

CITY OF HUNTSVILLE, TEXAS

Matt Hannes, Chairman

Nate Grigsby, Vice-Chairman
Mari Montgomery, Position 2
John Cromer, Position 3
Ken Holland, Position 4



David Zuniga, Alternate A
Anthony Watkins, Alternate B

BOARD OF ADJUSTMENT AGENDA

FRIDAY, December 16, 2016 at 12:00 PM (NOON)

COUNCIL CHAMBERS

HUNTSVILLE CITY HALL, 1212 AVENUE M

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact the Planning Division, at 936-294-5782 two working days prior to the meeting so that appropriate arrangements can be made.

REGULAR SESSION

1. **CALL TO ORDER**
2. **ROLL CALL** and selection of Alternate(s) if needed.
3. **ELECTION:**
 - a. **Chairman**
 - b. **Vice-Chairman**
4. **PUBLIC HEARING** for the variance request by property owner Sam Mathew and Bearkat Junction, applicant, for a variance to *Table 5-1: Lot and Building Setback Regulations* in *Article 5: Lot and Setback Regulations* of the *Development Code* for reduced front/street setback to allow for the construction of a canopy for existing fuel pumps on property located at 2020 Sam Houston Avenue.
5. **CONSIDER** the variance request by property owner Sam Mathew and Bearkat Junction, applicant, for a variance to *Table 5-1: Lot and Building Setback Regulations* in *Article 5: Lot and Setback Regulations* of the *Development Code* for reduced front/street setback to allow for the construction of a canopy for existing fuel pumps on property located at 2020 Sam Houston Avenue.
5. **PUBLIC HEARING** for the variance request by property owner John Adamick and Jerry Nemec, applicant, for a variance to *Section 10.500 Sidewalks* in *Article 10: Infrastructure and Public Improvements* of the *Development Code* to not construct the required sidewalk on property located at 154 SH 19.
7. **CONSIDER** the variance request by property owner John Adamick and Jerry Nemec, applicant, for a variance to *Section 10.500 Sidewalks* in *Article 10: Infrastructure and Public Improvements* of the *Development Code* to not construct the required sidewalk on property located at 154 SH 19.
8. **PUBLIC HEARING** for the variance request by property owner and applicant Robert Ballard for a variance to *Section 10.500 Sidewalks* in *Article 10: Infrastructure and Public Improvements* of the *Development Code* to not construct the required sidewalk on property located at 1090 Fish Hatchery Road.

- 9. **CONSIDER** the variance request by property owner and applicant Robert Ballard for a variance to *Section 10.500 Sidewalks in Article 10: Infrastructure and Public Improvements* of the *Development Code* to not construct the required sidewalk on property located at 1090 Fish Hatchery Road.
- 10. **CONSIDER** the FY 2016-2017 Meeting Schedule & Submission Deadlines.
- 11. **CONSIDER** the minutes of June 24, 2016.

12. ADJOURNMENT

If, during the course of the meeting and discussion of any items covered by this notice, the Board of Adjustment determines that a Closed or Executive session of the Commission is required, then such closed meeting will be held as authorized by Texas Government Code, Chapter 551, Sections: 551.071 – consultation with counsel on legal matters; 551.072 – deliberation regarding purchase, exchange, lease or value of real property; 551.073 – deliberation regarding a prospective gift; 551.074 – personnel matters regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; 551.076 – implementation of security personnel or devices; 551.087 – deliberation regarding economic development negotiation; and/or other matters as authorized under the Texas Government Code.

If a Closed or Executive session is held in accordance with the Texas Government Code as set out above, the Board of Adjustment will reconvene in Open Session in order to take action, if necessary, on the items addressed during Executive Session.

CERTIFICATE

I, Lee Woodward, City Secretary, do hereby certify that a copy of the December 16, 2016 Board of Adjustment Agenda was posted on the City Hall bulletin board, a place convenient and readily accessible to the general public at all times, in compliance with Chapter 551, Texas Government Code.

DATE OF POSTING: _____

TIME OF POSTING: _____

DATE REMOVED: _____

Lee Woodward, City Secretary



BOARD OF ADJUSTMENT AGENDA ITEM DISCUSSION FORM

Prepared by: Aron Kulhavy, A.I.C.P.
Community & Economic Development Director

Janet Ridley
Planner

MEETING DATE: December 16, 2016

TYPE OF REVIEW: Setback Variance

SUBJECT: 2020 Sam Houston Ave
Case No. 04-2016

REQUESTED BY: Sam Mathews/Bearkat Junction

FACTS, CODE REQUIREMENTS AND CONDITIONS:

The subject property is a 0.468 acre tract of land located at 2020 Sam Houston Avenue. The property was developed in 1972 as a fuel station and has been continuously, (and currently), that use. The current business name is Bearkat Junction. This property is located in the Management Development District and a staff prepared vicinity map of the property is attached.

The property has not been platted, so there are not any defined building setbacks for the property, per plat, which would allow a building setback differing from the requirements in the current City of Huntsville *Development Code*. Per **Article 5 Lot and Setback Regulations, Table 5-1: Lot & Building Setback Regulations** of the *Development Code* the required building setback along Sam Houston Avenue is twenty-five (25) feet. Sam Mathews, property owner, and Bearkat Junction, applicant, is requesting a variance from the 25 foot street setback to reconstruct a canopy over the existing fuel pumps located on the property which was destroyed by high wind several years ago. The time period allowed to reconstruct the canopy, (encroaching the current required building setback), under the City's grandfather clause has expired.

The owner/applicant has not submitted a site plan with the proposed location and dimensions for the canopy. However, if variance is granted, the canopy will be required to be constructed exactly the same size as the destroyed canopy. The destroyed canopy was twenty (20) feet in width. Therefore a reconstructed canopy twenty (20) feet in width will extend fifteen (15) feet into the 25' setback, resulting in a ten (10) foot building setback along Sam Houston Avenue. (Staff prepared site plan is attached.)

The subject property has street frontage on Sam Houston Avenue and on Avenue L-1/2. Sam Houston Avenue has a dedicated street right-of-way width of 60 feet. The property/right-of-way line along Sam Houston Avenue is approximately eight (8) feet behind the existing street curb line. There is not currently any vehicular access to the fuel station from Avenue L-1/2.

In order to grant this request, the *Development Code Section 12.907.B* states that six (6) outlined criteria must be met. The burden of proof for a variance request is solely upon the applicant. The applicant has provided information addressing only one of the six (6) criteria. Please see the attached Variance Application.

STAFF REPORT

Staff provides comments of each of the criteria based only on the strict interpretation of the *Development Code*. Staff comments in regards to each criterion follow in italics.

- (a) The variance is necessary to overcome a condition of the property itself.

The property as currently developed was constructed in 1972 prior to Development Code regulation. The existing location of the fuel pumps may continue without the canopy.

- (b) The condition necessitating the variance is unique to the subject property.

*There are numerous structures which were constructed along Sam Houston Avenue prior to Development Code adoption and building setback regulations. These existing structures are considered legal nonconformities. They are allowed to exist and are to be maintained to be safe and in good repair. **Section 11.403.A Damage or Destruction** of the Development Code addresses the rebuilding of a nonconforming structure that may be destroyed, either by accident or intentionally. Per the code, a structure which is destroyed as the result of an accident or by acts of God may be rebuilt provided that no new nonconformity is created and that the existing extent of nonconformity is not increased. A building permit to reconstruct the destroyed/damaged structure must be obtained within 18 months of the date of occurrence of such damage. The structure was destroyed approximately three years ago and needs the variance to be reconstructed.*

- (c) The condition necessitating the hardship was not created by the subject property owner.

The condition is the result of an act of God, not the property owner.

- (d) Literal enforcement of the subject regulation will deprive the property owner of any economically beneficial use of the subject property.

A literal interpretation of the Code does not allow the property owner to provide the convenience/amenity of a canopy over the fuel pumps for use in inclement weather which may affect his business. The property owner does not have an option to construct the canopy to be in compliance with the current Development Code setback requirements.

- (e) Approval of the variance will not be contrary to the public interest.

It will not be contrary to the public interest to provide a canopy for the existing fuel pumps for the convenience of customers. This service station is one of only two service stations located in close proximity to the Sam Houston State University Campus.

- (f) Approval of the variance is in keeping with the overall spirit of this Development Code and furthers substantial justice

The general purpose for the Development Code is to protect the health, safety, and general welfare of existing and future residents of the City.

A canopy over the fuel pumps would provide added convenience and an amenity for the business and may contribute to the general welfare of customers at the fuel station. The canopy will be constructed so as not to be an obstacle in the sight-triangle for ingress and egress to the fuel station, thereby endangering the safety of the public.

STAFF RECOMMENDATION:

There are valid arguments to the granting of the variance. The previous canopy which was destroyed by an act of God was not a detriment to the general health safety and welfare of the City. Financial constraints may have prevented the property owner from reconstructing the canopy within the specified time period allowed by the *Development Code*. The lack of a canopy may result in loss of business, but the property can continue to function without a canopy. Because the request for variance does not meet ALL of the six criteria as outlined in the Development Code, staff recommends denial of the request.

ATTACHMENTS:

- From Applicant: Application with Variance Request Questions.
- From Staff: Vicinity Map & Site Plan.



Variance/Appeal Request Application

City of Huntsville | 448 State Highway 75 North | Huntsville, TX 77320 | 936-294-5782

Applicant Information - As authorized by the property owner(s)

Name Bearkat Junction
2020 Sam Houston Ave Huntsville TX 77340
Mailing Address City State Zip Code

Phone Number 936-435-1092 Alternate Phone Number _____

E-mail: bearkat-junction@gmail.com

I, the undersigned, understand the provision of the Huntsville Development Code, especially Sections 12.900 and 12.1000, and hereby submit this request based upon one (1) of the following:

- There has been an alleged error in an order, requirement, decision or determination by an administrative official in the enforcement of the Development Code.
- The strict application of one or more requirements of the Development Code renders the parcel incapable of reasonable economic use due to the particular physical surroundings, shape, or topographical condition of the property.

[Signature] 10/31/2016
Signature Date

Property Owner Information - By signing below, I acknowledge that I am the rightful owner of the property proposed for development; and, if different, I authorize the "Applicant" to serve as my agent for matters pertaining to this application.

Name Sam Mathew
2020 Sam Houston Ave Huntsville TX 77340
Mailing Address City State Zip Code

Phone Number _____ Alternate Phone Number _____

E-mail: _____

[Signature] 10/31/16
Signature Date

Variance/Appeal Information

Please provide a description of your request. (If requesting a variance, please answer the attached questions.)
We are requesting to build a canopy structure for our gas station.

Application Fee
 \$250.00

Public Hearing
 A public hearing is required for this request. City staff will complete all the requirements of the public hearing notice process.

For Staff Use Only			
Received/By: <u>JF 11-9-16</u>	Fee Paid: <u>\$250.00</u>	Board of Adjustments Date: <u>12-16-16</u>	Outcome:

Applicant Name

Questions

Please answer the following questions. Attach a separate sheet if additional space is needed.

1. Is the variance necessary to overcome a condition of the property itself?

Yes. without canopy gas station is losing business.

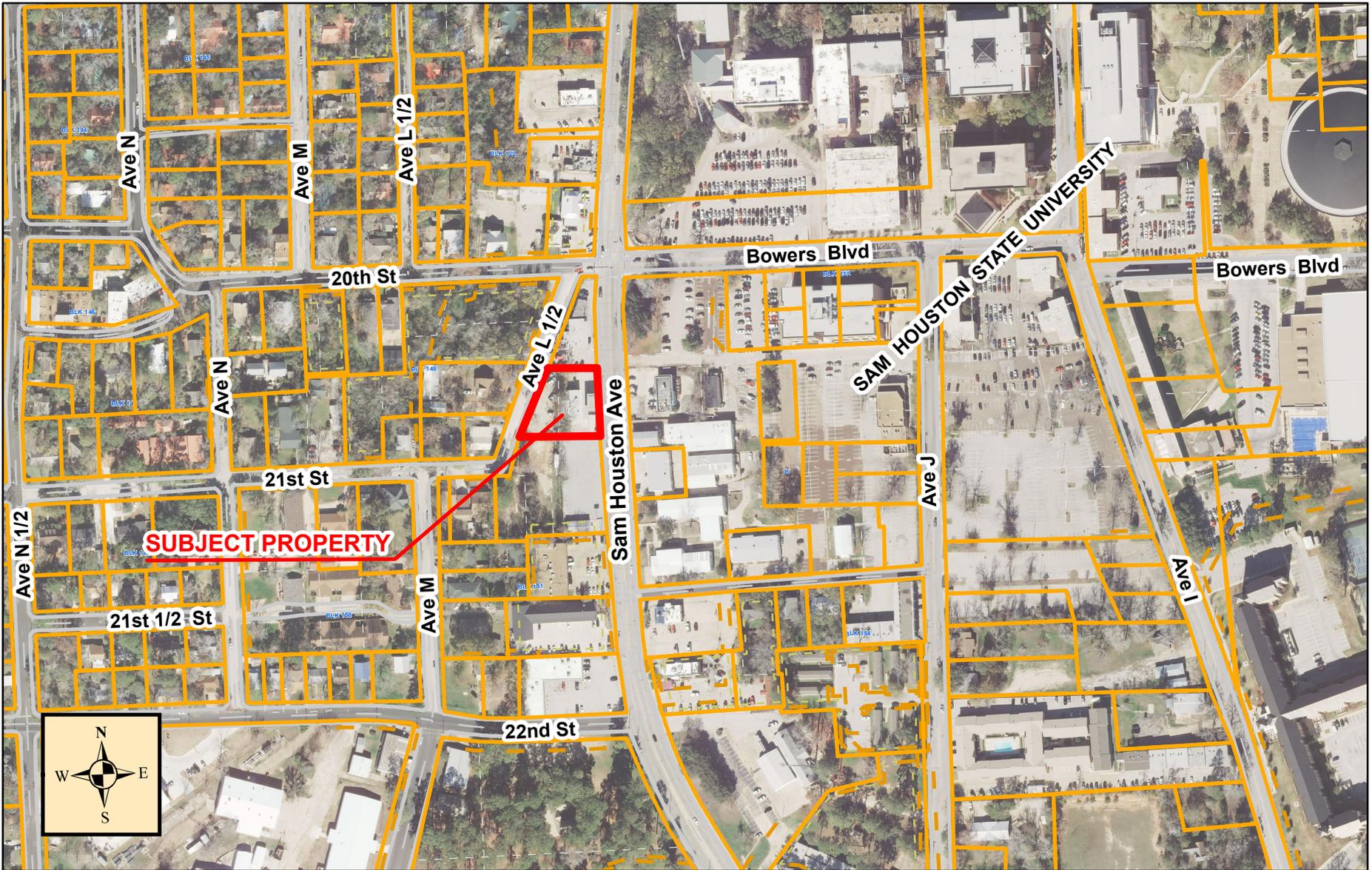
2. Is the condition necessitating the variance unique to the subject property?

3. Is the condition necessitating the variance created by the subject property owner?

4. Will literal enforcement of the subject regulation deprive the property owner of any economically beneficial use of the subject property?

5. Will approval of the variance be contrary to the public interest?

6. Will the approval of the variance be in keeping with the overall spirit of the Development Code and further substantiate justice?

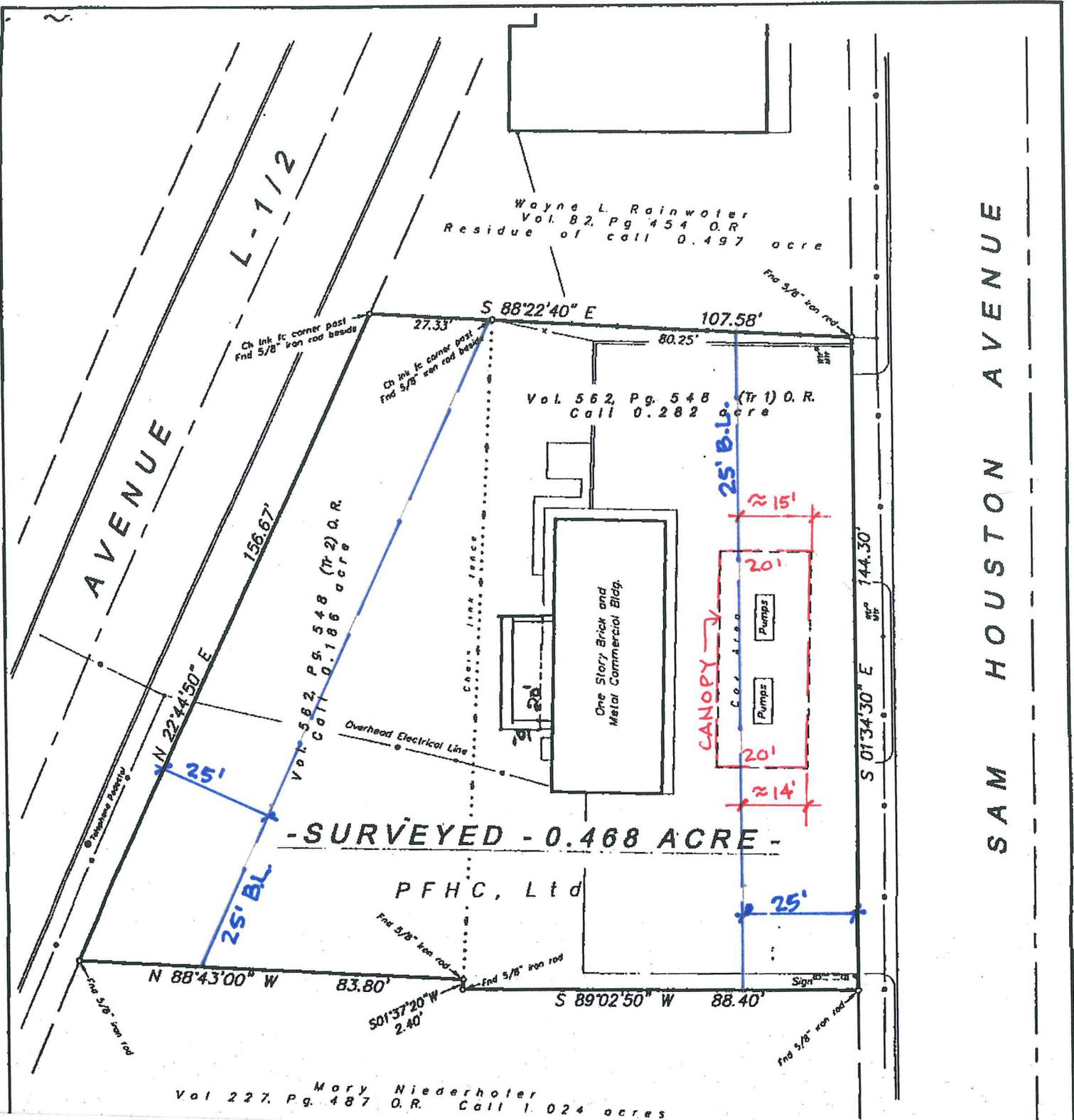


VICINITY MAP - CASE NO. 04-2016 - 2020 SAM HOUSTON AVE
Board of Adjustment Meeting - December 16, 2016

300 150 0 300 Feet



1 inch = 300 feet



Scale: 1" = 30'



STAFF PREPARED SITE PLAN
CASE NO. 04-2016 – 2020 SAM HOUSTON AVE
Board of Adjustment Meeting
December 16, 2016

PLAT OF SURVEY OF



BOARD OF ADJUSTMENT AGENDA ITEM DISCUSSION FORM

Prepared by: Aron Kulhavy, A.I.C.P.
Community & Economic Development Director

Janet Ridley
Planner

MEETING DATE: December 16, 2016

TYPE OF REVIEW: Infrastructure (Sidewalk) Variance

SUBJECT: 154 SH 19

REQUESTED BY: Jerry Nemec, PE, Applicant

Case No. 05-2016

FACTS, CODE REQUIREMENTS AND CONDITIONS:

The subject property is a 0.61 acre tract of land located at 154 SH 19. The property is situated on the east side of SH 19 approximately .4 mile from IH 45. State Highway 19 is classified as an Expressway/Freeway per the City of Huntsville Transportation Plan. The previously undeveloped property is currently under development for use as a temporary storage facility for a vehicle wrecker company. The property owner is John Adamick. This property is located in the Management Development District. A staff prepared vicinity map of the property is attached.

Section 10.500 Sidewalks in ***Article 10: Infrastructure and Public Improvements***, of the *Development Code*, requires sidewalks to be constructed by the owner of the subject property whenever development occurs on property with frontage on an arterial street. Jerry Nemec, P.E., applicant, is requesting a variance to not construct a sidewalk as required per the *Development Code*.

The subject property has approximately 326 linear feet of street frontage on SH 19. The *Development Code* requires that the sidewalk extend across the entire street frontage of the subject property. The sidewalk is to be constructed within the street right-of-way or in an approved easement. The sidewalk is to be constructed at the time of building permit and completed before a certificate of occupancy is issued. None of the existing developed property located adjacent to State Highway 19 have sidewalks. The nearest constructed sidewalk is located along Boettcher Drive, approximately 1 mile from the subject property.

In order to grant this request, the *Development Code Section 12.907.B* states that six (6) outlined criteria must be met. The burden of proof for a variance request is solely upon the applicant. The applicant has provided answers for the six (6) criteria. Please see the attached Variance Application.

STAFF REPORT

Staff provides comments of each of the criteria based only on the strict interpretation of the *Development Code*. Staff comments in regards to each criterion follow in italics.

- (a) *The variance is necessary to overcome a condition of the property itself.*

There is as much as 14' of change in elevation from the street to the subject property, (with the subject property being higher than the street). The width of the SH 19 right-of-way is approximately 380' at the subject property location. The existing edge of street pavement is approximately 110' from the subject property. The distance from the street and the elevation change are issues which may warrant the granting of the variance.

- (b) The condition necessitating the variance is unique to the subject property.

There are numerous properties located adjacent to arterials with similar conditions.

- (c) The condition necessitating the hardship was not created by the subject property owner.

The condition was not created by the subject property owner.

- (d) Literal enforcement of the subject regulation will deprive the property owner of any economically beneficial use of the subject property.

A literal interpretation of the Code does not deprive the property owner of an economically beneficial use of the property. The construction of a sidewalk is a development cost to be borne by the property owner regardless of the type of development.

- (e) Approval of the variance will not be contrary to the public interest.

The approval of the variance may not be contrary to the public interest at this point in time. The present level and type of development in the area does not generate, nor is it conducive, to/for pedestrians.

- (f) Approval of the variance is in keeping with the overall spirit of this Development Code and furthers substantial justice

The general purpose for the Development Code is to protect the health, safety, and general welfare of existing and future residents of the City. In addition, the infrastructure requirements of the Development Code are to promote orderly growth and development of the City and its extraterritorial jurisdiction, as well as to ensure the timely and coordinated provision or required transportation improvements, utilities and other facilities and services to new subdivisions and developments.

Growth is expected in the future for the area of the subject property, however currently it may not seem reasonable to require the construction of a sidewalk at the existing level of development. There are many unknowns when planning for future growth for property adjacent to major arterials. With the existing conditions and the level of development, a sidewalk would not be used if constructed on the subject property. The sidewalk may be demolished if the sidewalk is constructed in the highway right-of-way when growth of the area requires the expansion/improvement of SH 19. At present time, granting the variance would not be contrary to the overall spirit of the Development Code and would further substantiate justice.

STAFF RECOMMENDATION:

The current level of development in the area and existing topographical conditions may not warrant the construction of the sidewalk, however because the request for variance does not meet ALL of the six criteria as outlined in the Development Code, staff recommends denial of the request.

ATTACHMENTS:

- From Applicant: Application with Variance Request Questions
- From Staff: Vicinity Map



Variance/Appeal Request Application

City of Huntsville | 448 State Highway 75 North | Huntsville, TX 77320 | 936-294-5782

Applicant Information - As authorized by the property owner(s)

Name Jerry Nemece registered Engineer and Registered Surveyor

P O Box 404

Huntsville

TX

77342

Mailing Address

City

State

Zip Code

Phone Number Cell: 936-661-1113

Alternate Phone Number Home: 936-295-2846

E-mail: aolivier@co.walker.tx.us

I, the undersigned, understand the provision of the Huntsville Development Code, especially Sections 12.900 and 12.1000, and hereby submit this request based upon one (1) of the following:

- There has been an alleged error in an order, requirement, decision or determination by an administrative official in the enforcement of the Development Code.
- The strict application of one or more requirements of the Development Code renders the parcel incapable of reasonable economic use due to the particular physical surroundings, shape, or topographical condition of the property.

Jerry Nemece
Signature

11/9/16
Date

Property Owner Information - By signing below, I acknowledge that I am the rightful owner of the property proposed for development; and, if different, I authorize the "Applicant" to serve as my agent for matters pertaining to this application.

Name John Adamick

P.O. Box 339

Mailing Address

ROGERS

City

TX

State

77358

Zip Code

Phone Number 936 672-7452

Alternate Phone Number

E-mail: CALL ADAMICK.MAD

[Signature]
Signature

11/10/16
Date

Variance/Appeal Information

Please provide a description of your request. (If requesting a variance, please answer the attached questions.)

Developing a wrecked vehicle storage site on a 0.61 acre lot with access to SH19 and being located in the R.T. Walker Survey, Abstract 589, Walker County, TX. Said lot is tirangle shape with 326 FT. frontage on SH19. City regulations require sidewalk on property developed in the City Limits unless a variance is obtained.

Application Fee

\$250.00

Public Hearing

A public hearing is required for this request. City staff will complete all the requirements of the public hearing notice process.

For Staff Use Only

Received/By:

Fee Paid:

Board of Adjustments Date:

Outcome:

JAM 11/10/16

\$250.00

12-16-16

PD-VA-3

Revised: December 2015

817871

Applicant Name

Jerry Nemecek Engineer, developing property for a specific use. Owner: John Adamick being in storage of road damaged vehicles

Questions

Please answer the following questions. Attach a separate sheet if additional space is needed.

1. Is the variance necessary to overcome a condition of the property itself?

No.

2. Is the condition necessitating the variance unique to the subject property?

Yes being in a rural location with no sidewalks, for pedestrians and the business is not of type which brings in large grounds. Furthermore all area shall be covered with pavement so necessary movement can have a desired walkway.

3. Is the condition necessitating the variance created by the subject property owner?

No

4. Will literal enforcement of the subject regulation deprive the property owner of any economically beneficial use of the subject property?

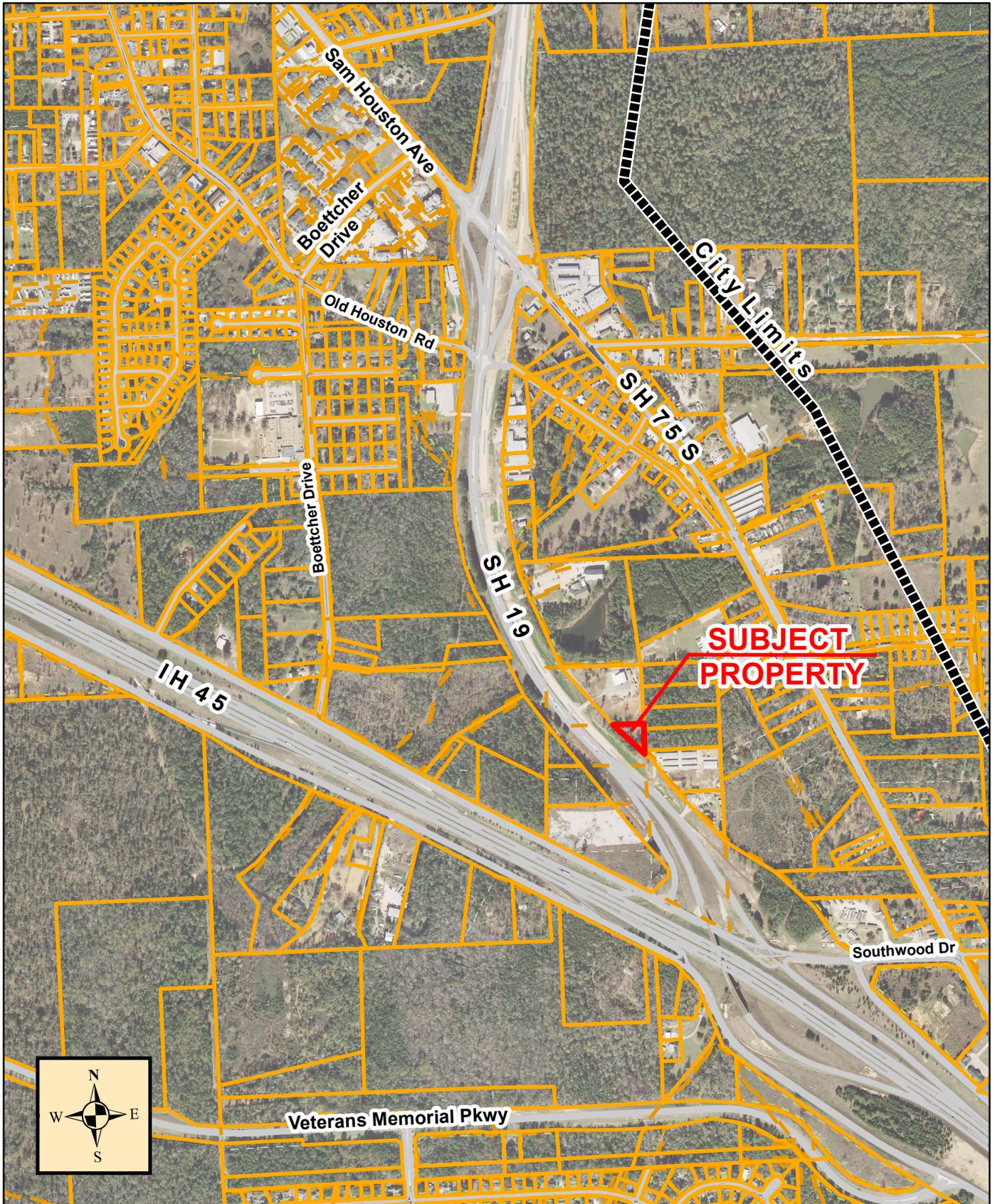
Yes. The lot shall be used to store damaged vehicles being brought in and placed out of public sight. Behind walls constructed to City Service regulation. This will reduce area for turning said vehicles and wreckers, and running over sidewalk with heavy loads would damage said walkway.

5. Will approval of the variance be contrary to the public interest?

None

6. Will the approval of the variance be in keeping with the overall spirit of the Development Code and further substantiate justice?

Yes



VICINITY MAP - CASE NO. 05-2016 - 154 SH 19
Board of Adjustment Meeting - December 16, 2016

1,000 500 0 1,000 Feet



1 inch = 1,000 feet





BOARD OF ADJUSTMENT AGENDA ITEM DISCUSSION FORM

Prepared by: Aron Kulhavy, A.I.C.P.
Community & Economic Development Director

Janet Ridley
Planner

MEETING DATE: December 16, 2016

TYPE OF REVIEW: Infrastructure (Sidewalk) Variance

SUBJECT: 1090 Fish Hatchery Road
Case No. 06-2016

REQUESTED BY: Robert Ballard, Applicant & Owner

FACTS, CODE REQUIREMENTS AND CONDITIONS:

The subject property is a 15.552 acre tract of land, designated at Lot 1 per the Minor Plat of the Ballard Property recorded in Volume 5, page 49 of the Walker County Plat Records on September 27, 2010 and located at 1090 Fish Hatchery Road. The property is situated on the north side of Fish Hatchery Road approximately .35 mile east of SH 30 E. Fish Hatchery Road is a State of Texas owned and maintained Farm-to-Market Road and is classified as a Secondary Arterial per the City of Huntsville Transportation Plan. The subject property has recently been developed with the construction of a structure for use as a single family residence. This property is located in the Management Development District. A staff prepared vicinity map of the property is attached.

Section 10.500 Sidewalks in *Article 10: Infrastructure and Public Improvements*, of the *Development Code*, requires sidewalks to be constructed by the owner of the subject property whenever development occurs on property with frontage on an arterial street. Robert Ballard, property owner and applicant, is requesting a variance to not construct a sidewalk as required per the *Development Code*.

Per the minor plat of the property, the subject lot has a total of 355.92 linear feet of street frontage on Fish Hatchery Road. There are existing easements located on the lot adjacent to the Fish Hatchery right-of-way line. There are existing overhead electric and telephone lines located in the easements as well as a City of Huntsville sanitary sewer main. The *Development Code* requires that the sidewalk extend across the entire street frontage of the subject property. The sidewalk is to be constructed within the street right-of-way or in an approved easement, constructed at the time of building permit and completed before a certificate of occupancy is issued. None of the existing developed property located adjacent to Fish Hatchery Road have sidewalks. The nearest constructed sidewalk is approximately 2 miles from the subject property.

In order to grant this request, the *Development Code Section 12.907.B* states that six (6) outlined criteria must be met. The burden of proof for a variance request is solely upon the applicant. The applicant has provided answers for the six (6) criteria. Please see the attached Variance Application.

STAFF REPORT

Staff provides comments of each of the criteria based only on the strict interpretation of the *Development Code*. Staff comments in regards to each criterion follow in italics.

- (a) The variance is necessary to overcome a condition of the property itself.

There are existing easements with existing utilities located on the subject property adjacent to the road right-of-way line, necessitating the need for the required sidewalk to be constructed in the road right-of-way. Fish Hatchery Road is a Farm-to-Market Road maintained by Texas Department of Transportation (TxDOT). The road is non-curbed & guttered with open ditches for drainage and thus a challenge for location and maintenance.

- (b) The condition necessitating the variance is unique to the subject property.

There numerous properties located adjacent to arterials with similar conditions.

- (c) The condition necessitating the hardship was not created by the subject property owner.

The condition was not created by the subject property owner.

- (d) Literal enforcement of the subject regulation will deprive the property owner of any economically beneficial use of the subject property.

A literal interpretation of the Code does not deprive the property owner of an economically beneficial use of the property. The construction of a sidewalk is a development cost to be borne by the property owner regardless of the type of development.

- (e) Approval of the variance will not be contrary to the public interest.

The approval of the variance may not be contrary to the public interest at this point in time. The present level and type of development in the area does not generate, nor is it conducive, to/for pedestrians.

- (f) Approval of the variance is in keeping with the overall spirit of this Development Code and furthers substantial justice

The general purpose for the Development Code is to protect the health, safety, and general welfare of existing and future residents of the City. In addition, the infrastructure requirements of the Development Code are to promote orderly growth and development of the City and its extraterritorial jurisdiction, as well as to ensure the timely and coordinated provision or required transportation improvements, utilities and other facilities and services to new subdivisions and developments.

There are many unknowns when planning for future growth for property adjacent to arterials. At this point in time this area is not experiencing an increase in development. There are no known plans for the improvement/expansion of Fish Hatchery Road, however a sidewalk constructed in the highway right-of-way would be demolished when/if expansion/improvement of Fish Hatchery Road occurs. At present time, granting

the variance would not be contrary to the overall spirit of the Development Code and would further substantiate justice.

STAFF RECOMMENDATION:

The current level of development in the area and existing conditions may not warrant the construction of the sidewalk, however because the request for variance does not meet ALL of the six criteria as outlined in the Development Code, staff recommends denial of the request.

ATTACHMENTS:

- From Applicant: Application with Variance Request Questions
- From Staff: Vicinity Map & Site Plan



Variance/Appeal Request Application

City of Huntsville | 448 State Highway 75 North | Huntsville, TX 77320 | 936-294-5782

Applicant Information - As authorized by the property owner(s)

Name ROBERT BALLARD

1140 Fish Hatchery Road

Mailing Address

Huntsville

City

TX

State

77320

Zip Code

Phone Number (936) 718-9701

Alternate Phone Number _____

E-mail: _____

I, the undersigned, understand the provision of the Huntsville Development Code, especially Sections 12.900 and 12.1000, and hereby submit this request based upon one (1) of the following:

- There has been an alleged error in an order, requirement, decision or determination by an administrative official in the enforcement of the Development Code.
- The strict application of one or more requirements of the Development Code renders the parcel incapable of reasonable economic use due to the particular physical surroundings, shape, or topographical condition of the property.

Robert Ballard

Signature

11-14-16

Date

Property Owner Information - By signing below, I acknowledge that I am the rightful owner of the property proposed for development; and, if different, I authorize the "Applicant" to serve as my agent for matters pertaining to this application.

Name ROBERT BALLARD

1140 FISH HATCHERY RD.

Mailing Address

HUNTSVILLE

City

TX

State

77320

Zip Code

Phone Number 936 718 9701

Alternate Phone Number _____

E-mail: _____

Robert Ballard

Signature

11-14-16

Date

Variance/Appeal Information

Please provide a description of your request. (If requesting a variance, please answer the attached questions.)

Application Fee

\$250.00

Public Hearing

A public hearing is required for this request. City staff will complete all the requirements of the public hearing notice process.

For Staff Use Only

Received/By:

JM 11/14/16

Fee Paid:

\$250.00

Board of Adjustments Date:

12-16-16

Outcome:

Applicant Name

ROBERT BALLARD

Questions

Please answer the following questions. Attach a separate sheet if additional space is needed.

1. Is the variance necessary to overcome a condition of the property itself?

Yes, the area of the proposed sidewalk is within Texas Dept. of Transportations right of way, an electrical right of way, and sanitary sewer right of way. Granting the variance will ensure that future work in these rights of way are not impeded.

2. Is the condition necessitating the variance unique to the subject property?

Yes, the subject property has been in the Ballard family since the 1930's. Additionally, the properties adjacent to the subject tract have also been in the Ballard family and are not likely to change for another 80-90 years.

3. Is the condition necessitating the variance created by the subject property owner?

No, the property owner did not create the subject property's easements.

4. Will literal enforcement of the subject regulation deprive the property owner of any economically beneficial use of the subject property?

Yes, by requiring the property owner to have the expense to build and maintain a sidewalk places a significant financial burden on them. As a retired individual this depletes valuable resources that are a necessity elsewhere.

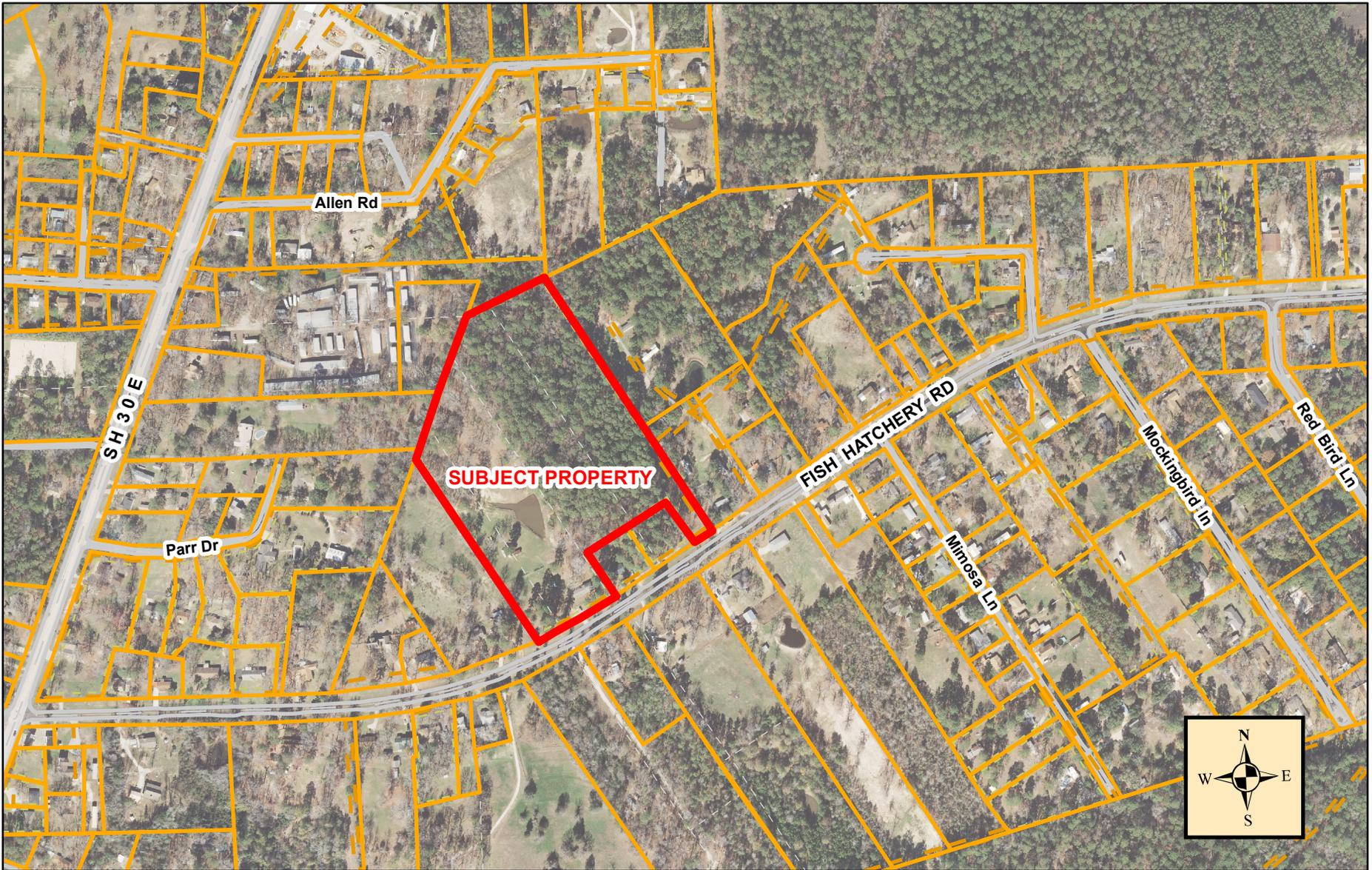
5. Will approval of the variance be contrary to the public interest?

No, in fact, enforcing the sidewalk would. The piece meal approach to building sidewalks actually hurts the aesthetic look of the area (No other sidewalks and creates a burden to pedestrians and individuals who may be wheelchair or walker bound.).

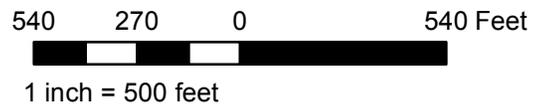
6. Will the approval of the variance be in keeping with the overall spirit of the Development Code and further substantiate justice?

Yes, while to spirit of the code is to enhance and make safe walking routes for pedestrians in high traffic areas, in this instance neither is done. Further, it would be an injustice to require a property owner who has held the property for over 80 years to dramatically change its character, creating an eyesore, maintenance issue and a sidewalk that will not be connected to in the

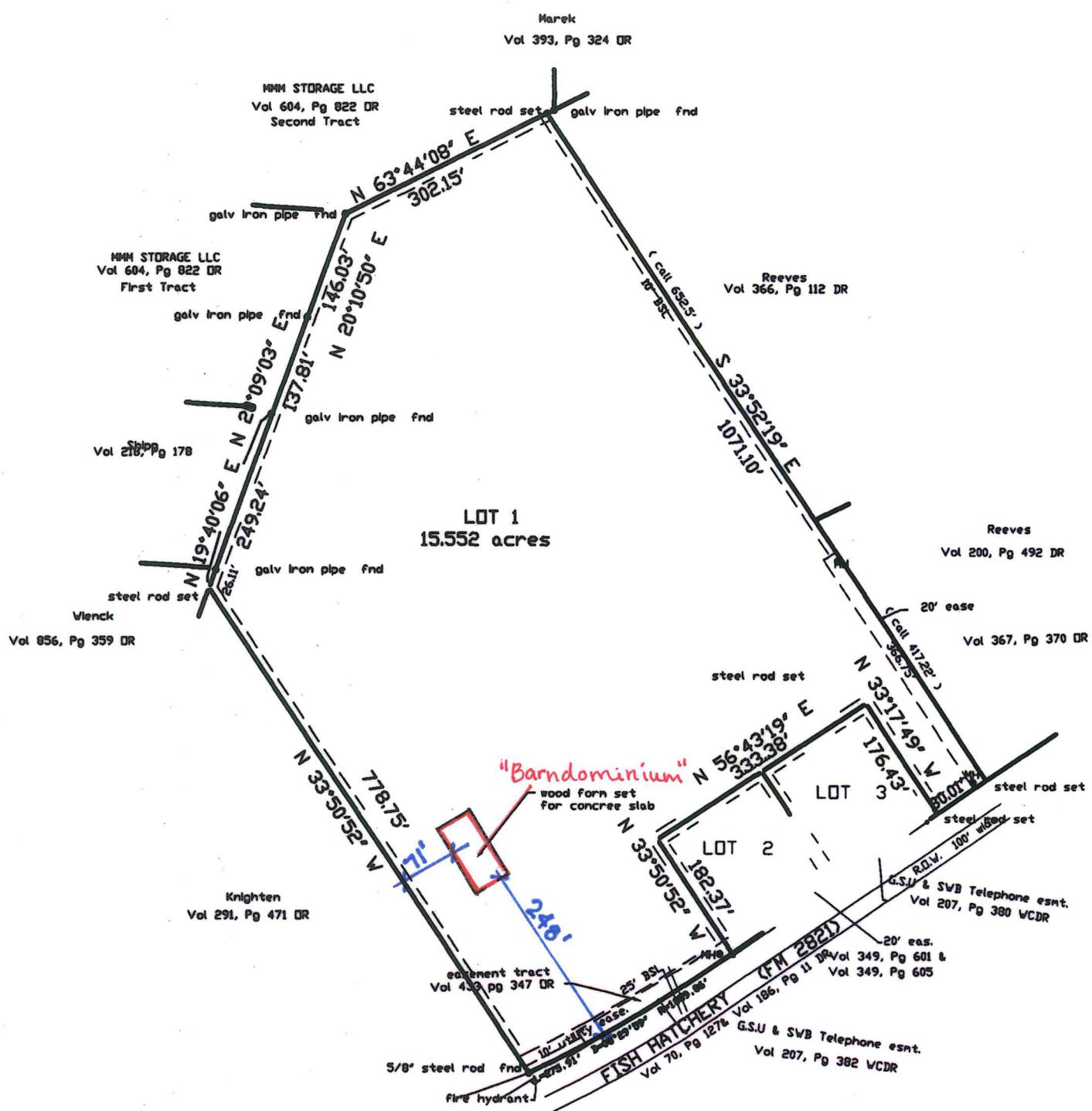
foreseeable future. Because this property has been in the Ballard family since the 1930's and the only substantial change has been the building of a "Barndominium" in the rear of an already existing house, circa 1930's, it would be an injustice to require they build a small section of sidewalk that has no reasonable expectation of ever being connected to or used.



VICINITY MAP - CASE NO. 06-2016 - 1090 FISH HATCHERY ROAD
Board of Adjustment Meeting - December 16, 2016



BR-2016-00410
1090 Fish Hatchery Rd



FORM SURVEY PLAT OF
BALLARD 15.52 ACRE TRACT
F. BOBO Survey, A-74
City of Huntsville, Walker County, Texas
MARCH 2016 Scale 1" = 100'
R.L. LANGE SURVEYORS
1224 University Ave, Suite 201
Huntsville, Texas 77340
Phone (936) 295-1352

STAFF PREPARED SITE PLAN
CASE NO. 06-2016 – 1090 FISH HATCHERY ROAD
Board of Adjustment Meeting
December 16, 2016

NOTES: 1) RECORD TITLE: Robert and Lina L. Ballard
2) RECORDED: VOL 1068, Pg 302
3) STREET ADDRESS: ~~1140~~ Fish Hatchery Road
MA

This survey substantially complies with the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1A Condition III Survey.

DATED 21 March 2016

SIGNED

Ronald L. Lange
Ronald L. Lange
Registered Professional Surveyor
State of Texas No. 3958

EMBOSSSED SEAL
SIGNED IN BLUE INK

BOARD OF ADJUSTMENT
2016-2017 Meeting Schedule and Submission Deadlines

These meeting dates and deadlines are hereby established by the Board of Adjustment.

Applicants must submit a complete application no later than Noon on the last day during the dates identified below to be placed on the corresponding meeting agenda for consideration.

Meetings are held at City Hall, 1212 Avenue M, Huntsville, TX 77340, in the Conference Room (or Council Chambers, if needed) at 12:00 Noon.

Regular meetings occur the last Friday of each month; however, if there are no applications or business to consider, the meeting will be canceled. If the last Friday of the month falls on a City holiday, the meeting will be scheduled for the Friday before.

Meeting Dates	Applicant's Submittal Deadline
September 30, 2016	September 1 - September 8, 2016
October 28, 2016	September 29 – October 6, 2016
November 25, 2016	October 27 – November 3, 2016
December 30, 2016	December 1 – December 8, 2016
January 27, 2017	December 29, 2016 - January 5, 2017
February 24, 2017	January 26 - February 2, 2017
March 31, 2017	March 2 – March 9, 2017
April 28, 2017	March 30 – April 6, 2017
May 26, 2017	April 27 – May 4, 2017
June 30, 2017	June 1 – June 8, 2017
July 28, 2017	June 29 – July 6, 2017
August 25, 2017	July 27 – August 3, 2017
September 29, 2017	August 31 – September 7, 2017

MINUTES OF THE MEETING OF THE ZONING BOARD OF ADJUSTMENT HELD IN THE CONFERENCE ROOM, AT CITY HALL, 1212 AVENUE M, HUNTSVILLE, TEXAS ON THE 24TH DAY OF June, 2016 AT 12:00 NOON.

Members present: Hannes; Grigsby; Montgomery; Cromer; Alternates Zuniga & Watkins

Members absent: Holland

Staff present: Kulhavy, Ridley

1. CALL TO ORDER

This meeting was called to order by Chairman Hannes. [12:00PM]

2. ROLL CALL and selection of Alternate(s) if needed.

Alternate Watkins will be voting due to the absence of Board Member Holland.

- 3. PUBLIC HEARING** for the variance request by Mark Mucasey, applicant, for variance to Article 5 Lot and Setback Regulations, Table 5-1: Lot & Building Setback Regulations and Article 6 Parking and Driveway Access of the City of Huntsville Development Code relating to minimum street setback and off-Street parking requirements in order to rebuild an apartment building within the Forest Gate Apartments complex located at 196 IH 45 N.

Chairman Hannes opened the public hearing. [12:01PM]

Aron Kulhavy gave an overview of the case as outlined in the staff discussion form. Two variances are requested, one for setback and one for parking. Explanation of the “grandfather” provision per the Development Code for the setback variance and the current parking requirements per the Development Code was given. The “grandfather” provision for the building, (destroyed by fire in November of 2005), has expired, therefore the reconstruction of the building must conform to current Development Code requirements. Kulhavy noted that staff has received several letters in opposition to the variances and addressed the main concerns presented in the letters of rebuilding on the existing foundation, drainage/runoff from the property, and apartment tenant issues. A structural report will be required prior to permitting the building to be reconstructed on the existing foundation and this is a permitting issue not an issue for this Board. The reconstruction of the building will have minimal effect on increase of drainage/runoff. The current Development Code requirements for site development can only be enforced for the reconstruction of this building and not for the entire apartment development.

Applicant, **Mark Mucasey**, presented his case for the variances, giving the history of the development and noting that the reconstruction of the building will be exactly as the original building which was destroyed by fire. He explained that the current owner of the property obtained the property with the understanding, (from the seller), that the building could be reconstructed. He presented his argument against the staff report on the 6 criteria required by the Development Code in order to grant the variances. He reported that the property owner intends to upgrade the entire property if allowed to reconstruct the destroyed building.

Speakers in support of the variance request:

There were none.

Speakers in opposition of the variance request:

Bill Miller, property manager for Timbercrest Townhomes (neighboring property), opposes the variances because the existing parking is currently full, the property is currently not being properly maintained, the destroyed building was not rebuilt by the owner of the property at the time because the building was not insured, and does not agree that there was an economic downturn to delay the reconstruction of the building.

Alana Ashley, property owner in Timbercrest Townhomes, spoke in opposition noting that the apartment property existing parking areas are always full and questioning what the impact additional vehicles for the residents in the reconstructed building will have on adjacent properties. She suggested that perhaps the apartment property owner should make improvements to the existing buildings and parking before being allowed to reconstruct the destroyed building.

Linda Skains, property owner in Timbercrest Townhomes, also voiced her opposition because of the parking issues. She also expressed concern regarding increase in crime in the area, stating that the property has become a public housing project.

Staff added that **Rhea Hall**, residing at 236 Elmwood, recently visited the City Planning Office and expressed his opposition to the variances because of the parking issues.

Applicant, Mark Mucasey, spoke in rebuttal to the opposition.

He noted that they are not proposing to add any additional parking, just using the current existing parking. He also stated that the apartment property is not a Section 8 Public Housing Project and added that it would be unfair to require the property owner to improve the entire property prior to approving the reconstruction of the destroyed building. The reconstruction of the building will be catalyst for income to allow the upgrading of the entire apartment property. He also noted the different economies of California, the property owner's state, and Texas. DTI, the property owner, is currently upgrading all of their properties located in Texas as funding has recently become available.

Board members questioned the applicant regarding other properties that DTI own in the City and where the additional residents will park. Applicant indicated that DTI does own other property in the City and that it would be possible to add eight additional parking spaces on the property to be in compliance with the current Development Code parking requirements for the property.

There was an additional public comment from **Bill Miller** regarding an alternative method of increasing income for the property in order to improve the property without reconstructing the destroyed building.

Chairman Hannes closed the public hearing. [12:39PM]

4. **CONSIDER** the variance request by Mark Mucasey, applicant, for variance to Article 5 Lot and Setback Regulations, Table 5-1: Lot & Building Setback Regulations and Article 6 Parking and Driveway Access of the City of Huntsville Development Code relating to minimum street setback and off-Street parking requirements in order to rebuild an apartment building within the Forest Gate Apartments complex located at 196 IH 45 N.

Board Member Montgomery asked staff for clarification regarding the number of existing and proposed apartment units and the number of existing parking spaces, legal vs. illegal street head-in parking spaces. Clarification for the grandfather provisions per the expired Development Code and the current Development Code was also requested.

Staff provided the requested clarifications. There are 118 existing apartment units with 192 bedrooms. The proposed reconstruction of the destroyed building will add 12 units with 16 bedrooms. There are 174 existing legal (located on-site) parking spaces. There are 26 existing illegal (street head-in) parking spaces for a total of 200 existing parking spaces. The current Development Code requires that a nonconforming structure be reconstructed within 18 months, if destroyed/damaged as a result of an accident. The expired "old" Development Code required that a nonconforming structure be reconstructed within 1 year if destroyed/damaged as a result of an accident. Staff also provided clarification regarding the parking variance request. The variance request is to allow the property to count the 26 illegal street head-in parking spaces in the total parking spaces provided to meet the current Development Code off-street parking requirement for the property. In any event, the head-in parking spaces will remain in place until such time as the entire apartment complex is razed. Per the new Development Code 208 on-site parking spaces are required to with the reconstruction of the destroyed building. Counting all existing parking spaces in use (legal & illegal) the property will be short 8 parking spaces. Staff also stated that the "old" Development Code also required 25' street building setback.

There was additional discussion by the **Board** regarding the parking requirements/issues and fire code requirements. **Board Member Montgomery** also pointed out that it has been 11 years since the building was destroyed. The building was not reconstructed in the four years under the previous ownership or in the 7 years under the current ownership. She also noted that standard commercial real estate contracts allow for a feasibility period for the potential buyer to research and verify the rules, regulations, codes, etc. for reconstructing a destroyed building prior to purchasing the property.

Board Member Cromer made a motion to deny both variances. Second was by Board Member Montgomery. The vote was unanimous.

5. **CONSIDER the minutes of April 29, 2016.**

Board Member Cromer made a motion to accept the minutes. Second was by Board Member Grigsby. The vote was unanimous.

6. **ADJOURNMENT**

The meeting was adjourned. [1:01 PM]