

**Board of Adjustments (BOA) Staff Report**

Board of Adjustments Hearing Date: December 14, 2023

**Case:** BA23-03  
**Property Owner(s):** Edon Veliu  
**Applicant(s):** KO Design Group  
**Legal Description:** Lot 1, Block 1 of Boyce Subdivision  
**Location:** 308A East Main Street  
**Lot Area:** Approximately 0.15 acres (6673 square feet)  
**Comp Plan Designation:** Old Town (Exhibit “C”)  
**Present Zoning & Use:** Old Town & Mixed Use (Exhibit “B”) / Vacant Commercial Building (Exhibit “D”)

**Adjacent Zoning & Land Uses:**

**North:** Single Family Residential - 6 (SF-6)/Residence  
**South:** Old Town & Mixed Use (OT&MU)/Office  
**West:** Old Town & Mixed Use (OT&MU)/Residence  
**East:** Old Town & Mixed Use (OT&MU)/Residence

**BACKGROUND**

The Request is for a total of four variances. Two of the variances being requested are 15-foot variances from Section 50-79, subsection (e)(2)(c) (*Area Regulations for Nonresidential Uses*), which establishes a minimum side yard setback of 20-feet for commercial buildings within Old Town & Mixed Use (OT & MU) zoning when adjacent to single-family residential zoning district *or* uses. If approved as requested, these variances would allow the construction of a commercial building as close as 5-feet to the east and west property lines which separate the subject property from existing single-family residences (within Old Town & Mixed Use (OT&MU)) zoning. The remaining two variances being requested are 10-foot variances from Section 50-115 (*Screening, Buffering and Fencing Requirements*), subsection (b)(1)(c) which states when a commercial use is established on a building site located adjacent to any residential area, a minimum 10-foot wide landscaped open-space buffer shall be installed, said buffer must also include an minimum 6-foot opaque screening wall/fence along the shared property boundary. If approved as requested, these variances would not require the establishment of a 10-foot-wide open space buffer along the east and west property lines which separate the subject property from the existing single-family residences (within Old Town & Mixed Use (OT&MU)) zoning, however the applicants do intend to construct the required opaque screening wall/fence as required by this section.

## ANALYSIS

Section 50-33 (f.4) defines certain criteria for the Board of Adjustment to consider when making decisions to grant a variance request. City staff has reviewed the requests as well as the criteria for approval and have determined the following:

1. That literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property:
  - a. BUILDING SETBACK VARIANCES (Exhibit E):
    - i. Yes, the literal enforcement of required 20-foot building setbacks from the east and west property boundaries will result in a “buildable area” that would accommodate a building as wide as approximately 8-feet in width.
  - b. BUFFER YARD VARIANCE (Exhibit F):
    - i. Yes, the literal enforcement of the required 10-foot-wide buffer yard along the east and west property boundaries will squeeze the developable area of the subject property to approximately 19-feet in width at the narrowest point, where a portion of the lot was previously “notched out” during the platting process. While the 10-foot buffer yard creates a developable area of approximately 29-feet in width at the widest portion of the lot. According to the Tomball Code of Ordinance these land use buffer yards must be vegetative and clear parking spaces and/or parking maneuvering areas. These required 10-foot-wide buffer yards result in constricted parking and vehicle maneuvering areas that prevent the development from meeting the minimum parking standards required to accommodate vehicular traffic which would be created by the permitted commercial development of the property. Specifically, the constriction of the vehicle parking & maneuvering areas does not allow the minimum drive aisle width necessary to accommodate two-way traffic (24-foot minimum) and/or the minimum number of required parking spaces for the planned use of the property (Art Gallery = 1 space: 500 sqft). The planned square footage of the proposed art gallery is 1500 square feet which requires a minimum of THREE (3) parking stalls, two measuring 9-feet in width and one being ADA van accessible measuring 11-feet in width for a total parking stalls width of 29-feet.
2. The situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district:
  - a. The hardship is not self-imposed, the difficulty is caused by the irregular shape of the platted lot and the relatively narrow nature of the parcel of land paired with the existing condition of single-family residential homes neighboring the property to the east and west. The literal enforcement of the standards would deprive the owner of the commercial use of the land permitted in the Old Town & Mixed-Use zoning district.
3. The relief sought will not injure the permitted use of adjacent conforming properties:
  - a. City staff does not believe that the relief being sought will injure the permitted uses of the adjacent conforming properties given that all neighboring lots being utilized for residential purposes are within the Old Town & Mixed Use (OT &MU) zoning. A zoning designation was created to promote single-family residential uses alongside commercial uses. Furthermore, the subject property, as well as the neighboring properties’ frontages are located along E. Main Street (FM 2920). Lots located along major arterial streets such as this are routinely considered to be appropriate for commercial activity.

4. The granting of the variance(s) will be in harmony with the spirit and intent of this chapter (Chapter 50 – Zoning):
  - a. The subject property, as well as the neighboring properties being utilized for single-family residential purposes are all located within the Old Town & Mixed-Use (OT&MU) zoning district. This zoning designation is intended to foster a mixture of commercial/retail uses near single-family and multi-family residential uses. The relief sought by the applicant will allow the establishment of commercial uses alongside the existing single-family residential land uses as intended by OT&MU zoning.

### **RECOMMENDATION**

City Staff has reviewed the request and recommends approval of **BOA Case BA23-03**.

### **PUBLIC COMMENTS**

Property owners within 300 feet of the project site were mailed notification of this proposal and a notice of public hearing was published in the Potpourri on November 29, 2023. 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(s)
- E. Setback Exhibit
- F. Buffer Yard Exhibit
- G. Application

Exhibit "A"  
Aerial Map



# Location



Exhibit "B"  
Zoning Map

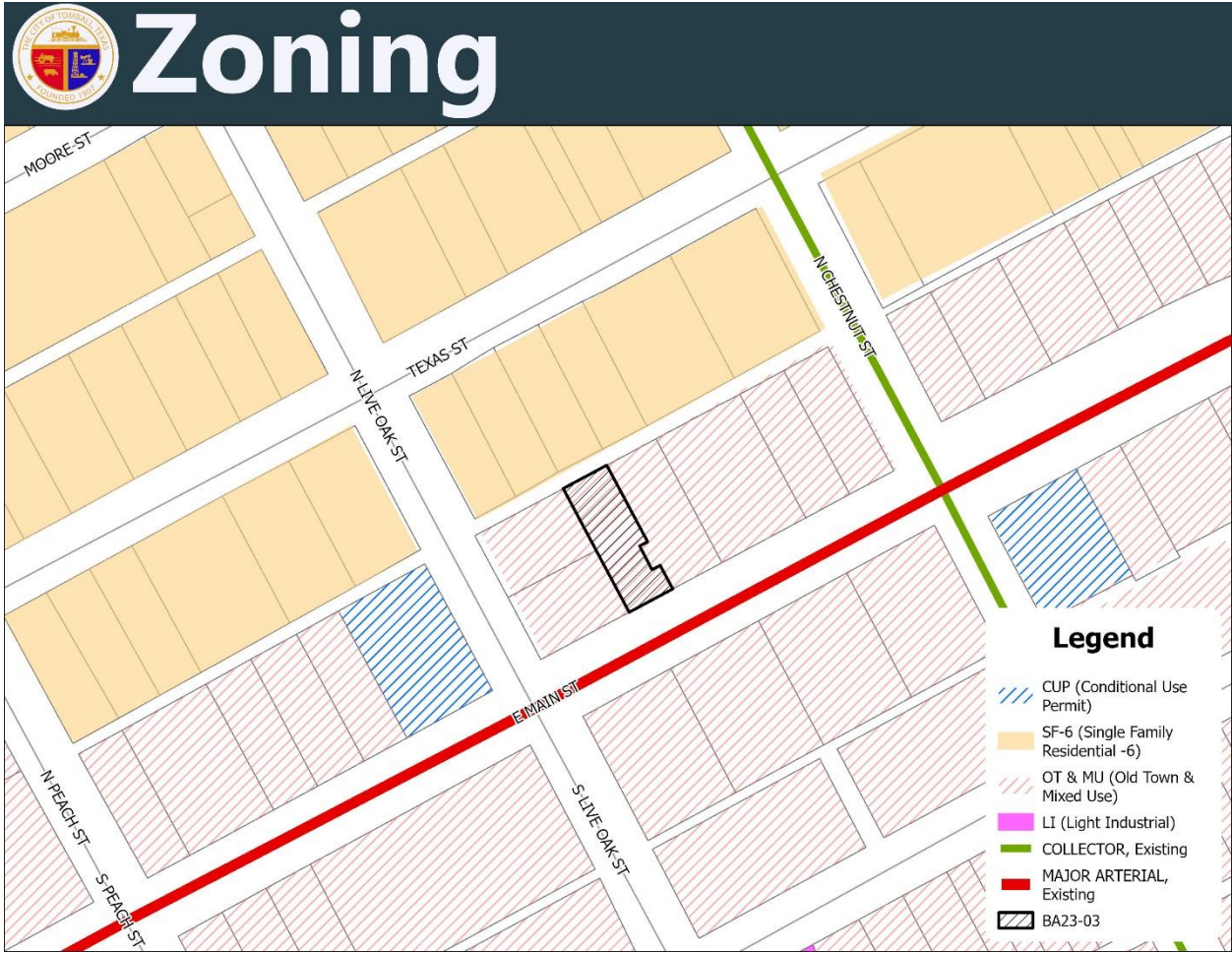


Exhibit "C"  
Future Land Use Map



**Exhibit "D"**  
**Site Photo(s)**

**Subject Property**



**Neighboring Property (East)**



# Neighboring Property (West)



# Neighboring Property (south)





## Neighboring Property (North)

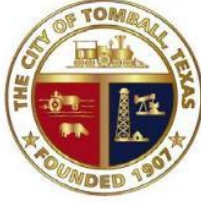




# Exhibit "G" Application

RECEIVED (KC)  
11/02/2023

Revised 5/19/15



## ZONING BOARD OF ADJUSTMENTS (BOA) VARIANCE APPLICATION Community Development Department 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. Refer to Section 50-33(f) of the Code of Ordinances for additional information. No variance shall be granted for any requirement outside Chapter 50 of the Code of Ordinances.

**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: William Kalkman Title: Architect  
Mailing Address: PO Box 15831 City: Houston State: TX  
Zip: 77220  
Phone: (832) 482-1650 Fax: ( ) Email: wk@kodesigngroup

### **Owner**

Name: Edon Veliu Title: Owner  
Mailing Address: 29 Spurwood Ct City: The Woodlands State: TX  
Zip: 77381  
Phone: (281) 330-9313 Fax: ( ) Email:

Description of Proposed Project: 308A Main Studio

Physical Location of Property: 308A East Main St  
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: Boyce Lt 1 Block 1  
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

HCAD Identification Number: 1501120010001 Acreage: 0.1531

Current Use of Property: Commercial

VARIANCE(S) REQUESTED

Applicable Zoning Ordinance Requirements and Sections:

Sec 50-79 - 20 ft Building setbacks abutting residential uses/district.
Sec 50-115 10 ft wide landscape buffer on east and west sides.

Variance Requested:

Reduction to 5 ft building setbacks on east and west sides.
Removal of the landscape buffer on east and west sides.

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] 11/01/23
Signature of Applicant Date

X [Signature] 11/01/23
Signature of Owner Date

## 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 Section 50-36(a)(3) of the Code of Ordinances 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.**



November 2, 2023

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

Subject: Request for variance

Dear: Board of Adjustments

The purpose of this letter is to request a variance to redevelop the lot at 308A Main. We are requesting variances for Section 50-79 for building setbacks, and section 50-115 Screening buffers.

The first variance request is to allow for five feet (5') building line setback for the east and west sides of the property in lieu of the twenty (20') building line setback required for a property butting a residential lot. We would like to use the more standard setback for commercial type uses of five feet (5').

The second variance request is to allow for the removal of the landscape buffer requirement for the east and west sides of the property in lieu of the ten (10') landscape buffer required for a property butting a residential lot.

The literal enforcement of the Zoning Ordinance will not allow the development of the site since the allowable building width would be nine (9) feet with the current building setbacks. We intend to provide the privacy fence on the sides but the landscape buffer would reduce the building area and not provide a usable footprint for our proposed building. Our new proposed design is providing a buffer and building setback that is not currently provided with the current building. The new proposed design provides improved life safety for the overall area.

This variance is necessary to redevelop the site and provide a new development along the main street corridor. Our goals it to improve the surrounding community with a new building and business. The project will promote an increase in the economy and will impact the area in a positive way.

Granting this variance will not be detrimental to the public health, safety, or welfare of the communities neighboring. It will not be injurious to other properties, and it would encourage other properties to be develop and bring more activities to the area.

This variance acceptance will be in harmony with local regulations and the layout is created to align with surrounding neighborhoods to make the project fit right in and be part of the community.

If you have any questions, please contact me at 832.482.1650

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'W. Kalkman', is written over a light blue horizontal line.

William Kalkman  
Principal

[www.KODesigngroup.net](http://www.KODesigngroup.net)



