

Board of Adjustments (BOA) Staff Report

Board of Adjustments Hearing Date: July 14, 2022

BOA Case P22-206: Request by Tomball Economic Development Corporation, represented by Robert Banzhaf, for a variance from Section 50-78 Light Industrial District (LI) of the Tomball Code of Ordinances to allow for encroachment into the required side building setback.

Property Owner(s): Tomball Economic Development Corporation
Applicant(s): Robert Banzhaf
Legal Description: Lot 4-1, in Block 1 of Tomball Business and Technology Park Lots 4 & 8 Replat
Location: The southwest corner of the intersection of Hufsmith-Kohrville Road and Spell Road
Lot Area: Approximately 1.75 acres (76,162 square feet)
Present Zoning & Use: Light Industrial (LI) (Exhibit “B”) / Vacant (Exhibit “C”)
Comp Plan Designation: Business Park and Industrial (Exhibit “D”)
Adjacent Zoning & Land Uses:
North: Light Industrial District (LI)/Gymnastic Center
South: Light Industrial District (LI)/Office/Warehouse
West: N/A (ETJ) / Vacant
East: Light Industrial (LI)/Vacant

BACKGROUND

The request is for a variance to reduce the ordinarily applicable 25-foot side yard setback required in the Light Industrial zoning district that the property falls within to a 15-foot side yard setback. This variance request would allow the construction of an office/warehouse facility as close as 15 feet to the northeastern side property boundary between Lot 4-1 and Restricted Reserve “A” in Tomball Business and Technology Park Lots 4 and 8 Replat. In March 2022, the subject property was created by replat. During the execution of this replat, the northeastern most corner of the parent tract was platted as a 3,722 square foot reserve which is restricted to signage and landscaping. The property boundary shared between the restricted reserve and the subject property that is the subject of this variance request.

ANALYSIS

According to Section 50-78, Subsection d.2.b (*Light Industrial District - LI*), the minimum side yard setback is 25 feet.

The intention of side yard setbacks is to provide adequate open space and building separation standards. Given that the side property boundary adjoins an unbuildable landscape and sign reserve, the literal enforcement of side setbacks in this circumstance creates an unnecessary hardship or practical difficulty in the development of the property. This hardship is not self-imposed, nor is it affecting properties in the same zoning district. The relief provided by granting this variance will not adversely affect permitted uses of adjacent conforming properties.

Lastly, in considering the variance request the site plan provided by the applicant illustrates that the proposed building greatly exceeds the minimum 35-foot street side setback required in Light Industrial zoning. The restricted reserve between the subject property and the street right-of-ways effectively serves as the required building setback.

RECOMMENDATION

City Staff has reviewed the request and recommends approval of **BOA Case P22-206**.

PUBLIC COMMENTS

Property owners within 200 feet of the project site were mailed notification of this proposal and a notice of public hearing was published in the Potpourri on June 29, 2022. Public responses will be provided in the Board packets or at the meeting.

EXHIBITS

- A. Aerial Photo
- B. Zoning Map
- C. Future Land Use Map
- D. Site Photo(s)
- E. Application

Exhibit "A"
Aerial Map



Exhibit "B" Zoning Map

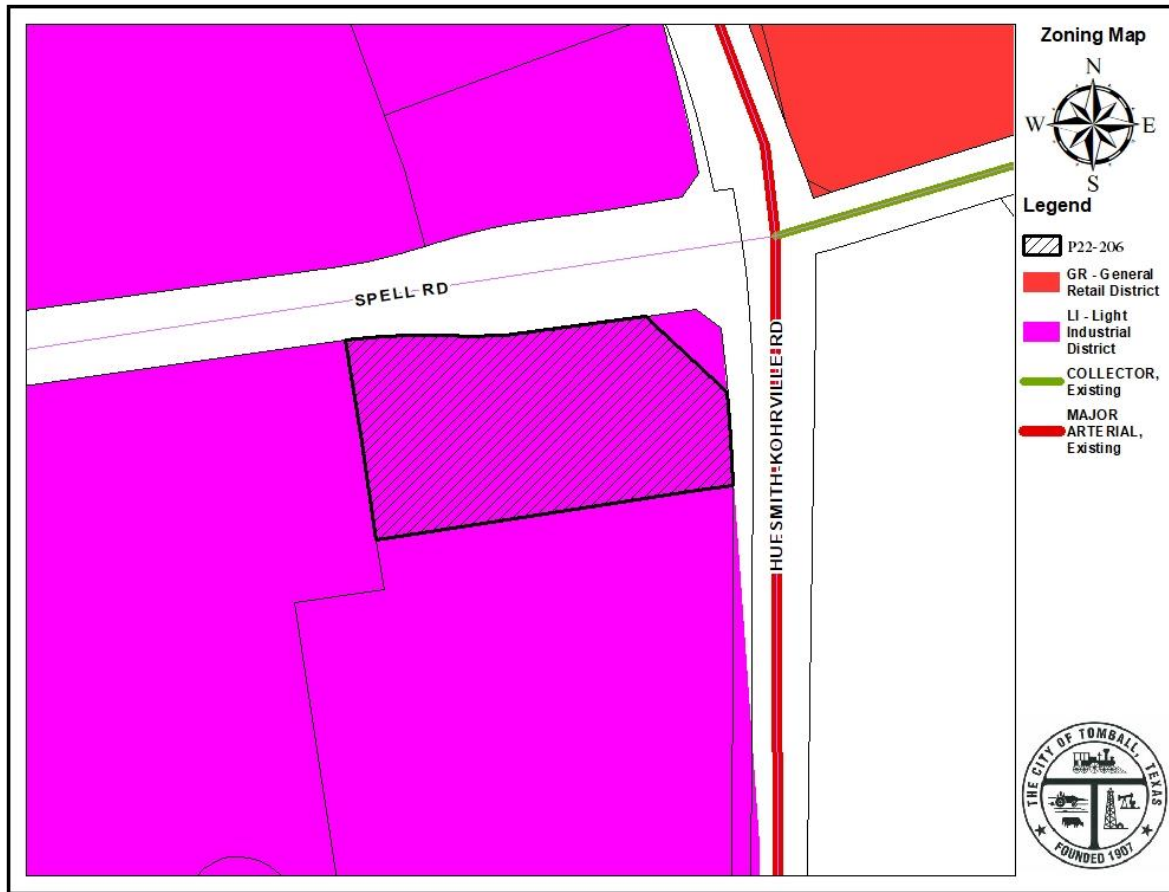
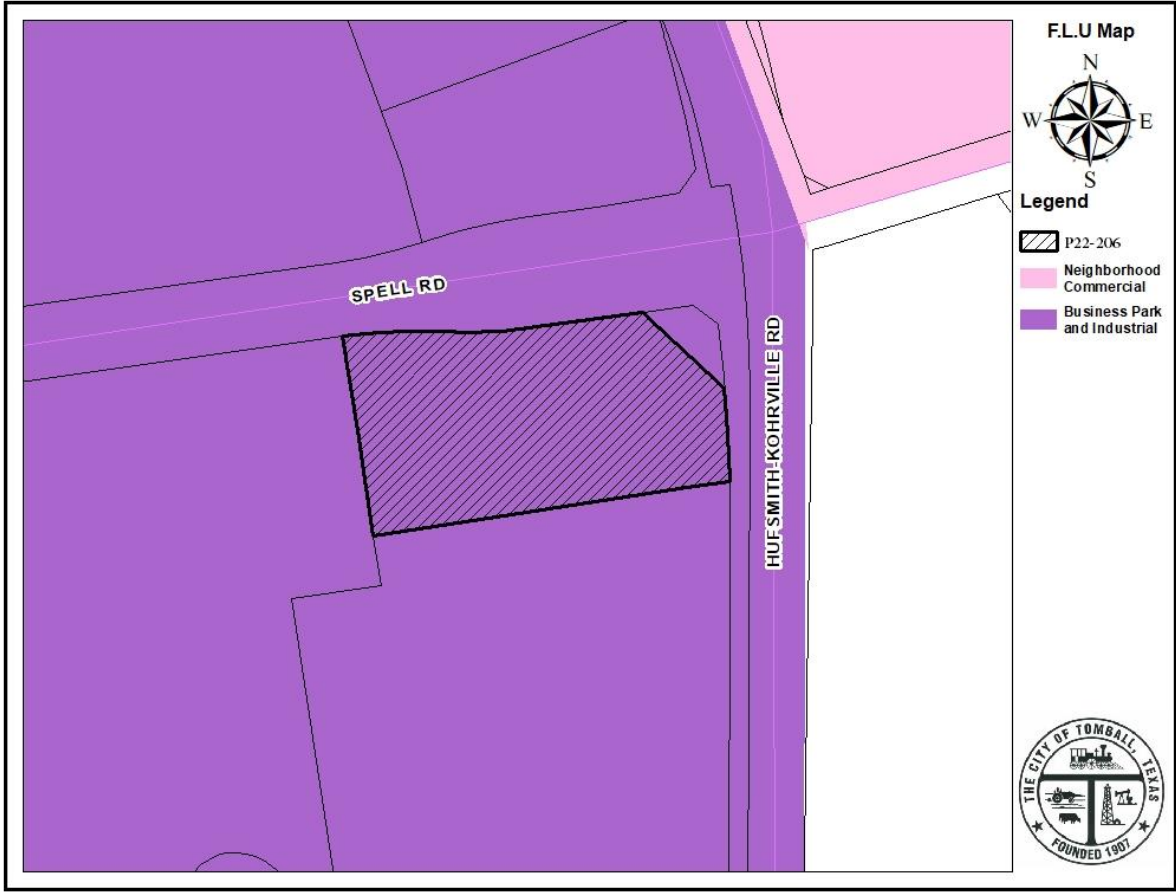


Exhibit "C"
Future Land Use Map



**Exhibit “D”
Site Photos**



Exhibit "E" Application



RECEIVED (KC)
06/13/2022

Revised: 4/29/2020
BOA CASE P22-206
\$250 PD

ZONING BOARD OF ADJUSTMENTS (BOA) **VARIANCE APPLICATION** Planning Division

Variance(s) Defined: A variance is the authority to depart from the application of areas, side yards, setback, height, and similar regulations to prevent unnecessary hardships.

APPLICATION SUBMITTAL: Applications will be *conditionally* accepted on the presumption that the information, materials and signatures are complete and accurate. If the application is incomplete or inaccurate, your project may be delayed until corrections or additions are received.

Applicant

Name: **ROBERT BANZHAF** Title: **MANAGING PRINCIPAL**
Mailing Address: **2170 BUCKTHORNE PL, SUITE 150** City: **THE WOODLANDS** State: **TEXAS**
Zip: **77380** Contact: _____
Phone: **(281) 210-0093** Email: **rob@newcorcre.com**

Owner

Name: **KELLY VIOLETTE, CECD, PCED, AICP** Title: **EXECUTIVE DIRECTOR**
Mailing Address: **29201 QUINN ROAD, SUITE B** City: **TOMBALL** State: **TEXAS**
Zip: **77375** Contact: _____
Phone: **(281) 401-4086** Email: **KVioletta@tomballtxcdc.org**

Description of Proposed Project: **COMMERCIAL DEVELOPMENT IN TOMBALL BUSINESS AND TECHNOLOGY PARK**

Physical Location of Property: **VACANT LOT LOCATED IN SOUTHWEST CORNER OF HUFMISTH-KOHRVILLE AND SPELL ROAD INTERSECTION**

[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: **LOT 4, BLOCK 1, TOMBALL BUSINESS AND TECHNOLOGY PARK SITUATED IN THE ELIZABETH SMITH LEAGUE, A-70, CITY OF TOMBALL, HARRIS COUNTY, TEXAS**

[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

HCAD Identification Number: **1342060010007** **Acreage:** **1.748 ACRES**

Current Use of Property: **VACANT LOT WITHIN TOMBALL BUSINESS AND TECHNOLOGY PARK**

Revised: 4/29/2020

VARIANCE(S) REQUESTED

Applicable Zoning Ordinance Requirements and Sections:

SEC 50 - 78(d)(2)b

Variance Requested:

REDUCTION FOR PORTIONS OF SIDE YARD SETBACK REQUIREMENTS

A description of hardship letter must be submitted in conjunction with this application. The criteria for a hardship are outlined in the attached document titled "Description of Hardship." In the letter, state variance(s) requested specifically and in detail (identify section and requirement). Please attach separate sheets(s) as necessary.

This is to certify that the information on this form is **COMPLETE, TRUE, and CORRECT** and the under signed is authorized to make this application. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

<p><small>Authentisign</small>  <small>6/3/2022 8:01:20 AM CDT</small> Signature of Applicant</p>	<p>06/02/2022 Date</p>
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<p> Signature of Owner</p>	<p>06/02/2022 Date</p>
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From: noreply@tomballtx.gov
To: [Kimberly Chandler](#)
Subject: Receipt #R01319484
Date: Monday, June 13, 2022 1:33:24 PM

401 Market Street
401 Market Street
Tomball, TX 77375
(281) 351-5484

DATE : 6/3/2022 1:40 PM
OPER : JC
TKBY : Juanita Cherety
TERM : 5
REC# : R01319484
130.0000 PLANNING AND ZONING
Variance Fees 250.00

Paid By: Variance Fees
2-CK 250.00 REF:w 243

Submittal Requirements

The following summary is provided for the applicant's benefit. However, fulfilling the requirements of this summary checklist does not relieve the applicant from the responsibility of meeting the regulations in the Zoning Ordinance, subdivision regulations, and other development related ordinances of the City of Tomball.

A complete application must include:

- **Application Fee: \$100 Residential (Except Multi-Family); \$250 Non-Residential & Multi-Family**
- **Letter explaining the variance in detail, including Description of Hardship**
- **Metes & Bounds of property**
- **Site Plan, Plot Plan, or Drawing showing the requested variance**
- **Other necessary information (maps, drawings, pictures, etc.) to explain the variance**

Payment of all indebtedness attributed to subject property must be paid with application or an arrangement in accordance with Sec. 12.1 C of the Zoning Ordinance as cited below:

(No person who owes delinquent taxes, delinquent paving assessments, or any other fees, delinquent debts or obligations or is otherwise indebted to the City of Tomball, and which are directly attributed to a piece of property shall be allowed to submit any application for any type of rezoning, building permit, or plan review until the taxes, assessments, debts, or obligations directly attributable to said property and owed by the owner or previous owner thereof to the City of Tomball shall have been first fully discharged by payment, or until an arrangement satisfactory to the City has been made for the payment of such debts or obligations. It shall be the applicant's responsibility to provide evidence of proof that all taxes, fees, etc. have been paid, or that other arrangements satisfactory to the City have been made for payment of said taxes, fees, etc.)

In granting special exceptions, the Board may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which the nonconforming use may continue to operate or exist before being brought into conformance with the provisions of this Ordinance.

The City's staff may require other information and data for specific required plans. Approval of a required plan may establish conditions for construction based upon such information.

Description of Hardship

Please provide a letter explaining the hardship, demonstrating the following (address each variance requested):

1. That literal enforcement of the provisions of the Zoning Ordinance will create an unnecessary hardship or practical difficulty in the development of the affected property.
2. That there are special circumstances or conditions affecting the land involved such that the application of the provisions of the Zoning Ordinance would deprive the owner/applicant of the reasonable use of his/her land.
3. That the variance is necessary for the preservation and enjoyment of a substantial property right of the owner/applicant.
4. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of the Zoning Ordinance.
5. That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district.
6. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area.
7. That the granting of a variance will be in harmony with the spirit and purpose of these regulations.
8. That the granting of an individual variance will not set a precedent.

*Financial hardship shall not be considered grounds for the issuance of a variance.

Request for Variance

Tomball Business and Technology Park Lot 4 Block 1

Located at Spell Road and Hufsmith-Kohrville, Tomball

Letter of Intent

May 31, 2022

Dear Members of the Zoning Board of Adjustment,

We are submitting a request for a variance on a side lot building setback from the Zoning Board of Adjustment.

The property is located at the southwest corner at the intersection of Spell Road and Hufsmith-Kohrville Road. The property is located within the Tomball Business and Technology Park and is currently vacant. The property is currently zoned Light Industrial (LI) and the proposal is to construct a 24,690 square feet (approximately) warehouse building with leasable tenant space. The development will be compatible with the surrounding uses and blend in with the character of the area. The proposed use is a permitted use in LI zone. The property utilizes an existing driveway with the Packers Plus facility to the south via dedicated shared access easement along the western property boundary. City utility easement and storm sewer easement bound the property to the west, north and south, leaving a net building area of approximately 68,000 square feet.

Location Map and Site Conditions



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The Tomball Economic Development Corporation (TEDC) has built a monument sign adjacent to the southwest corner of the intersection and this monument sign is being replatted as an open space reserve for the Business Park sign, creating an undevelopable side lot at the corner of the roadway intersection. As shown on the attached site plan, the creation of a side lot line requires an increase in the building setback, thus reducing the potential building footprint.

Site Picture



The business park covenants and restrictions mirror the same requirements for side lot setbacks (25 feet), and the variance request will require TEDC Board approval. The variance application with the TEDC is pending City of Tomball Board of Adjustment approval.

The property has unique characteristics:

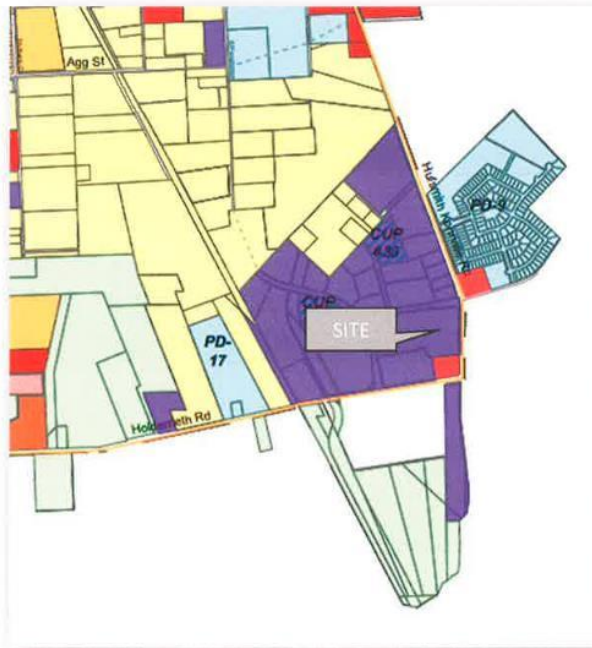
- The location of the property along two streets (an arterial and a local road) requires two "front yards" area the street
- The east side of the property abutting Hufsmith-Kohrville has multiple easements, a 20-foot wide City utility easement and a 25-foot wide drainage easement
- The west side of the property has a City utility easement and a 40-foot wide shared access easement
- Location of the EDC monument sign reserve - If the sign were located within an easement instead of a platted reserve, the setbacks would be in conformance. The platting of the reserve moved the property line rendered the setback non-complaint

We had a pre-development meeting with staff a few weeks back and while we are meeting, if not exceeding most of the requirements, our proposal will require a variance from the side yard building setback requirement.

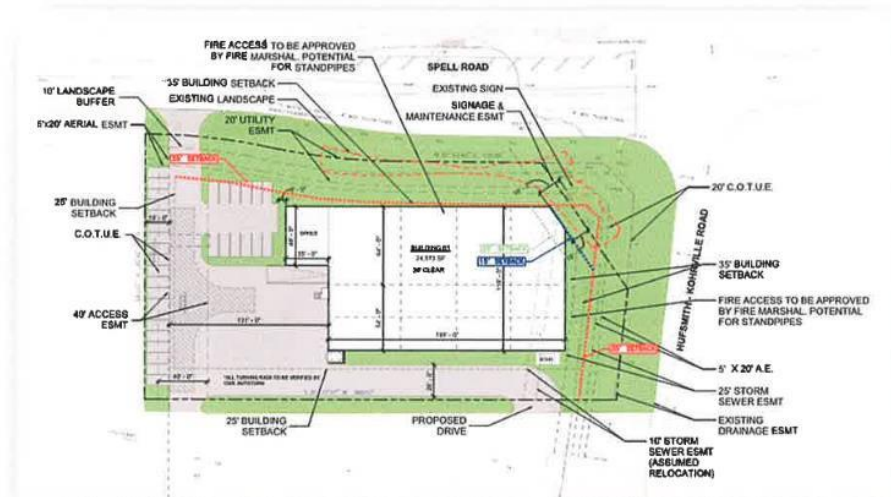
Zone: LI			
	Required	Proposed	Result
Min. lot area	5,000 sq. ft.	76,162 sq. ft.	Exceeds
Min. lot depth	100 feet	217 feet	Exceeds
Min lot width	50 feet	389 feet	Exceeds

Min. Yard Setback (North side)	COT – 25 feet TEDC Covenants and Restrictions – 35'	35 feet	Meets
Min. Yard Setback (East side)	COT - Where a lot faces a designated arterial street, the yard shall be a minimum of 35 feet.	55 feet	Exceeds
Min Yard Setback (West Side)	25 feet	100+ feet	Exceeds
Min. Yard Setback (South side)	25 feet	25 feet	Meets
Min. Yard Setback (Northeast)	25 feet (side yard setback)	15 feet	Variance required to reduce the building setback requirement

Zoning Map



Site Plan



We request consideration of the variance for a side lot setback of 15 feet in lieu of the required 25 feet for the following reasons:

- The requested variance does not jeopardize the minimum yard setbacks from Spell Road or Hufsmith-Kohrville of 35 feet as the building will meet or exceed the requirements.
- The side lot setback is from an undevelopable lot currently being used as the business park's monument sign and landscaping
- Granting the variance will not have any adverse impact on roadway safety or sight distances.
- This situation is not self-imposed or self-inflicted and is a result of the reserve required for the monument sign installed by the Tomball Economic Development Corporation that will benefit the entire area and the City.
- This situation is unique to this property and does not apply to other properties in the area. Granting of this variance will not set a precedent.
- The reduction in the yards will allow the site to be developed to its maximum economic development potential and add value without adversely impacting surrounding properties and their future development.
- Granting of the variance will not be detrimental to the public health and safety, or injurious to other property within the area.
- Granting of a variance will be in harmony with the intent of the Comprehensive Plan and the zoning code.

In summary, we respectfully request you to consider this variance favorably. We are looking forward to investing in the community. Our development will add light industrial and commercial uses for the city, create new jobs, spur economic development in the area, beautify this corner, and add value to surrounding properties.

Sincerely,

