term renters, delivering a win to Texas homeowners who hope to take advantage of websites like Airbnb and HomeAway, and likely bolstering a separate, ongoing case against the City of Austin's short-term rental ordinance.

Kenneth Tarr bought a home near San Antonio in 2012, but when his employer transferred him to Houston two years later, he began to rent it out on a short-term basis. His homeowners' association soon took issue with that, telling him that the practice violated his deed restrictions, which said his home had to be used "solely for residential purposes."

Tarr and his lawyers argued that short-term rentals did constitute a residential purpose: Visitors ate, slept and entertained themselves as anyone would at home. The homeowners' association countered that Tarr's property operated more like a hotel than a home, meaning it was primarily serving a commercial purpose.

"So long as the occupants to whom Tarr rents his single-family residence use the home for a 'residential purpose,' no matter how short-lived, neither their on-property use nor Tarr's off-property use violates the restrictive covenants in the Timberwood deeds," Justice Jeff Brown wrote Friday for a unanimous court.

Patrick Sutton, Tarr's lawyer, said Friday's ruling will apply to homeowners in homeowners associations across the state, most of whom operate under similar deed restrictions — and its impacts may even reach further than that.

"This is about as strong of a property rights type opinion as one can imagine," Sutton said. "It is broadly applicable to [city] ordinances and to deed restrictions — it tells us what nine justices on this current court think about people using their land."

Separate from deed restrictions, there are also local ordinances on short-term rentals in place in more than a dozen Texas cities. While Friday's ruling doesn't directly concern those restrictions, the strong attention it gives to property rights and the court's unanimous support for it may well bolster the case of a group of short-term renters and guests who have sued the city of Austin, alleging that its short-term rental ordinance, one of the state's oldest and strictest, unconstitutionally infringes on their rights. In that high-profile case — which has drawn the support of Texas Attorney General Ken Paxton — a small group of plaintiffs, represented by the Texas Public Policy Foundation, argue that by restricting short-term rentals, the City of Austin prevents homeowners from using their property as they see fit, and treats short-term renters differently than it treats long-term renters.

Rob Henneke, a TPPF lawyer representing those plaintiffs, said Friday that “the Texas Supreme Court got it right.” “This is a decision affirming private property rights,” he said, noting that the reasoning in the case supports his argument against Austin’s ordinance in several major ways.

In overruling a lower court’s previous decision on Tarr’s case, the ruling removes much of the legal grounding for the City of Austin’s argument, he said. A lawyer for the city did not immediately return a request for comment. The ruling also affirms a separate short-term rental decision that supports TPPF’s side, Henneke said.

The decision marks the high court’s first major ruling on this issue at a time when short-term rentals — and the restrictions on them — are being litigated across the state. While short-term rentals have long been a reality, especially in vacation destinations, their spike in popularity thanks to web platforms like HomeAway and Airbnb has exposed holes and discrepancies in the laws that regulate them, ripening the issue for litigation across the state.

EXHIBIT C

Texas Attorney General's News Release

(<https://www.texasattorneygeneral.gov/news/categories/short-term-rentals>)

March 30, 2018

AG Paxton Urges Texas Appeals Court to Declare Austin's Short-Term Rental Ordinance Unconstitutional

Attorney General Ken Paxton asked the Court of Appeals for the Third Judicial District in Austin to reverse a trial court's judgment and rule that the city of Austin's stringent ordinance against short-term rentals exceeds the lawful scope of the city's authority and infringes upon property owners' fundamental constitutional rights.

Short-term rentals have been around at least since Texas independence and have played important roles in local communities over the years. They have provided temporary accommodations for veterans returning from combat, minorities that were wrongfully denied public accommodations in the Jim Crow era, evacuees from natural disasters such as Hurricane Harvey in 2017, and those looking for new homes. But now, through the current ordinance, the city of Austin seeks to end this rich history and tradition of freedom.

In October 2016, Attorney General Paxton intervened in a lawsuit against the city of Austin that was filed by the Texas Public Policy Foundation on behalf of several short-term rental owners and guests. Austin's ordinance phases out short-term rental permits by 2022 for homeowners who want to rent out their secondary homes. But by taking away its citizens' property right to lease their homes as they see fit, the city has violated their constitutional rights.

"City governments do not have the authority to trample Texas constitutional rights and protections for property owners and their guests," Attorney General Paxton said. "The city of Austin's short-term rental ordinance is not only bad policy, but also unlawful and must be struck down."

Sec. 98-952. - Use classification.

- (a) *Purpose and intent.* The use regulations of the zoning districts are based on the use classification system of this section. The purpose of the provisions of this section is to classify uses of land into a number of specially defined land use categories on the basis of common functional characteristics and similar compatibility with other uses, thereby providing a basis for regulation of uses in accordance with criteria that are directly relevant to the public interest. The provisions of this section shall apply throughout this chapter.
- (b) *Classification of principal uses.* The use categories listed in the use regulations schedule in subsection (c) of this section shall be considered to be principal uses, with the exception of uses listed in the "accessory and temporary uses" category. A single lot, other than a lot used for residential dwelling purposes, may contain more than one principal use, or a single use that has the characteristics of more than one use category, unless otherwise prohibited by the provisions of this chapter. All existing and proposed uses shall be classified into the use category that most closely portrays the overall nature of such activity. Any use that cannot be so classified shall not be permitted in any district.
- (c) *Schedule of use regulations.* The following use regulations schedule summarizes the use regulations of the districts. In the event of any conflict between the use regulations schedule and the text of the zoning district regulations, the text shall control. Uses that were established prior to the adoption of this chapter or its predecessors, but that are now inconsistent with the requirements of this chapter, shall be permitted if such uses meet the requirements of article V, chapter 78 of this Code, nonconformities, for a valid nonconforming use. The use regulations schedule shall be interpreted as follows:
- (1) *Permitted uses.* Uses identified in a particular district column with a "P" shall be permitted in such district, subject to compliance with all applicable conditions and provisions of this chapter.
 - (2) *Specific uses.* Uses identified in a particular district column with an "S" shall be permitted in such district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 98-953, specific use permits.
 - (3) *Temporary uses.* Uses identified in a particular district column with a "T" shall be permitted in such district only upon approval of a temporary use permit in accordance with the procedures and standards of [section] 78-87 of this Code, temporary use permits.
 - (4) *Not permitted.* Uses not identified in a particular district column with a "P," "S" or "T" are not allowed in such district, unless otherwise expressly permitted in this chapter.
 - (5) *Use conditions.* Numbers occurring in parenthesis after the names of selected use categories refer to conditions applicable to such use and set forth in subdivision III of this division, special use conditions.

SCHEDULE OF USE REGULATIONS

Use Type/Section	98- 27 1	98- 30 1	98- 43 1	98- 33 1	98- 36 1	98- 39 1	98- 42 1	98- 45 1	98- 48 1	98- 51 1	98- 54 1	98- 57 1	98- 60 1	98- 63 1	98- 66 1	98- 84 1	98- 87 1	98- 69 1	98- 72 1	98- 75 1	98- 78 1	98- 81 1	98- 89 0
Residential Uses	A	SF E	SF -5	SF 30	SF 15	SF 10	SF A	2F	M F	M H	O	R1	R2	C1	C2	CC	CI	I1	I2	W R	RE C	P D	CB D

Dwelling, single- family detached	P	P	P	P	P	P														P		P	*
Boardingh ouse or roomingh ouse									P														*
Hotel or motel										S					P	P	P	P	P	P	S	P	*

* The uses allowed in the CBD are specified in the zoning ordinance as approved and adopted by the town council, establishing a CBD on a particular land use area and such zoning ordinance shall specify what uses are permitted uses, what uses are specific uses requiring a specific use permit, and what uses are temporary uses. A list of such category of uses shall be maintained by the executive director of development services for each CBD approved by the town council.

(d) Reserved.

(Code 1989, ch. 12, § 3.05(b), (c); Ord. No. 27-99, § 1, 4-5-1999; Ord. No. 75-99, § 2(3.05), 12-6-1999; Ord. No. 14-00, § 2, 2-17-2000; Ord. No. 32-00, § 2(3.05), 4-3-2000; Ord. No. 50-00, § 1, 7-17-2000; Ord. No. 08-01, § 1, 2-5-2001; Ord. No. 09-01, § 1, 2-5-2001; Ord. No. 49-01, § 1, 7-16-2001; Ord. No. 48-03, § 9, 8-18-2003; Ord. No. 75-03, § 2, 11-3-2003; Ord. No. 76-03, § 24, 11-3-2003; Ord. No. 72-05, § 8, 9-6-2005; Ord. No. 02-07, §§ 2(Exh. 1), 16, 1-18-2007; Ord. No. 47-07, § 2(Exh. 1), 6-18-2007; Ord. No. 80-07, § 17, 10-1-2007; Ord. No. 17-08, § 3, 2-18-2008; Ord. No. 45-08, § 3, 8-4-2008; Ord. No. 05-10, § 4, 1-21-2010 Ord. No. 33-11, § 4, 7-18-2011; Ord. No. 06-12, § 35, 2-20-2012)

ARTICLE I. - IN GENERAL

Sec. 98-1. - Scope and applicability of chapter.

The regulations of this chapter shall apply to all lands located within the corporate limits of the town and within any areas annexed for the limited purposes of planning and zoning as provided in state law. All land, buildings, structures or appurtenances thereon located within the town that are hereafter occupied, used, erected, altered, removed, placed, demolished or converted shall be occupied, used, erected, altered, removed, placed, demolished or converted in conformance with the zoning regulations prescribed for the zoning district in which such land or building is located, as provided in this chapter.

(Code 1989, ch. 12, § 3.01)

Sec. 98-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Boardinghouse or *roominghouse* means a building, other than a hotel or motel or multifamily dwelling, where lodging and/or meals for three or more persons are provided for compensation.

Dwelling, multifamily, means any building or its portion that is designed, built, rented, leased or let to be occupied as three or more dwelling units on a single lot.

Dwelling, single-family attached, means a dwelling unit joined to another dwelling at one or more sides by a party wall or abutting separate wall and located on a platted separate lot and served by separate utility connections and meters as a single-family dwelling.

Dwelling, single-family detached, means a single dwelling unit, other than a mobile home, located on a lot or separate building tract and having no physical connection to a building located on any other lot or tract.

Dwelling, single-family detached (medium density), means a special type of single-family dwelling (detached) with unique dimensional regulations permitting greater flexibility of site design as defined by this chapter and permitted solely in planned development districts approved prior to the effective date of this subpart B.

Hotel or *motel* means a building or group of buildings designed and occupied as a temporary abiding place of individuals. To be classified as a hotel or motel, an establishment shall contain a minimum of 12 individual guestrooms or units and shall furnish customary hotel services.

(Code 1989, ch. 12, § 2.03; Ord. No. 75-99, § 1(2.03), 12-6-1999; Ord. No. 14-00, § 1(2.03), 2-17-2000; Ord. No. 40-00, § 1, 6-5-2000; Ord. No. 08-01, § 1, 2-5-2001; Ord. No. 89-02, § 1, 12-2-2002; Ord. No. 25-03, § 1, 5-19-2003; Ord. No. 48-03, § 3, 8-18-2003; Ord. No. 76-03, § 2, 11-3-2003; Ord. No. 101-04, § 5, 12-20-2004; Ord. No. 72-05, § 2, 9-6-2005; Ord. No. 53-06, § 2, 8-5-2006; Ord. No. 80-07, § 2, 10-1-2007; Ord. No. 05-10, § 2, 1-21-2010; Ord. No. 33-11, § 2, 7-18-2011; [Ord. No. 18-16](#), § 1, 3-21-2016)

Cross reference— Definitions generally, § 1-2.

Secs. 98-3—98-30. - Reserved.



TOWN OF FLOWER MOUND

BOARD OF ADJUSTMENT CASE NO. BOA18-0010

NOTICE OF APPLICATION

DATE: December 21, 2018

Dear Interested Property Owner,

Notice is hereby given that the Board of Adjustment (**BOA**) of the Town of Flower Mound, Texas, will hold a public hearing on Wednesday, January 9, 2019, at 6:30 p.m. in the Flower Mound Town Hall, 2121 Cross Timbers Road (FM 1171).

A request has been made from Elaine Wells for an appeal of staff's determination that Town Code Section 98-951—98-952, "Subdivision-Use regulations generally and Use classification," applies to the use of the property as a boardinghouse/roominghouse as defined in Code Section 98-2 "Definitions."

The property is generally located West of Long Prairie Rd and South of Flower Mound Rd and is locally known as 2900 Northshore Blvd, Lot 28, of the Villages of Northshore Ph 1A Subdivision.

The Board of Adjustment may, in conformity with the provisions of the state statutes, as existing or hereafter amended, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and make such order, requirement, decision or determination, in the board's opinion, as ought to be made and shall have all the powers of the officer from whom the appeal is taken.

On the reverse side please find a copy of a vicinity map depicting the general location of the subject property. Further information may be obtained at the Environmental Services Department located at The Atrium, 1001 Cross Timbers Road, Suite 2330, or by calling 972-874-6340.

As an interested property owner, you are requested to make your views known by attending this hearing. If you cannot attend the hearing, it is requested that you express your views by mail to the address listed below to my attention.

Sincerely,

Christa Crowe
Property Standards Manager

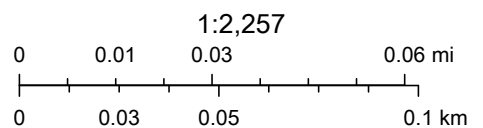
Property Owner Notice

200' PROPERTY OWNER NOTICE MAP



12/13/2018, 10:16:01 AM

- Buffer (Step 2) _Query result
- Parcel
- County Line
- Town Limits
- Park Location
- Streams



Town of Flower Mound, DCAD, TAD, Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community, Town of Flower Mound

PUBLIC HEARING

Notice is hereby given that the Board of Adjustment of the Town of Flower Mound, Texas, will hold a public hearing on Wednesday, January 9th, at 6:30 pm at the Flower Mound Town Hall, 2121 Cross Timbers Rd (FM1171). The purpose of the hearing is to consider a request from Elaine Wells for an appeal of staffs determination that Town Code Section 98-95198-952, Subdivision-Use regulations generally and Use classification, applies to the use of the property as a boardinghouse/roominghouse as defined in Code Section 98-2 Definitions. The property is generally located West of Long Prairie Rd and South of Flower Mound Rd and is locally known as 2900 Northshore Blvd, Lot 28, of the Villages of Northshore Ph 1A Subdivision.

Christa Crowe
Property Standards Manager
Town of Flower Mound

DRC 12/28/2018

PID	Site Address	SUBNAME	Owner Name	Owner Address	Owner City	Owner State	Owner Zip
R178170	1901 Tophill Dr	THE VILLAGES OF NORTSHORE PH 1A	BUCHANAN, JAMES PAUL	1901 TOPHILL DR	FLOWER MOUND	TX	75022
R178171	1900 Bluffview Ct	THE VILLAGES OF NORTSHORE PH 1A	OLSEN, CHRISTIAN JAMES & JENILIN	1900 BLUFFVIEW CT	FLOWER MOUND	TX	75022
R178185	2900 Elmridge Dr	THE VILLAGES OF NORTSHORE PH 1A	BRIGHT, TRAVIS R & ALISON A	2900 ELMRIDGE DR	FLOWER MOUND	TX	75022
R178192	2917 Elmridge Dr	THE VILLAGES OF NORTSHORE PH 1A	SCALZO, BERT D	2917 ELMRIDGE DR	FLOWER MOUND	TX	75022
R178193	2913 Elmridge Dr	THE VILLAGES OF NORTSHORE PH 1A	BURROW, BILL B JR	2913 ELMRIDGE DR	FLOWER MOUND	TX	75022
R178194	2909 Elmridge Dr	THE VILLAGES OF NORTSHORE PH 1A	LOHR, ELIZABETH C	2909 ELMRIDGE DR	FLOWER MOUND	TX	75022
R178195	2905 Elmridge Dr	THE VILLAGES OF NORTSHORE PH 1A	WALKER, WINSTON P & MELISSA E	2905 ELMRIDGE DR	FLOWER MOUND	TX	75022
R178196	2901 Elmridge Dr	THE VILLAGES OF NORTSHORE PH 1A	PEREGOY, GEORGE G SR & JEFFELEAN G	2901 ELMRIDGE DR	FLOWER MOUND	TX	75022
R178197	2825 Elmridge Dr	THE VILLAGES OF NORTSHORE PH 1A	ORDONEZ, LOURDES V & PASTOR, JESUS ANGEL	2825 ELMRIDGE DR	FLOWER MOUND	TX	75022
R178198	2821 Elmridge Dr	THE VILLAGES OF NORTSHORE PH 1A	GRIFFIN, NINA	2821 ELMRIDGE DR	FLOWER MOUND	TX	75022
R178199	2817 Elmridge Dr	THE VILLAGES OF NORTSHORE PH 1A	GVG CAPITAL, LLC	4305 WINDSOR CENTRE TRL STE 400	FLOWER MOUND	TX	75028
R178213	2812 Northshore Blvd	THE VILLAGES OF NORTSHORE PH 1A	DUCOTE, ALICIA	2812 NORTSHORE BLVD	FLOWER MOUND	TX	75022
R178214	2816 Northshore Blvd	THE VILLAGES OF NORTSHORE PH 1A	SUH, PAUL & CAROL INJ A	1720 STRAIT LN	FLOWER MOUND	TX	75028
R178215	2820 Northshore Blvd	THE VILLAGES OF NORTSHORE PH 1A	KOMMINENI, PRASAD R & REKHA	2820 NORTSHORE BLVD	FLOWER MOUND	TX	75022
R178216	2900 Northshore Blvd	THE VILLAGES OF NORTSHORE PH 1A	WELLS, ELAINE W	651 10TH AVE 31-H	NEW YORK	NY	10036
R178217	2904 Northshore Blvd	THE VILLAGES OF NORTSHORE PH 1A	BRYANT, SHAUN C & MARIA C	2904 NORTSHORE BLVD	FLOWER MOUND	TX	75022
R178218	2908 Northshore Blvd	THE VILLAGES OF NORTSHORE PH 1A	MORRIS, MELISSA S & CLIFFORD T	2908 NORTSHORE BLVD	FLOWER MOUND	TX	75022
R178219	2912 Northshore Blvd	THE VILLAGES OF NORTSHORE PH 1A	MALLOUF, IAN JACK & AMY D	2912 NORTSHORE BLVD	FLOWER MOUND	TX	75022
R178225	2909 Northshore Blvd	THE VILLAGES OF NORTSHORE PH 1A	BAHREVAR, HAMID R & ROSA M	2909 NORTSHORE BLVD	FLOWER MOUND	TX	75022
R178226	2905 Northshore Blvd	THE VILLAGES OF NORTSHORE PH 1A	JONES, SHEA	2905 NORTSHORE BLVD	FLOWER MOUND	TX	75022
R178227	2901 Northshore Blvd	THE VILLAGES OF NORTSHORE PH 1A	ANGANAGARI, VENKAT N & SUSMITHA	2901 NORTSHORE BLVD	FLOWER MOUND	TX	75022
R178228	2821 Northshore Blvd	THE VILLAGES OF NORTSHORE PH 1A	BARTHOLOMEW, MARK & DUPRE, MARGARET	2821 NORTSHORE BLVD	FLOWER MOUND	TX	75022
R178229	2817 Northshore Blvd	THE VILLAGES OF NORTSHORE PH 1A	TEFERTILLER, STEVEN R	2817 NORTSHORE BLVD	FLOWER MOUND	TX	75022
R178230	2813 Northshore Blvd	THE VILLAGES OF NORTSHORE PH 1A	SMITH, JERRY L & RUTH J	2813 NORTSHORE BLVD	FLOWER MOUND	TX	75022

Christa Crowe

From: Emily Chapman
Sent: Sunday, December 30, 2018 6:48 PM
To: Christa Crowe; Matthew Woods
Subject: Fwd: received letter

Thank you,
Emily Chapman

Sent from Emily's iPhone

Begin forwarded message:

From: Bert Scalzo [REDACTED]
Date: December 30, 2018 at 2:52:55 PM CST
To: environmentalservices@flower-mound.com
Subject: received letter

Hello,

I received a letter regarding the board of adjustment case no. BOA18-0010. If I understand the contents of the letter, we have a homeowner at 2900 Northshore Blvd who is appealing findings regarding the restriction against property being used as boarding or rooming house.

I am 100% against allowing any homeowner to rent rooms out either short or long term.

Also, note that 2921 Elmridge Drive is currently renting a room to a college student. This has been going on at least a year. I'd like to see that situation corrected as well.

Thanks.

Bert Scalzo
2917 Elmridge Dr
Flower Mound, TX 75022
[REDACTED]