

# ZONING BOARD OF ADJUSTMENT – October 5, 2020

## STAFF REPORT



<b>APPLICATION TYPE:</b>		<b>CASE:</b>					
Variance		ZBA20-26: 2302 N. Bryant (Carter)					
<b>SYNOPSIS:</b>							
A request for approval of a variance from Section 502 of the Zoning Ordinance to allow a 10' front yard setback in lieu of the required 25' along West 23 <sup>rd</sup> Street for a business in the General Commercial/ Heavy Commercial (CG/CH) Zoning District.							
<b>LOCATION:</b>		<b>LEGAL DESCRIPTION:</b>					
2302 North Bryant Blvd.		Lot 1, West 23 <sup>rd</sup> Street Addition					
<b>SM DISTRICT /</b>		<b>ZONING:</b>		<b>FUTURE LAND USE:</b>		<b>SIZE:</b>	
SMD #4 – Lucy Gonzales Blackshear Neighborhood		General Commercial/Heavy Commercial (CG/CH)		Neighborhood Center		0.939 acre	
<b>THOROUGHFARE PLAN:</b>							
<p><u>North Bryant Blvd</u> – TXDOT – Major Arterial; ROW 80' Required (150' Existing); Pavement Width 64' Required (85' Existing).</p> <p><u>West 23rd Street</u> – Urban Local Street – ROW 50' Required (50' Existing) – Pavement Width 40' or 36' with 4' Sidewalk Required (30' Existing)</p>							
<b>NOTIFICATIONS:</b>							
7 notifications were mailed within a 200-foot radius on September 18, 2020. Zero responses have been received in support or in opposition.							
<b>STAFF RECOMMENDATION:</b>							
Staff recommends <b>DENIAL</b> of a variance from Section 502 of the Zoning Ordinance to allow for a 10' front yard setback in lieu of the required 25' for a commercial use within the General Commercial/ Heavy Commercial (CG/CH) Zoning District.							
<b>PETITIONER:</b>							
Erica Carter - Representative							
<b>STAFF CONTACT:</b>							
Sherry Bailey Principal Planner (325) 657-4210, Extension 1546 <a href="mailto:sherry.bailey@cosatx.us">sherry.bailey@cosatx.us</a>							

**Variance:** Section 207(F) of the Zoning Ordinance requires that the Zoning Board of Adjustments consider six (6) factors in determining the appropriateness of any Variance request.

1. **Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial.** The applicant has stated he purchased this property and intends on remodeling the existing building for use as a Lube Center. It is his belief that the three bays can only be oriented one way for use as a Lube Center so that traffic will flow as needed for a lube center. However, staff looked at the orientation of the existing building and the fact that this is a commercially zoned piece of property that has a zero side yard setback on the opposite of the building and the same three bays could easily fit on that side of the property. The parking could then be placed on the 23<sup>rd</sup> Street side of the building in the setback area. In talking with the applicant's engineer we are not aware of any physical design restrictions that would not allow switching the placement of the three bay structure to the other side of the building. In addition, a property owner does not have a right to expand a building on a property where the setbacks would not allow such expansion, especially when a viable commercial building is already present.
2. **These special circumstances are not the result of the actions of the applicant.** According to the submitted application by the applicant he was not aware of the 25 foot 23<sup>rd</sup> Street setback when he bought the building. The property plat was approved in May 2020 at which time the 25 foot back was displayed on the plat. This plat was recorded in August 2020 and the variance was requested a month later.
3. **Literal interpretation and enforcement of the terms and provisions of this Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship.** The applicant has stated that the Lube Center will only work financially as a business venture if there are the three bays and they believe that the three bays are only viable on the 23<sup>rd</sup> Street side. The business plan was not part of the application submittal so staff is unaware of the cost difference of placement on the opposite building side (but cost considerations cannot be considered by the Board under state law in any case) or why the applicant believes the flow of traffic will only work on the 23<sup>rd</sup> Street side.
4. **Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of this Zoning Ordinance and substantial justice.** Staff believes rather than build near West 23<sup>rd</sup> Street, that the placement on the opposite building side should be examined more closely by the applicant. The space is there to build the three bays, and the parking could be reoriented so that access to the other side of the building would appear to flow well and access off North Bryant. Staff is recommending denial since building on the 23<sup>rd</sup> Street side to the 10 foot setback would overshadow the Bryant Boulevard view of the adjacent buildings.
5. **Granting the variance will not adversely affect adjacent land in a material way.** The applicant believes that granting this variance will not affect the adjacent property. However, it could easily block the property to the east from view of drivers on North Bryant Boulevard.

6. **Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.** The purpose of the ordinance setbacks is to provide sufficient view at a corner for traffic safety and establish consistent building lines along the street. Some of the purpose statements of the Zoning Ordinance state, “Protect the character and the established pattern of desirable development in each area,” and “Maintain property values by stabilizing expectations and ensuring predictability in development.” Granting this variance would not protect the character or established pattern in the areas as well as create unpredictability in development.

**Allowed Variances:**

In exercising its authority to grant a variance, per Section 207.D of the Zoning Ordinance, the Zoning Board of Adjustment must affirmatively find that one or more of the following circumstances applies:

1. **SPECIAL CIRCUMSTANCES RESULTING IN UNNECESSARY HARDSHIP.** *Where special circumstances exist on the property related to the size, shape, area, topography, surrounding conditions or location that do not generally apply to other property in the same zoning district, and that the circumstances are such that strict application of this zoning ordinance would create an unnecessary hardship or deprive the applicant of reasonable use of the land or building.*

**The applicant believes there is a special circumstance because they are trying to utilize the existing building and is having to work around its placement and orientation on the lot. That placement is unique to this piece of property. – However, staff does not agree that this results in a legal hardship.**

2. **OVERRIDING PUBLIC INTEREST.** *If the variance further an overriding public interest or concern, including, but not limited to: (a) Preserving the natural environment, (b) Promoting maintenance or reuse of older urban or historic buildings, or (c) Helping to eliminate a nonconforming use at another location.*
3. **LITERAL ENFORCEMENT.** *If it is found that the literal enforcement and strict application of this Zoning Ordinance will result in extraordinary circumstances inconsistent with the general provisions and intent of this ordinance, and that, in granting the variance, the spirit of the ordinance will be preserved and substantial justice done.*

**Recommendation:**

Staff recommends that the Zoning Board of Adjustments **DENY** the variance from Section 502 of the Zoning Ordinance to allow for a 10' front yard setback in lieu of the required 25' along West 23<sup>rd</sup> Street for a commercial use within the General Commercial/Heavy Commercial Zoning District.

**Attachments:**

Aerial Map

Zoning Map

Notification Map

Site Plan

Photos of the Site

Application





**Location Map ZBA20-26: Carter**

**2302 N Bryant Blvd.**  
 Council District 4 - Lucy Gonzales  
 Neighborhood: Blackshear  
 Scale: 1" approx. = 165 ft

Platting in process

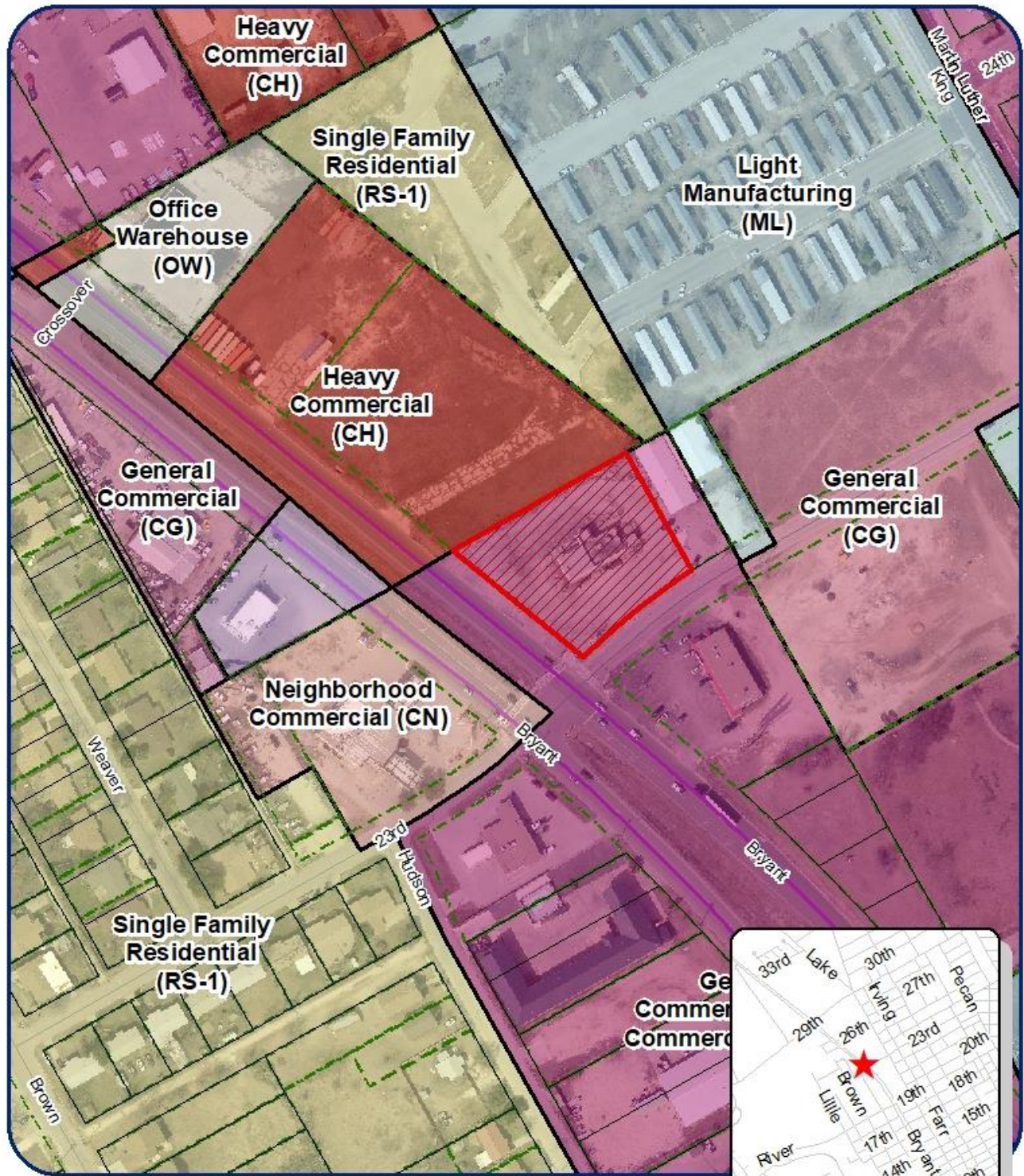
**Legend**

- Subject Properties:
- Current Zoning: **CG/CH**
- Requested ZBA Action: **Front setback variance**
- Vision: **Neighborhood Center**

**Aerial Map**

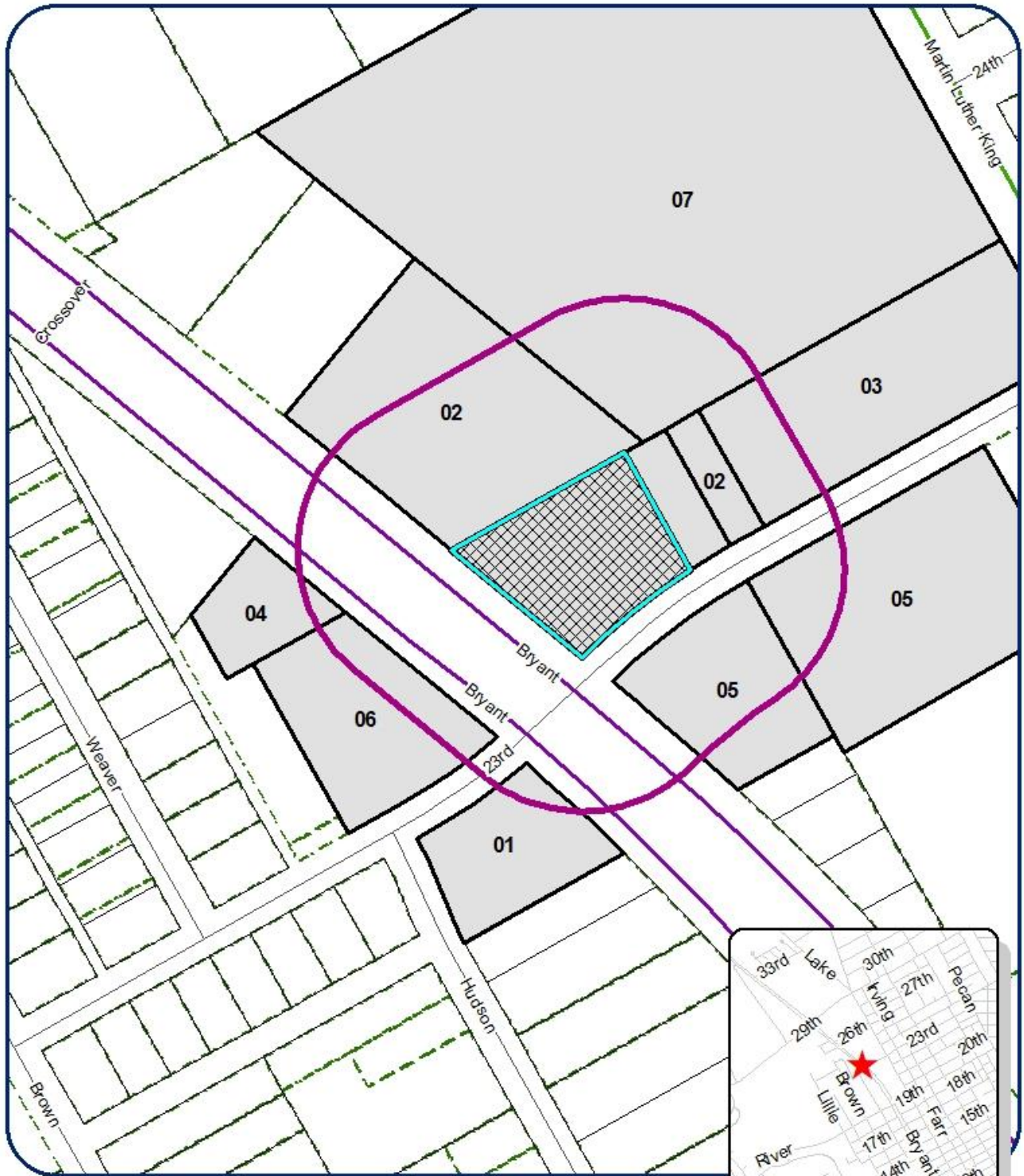






<p><b>Location Map ZBA20-26: Carter</b>  <b>2302 N Bryant Blvd.</b>                  Council District 4 - Lucy Gonzales                  Neighborhood: Blackshear                  Scale: 1" approx. = 165 ft                  Platting in process</p>	<p><b>Legend</b>                  Subject Properties: <span style="border: 2px solid red; display: inline-block; width: 20px; height: 10px;"></span>                  Current Zoning: <b>CG/CH</b>                  Requested ZBA Action: <b>Front setback variance</b>                  Vision: <b>Neighborhood Center</b></p>	<p>N    </p>
<b>Zoning Map</b>		





**Location Map ZBA20-26: Carter**

**2302 N Bryant Blvd.**  
 Council District 4 - Lucy Gonzales  
 Neighborhood: Blackshear  
 Scale: 1" approx. = 165 ft

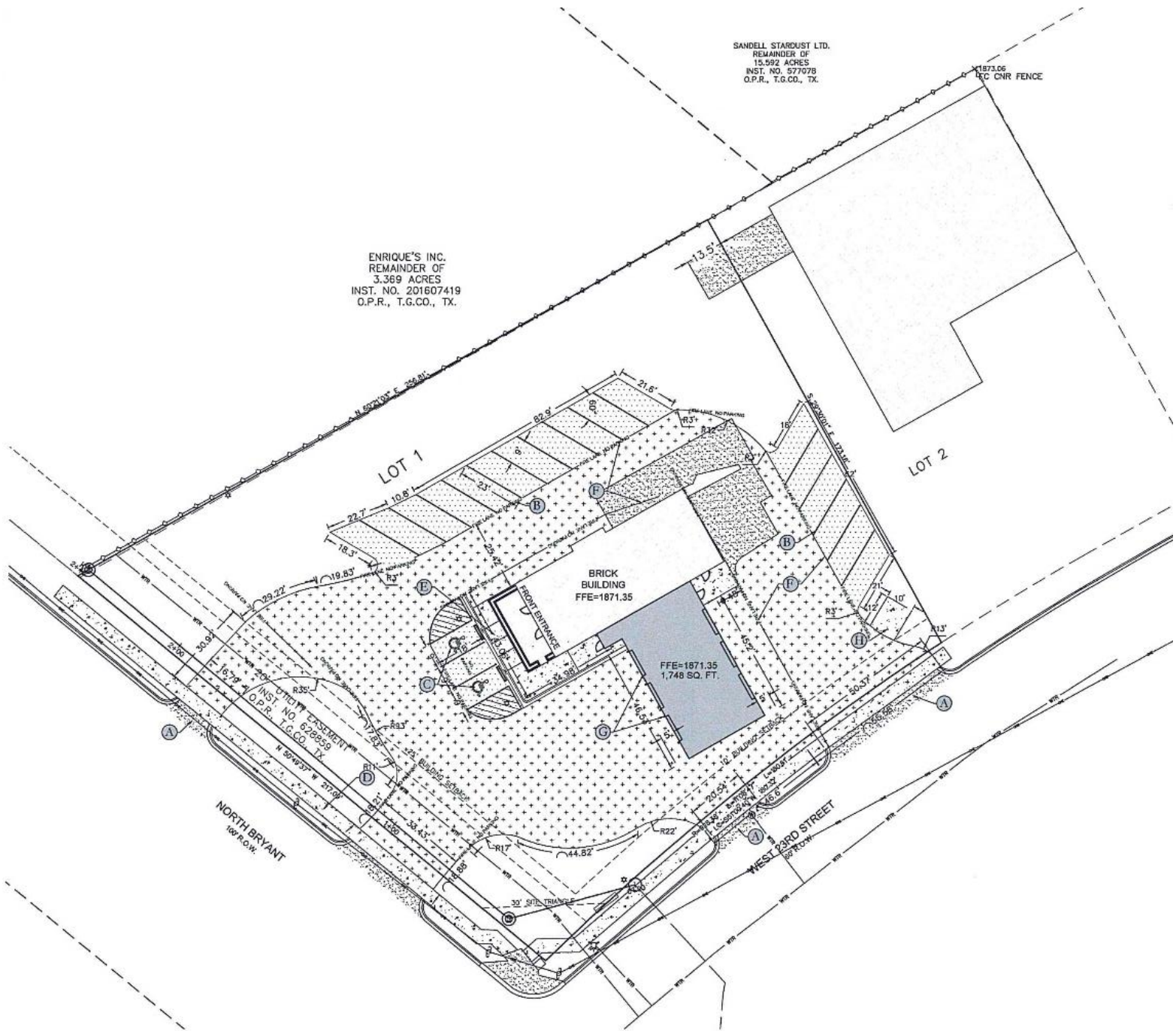
Platting in process

**Legend**

Subject Properties: █  
 Current Zoning: CG/CH  
 Requested ZBA Action: **Front setback variance**  
 Vision: **Neighborhood Center**



**Notification Map**





**Photos of the Site**



West 23<sup>rd</sup> Street side



Adjacent property that will be blocked





Interior side that could accommodate the three bays



Close up of the interior side



Bearing Basis hereon is Texas State Plane Coordinate System, Reference Frame North American Datum 1983 (2011) (EPOCH 2010.0000), as determined from Global Navigation Satellite System (GNSS) survey equipment by Static, Virtual Reference System (VRS) network and or Real Time Kinematic (RTK). Distances shown hereon are shown as grid Texas State Plane Coordinate System distances.

This plot is filed in Cabinet H, Slide 10  
 Plat Records of Tom Green County, Texas.

**FN-2020/1732**

202011733 PLAT Total Pages: 1



SCALE: 1"=80'  
 0 80 160

**LEGEND**

- POINT
- ⊙ FOUND 1/2" IRON ROD
- ⊙ FOUND 1/2" IRON PIPE
- ⊙ FOUND PIPE FENCE POST
- SET 1/2" IRON ROD
- ⊙ FOUND "X" IN CONCRETE
- SUBJECT PROPERTY BOUNDARY
- ADJACENT PROPERTY LINE
- EASEMENT
- O.P.R. OFFICIAL PUBLIC RECORDS
- T.G.CO. TOM GREEN COUNTY
- TX. TEXAS

**CITY PLANNING COMMISSION**  
 Approved for recording this 18 day  
 of May, 2020  
 City Planning Commission of San Angelo, Texas.

By: Jeri Jackson  
 Chairman  
 By: Ja Janis  
 Secretary

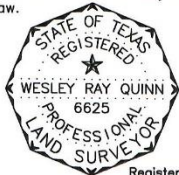
**DEPARTMENT OF PUBLIC WORKS**  
 Approved for recording this 31 day  
 of July, 2020  
 By: Dr. James Q  
 Director of Public Works

**DEPARTMENT OF WATER UTILITIES**  
 Approved for recording this 31 day  
 of July, 2020  
 By: And Alva  
 Director of Water Utilities

**COUNTY CLERK**  
 Approved for recording this 6th day  
 of August, 2020 9:05 Am  
 County Clerk of Tom Green County, Texas  
 By: Debra Ferguson  
 Deputy

**SURVEYOR'S CERTIFICATE**

Know all men by these presents: that I, Wesley Ray Quinn, do hereby certify that I prepared this plat from an actual and accurate survey of the land and the corner monuments shown hereon will be or were properly placed under my supervision, in accordance with the rules for land subdivision by the City Council of the City of San Angelo; and I further certify that the tract of land herein platted lies within the City Limits, or within the extraterritorial jurisdiction are of the City of San Angelo, Texas, as established by law.



Registered Prof. Land Surveyor  
 Texas Registration No. 6625

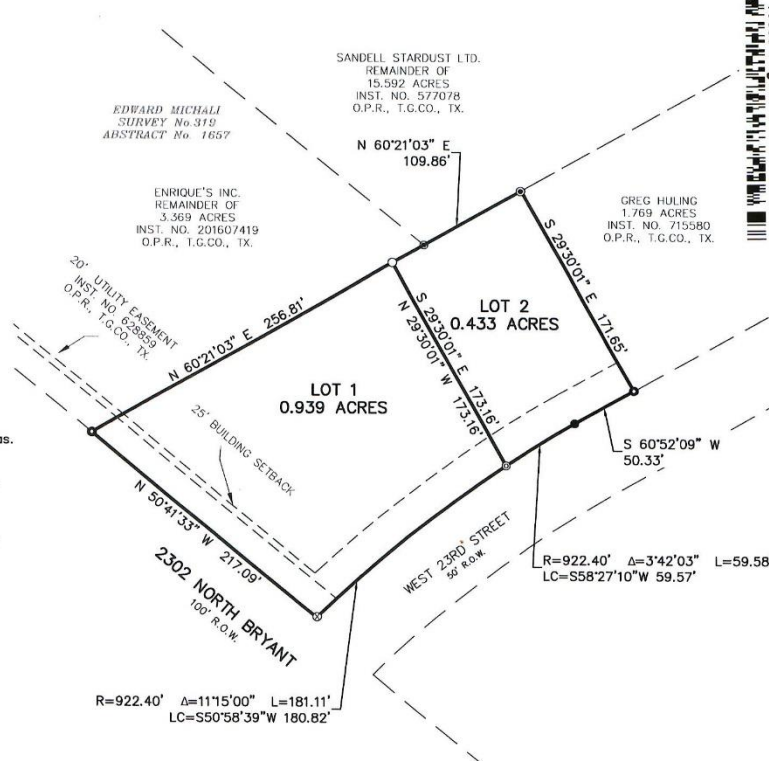
*Wesley Ray Quinn*

SANDELL STARDUST LTD.  
 REMAINDER OF  
 15.592 ACRES  
 INST. NO. 577078  
 O.P.R., T.G.CO., TX.

EDWARD MICHALI  
 SURVEY No. 319  
 ABSTRACT No. 1657

ENRIQUE'S INC.  
 REMAINDER OF  
 3.369 ACRES  
 INST. NO. 201607419  
 O.P.R., T.G.CO., TX.

GREG HULING  
 1.769 ACRES  
 INST. NO. 715580  
 O.P.R., T.G.CO., TX.



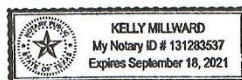
**WEST 23RD STREET ADDITION,  
 CITY OF SAN ANGELO,  
 TOM GREEN COUNTY, TEXAS**

OWNER: ENRIQUE'S INC., A TEXAS COMPANY  
 BEING 1.372 ACRES OF LAND OUT OF THE  
 EDWARD MICHALI SURVEY NO. 319, ABSTRACT  
 NO. 1657, TOM GREEN COUNTY, TEXAS AND  
 BEING A PORTION OF THAT SAME TRACT  
 DESCRIBED AND RECORDED IN INSTRUMENT NO.  
 201607419 OFFICIAL PUBLIC RECORDS, TOM  
 GREEN COUNTY, TEXAS.

**DEDICATION / ACKNOWLEDGEMENT**

I, Henry Hogeda, do hereby adopt this plat as the subdivision of my property and dedicate for the use to the public the streets, alleys and easements as shown.  
Henry Hogeda Jr  
 HENRY HOGEDA

STATE OF TEXAS  
 COUNTY OF TOM GREEN  
 This instrument was acknowledged before me on the  
26th day of June, 2020  
 By: Kelly Millward  
 Notary Public in and for the State of Texas



Field: MS  
 Office: CFE  
 Job # 19120017

MCMILLAN AND QUINN, INC.

Effective January 3, 2017



City of San Angelo, Texas – Planning Division  
 52 West College Ave



**Application for Variance from Zoning Regulations**

**Section 1: Basic Information**

Name of Applicant(s): Erica Carter

Owner  Representative (Notarized Affidavit Required)

113 East Twohig San Angelo TX 76903  
 Mailing Address City State Zip Code

325-716-3013 ecarter@fentresseng.com  
 Contact Phone Number Contact E-mail Address

2302 North Bryant San Angelo Texas 76903  
 Subject Property Address and/Location City State Zip Code

Lot 1, West 23rd Street Addition

Legal Description (can be found on property tax statement or at [www.tomgreencad.com](http://www.tomgreencad.com))

Zoning District:

- CN  CO  CG  CH  CG/CH  CBD  OW  ML  MHS  MHP  PD  
 RS-1  RS-2  RS-3  RM-1  RM-2  R&E

(Zoning Map available on [City Maps](#))

**Section 2: Variance Request(s)**

List each variance request separately:

- Zoning Ordinance section: Section 502 Frontyard Setbacks  
 Describe variance: We are requesting a 10' setback off of 23rd Street instead of a 25'.
- Zoning Ordinance section: \_\_\_\_\_  
 Describe variance: \_\_\_\_\_
- Zoning Ordinance section: \_\_\_\_\_  
 Describe variance: \_\_\_\_\_
- Zoning Ordinance section: \_\_\_\_\_  
 Describe variance: \_\_\_\_\_

**Section 3: Variance Request Criteria**

I assert that my request for variance meets all of the required criteria based on my explanation(s) below:

1. Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial;

Explanation: The land was bought with an existing building. In order to use the existing building, and convert to a Lube Center, the addition to the building can really only be orientated 1 way so that traffic will flow as needed for a Lube Center.



Effective January 3, 2017

**Section 3 continued: Variance Request Criteria**

2. These special circumstances are not the result of the actions of the applicant;

Explanation: The applicant was not aware of the 25' setback off of 23rd Street when he bought this property for the use of a Lube Center.

3. Literal interpretation and enforcement of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship;

Explanation: In order for their business to work, they must have 3 bays for the Lube Center and ensure that traffic flows. If they are not allowed to have 3 bays, then their business plan won't work. They can only make 3 bays work if they can get a variance from the 25' Setback off of 23rd Street.

4. Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of the Zoning Ordinance and substantial justice;

Explanation: There have been many projects around town that have had frontage of 2 roads and have gotten a variance to only hold the 25' setback to just 1 road. 23rd Street is not a busy street and there would be no danger in having the Setback off of that street at 10'.

5. Granting the variance will not adversely affect adjacent land in a material way; and

Explanation: Granting this variance will not change or affect any adjacent Land owners.

6. Granting the variance will be generally consistent with the purposes and intent of the Zoning Ordinance.

Explanation: It has been consistent throughout the City of San Angelo to grant this type of variance with projects that have Multiple 25' Setbacks.

Effective January 3, 2017

**Section 4: Applicant(s) Acknowledgement**

Please initial the following:

EC I/we understand that the Zoning Board of Adjustment (ZBA) is bound by criteria established by state law; I further understand that my request is not guaranteed to be approved and that it constitutes an exception from regulations of the City of San Angelo;

EC I/we understand that any variation(s) authorized by the ZBA will require me/us to obtain a building permit for that stated variation within twelve (12) months of the approval date by the ZBA, unless the ZBA has specifically granted a longer period;

EC I/we understand that all drawings, pictures, documents or other information used during your testimony to the ZBA must be kept in the permanent files of the Planning Division; and

EC I/we understand that any appeal of a decision made by the ZBA must be presented to a court of record with a verified petition stating that the decision of the ZBA is illegal in whole or in part and specifying the grounds of the illegality. This petition for appeal must be presented within ten (10) days after the date the decision is filed in the board's office.

**I/We the undersigned acknowledge that the information provided above is true and correct.**

*Erica Carter*

Signature of licensee or authorized representative

08/31/2020

Date

Erica Carter

Printed name of licensee or authorized representative

Carter-Fentress Engineering

Name of business/Entity of representative

**FOR OFFICE USE ONLY:**

Reviewed/Accepted by: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Case No.: ZBA: \_\_\_\_\_-\_\_\_\_\_

ZBA Hearing Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Fully-Dimensioned and scaled Site Plan:  Yes  No

Date of Application: \_\_\_\_/\_\_\_\_/\_\_\_\_

Non-Refundable Fee: \$ \_\_\_\_\_ Receipt #: \_\_\_\_\_

Date paid: \_\_\_\_/\_\_\_\_/\_\_\_\_

Ordinance section(s) from which variance(s) is/are requested: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**ZONING BOARD OF ADJUSTMENT – October 5, 2020  
STAFF REPORT**



<b>APPLICATION TYPE:</b>		<b>CASE:</b>	
Variance		ZBA20-27: 5130 West Houston Harte Expressway	
<b>SYNOPSIS:</b>			
<p>The applicant received a building permit for a new car dealership on the subject property. During a site visit for the final inspection for this permit, Staff discovered that the required six-foot tall privacy fence adjacent to the northeast and east property lines abutting the Low Rise Multifamily Residential (RM-1) Zoning District, was not installed as required per Section 509.A.1 of the Zoning Ordinance. This section requires that a privacy fence be installed whenever a side or rear lot line of a nonresidential use is adjacent to an existing residential use or zoning district except R&amp;E (see Additional Information).</p>			
<b>LOCATION:</b>		<b>LEGAL DESCRIPTION:</b>	
5130 West Houston Harte Expressway; located northeast of Hunters Glen Road and West Houston Harte Expressway		Being Tract K in the First Replat of Tract J, The Bluffs Addition, Section 30	
<b>SM DISTRICT / NEIGHBORHOOD:</b>	<b>ZONING:</b>	<b>FUTURE LAND USE:</b>	<b>SIZE:</b>
SMD District #6 – Billie DeWitt Bluffs Neighborhood	General Commercial (CG)	C – Commercial	5.232 acres
<b>THOROUGHFARE PLAN:</b>			
<p><b>West Houston Harte Expressway</b> – Freeway (TXDOT), Required: N/A; Provided: variable right-of-way, frontage road is 36’ pavement</p> <p><b>Drexel Drive – Urban Local Street</b>, Required: 50’ right-of-way, 40’ pavement or 36’ with a 4’ wide sidewalk, Provided: 60’ right-of-way, 40’ pavement with a 5-foot wide sidewalk</p>			
<b>NOTIFICATIONS:</b>			
19 notifications mailed within 200-foot radius on September 24, 2020. No responses received for or against.			
<b>STAFF RECOMMENDATION:</b>			
<p>Staff’s recommendation is for the Zoning Board of Adjustment (ZBA) to <b>APPROVE</b> a variance from Section 509.A.1 of the Zoning Ordinance to exempt the requirement for a privacy fence where a side or rear lot line is adjacent to the Low Rise Multifamily Residential (RM-1) Zoning District; located at 5130 West Houston Harte Expressway, subject to <b>two</b> conditions of approval.</p>			
<b>PROPERTY OWNER/PETITIONER:</b>			
BBISA, LLC (Kent Brown)			
<b>STAFF CONTACT:</b>			
Jeff Fisher, AICP Principal Planner (325) 657-4210, Extension 1550 <a href="mailto:jeff.fisher@cosatx.us">jeff.fisher@cosatx.us</a>			

**Additional Information:** Without granting of this variance, the applicant would be responsible to install a six-foot tall privacy fence along the northeast property line 201.31 feet in length adjacent to an AEP substation and drainage easement, and along the east property line which is 230.38 feet in length except for the 25-foot front yard facing Houston Harte Expressway Frontage Road. The east side of the subject property serves as a detention pond, and it is noted that the applicant has installed a six-foot tall privacy fence adjacent the Drexel Drive to provide screening for the residential homes located across the street. This fence is set back the required 25 feet as Drexel Drive is considered a front yard.

**Variations:** Section 207(F) of the Zoning Ordinance requires that an applicant for a variance must show that a hardship exists and that the Zoning Board of Adjustment make an affirmative finding that each and every one of the following six (6) criteria are met:

1. **Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial.** The applicant indicates that it will be almost impossible to install the fence through the drainage area on the property due to topography. Staff concurs that there is a significant grade differential at the east side of the property. In addition, this portion of the property serves as a large detention pond extending over 150 feet from the edge of the new parking lot. This detention pond provides a special circumstance even without the topography issue to warrant a variance. The AEP substation and drainage easement to the northeast, a nonresidential use, provides a special circumstance to exempt a privacy fence adjacent to this northeast property line as well.
2. **These special circumstances are not the result of the actions of the applicant.** The applicant required a detention pond as part of their drainage study to capture stormwater runoff for the site. This required detention pond provides a substantial buffer between the new car dealership and the RM-1 property to the east. The AEP substation to the northeast existed prior to this development and therefore, Staff supports a variance from a fence adjacent to both of these property lines.
3. **Literal interpretation and enforcement of the terms and provisions of this Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship.** The applicant indicates that the installation of a privacy fence would not benefit the subject or adjacent property owner. Staff does not agree that in all cases this would be true, but does believe that the literal interpretation of the Zoning Ordinance in this case would not justify a privacy fence. The privacy fence requirement was to protect residential uses that were immediately adjacent or in very close proximity to nonresidential uses. In this case, the detention pond separates the east property line abutting the RM-1 zoning by over 150 feet, and the AEP property, a nonresidential use is located to the northeast. Staff believes that these unique circumstances in addition to the topography justify a variance.
4. **Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of this Zoning Ordinance and substantial justice.** The proposed car dealership complies with all other



development standards of the General Commercial (CG) Zoning District where it is located except for the privacy fence requirement. Therefore, the proposed request is the minimum action required. Staff also believes that granting the variance would not be contrary to the public interest given the detention pond which serves as a buffer from the RM-1 zoning to the east, and AEP property to the northeast which Staff also believes does not need screening.

5. **Granting the variance will not adversely affect adjacent land in a material way.** Planning Staff does not believe that granting the variance will have any negative impact on adjacent properties for the above reasons. In addition to the topography issues and detention pond buffer, the property to the east although currently zoned RM-1 could be rezoned to allow commercial uses given it has a future land use of Commercial in the City's Comprehensive Plan. In the past several years, new commercial development has taken place along this Houston Harte frontage road corridor which includes Chick-Fil-A, the new HEB store to the west, and a recent rezoning on the east half of the subject property from RM-1 to CG to allow the new car dealership (Z19-05). Regardless, the detention pond, topography issue, and AEP site immediately northeast is sufficient to justify a variance in this case.
6. **Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.** Staff believes that Section 509.A of the Zoning Ordinance was established to protect residential properties from incompatible commercial uses or those immediately adjacent or in close proximity. Privacy fencing has already been installed along the Drexel Drive frontage, and behind the homes on Southampton Place to the north. In this case, Staff believes that the detention pond provides an adequate distance from any future residential development without the need for a privacy fence. The AEP substation would also not necessitate screening from this car dealership as both uses are nonresidential and compatible land uses.

**Allowed Variances:**

In addition to the above criteria, in exercising its authority to grant a variance, per Section 207.D of the Zoning Ordinance, the Zoning Board of Adjustment must affirmatively find that one or more of the following circumstances applies:

1. **SPECIAL CIRCUMSTANCES RESULTING IN UNNECESSARY HARDSHIP.** *Where special circumstances exist on the property related to the size, shape, area, topography, surrounding conditions or location that do not generally apply to other property in the same zoning district, and that the circumstances are such that strict application of this zoning ordinance would create an unnecessary hardship or deprive the applicant of reasonable use of the land or building.*  
**Staff believes there is a Special Circumstance to support a variance from a privacy fence along the east property line given the large detention pond and topography issues along this side of the property. Staff also believes there is justification for a variance to exempt a privacy fence adjacent to the northeast property line because it is next to an AEP substation, a non-residential use.**
2. **OVERRIDING PUBLIC INTEREST.** *If the variance further an overriding public interest or concern, including, but not limited to: (a) Preserving the natural environment, (b) Promoting maintenance*

*or reuse of older urban or historic buildings, or (c) Helping to eliminate a nonconforming use at another location.*

3. **LITERAL ENFORCEMENT.** *If it is found that the literal enforcement and strict application of this Zoning Ordinance will result in extraordinary circumstances inconsistent with the general provisions and intent of this ordinance, and that, in granting the variance, the spirit of the ordinance will be preserved and substantial justice done.*

**Recommendation:**

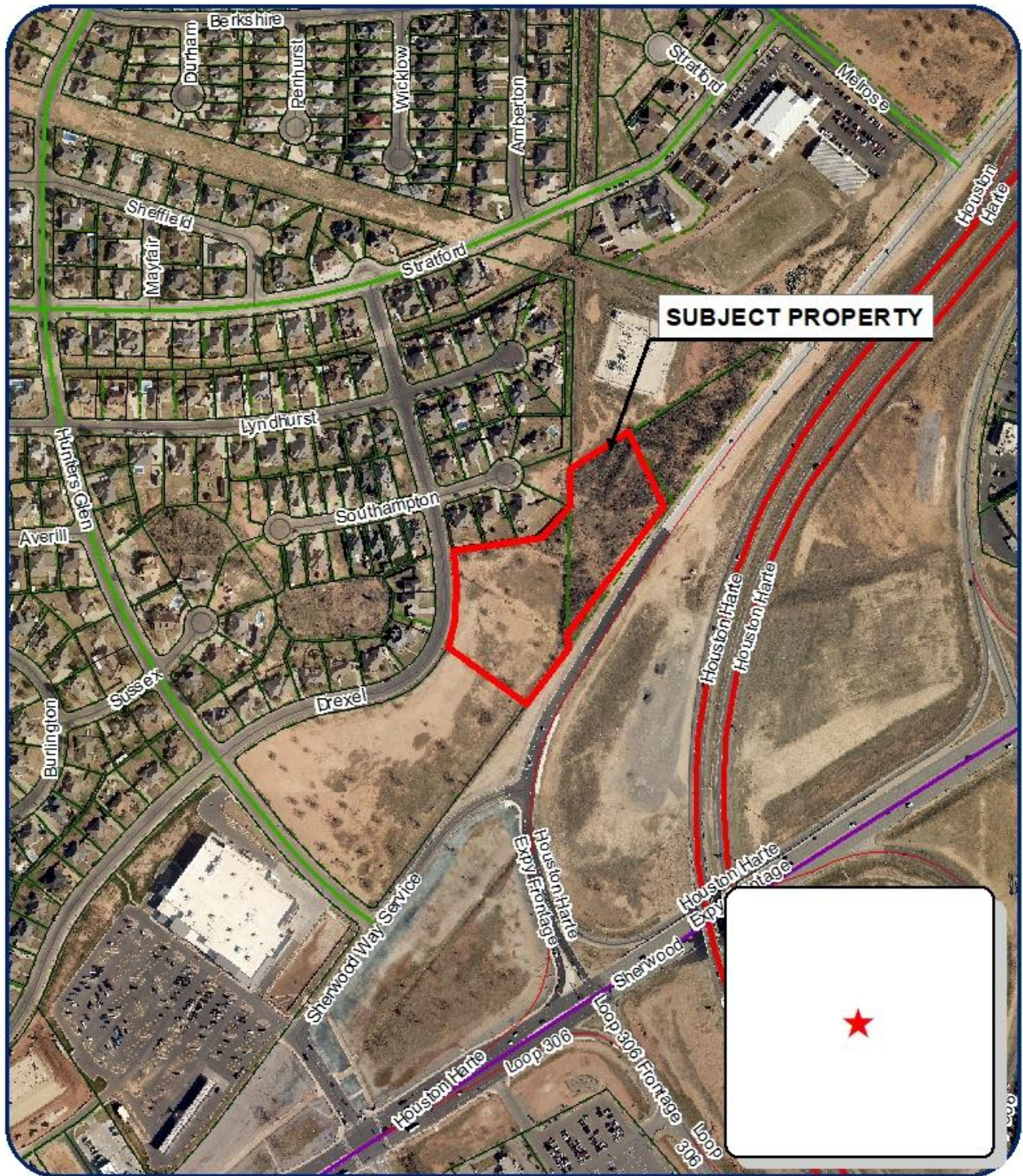
Staff's recommendation is for the Zoning Board of Adjustment (ZBA) to **APPROVE** a variance from Section 509.A.1 of the Zoning Ordinance to exempt the requirement for a privacy fence where a side or rear lot line is adjacent to the Low Rise Multifamily Residential (RM-1) Zoning District; located at 5130 West Houston Harte Expressway, subject to **two** conditions of approval:

1. The applicants shall obtain a final certificate of occupancy for the new car dealership building.
2. This approval only applies to permitted uses and development within the limits of the existing parking area shown on the approved site plan. Any expansion into the area of the current detention pond will require the addition of a privacy fence or new variance application.

**Attachments:**

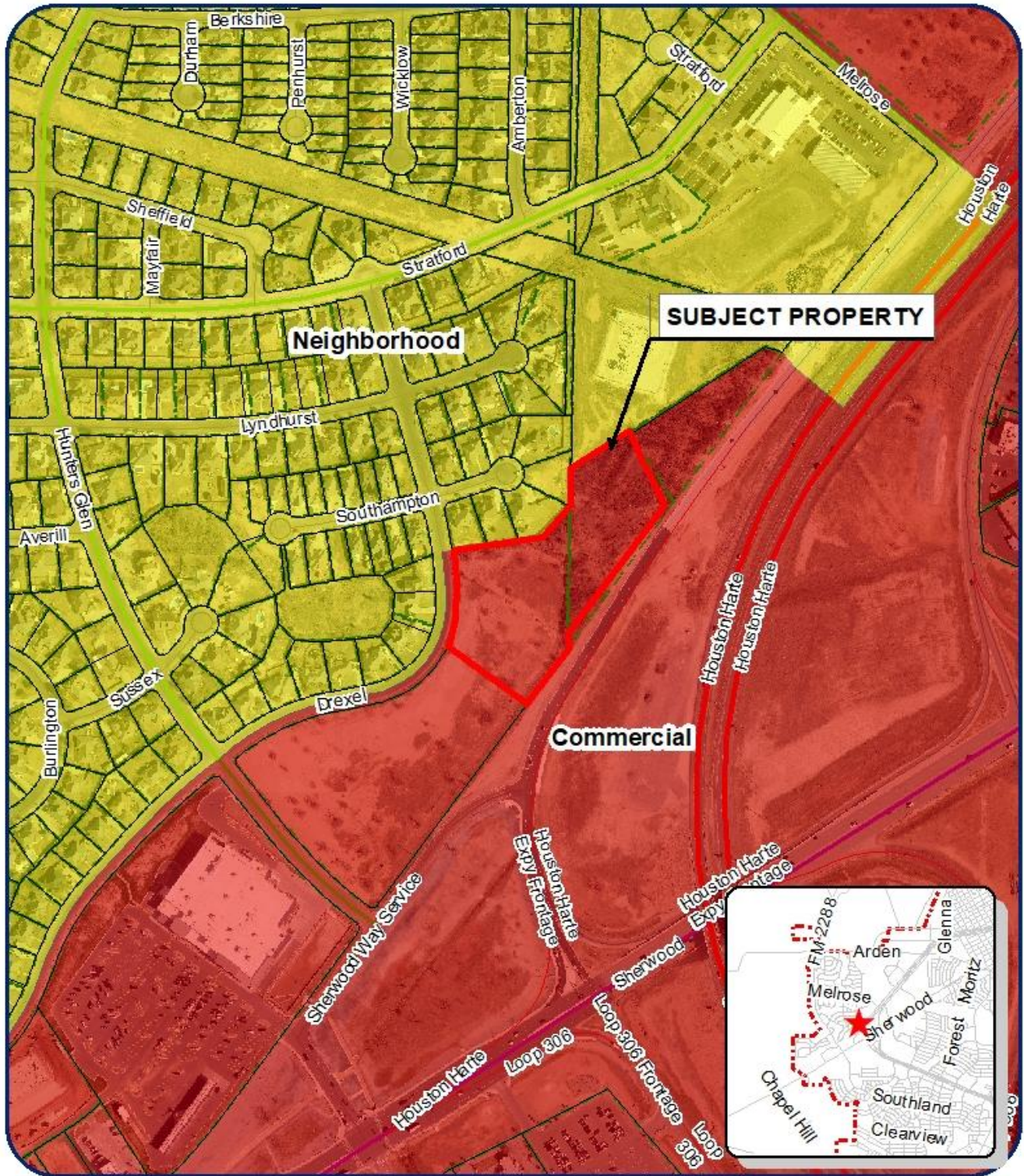
Aerial Map  
Future Land Use Map  
Zoning Map  
Photographs  
Site Plan  
Application





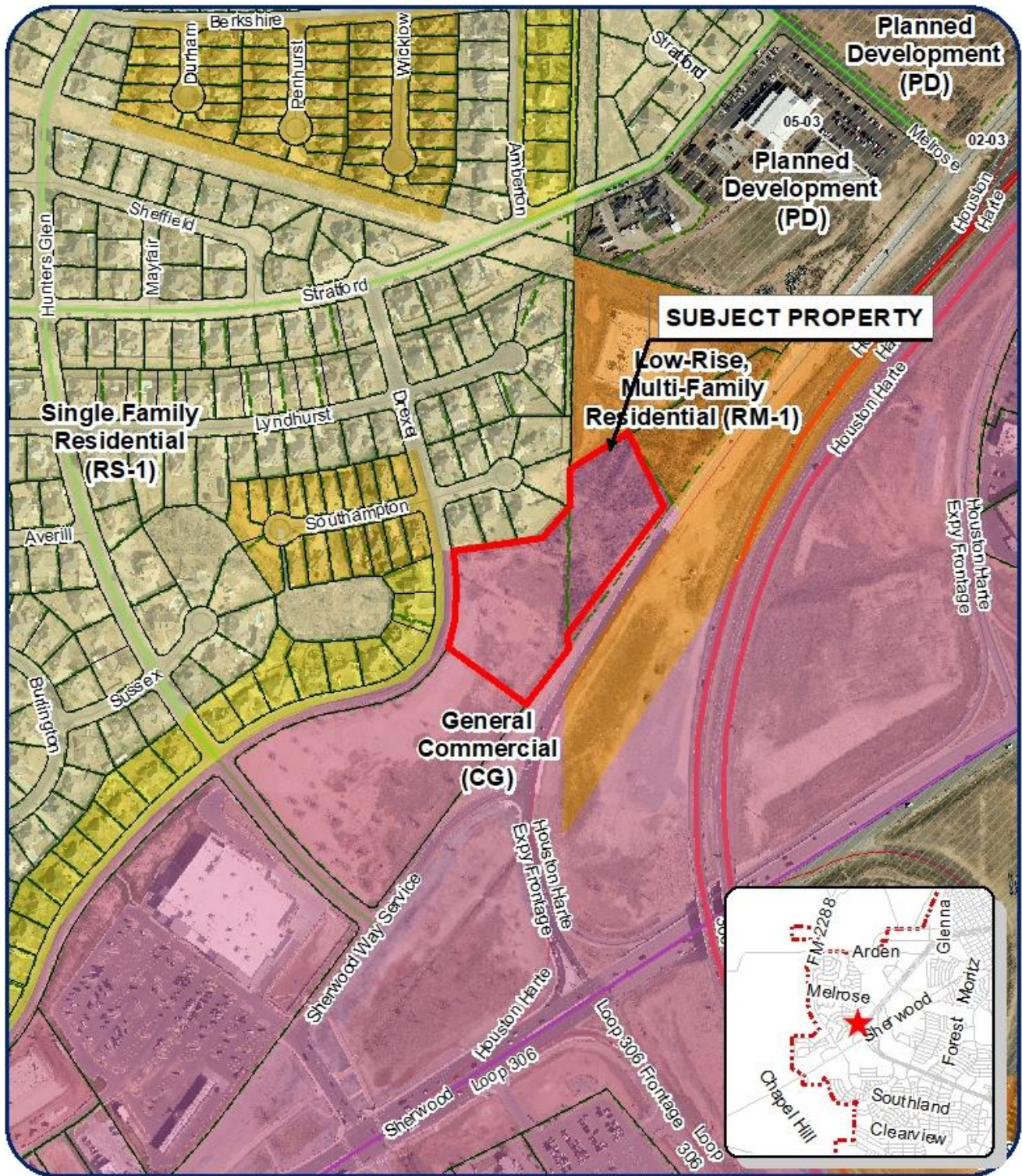
<b>Variance</b>		<b>Legend</b>			
<b>ZBA20-27: 5130 W. H. Harte Expressway</b> Council District: Billy DeWitt - District 6 Neighborhood: Bluffs Scale: 1" approx. = 375 ft <b>5130 W. H. Harte Expressway</b>		Subject Properties:  Current Zoning: <b>CG</b> Requested Zoning Change: <b>N/A</b> Vision: <b>Commercial</b>			





<b>Variance</b>		<b>Legend</b>			
<b>ZBA20-27: 5130 W. H. Harte Expressway</b> Council District: Billy DeWitt - District 6 Neighborhood: Bluffs Scale: 1" approx. = 375 ft <b>5130 W. H. Harte Expressway</b>		Subject Properties: 	Current Zoning: <b>CG</b>		
		Requested Zoning Change: <b>N/A</b>	Vision: <b>Commercial</b>		





**Variance**  
**ZBA20-27: 5130 W. H. Harte Expressway**  
 Council District: Billy DeWitt - District 6  
 Neighborhood: Bluffs  
 Scale: 1" approx. = 375 ft  
**5130 W. H. Harte Expressway**

**Legend**  
 Subject Properties: —  
 Current Zoning: **CG**  
 Requested Zoning Change: **N/A**  
 Vision: **Commercial**





**Photos of Site and Surrounding Area**

NEW HONDA DEALERSHIP ON PROPERTY



LOOKING EAST ON DREXEL DRIVE



DREXEL DRIVE PRIVACY FENCE  
INSTALLED BY APPLICANT



EXISTING PRIVACY FENCE FOR  
RESIDENTIAL HOMES



NORTHEAST PROPERTY LINE (VARIANCE REQUESTED  
TO EXEMPT REQUIRED PRIVACY FENCE)



EAST PROPERTY LINE (VARIANCE REQUESTED  
TO EXEMPT REQUIRED PRIVACY FENCE)









Effective January 3, 2017

**Section 3 continued: Variance Request Criteria**

2. These special circumstances are not the result of the actions of the applicant;

Explanation: The issues associated with the installation of the fencing are naturally occurring topographical conditions.

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3. Literal interpretation and enforcement of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship;

Explanation: The zoning ordinance for fencing would not benefit either property owner in any way and would have no affect on the use of the either property.

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4. Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of the Zoning Ordinance and substantial justice;

Explanation: The zoning ordinance could not foresee all of the topographical conditions that would occur based on installing solid fencing and the public interest would not be improved by the installation of the fencing.

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5. Granting the variance will not adversely affect adjacent land in a material way; and

Explanation: Installation of the fencing would not harm the development or use of the property to the northeast in any way.

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6. Granting the variance will be generally consistent with the purposes and intent of the Zoning Ordinance.

Explanation: Yes. The zoning ordinance could not have foreseen the circumstances surrounding the topography between these two properties.

Granting the variance would be consistent with the purpose of the ordinance.

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Effective January 3, 2017

**Section 4: Applicant(s) Acknowledgement**

Please initial the following:

- I/we understand that the Zoning Board of Adjustment (ZBA) is bound by criteria established by state law; I further understand that my request is not guaranteed to be approved and that it constitutes an exception from regulations of the City of San Angelo;
- I/we understand that any variation(s) authorized by the ZBA will require me/us to obtain a building permit for that stated variation within twelve (12) months of the approval date by the ZBA, unless the ZBA has specifically granted a longer period;
- I/we understand that all drawings, pictures, documents or other information used during your testimony to the ZBA must be kept in the permanent files of the Planning Division; and
- I/we understand that any appeal of a decision made by the ZBA must be presented to a court of record with a verified petition stating that the decision of the ZBA is illegal in whole or in part and specifying the grounds of the illegality. This petition for appeal must be presented within ten (10) days after the date the decision is filed in the board's office.

I/We the undersigned acknowledge that the information provided above is true and correct.

Kent Brown  
Signature of licensee or authorized representative

9/17/20  
Date

Kent Brown  
Printed name of licensee or authorized representative

Brown Brothers / BBISA  
Name of business/Entity of representative

**FOR OFFICE USE ONLY:**

Reviewed/Accepted by: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Case No.: ZBA: \_\_\_\_\_ ZBA Hearing Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Fully-Dimensioned and scaled Site Plan:  Yes  No Date of Application: \_\_\_\_/\_\_\_\_/\_\_\_\_

Non-Refundable Fee: \$ \_\_\_\_\_ Receipt #: \_\_\_\_\_ Date paid: \_\_\_\_/\_\_\_\_/\_\_\_\_

Ordinance section(s) from which variance(s) is/are requested: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_