

## **AGENDA ITEM SUMMARY SHEET**

**CITY OF ROLLINGWOOD, TEXAS**

**MEETING DATE: January 18, 2023**

***Agenda Item \_\_: Request for legal advice and discussion and possible action with regard to building permit applications, and purported issuance of building permits, where the Building Official has determined that the applications do not conform to the setback requirements of the zoning code and zoning variances for the non-conformities have not been sought from the Board of Adjustment; determination of appropriate action with regard to such applications; and identification of any other similar issues in connection with any other Rollingwood permit applications, if any, in progress at this time.***

**Submitted by: Brook Brown**

### **Background:**

**At the February 16, 2022, city council meeting, Agenda Item 13 sought legal advice as to whether a property owner could revise the setback lines for a property by filing a replat of the property, or if the zoning code setbacks would apply despite zoning setbacks being placed on a filed replat. This question arose because of a request before the Planning and Zoning Commission for approval of a replat of the property located at 304 Vale, to provide for a 20 ft. side setback along Bettis, rather than the prior 30ft. setback that would otherwise apply under the Code, and a similar action by the owner of the property at 400 Farley, to change the address of the property formerly known as 2500 Bettis, to 400 Farley, then claiming that this address change also changed the former 30ft. front setback along Bettis to a 20ft. "side" setback.**

**At the February 16, 2022, council meeting, the City attorney advised that, in these circumstances, "a zoning variance was necessary because the zoning setback was more restrictive based on the way that houses were facing, and that the applicants will need to seek a zoning variance. The Mayor indicated that "the next step is to send this to the BOA and notice appropriately." Minutes of the February 16, 2022 council meeting at p. 7, Item 13.**

**The permit file indicates the 304 Vale and the 400 Farley property owners subsequently proceeded with their building permit applications; however neither filed an application for a zoning variance for approval of the setbacks as shown on their replats.**

**The permit file for the 304 Vale property contains a memo from the Mayor dated August 28, 2022, indicating that he made the decision to issue the building permit "despite the setbacks not complying with the zoning code" to avoid a potential legal dispute by the owner related to setbacks in the zoning code and those recorded on the plat.**

**The permit file for the 400 Farley property contains a memo from K. Friese stating "This item has been cleared at the executive direction of Mayor Massingill due to previous actions by the City and a potential legal dispute by the owner related to setbacks in the zoning code and those recorded on the officially approved plat. As a result of the potential dispute, the Mayor ordered the permit to be issued despite the setbacks not complying with the zoning code." The file also contains a memo from the Mayor dated August 28, 2022, indicating that he made the decision to issue the building permit**

"despite the setbacks not complying with the zoning code" to avoid a potential legal dispute by the owner related to setbacks in the zoning code and those recorded on the plat.

The Mayor's memo also notes that an ordinance amendment approved at the August 17 meeting removed the requirement in the code for a plat to reflect setback lines. However, this amended ordinance did not change the requirement to seek a variance to build in accordance with the setbacks on the filed plats where inconsistent with the zoning setback requirements, consistent with the legal advice received at the February council meeting.

**Action requested:** Legal advice as to the legal status of the Mayor's directives and the permit applications for the 304 Vale and 400 Farley properties given the non-compliance with the Code and the absence of authority in the Mayor's office to approve a building permit, the decision of non-compliance of these applications with zoning code requirements by the building official, and the absence of authority in the mayor's office to settle threatened litigation without council approval; determination of the appropriate action with regard to the building applications for and work proceeding at the 304 Vale and 400 Farley properties; and identification of any other similar issues in connection with any other Rollingwood permit applications, if any, in progress at this time.

**Resources:**

**Sec. 101-27. Generally.**

The procedures established in this article and in the city construction regulations will be administered by the building official, who may authorize the use of persons, equipment, and facilities as necessary to implement and enforce the provisions hereof.

(Code 1987, ch. 11, subch. A, § 3; Code 1995, § 3.02.005)

**Sec. 101-30. - Third-party inspections.**

If the city contracts with a person to perform the inspections required by the city building code, an inspection performed by such person shall be considered an inspection by the building official; provided, however, that building permits and certificates of occupancy shall be issued only by the city building official. If the city has not contracted with a licensed plumbing inspector to conduct inspections within the city, a nonresidential property owner must secure the services of a licensed plumbing inspector for the city and pay all costs incurred by the city for such inspection services.

(Code 1987, ch. 11, subch. A, § 11; Code 1995, § 3.02.011)

**Sec. 101-90. Required, generally.**

- (a) No person shall construct, alter or move any building, structure, gas line, or fence, or any portion thereof, or store building materials or equipment on property, or cause the same to be done, without first obtaining a building permit, as required under the city construction regulations from the building official; provided, however, that no person shall be required to obtain a building permit for the application or installation of new or replacement flooring, appliances (except for water heaters for which a building permit is required unless it is installed by a licensed plumber), light fixtures, wallpaper or wall coverings, tile work, plumbing fixtures, hardware, glazing, paint, stain or plaster, trim work, cabinetry or shelves, insulation, counter tops, doors, garage doors, drywall (except drywall for garage separation), tile work, trim work, plaster, gutters and downspouts, exterior doors or windows (except windows in sleeping areas), roofing materials and all other materials and equipment necessary of the proper completion thereof.



- (b) Except as otherwise authorized in a written order approved by the board, a building permit shall not be issued except in conformity with the provisions of this article.
- (c) The city council shall adopt a schedule of building permit fees. Such schedule of fees shall remain in force until changed by the city council.

(Code 1987, ch. 11, subch. G, art. XV, § 2; Code 1995, § 14.02.852(a)—(c); Ord. No. 2017-01-18, 1-18-2017)

**Sec. 2-57. Presiding officer; mayor pro tempore; council liaisons.**

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- (c) The mayor shall not have the power to negate any action of the city council except as otherwise authorized by V.T.C.A., Local Government Code ch. 53. The mayor may not bind or obligate the city in any way without prior authorization from the city council. The mayor may not vote on any motion considered by the council, unless necessary to break a tie.

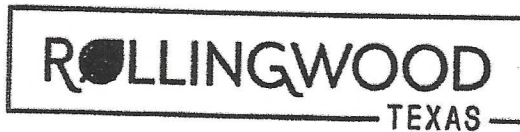
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**Sec. 101-101. Revocation of building permits.**

- (a) Whenever work is being performed in violation of the requirements of the city's building code or site plan filed with the city, the building official shall give written notice to the person performing or causing work to be performed, directing such person to show cause why the building permit authorizing the work should not be revoked.
- (b) Any person served with notice may, within five days after service, show cause to the building official why the building permit should not be revoked. If the person fails to show good cause, the building official shall revoke the building permit and give written notice of the revocation to the person.
- (c) A building permit revocation order shall be posted upon the building or structure where work is being performed.
- (d) The show-cause procedure provided under this section may be waived by the building official when the building official finds that the work being performed in violation of the city's building code could cause imminent peril to life or property.

(Code 1995, § 14.02.869; Ord. No. 2017-01-18, 1-18-2017)

**Mayor's memos - see attached.**



**Memorandum**

**From:** Gavin Massingill, Mayor  
**Date:** August 28, 2022  
**Subject:** 304 Vale St. Zoning Approval and Permit Issuance

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The property owners of 304 Vale Street, Walt and Kendra Roloson, as well as their engineer and architect, had been working with City Staff since September 2021 on a new residence application. In November 2021, a replat application and associated documentation was filed for this address with the office of development services. In December, the replat review was completed and denied, with the explanation that the owners would need a variance to obtain the building setbacks that were shown on the plat. A variance was brought before the Planning and Zoning Commission in February 2022 and both the variance and the plat were approved, but it was determined shortly thereafter that the variance should have been heard by the Board of Adjustment, not the Planning and Zoning Commission.

The reason the owners were told they needed a variance was that the building setbacks that were shown on the plat did not conform to the city's zoning requirements with respect to required depths of yards. The building plans that were submitted and had gone through various iterations of review also did not conform with the yard requirements in the residential zoning code, however, the owners had an approved plat showing the building lines as they were requesting. Further, a plat is a legal document governing the division of land described by its metes and bounds and how the land is represented. Zoning regulations should not be recorded on a plat; however, the city's subdivision ordinance, which governs what is to be shown on a plat, had a requirement that building lines be shown.

The city's zoning regulations would generally prevail in most situations, however, due to the threat of costly litigation based on the actions already taken, advice given by former staff, potential inconsistency of previous application, and a perceived conflict because of what was required on plats, I made the decision to order the permits issued despite the setbacks not complying with the zoning code to avoid a potential legal dispute by the owner related to setbacks in the zoning code and those recorded on the officially approved plat.

It should also be noted that there was support of all surrounding neighbors of this property to allow the building yard lines as proposed and shown on the approved plat.

I took the action to approve this permit issuance to avoid the legal entanglement that would have pursued, and then immediately put an item on the next City Council agenda for the Council to consider removing the requirement that building lines be required on plats so no future confusion would exist and so that the city would not be put in this situation again. The City Council did approve this code amendment at the August 17 City Council Meeting.





## Memorandum

**From:** Gavin Massingill, Mayor  
**Date:** August 28, 2022  
**Subject:** 400 Farley Trail Zoning Approval and Permit Issuance

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The property owner of 400 Farley Trail, Buck Shapiro, originally applied for a replat of his property, originally addressed 2500 Bettis, in May 2021. This replat included the address change to 400 Farley Trail. In August 2021 the City Council approved the address change from 2500 Bettis to 400 Farley Trail. Mr. Shapiro worked with staff through multiple revisions and a resubmission of his replat, and in May of 2022 the replat was approved through the administrative approval process based on the precedent set by previous action by the Planning and Zoning Commission to approve the plat for 304 Vale Street. (See Executive Memorandum for 304 Vale Street dated August 28, 2022.)

In May of 2022, Mr. Shapiro applied for a new residential permit with the office of development services. He had moved forward with the development and submittal of plans based on the setback lines that were shown on the property's approved plat. It was discovered that the plat that was filed with the city and approved for this property had building setbacks shown on it that did not conform to the city's zoning requirements with respect to required depths of yards.

A plat is a legal document governing the division of land described by its metes and bounds and how the land is represented. Zoning regulations should not be recorded on a plat; however, the city's subdivision ordinance, which governs what is to be shown on a plat, had a requirement that building lines be shown.

The city's zoning regulations would generally prevail in most situations, however, due to the threat of costly litigation based on the actions already taken, advice given by former staff, potential inconsistency of previous application, and a perceived conflict because of what was required on plats, I made the decision to order the permits issued despite the setbacks not complying with the zoning code to avoid a potential legal dispute by the owner related to setbacks in the zoning code and those recorded on the officially approved plat.

It should also be noted that there was support of all surrounding neighbors of this property to allow the building yard lines as proposed and shown on the approved plat.

I took the action to approve this permit issuance to avoid the legal entanglement that would have pursued, and then immediately put an item on the next City Council agenda for the Council to consider removing the requirement that building lines be required on plats so no future confusion would exist and so that the city would not be put in this situation again. The City Council did approve this code amendment at the August 17 City Council Meeting.