



# BOARD OF ADJUSTMENT COMMUNICATION

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**DATE:** July 30, 2024

**FROM:** Thad Chambers, Town Administrator

**AGENDA ITEM:** Public hearing to consider a variance to regulations found in Bartonville Zoning Ordinance Section 18.6, relating to minimum landscaping requirements for nonresidential developments. The property subject to the variance request is located at 64 McMakin Road in Bartonville, Texas. The applicants are Mark and Kathryn Taylor. [Town File No. VAR-2024-006].

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**Applicant:** Mark and Kathryn Taylor

**Zoning:** Rural Business (RB)

**Requested Variance:** To permit a variance from the original landscape plan for Guidance Preparatory Academy, located at 64 McMakin Road.

**Summary:** The applicant has submitted a variance request (Exhibit 1) to amend the original approved landscape plan included as part of their original site plan approval in 2008. Within the past year or so, approximately 11 Leland cypress trees and 12 photinia trees were removed as part of a site clearing effort related to utility easement maintenance and septic system upgrades. These trees were originally planted to provide extra screening between the school property and the adjacent residential property. Town staff observed the change to the landscape plan and on May 23, 2024 a notice of zoning code violation was prepared and delivered to the property owner, stating that the landscape maintenance provisions in Bartonville Zoning Ordinance Section 18.8 had been violated.

In response to the zoning code violation letter, the applicant submitted a variance request, which had been identified as an available option. Based on the applicant's variance request explanation letter, the variance and change to the original landscape plan is being requested to accommodate 1) changes recommended by the property owner's septic design engineer, which precludes the ability to replant the Leland cypress trees, and 2) an error in the original application that allowed the photinia to be planted within a recorded utility easement along the screen wall located on the property's western boundary.

The applicant claims that the redesigned septic system lateral lines prevent the Leland cypress from being planted in their original location without risk of future damage to the system. The photinia are not appropriate for the utility easement, as said easement provides vehicular access for utility maintenance.

As part of the variance request, the applicant is requesting the authority to plant three 45-gallon, 12-foot-high live oak trees at 20-foot spacing within the area between McMakin Road and the septic tank on-site, in lieu of replanting the Leland cypress and photinia as reflected in the original approved landscape plan. The applicant's proposed planting location is not situated between the applicant's commercial use and the adjacent residential property.

**Criteria for Approval:** In deciding the variance petition, the Board of Adjustments shall apply the following criteria:

- A. There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land subject to the variance petition, such that the strict application of the provisions of this Zoning Ordinance to the development application would create an unnecessary hardship or inequity upon or for the petitioner, as distinguished from a mere inconvenience, in developing the land or deprive the petitioner of the reasonable and beneficial use of the land;
- B. The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;
- C. The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner;
- D. Granting the variance petition will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
- E. Granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Ordinance, or adversely affect the rights of owners or residents of surrounding property;
- F. Granting the variance petition is consistent with any special criteria applicable to varying particular standards;
- G. The hardship or inequity suffered by petitioner is not self-induced;
- H. The request for a variance is not based exclusively upon a desire from the petitioner for increased financial gain from the property, or to reduce an existing financial hardship; and
- I. The degree of variance requested is the minimum amount necessary to meet the needs of petitioner and to satisfy the standards in this section.

**If Approved:** Approval of the variance request would permit the property owner to plant three 45-gallon, 12-foot-high live oak trees at 20-foot spacing within the area between McMakin Road and the septic tank on-site, in lieu of replanting the Leland cypress and photinia as reflected in the original approved landscape plan. As a result, the extra screening provided by the original plantings would not be replaced.

**If Denied:** Denial of the variance request would mean that the property owner would either have to replace all of the original plantings and ensure their survival in accordance with Bartonville Zoning Ordinance Section 18.8 or propose another landscape plan for Planning & Zoning Commission and Town Council approval that meets all of the requirements in Chapter 18 of the Bartonville Zoning Ordinance.

**Exhibits:**

- 1. Variance Application VAR-2024-006
- 2. Copy of Original Approved Landscape Plan
- 3. Location Map
- 4. Notification Letter and Addresses
- 5. Publication Affidavit