

Board of Adjustments (BOA) Staff Report

Board of Adjustments Hearing Date: December 8, 2022

BOA Case P22-368: Request by Church Engineering Services, represented by Hammonds Construction for a variance from Section 50-78 Light Industrial (LI) District of the Tomball Code of Ordinances to allow for encroachment of 10-feet into the ordinarily required 25-foot street side setback. The property is legally described as being Lot 2, Block 1 of Tomball South Commercial. Located within the 21300 block of Hufsmith-Kohrville Road (west side), within the City of Tomball, Harris County, Texas.

Property Owner(s): Church Engineering Services Inc.
Applicant(s): Hammonds Construction
Legal Description: Lot 2, Block 1 of Tomball South Commercial
Location: 21300 block of Hufsmith-Kohrville Road (west side) (Exhibit “A”)
Lot Area: 6.93 acres
Present Zoning & Use: Light Industrial (LI) (Exhibit “B”) / Vacant (Exhibit “D”)
Comp Plan Designation: Business Park and Industrial (Exhibit “C”)
Adjacent Zoning & Land Uses:
North: Light Industrial (LI) / Vacant
South: Light Industrial (LI) / Construction Contractor Office/Storage
West: Light Industrial (LI) Conditional Use Permit (CUP) / Manufacturing & Warehouses, CUP to allow soap, detergent, cleaning product manufacturing
East: Planned Development (PD #9) / Single Family Residences

BACKGROUND

The subject property has been located within the City of Tomball since at least 1909. The property has remained vacant since that time. In 2008, when the City of Tomball adopted zoning the property was placed within an Agricultural (AG) zoning district. In 2009, the City of Tomball adopted its first Comprehensive Plan “Vision 2030”. The Future Land Use Plan found in the “Vision 2030” Comprehensive Plan identified the subject site as being located within Rural Residential and Business/Industrial. In 2012, the subject site was officially rezoned to its current Light Industrial zoning designation. Earlier this year city staff held pre-development meetings with the applicants to discuss plans to build office/warehouses on the subject site. With this development, there are plans to replat the property. With this replat, the owner plans to create a public cul-de-sac street projecting west from the western right-of-way boundary of Hufsmith-

Kohrville Road that will service the overall development. The applicant is seeking TWO (2) 10-foot variances from the ordinarily applicable 25-foot street side building setback that will be required from this planned future roadway. According to information provided within the application these variances will serve to help facilitate the construction of TWO proposed buildings that are to be developed within this industrial park. If approved, the variances would allow ONE (1) building on the north side of the proposed roadway to be as close as 15 feet to the southern property line and ONE (1) building on the south side of the proposed roadway to be as close as 15 feet to the northern property line.

ANALYSIS

According to Section 50-33 (f) (Variances) When reviewing variance requests the Board of Adjustments should consider:

Section 50-33(f.4) (Findings of Undue Hardship)

1. The literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property.
 - a. No, the literal enforcement of the code does not create an unnecessary hardship or difficulty.
2. That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district:
 - a. No, the situation causing the hardship is self-imposed.
 - b. According to the information provided by the applicant there are two easements that are contributing to the apparent hardship.
 1. The first is an AT&T building and the associated easement. This building and associated easement fall almost entirely within the required 35-foot building setback from Hufsmith-Khorville Road and have no apparent effect on the building placement for this site according to the concept plan submitted with the application.
 2. The second is an existing 30-foot-wide Tandem Energy pipeline easement along the southern boundary of the site. This easement is 5 feet wider than the required 25-foot building setback required from this property boundary.
 - I. The graphic concept plan provided with the application submitted illustrates “Building 5” within this overall development. Building 5 is unaffected by the existing 30-foot easement. Therefore, the property overall does not appear to be burdened by this existing easement. Furthermore, the planned lots that “Building 3” and “Building 1” are to be located on are not directly affected by this 30-foot wide easement which is located on a separate lot within the development.
3. That the relief sought will not injure the permitted use of adjacent conforming properties:
 - a. Yes, the granting of the variances does not appear to injure permitted uses of adjacent properties.
4. That the granting of a variance will be in harmony with the spirit and purpose of this chapter:
 - a. Yes, in most zoning designations within the City of Tomball there is a differentiation between front yard setbacks, side setbacks, and side street setbacks. Where these setbacks are differentiated the standard setback for side yards adjacent to a street is fifteen (15) feet; as opposed to the standard 25-foot front yard setback applicable in commercial zoning districts (General Retail (GR), Office (O), Commercial (C)). However, within the Light Industrial (LI) zoning district where the subject site is located, there is no such distinction made between the side setback

and the side street setback. Leaving staff to interpret that the required side setback of Twenty-Five (25) feet is applicable to the planned side street boundaries. Subsequently, it is the opinion of city staff that the requested 15-foot setback from the proposed street (which may be viewed as a side street) may not appear out of character with standards ordinarily applicable within other commercial zoning districts in the City of Tomball.

Section 50-33(f.5) in the Code of Ordinance states:

1. Self-inflicted hardship. A variance shall not:
 - a. Be granted to relieve a self-created or personal hardship.

Given that the apparent hardship preventing the development of this site appears self-imposed, according to Section 50-33(f.5), a variance should not be approved.

RECOMMENDATION

City Staff has reviewed the request and recommends denial of **BOA Case P22-368**.

The hardship on site appears to be self-imposed. The literal enforcement of the ordinary setback standards does not create an undue hardship or practical difficulty in the development of this property.

PUBLIC COMMENTS

A Notice of Public Hearing was published in the paper and property owners within 300 feet of the project site were mailed notification of this proposal on November 18, 2022. Public responses will be provided in the Board packets or at the meeting.

EXHIBITS

- A. Aerial Location Map
- B. Zoning Map
- C. Future Land Use Map
- D. Site Photo
- E. Comprehensive Plan
- F. Application

Exhibit "A"
Aerial Location Map



Exhibit "B" Zoning Map

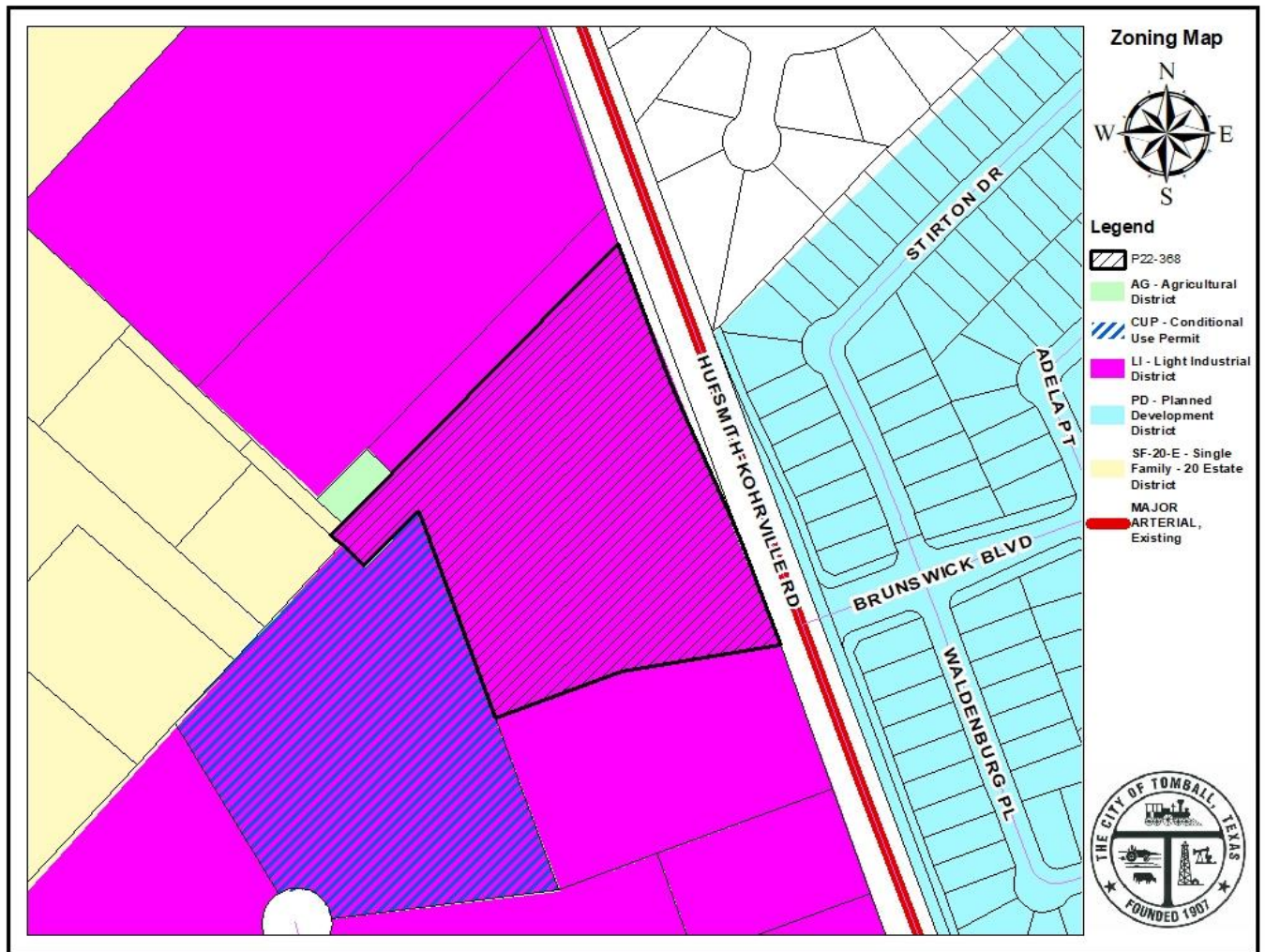


Exhibit "C"
Future Land Use Map

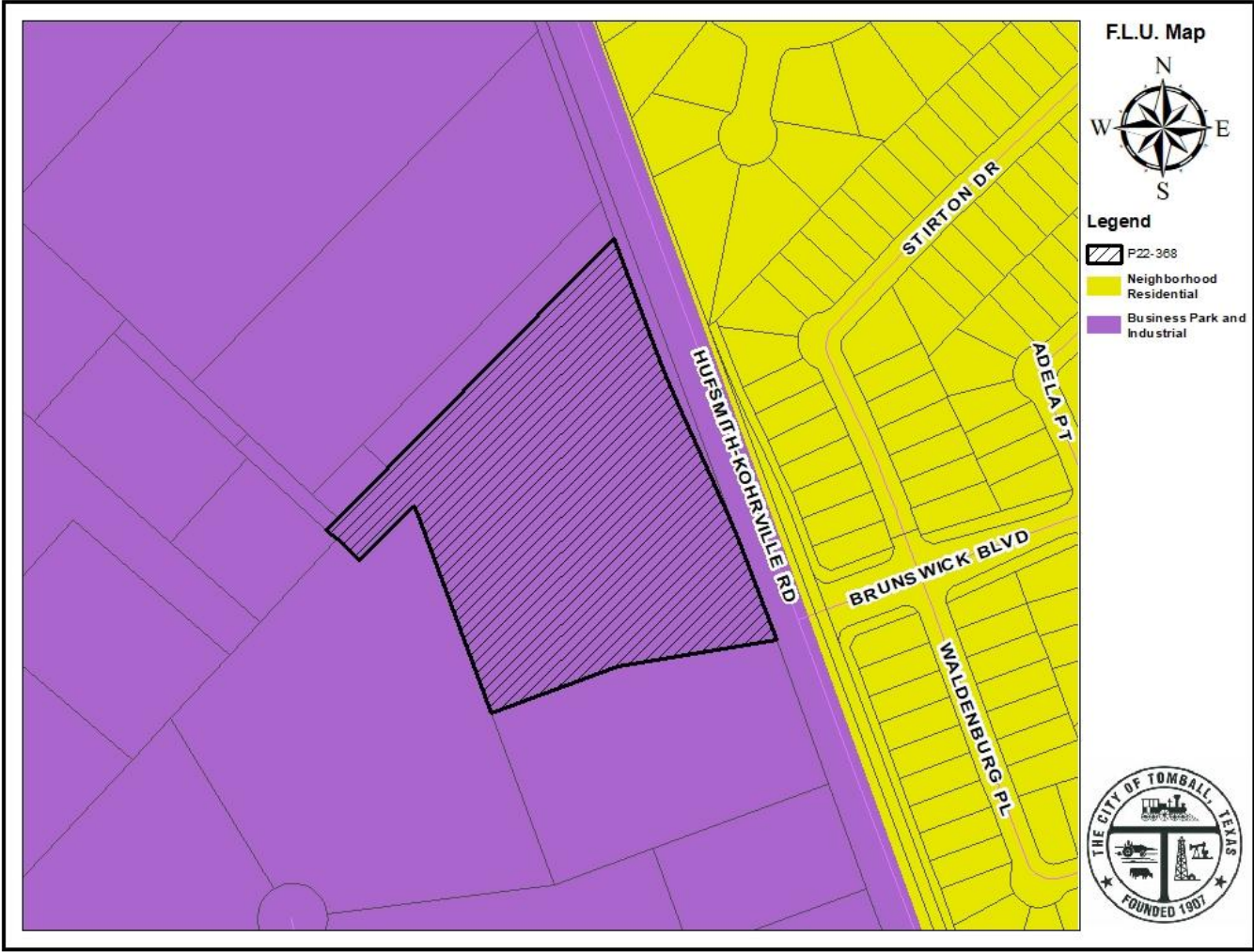


Exhibit "D"
Site Photos

Subject Property



Neighboring Property (north)



Neighboring Property (south)



Neighboring Property (east)



Neighboring Property (west)



Neighboring Property (northwest)



Exhibit "E"
Application

RECEIVED (KC)
10/26/2022

Revised: 4/29/2020
P&Z 22-368
\$500.00 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: Cory Rutledge - Hammonds Construction Title: Project Manager
Mailing Address: 2245 Texas Dr #300 City: Sugar Land State: TX
Zip: 77479 Contact: Cory Rutledge
Phone: (214) 886-7781 Email: crutledge@hammonds-construction.com

Owner

Name: Church Engineering Services Title: Owner
Mailing Address: PO Box 12029 City: Spring State: TX
Zip: 77391-2029 Contact: Josh Mueller
Phone: (713) 614-7694 Email: joshuamueller@churchholdings.com

Description of Proposed Project: Hufsmith Kohrville Industrial Business Park

Physical Location of Property: See below:
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: See below:
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

HCAD Identification Number: 1320030010002 **Acreage:** 6.93

Current Use of Property: Wooded lot - no current use

Location: West side of Hufsmith Kohrville approx 1,000ft north of Spell Rd.
Property just north of Creacom, Inc. facility.

Legal Description: Lot two (2), in Block One (1) of TOMBALL SOUTH COMMERCIAL, a subdivision in Harris County, Texas, according to the map or plat thereof recorded under Film Code Number 632199 of the Map Records of Harris County, TX.

VARIANCE(S) REQUESTED

Applicable Zoning Ordinance Requirements and Sections:

Chapter 50-78(d) (2)b. Minimum side & rear yard: 25 feet

Variance Requested:

Side/rear yard of proposed buildings to have 15' yard to
ROW of proposed public street.

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.

X  _____ Signature of Applicant	10/25/22 _____ Date
X  _____ Signature of Owner	10/25/2022 _____ Date

From: noreply@tomballtx.gov
To: crutledge@hammonds-construction.com; Kimberly Chandler
Subject: Receipt #R01339270
Date: Wednesday, October 26, 2022 9:28:01 AM

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

DATE : 10/26/2022 9:24 AM
OPER : RP
TKBY : RP
TERM : 2
REC# : R01339270
130.0000 PLANNING AND ZONING
hufsmith-kohrvile ind business park hammonds construction 500.00

508.0000 CREDIT CARD FEES-GENERAL FUND
100-5561 15.00

Paid By:hufsmith-kohrvile ind business park hammonds construction
4-CC 515.00AUTH:284254 REF:p amex 3589

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:

500.00

- **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.



2245 Texas Dr., Suite #300
Sugar Land, Texas 77479
OFFICE 346.309.2726 FAX 281.754.4211

October 25, 2022

City of Tomball - Zoning Board of Adjustments
501 James St
Tomball, TX 77375

DESCRIPTION OF HARDSHIP

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. The enforcement of the 25' yard space adjacent to the proposed road compresses the developmental area of the property such that it makes the development for the designated use impractical. Specifically, it compresses truck apron space between buildings greatly limiting access. A variance providing relief from 25' yard space to 15' yard space resolves this difficulty.
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. Special conditions impacting this property include an existing AT&T building and pipeline easement which already limit the developmental area especially in the North/South direction. Further condensing the property with 25' yard space requirements will deprive the owner of the ability to reasonably develop the property.
3. That the variance is necessary for the preservation and enjoyment of a substantial property right of the owner/applicant. The requested variance from 25' yard space to 15' yard space is necessary to facilitate the owner developing the property into a valuable business park in the City of Tomball.
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. Granting this variance will have no effects outside of the subject property itself. The proposed road and yard space are all contained within the interior of the property and will not prevent the orderly use of any other property.
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. The situation causing the difficulty is the result of the specific property conditions noted above. They are not self-imposed and do not affect 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. Granting of the requested variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area. To the contrary, granting of the variance will result in a higher quality development benefitting the City of Tomball and other properties in the area. The variance allows for adequate access around the proposed business park which will increase safety for vehicle traffic, reduce congestion and improve the aesthetic appeal of the development for the residents of, and visitors to, the City of Tomball.
7. That the granting of a variance will be in harmony with the spirit and purpose of these regulations. Granting the variance is in harmony with the spirit and purpose of these regulations. The result of the variance allows for a first-class development in the City of Tomball benefitting the City and residents.
8. That the granting of an individual variance will not set a precedent. The owner/applicant note that granting of this variance will not set a precedent.

Sincerely,

A handwritten signature in red ink, appearing to read 'Cory Rutledge', is written over a horizontal line.

Cory Rutledge
HAMMONDS CONSTRUCTION LLC
crutledge@hammonds-construction.com

