City of Bastrop

Agenda Information Sheet:

Zoning Board of Adjustment Meeting Date: **April 6, 2016**
BOAV16:03 **Agenda Item #6**

Public Notice Description:
Consideration and possible action on a Variance to Zoning Ordinance, Section 28.4.B.1, to allow a 10 foot setback where 25 feet is required for the front yard setback for 905 College being +/-0.137 acres within Building Block 18 East of Water Street located between College and Gutierrez Streets within the City Limits,

Owner/Applicant: Lenor DeLaRosa and Rosa Molloy
Location: 905 College Street
Utilities: City water, sewer, and electric
Zoning: C-1, Commerial-1, Light

Existing +/- 0.137 acres, lot location

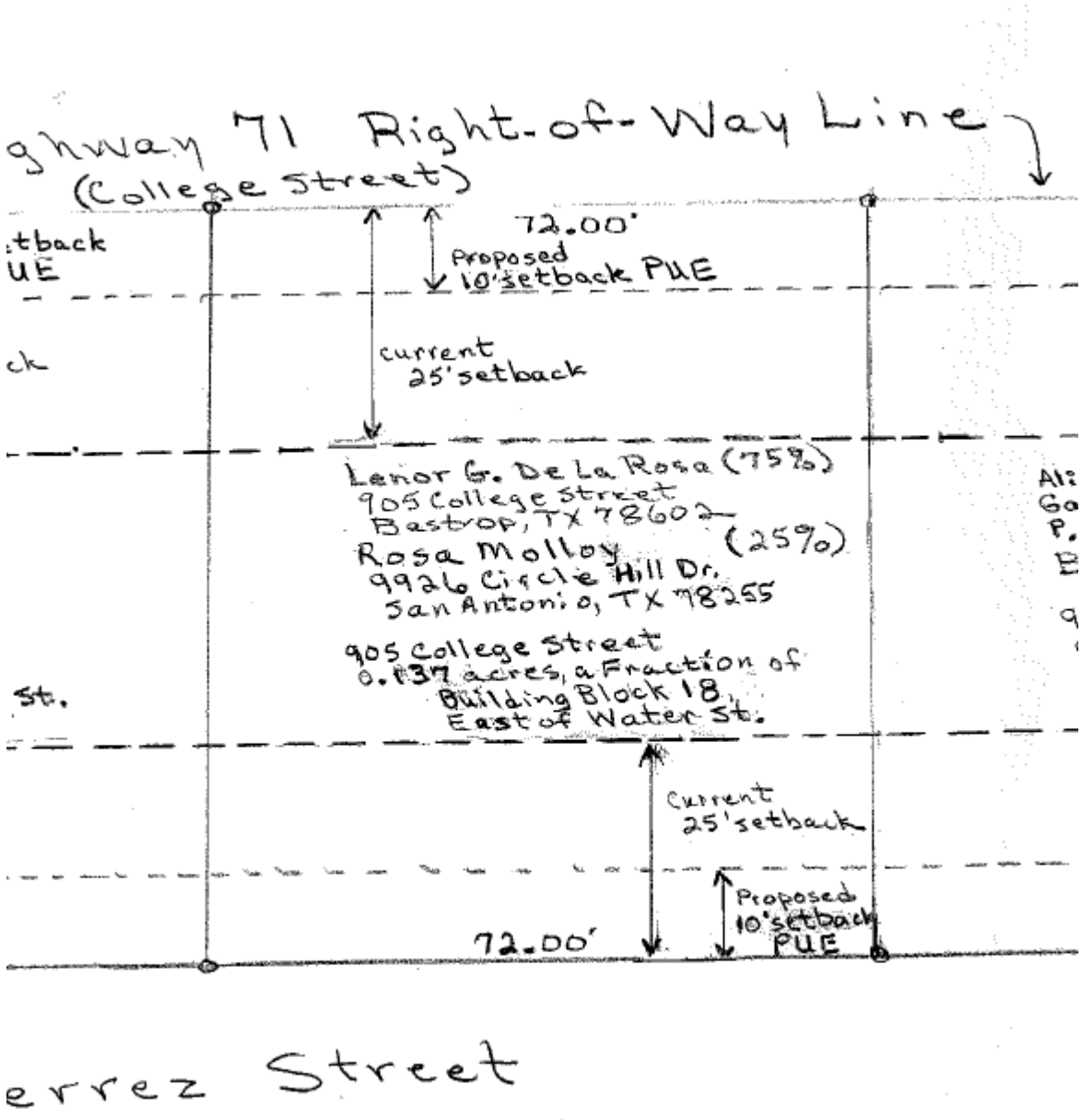
Background:
This property is one of three that have applied for a variance on this block between Paul C. Bell, Gutierrez Street and College Streets. Other applications will be under a separate agenda item. This property is listed for sale. These properties (901, 905, and 907 College) were rezoned as part of a city initiated rezoning from, SF-7, Single Family-7 to C-1, Commercial (Light) and approved by City Council on May 27, 2014.

Request:

Variance to Zoning Ordinance, as requested by Lenor DeLaRosa and Rosa Molloy, for 905 College Street located south of Highway 71 between College Street, and Gutierrez Street. The Applicant is requesting a variance to both the front setback from both Gutierrez, and College Streets.

This property would be required to have a 25' (foot) setback from each street and the applicant is asking for a reduced setback of 10 '(ten feet) instead of the 25 feet required. There is a current home located on the property and current lot width is 72 feet and depth is 83.33 feet or 6,000 square feet. Functionally this would leave the buildable area to 52 feet by 33.33 feet or 1,733 square feet. This variance would facilitate future construction of potentially a new structure on the site. The variance would increase the buildable area to 52 feet by 63.33 feet or 3,293 square feet.

Layout of lot



Variances requested to allow the buildable area of the property to be larger to allow commercial development. These properties were reduced in size with the imminent domain by TxDOT for construction of Highway 71, back in 1958.

The applicant is requesting a variance prior to the development or redevelopment of these properties for commercial.

Utilities are available to the site and any extensions that might be required as part of the site development/building permit application will be at the owner/applicants expense. The owner/applicant will be required to follow all other building code requirements.

Google Street View- College Street May 2011

Google Street View- Gutierrez Street May 2011

Variance Criteria:

The Board of Adjustment may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance. In granting a variance, the Board shall prescribe only those conditions that it deems necessary to or desirable in the public interest. In making the findings hereinafter required, the Board shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who reside or work in the proposed use, and the probable effect of such variance upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity.

Criteria for Findings

A. In order to grant a variance from these zoning regulations, the Board of Adjustment must make written findings that undue hardship exists, using the following criteria:

   1. Special circumstances or conditions exist which affect the land involved such that the strict application of the provisions of this ordinance would deprive the applicant of reasonable use of the land.

The property is unique it that is has three "frontages" on existing public streets. With the acquisition of right of way (ROW) for Highway 71/College Street the remaining Block 18 which was approximately 333.33 by 333.33 is reduced to only 83.33 feet deep. 250 feet was acquired by TxDOT for Highway 71 construction.

2. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.

   The owners wish to develop/redevelop these properties to work for commercial uses, with limited lot depth the setback from the streets greatly reduce the potential developable area. The 10' (ten feet) requested will still allow for appropriate PUE easements.

3. Granting of the variance will not be detrimental to the public health, safety or welfare or Injurious to other property in the area, and the spirit of the ordinance will be observed. Variances may be granted only when in harmony with the general purpose and intent of this ordinance.

   This area is unique between the frontage roads of Highway 71 (College Streets) and the existing ROW of Gutierrez Street (Newton Street).

4. Granting of a variance will not have the effect of preventing the orderly use of other land in the area in accordance with the provisions of this ordinance.

   The reduce setbacks are applicable to this Building Block 18 and could be applicable to other blocks similarly situated being Building Block(BB) 3, BB 23 and BB38 and BB43 that were recently rezoned to C-1, Commercial (Light) between College Street (frontage Road) and Newton Streets.

5. The Applicant's practical difficulties and/or unnecessary hardship arise from unusual conditions or circumstances pertaining only to the Property, which difficulties and/or hardship are not shared generally by other parcels in the neighborhood of the Property.

   This is a unique set of parcels that was drastically changed with acquisition of Highway 71 ROW.

B. A variance is to be denied if conditions or circumstances relied on for a variance were created by a person having an interest in the property.

   The owners/applicant family (Gutierrez) has owned this property since at least 1920 and owned this property prior to ROW acquisition. This property has been in its current configuration since 1958. The owner/applicant is applying for this variance prior to applying for site development or building permits.

C. Financial hardship to the applicant, standing alone, shall not be deemed to constitute a hardship.

D. The applicant bears the burden of proof in establishing the facts justifying a variance.

Comments: Six (6) adjacent property owner notifications were mailed 3/17/2016. As of this date one (1) property owner responses have been received in favor of the variance request.

Basis of Support:

Staff recommends approval of the Variance to Zoning Ordinance, Section 28.4.B.1, to allow a 10 foot setback where 25 feet is required for the front yard setback for 905 College being +/- 0.137 acres within Building Block 18 East of Water Street located between College and Gutierrez Streets within the City Limits.

Recommended Action:
Staff has recommended approval and provided factual comments above in relation to the variance criteria for the Board's consideration. The applicant has also provided a letter and documentation supporting their request. Additional comments may be provided at the meeting based upon additional testimony that may be provided during the hearing.

Adopt findings in the form that renders the Board's position to "grant" or "deny" the request.

City Contact:
Melissa M. McCollum, AICP, LEED AP, Director Planning and Development Department

Attachments:
Letter from property owner, survey, location map, and findings of fact

905 College
Property Location Map

Legend

905 College

City of Bastrop
Board of Adjustments

Applicants (Alice Gutierrez, Lenor DeLaRosa, Rosa Molloy, Gary Gutierrez and Jeanette Gutierrez) request a setback variance on Building Block 18, East of Water Street, which is 901, 905 and 907 College Street. This is the remaining portion of Building Block 18, East of Water Street, which was left after the majority, due to imminent domain, was used in 1958 to construct Highway 71 as it is today.

This remaining portion of the Building Block 18, East of Water Street, is 83 feet by 333 feet. It is zoned C1 Commercial with 25 foot setback requirements. The setback requirements deprive the applicants of reasonable use of the land. With this entire property bordered on all four sides by public streets the 10 foot setback would still allow ample space for sidewalks and public utility easements.

Respectfully submitted,

Alice Gutierrez — 2/17/2016
Alice Gutierrez — Date

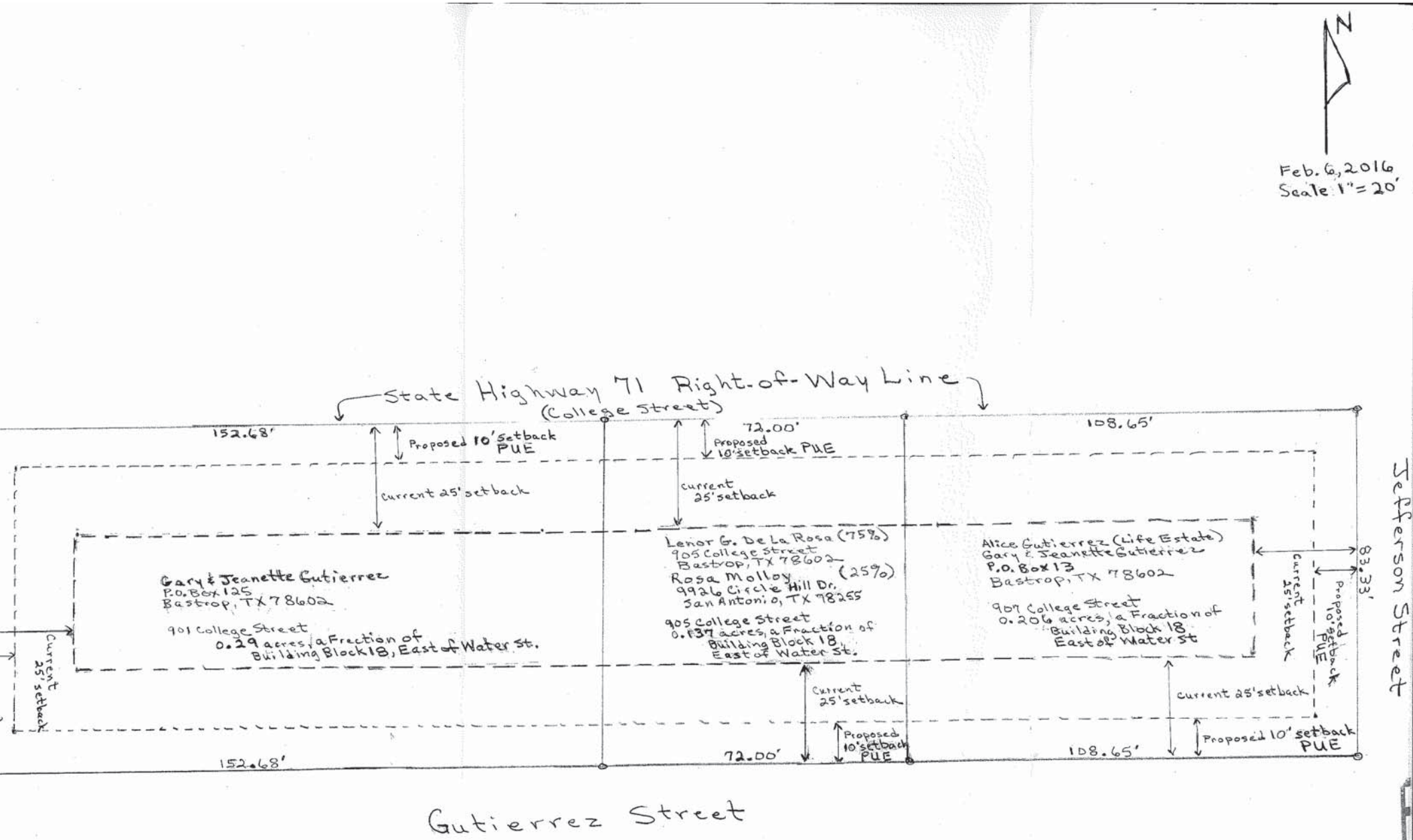
Lenor DeLaRosa — 2/6/2016
Lenor DeLaRosa — Date

Rosa Molloy — 2/6/2016
Rosa Molloy — Date

Jeanette Gutierrez — 2/2/2016
Jeanette Gutierrez — Date

Gary Gutierrez — 2/2/2016
Gary Gutierrez — Date

RECEIVED
FEB 18 2016
By MM


N
Feb. 6, 2016
Scale 1" = 20'
State Highway 71 Right-of-Way Line
(College Street)
152.68'
Proposed 10' setback PUE
current 25' setback
72.00'
Proposed 10' setback PUE
current 25' setback
108.65'
Gary & Jeanette Gutierrez
P.O. Box 125
Bastrop, TX 78602
901 College Street
0.29 acres, a Fraction of
Building Block 18, East of Water St.
Lenor G. De La Rosa (75%)
905 College Street
Bastrop, TX 78602
Rosa Molloy (25%)
9926 Circle Hill Dr.
San Antonio, TX 78255
905 College Street
0.137 acres, a Fraction of
Building Block 18,
East of Water St.
Alice Gutierrez (Life Estate)
Gary & Jeanette Gutierrez
P.O. Box 13
Bastrop, TX 78602
907 College Street
0.206 acres, a Fraction of
Building Block 18
East of Water St
83.33'
current 25' setback
Proposed 10' setback PUE
Current 25' setback
Current 25' setback
Proposed 10' setback PUE
current 25' setback
Proposed 10' setback PUE
152.68'
72.00'
108.65'
Jefferson Street
Gutierrez Street

NOTICE OF PUBLIC HEARING
BASTROP ZONING BOARD OF ADJUSTMENT

Dear Property Owner:

The Bastrop Zoning Board of Adjustment will conduct a public hearing in the City Council Chambers, 1311 Chestnut Street, Bastrop, Texas on Wednesday, April 6, 2016 at 6:00 p.m. to consider the following request:

Variance to Zoning Ordinance, Section 28.4.B.1, and 28.4.B.3, to allow a 10 foot setback where 25 feet is required for the front, and exterior side yard setback for the following three properties zoned C-1, Commercial -1 (light) located within Building Block 18 East of Water Street, between College, Gutierrez, Water and Paul C. Bell Streets, also known as 901 College Street, +/-0.29 acres within the City Limits:

The Applicant is: Lenor De La Rosa & Rosa Molloy

Property Location: 905 College Street

Legal Description: Building Block, Block 18 East of Water Street, +/-0.137 acres

(PLEASE SEE ATTACHED SITE PLAN/LOCATION & LETTER)

As a property owner within 200' of the above referenced property, you are being notified of the public hearing and invited to attend to express your opinion at the meeting or in writing by completing the form below. Written comments, either in support or opposition to this request, must be submitted to the Planning Department prior to the April 6, 2016 meeting at 1311 Chestnut Street, P.O. Box 427, Bastrop, Texas 78602, Fax (512) 332-8829 or call the Planning Department at (512) 332-8840.

PROPERTY OWNER'S RESPONSE

As a property owner within 200':
(Please check √ one)

- ☑ I am in favor of the request.
- ☐ I am opposed to the request.
- ☐ I have no objection to the request.

Property Owner Name: Christopher David Homes
Property Address: 1011 College St
Mailing Address: 7511 Walnut
Phone (optional): 512.296.3589
Email (optional): CDHomes@gmail.com

Property Owner's Signature:
Comments: (Optional)

Please reply to: Planning and Development Department
City of Bastrop
P.O. Box 427
Bastrop, Texas 78602 or via fax (512) 332-8829

Re: Variance to setbacks – 905 College Street (mailed 3/17/2016)

RECEIVED
APR 01 2016
By

ACTION OF THE CITY OF BASTROP
ZONING BOARD OF ADJUSTMENT

GRANTING VARIANCE

WHEREAS, Lenor DeLaRosa and Rosa Molloy ("Applicant") of Bastrop, Texas, are the owners of the property legally described as being Building Block 18 East of Water Street, commonly known as 905 College Street; Bastrop, Bastrop County, Texas ("Property"); and

WHEREAS, said Property is located in an area zoned under the City's Zoning Ordinance as C-1, Commercial (Light); and

WHEREAS, Applicant has applied for a variance to the City of Bastrop Zoning Ordinance, for the Property within the C-1, Commercial (Light) Zoning District, in accordance with Section 9.8; and

WHEREAS, Applicant desires a variance be granted to authorize a 10' (ten foot) setback from each street (College and Gutierrez Street) where 25' (twenty-five feet) is required; and

WHEREAS, Applicant has filed a proper request for such variance; and

WHEREAS, Applicant alleges that strict compliance with the City's Zoning Ordinance would result in undue hardship to Applicant, pursuant to Section 9.6 of the City's Zoning Ordinance; and

WHEREAS, public notice has been given and a public hearing was held on April 6, 2016 before the Bastrop Zoning Board of Adjustment, with at least the statutory required 75% of members being present.

NOW THEREFORE, THE BASTROP ZONING BOARD OF ADJUSTMENT FINDS THAT:

1. The circumstances required for granting approval of the above described variance, as set out in Section 9.6 of the City's Zoning Ordinance, <u>do</u> exist on the property legally described as being Building Block 18 East of Water Street, commonly known as 905 College Street; Bastrop, Bastrop County, Texas ("Property"):

	CRITERIA for Findings
X	1. Special circumstances or conditions exist which affect the land involved such that the strict application of the provisions of this ordinance would deprive the applicant of reasonable use of the land; *The property is unique it that is has three "frontages" on existing public streets. With the acquisition of right of way (ROW) for Highway 71/College Street the remaining Building Block 18 which was approximately 333.33 by 333.33 was reduced to only 83.33 feet deep. 250 feet was acquired by TxDOT for Highway 71 construction.*
X	2. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; *The owners wish to develop/redevelop these properties to work for commercial uses, with limited lot depth. The setback from the streets greatly reduce the potential developable area. The 10' (ten feet) requested will still allow for appropriate PUE easements.*
X	3. Granting the variance will not be detrimental to the public health, safety or welfare or injurious to other property in the area, and the spirit of the ordinance will be observed. [Variances may be granted only when in harmony with the general purpose and intent of this ordinance]; *This area is unique between the frontage roads of Highway 71 (College Streets) and the existing ROW of Gutierrez Street (Newton Street).*
X	4. Granting of the variance will not have the effect of preventing the orderly use of other land in the area in accordance with the provisions of this ordinance; *The reduced setbacks are applicable to this Building Block 18 and could be applicable to other blocks similarly situated being Building Block (BB) 3, BB 23 and BB 38 and BB 43 that were recently rezoned to C-1, Commercial (Light) between College Street (frontage Road) and Newton Streets.*
X	5. The applicant's practical difficulties or unnecessary hardship arise from unusual conditions or circumstances, which are not shared generally by other parcels in the neighborhood or district; and *This is a unique set of parcels that was drastically changed with acquisition of Highway 71 ROW.*
X	B. A variance is to be denied if conditions or circumstances relied on for a variance were created by a person having an interest in the property. *The owners/applicant family (Gutierrez) has owned this property since at least 1920 and owned this property prior to ROW acquisition. This property has been in its current configuration since 1958. The owner/applicant is applying for this variance prior to applying for site development or building permits.* C. Financial hardship to the applicant, standing alone, shall not be deemed to constitute a hardship. D. The applicant bears the burden of proof in establishing the facts justifying a variance.

2. Therefore, the request to grant the variance to authorize a 10' (ten foot) setback from each street (College and Gutierrez Street) where 25' (twenty-five feet) is required for the property, as noted herein, IS HEREBY GRANTED, with the following conditions, if any:

(a) _____
(b) _____
(c) _____
(d) _____
(e) _____

3. This matter was heard by at least 75% of the members of the Board who voted as follows:

A. Dan Hays-Clark _____
B. Blas Coy _____
C. Matthew Lassen _____
D. Michael Gibbons _____
E. Herb Goldsmith _____

4. The action of the Bastrop Zoning Board of Adjustment, concerning this request for a variance to the City's Zoning Ordinance, was approved by a minimum of at least four (4) members of the Board, in full compliance with the Local Government Code, Section 211.009(c)(3).

5. As required by the Local Government Code, Section 211.008(f), minutes of this proceeding shall be kept on file in the Board's office, and are public records.

NOW THEREFORE, the above request for a variance was heard and granted on April 6, 2016 by the Bastrop Zoning Board of Adjustment.

_____
By: Presiding Officer

STATE OF TEXAS §

COUNTY OF BASTROP §

CERTIFICATE OF AUTHENTICITY OF
VARIANCE FROM CITY OF BASTROP ZONING REQUIREMENTS

I, Marie Murnan, Planning Technician of the City of Bastrop, hereby certify that the attached "Action of the City of Bastrop Zoning Board of Adjustment Granting Variance" is a true and correct copy of the original document in the Board of Adjustment Office, and I further certify that such document accurately reflects the action granting a variance taken by the Board on _____, 20___.

_____
Marie Murnan
Planning Technician
City of Bastrop

Subscribed and sword to before me on this the _____ day of _____, 20___ to certify which witness my hand and official seal.

_____
Notary Public in and for the State of Texas

My Commission Expires: _____, 20__

ACTION OF THE CITY OF BASTROP
ZONING BOARD OF ADJUSTMENT

DENYING VARIANCE

WHEREAS, Lenor DeLaRosa and Rosa Molloy ("Applicant") of Bastrop, Texas, are the owners of the property legally described as being Building Block 18 East of Water Street, commonly known as 905 College Street; Bastrop, Bastrop County, Texas ("Property"); and

WHEREAS, said Property is located in an area zoned under the City's Zoning Ordinance as C-1, Commercial (Light); and

WHEREAS, Applicant has applied for a variance to the City of Bastrop Zoning Ordinance, for the Property within the C-1, Commercial (Light) Zoning District, in accordance with Section 9.8; and

WHEREAS, Applicant desires a variance be granted to authorize a 10' (ten foot) setback from each street (College and Gutierrez Street) where 25' (twenty-five feet) is required; and

WHEREAS, Applicant has filed a proper request for such variance; and

WHEREAS, Applicant alleges that strict compliance with the City's Zoning Ordinance would result in undue hardship to Applicant, pursuant to Section 9.6 of the City's Zoning Ordinance; and

WHEREAS, public notice has been given and a public hearing was held on April 6, 2016 before the Bastrop Zoning Board of Adjustment, with at least the statutory required 75% of members being present.

NOW THEREFORE, THE BASTROP ZONING BOARD OF ADJUSTMENT FINDS THAT:

1. The circumstances required for granting approval of the above described variance, as set out in Section 9.6 of the City's Zoning Ordinance, do not exist on the property legally described as being Building Block 18 East of Water Street, commonly known as 905 College Street; Bastrop, Bastrop County, Texas ("Property"):

	CRITERIA for Findings
	1. There are no special circumstances or conditions that exist which affect the land involved such that the strict application of the provisions of this ordinance would deprive the applicant of reasonable use of the land; _____ _____
	2. The variance is not necessary for the preservation and enjoyment of a substantial property right of the applicant; _____ _____
	3. Granting the variance would be detrimental to the public health, safety or welfare or injurious to other property in the area, and the spirit of the ordinance will be observed. Variances may be granted only when in harmony with the general purpose and intent of this ordinance; _____ _____
	4. Granting of the variance would have the effect of preventing the orderly use of other land in the area in accordance with the provisions of this ordinance; _____ _____
	5. The applicant's practical difficulties or unnecessary hardship do not arise from unusual conditions or circumstances, which are not shared generally by other parcels in the neighborhood or district; _____ _____
	6. The conditions or circumstances relied on for the variance was created by a person having an interest in the property. _____ _____
	7. Financial hardship to the applicant, standing alone, has been claimed. _____ _____

2. Therefore, the request to grant the variance to the authorize 10' (ten foot) setback from each street (College and Gutierrez Street) where 25' (twenty-five feet) is required as noted herein, IS HEREBY DENIED.

3. This matter was heard by at least 75% of the members of the Board who voted as follows:

   A. Dan Hays-Clark _____
   B. Blas Coy _____
   C. Matthew Lassen _____
   D. Michael Gibbons _____
   E. Herb Goldsmith _____

4. The action of the Bastrop Zoning Board of Adjustment, concerning this request for a variance to the City's Zoning Ordinance, was not approved by a minimum of at least four (4) members of the Board, in full compliance with the Local Government Code, Section 211.009(c)(3).

5. As required by the Local Government Code, Section 211.008(f), minutes of this proceeding shall be kept on file in the Board's office, and are public records.

NOW THEREFORE, the above request for a variance was heard and denied on April 6, 2016 by the Bastrop Zoning Board of Adjustment.

_____
By: Presiding Officer

STATE OF TEXAS §

COUNTY OF BASTROP §

CERTIFICATE OF AUTHENTICITY OF
VARIANCE FROM CITY OF BASTROP ZONING REQUIREMENTS

I, Marie Murnan, Planning Technician of the City of Bastrop, hereby certify that the attached "Action of the City of Bastrop Zoning Board of Adjustment Denying Variance" is a true and correct copy of the original document in the Board of Adjustment Office, and I further certify that such document accurately reflects the action denying a variance taken by the Board on _____, 20___.

_____
Marie Murnan
Planning Technician
City of Bastrop

Subscribed and sword to before me on this the _____ day of _____, 20___ to certify which witness my hand and official seal.

_____
Notary Public in and for the State of Texas

My Commission Expires: _____, 20__