City of Bastrop

Agenda Information Sheet:

Zoning Board of Adjustment Meeting Date: **May 4, 2016**
BOAV16:06 **Agenda Item #8**

Public Notice Description:
Consideration and possible action on a 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 all properties fronting on public right-of-way (ROW) for the following properties zoned C-1, Commercial -1 (Light) located within the City Limits.

1. 803 College for +/-0.3190 acres within BB 3, East of Water Street (R45734)
2. 807 College for +/-0.318 acres within BB 3, East of Water Street (R33031)
3. 901 College for +/-0.29 acres within BB 18, East of Water Street (R47621) (tabled at April BOA continuation separate BOA item 5)
4. 905 College for +/-0.137 acres within BB 18, East of Water Street (R32963) (tabled at April BOA, continuation separate BOA item 6)
5. 907 College for +/-0.206 acres within BB 18, East of Water Street (R47622) (tabled at April BOA, continuation separate BOA item 7)
6. 1011 College for +/-0.1 acres within BB 23, East of Water Street (R47625)
7. 1003 College for +/-0.098 acres within BB 23, East of Water Street (R34481)
8. 1007 College for +/-0.2440 acres within BB 23, East of Water Street (R34513)
9. 1001 College for +/-0.098 acres within BB 23, East of Water Street (R39271)
10. 1013 College for +/-0.095 acres within BB 23, East of Water Street (R47626)
11. For lot described as +/-0.458 acres within BB 38, East of Water Street (between Hill St and Lovers Ln)
12. 1215 College for +/-0.306 acres within BB 43, East of Water Street (R47700)

Background:
This report represents a total of 12 (twelve) properties that each need action for the proposed setback variance against the existing street/right of ways. All of these properties were rezoned (City initiated) to C-1, Light Commercial-1 on May 27, 2014. After the requested variance submitted to the Board of Adjustment (BOA) for 3 (three) properties in April, 2016 (901, 905, and 907 College) City staff looked at

the applicably of the requested variance to be applied to the other 9 properties that are affected. City staff used the same area that was rezoned in May, 2014 to be the same area applicable for the setback variances.

Request:
Variance to the Zoning Ordinance, is now requesting all 12 (twelve) properties be considered for a reduced setback to 10' (ten feet) instead of the required 25' (foot) setback from each street being Water, College, Gutierrez/Newton, Paul C. Bell, Jefferson, Hill and Lovers Lane.

These properties would be required to have a 25' (foot) setback from each street and the City is asking for a reduced setback of 10 '(ten feet) instead of the 25 feet required.

These setback variances of 10' (ten feet) are consistent with the Form Based Code (FBC) area across Highway 71/North College Street, of the Commercial Mixed Use (CMU) Character Zone of Secondary/Build to Zone (BTZ) and General Frontage setbacks of 10' (ten feet) minimum.

Buildings are currently located on properties 1-5, 7 and 8. Parcels 6, 9, 10, 11, and 12 are vacant.

Staff understands that these variances only apply to the properties as they are currently situated. Any re-platting or combining of properties would require the variances to be readdressed

Variances requested are 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 in 1958.

The City is initiating this variance request. Utilities are available in the area and any extensions that might be required as part of the platting, site development/building permit application will be at the owner/applicants expense. The owner will be required to follow all other building code requirements.

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.

<u>Criteria for Findings</u>

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.

      These properties are unique because they have multiple "frontages" on existing public streets. With the acquisition of right of way (ROW) for Highway 71/College Street the remaining Building Block 3, 18, 23, 38 and 43 were significantly reduced. 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 City initiated request aligns with the May, 2014 rezoning and hopes that these properties will allow owners 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 reduced setbacks being applied and are applicable to other blocks similarly situated being Building Block (BB) 3, BB 18, 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.

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.

   Many of the owners have owned this property since 1920 and owned this property prior to ROW acquisition. The City is asking/applying for this variance prior to property owners submitting any applications 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: 15 adjacent property owner notifications were mailed 4/18/2016. As of this date no property owner notifications have been received.

Basis of Support:
Staff recommends approval of the Variances to Zoning Ordinance, 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 12 (twelve) properties within Building Bock, (BB) 3, BB18, BB23, BB38, BB43 with frontage on Water, College, Gutierrez/Newton, Paul C. Bell, Jefferson, Hill and Lovers Lane 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.

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

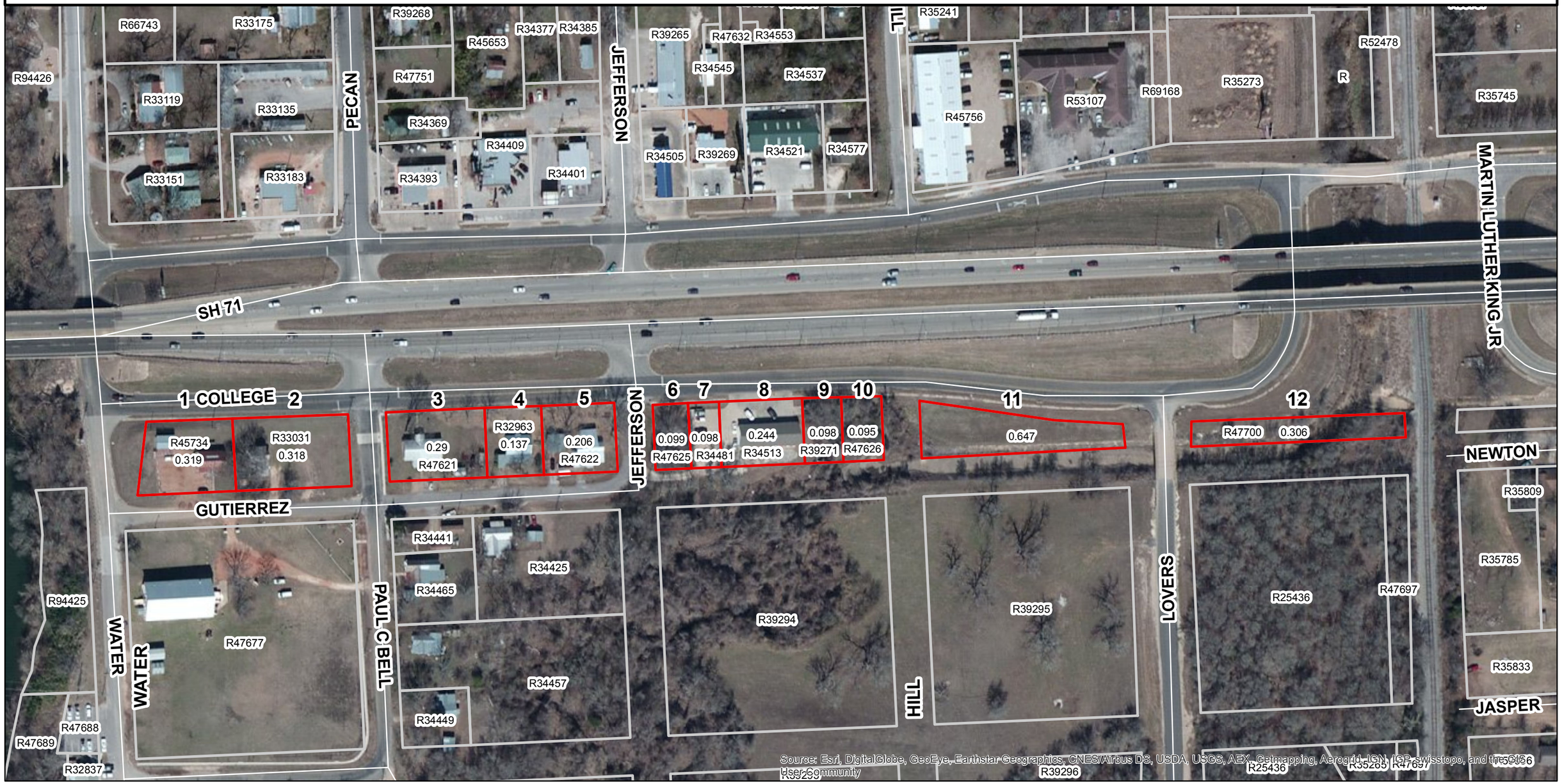
Attachments:
Letter from property owner, survey, location map, and findings of fact

Legend

- Parcels to receive the proposed variance
- Parcels

Property Location Map for 12 separate parcels

(803, 807, 901, 905, 907, 1011, 1003, 1007, 1001, 1013, 1215 College Street and the lot described as +/-0.458 ac within BB 38)



ACTION OF THE CITY OF BASTROP
ZONING BOARD OF ADJUSTMENT

GRANTING VARIANCE

WHEREAS, City of Bastrop ("Applicant") of Bastrop, Texas, initiated for all properties fronting on public right-of-way (ROW) for the following properties zoned C-1, Commercial -1 (Light) located within the City Limits. The properties legally described as: 803 College for +/-0.3190 acres within BB 3, East of Water Street (R45734); 807 College for +/-0.318 acres within BB 3, East of Water Street (R33031); 901 College for +/-0.29 acres within BB 18, East of Water Street (R47621); 905 College for +/-0.137 acres within BB 18, East of Water Street (R32963); 907 College for +/-0.206 acres within BB 18, East of Water Street (R47622); 1011 College for +/-0.1 acres within BB 23, East of Water Street (R47625); 1003 College for +/-0.098 acres within BB 23, East of Water Street (R34481); 1007 College for +/-0.2440 acres within BB 23, East of Water Street (R34513); 1001 College for +/-0.098 acres within BB 23, East of Water Street (R39271); 1013 College for +/-0.095 acres within BB 23, East of Water Street (R47626); For lot described as +/-0.458 acres within BB 38, East of Water Street (between Hill St and Lovers Ln); and 1215 College for +/-0.306 acres within BB 43, East of Water Street (R47700); 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, Paul C. Bell, 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 May 4, 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 exist on the properties legally described as: 803 College for +/-0.3190 acres within BB 3, East of Water Street (R45734); 807 College for +/-0.318 acres within BB 3, East of Water Street (R33031); 901 College for +/-0.29 acres within BB 18, East of Water Street (R47621); 905 College for +/-0.137 acres within BB 18, East of Water Street (R32963); 907 College for +/-0.206 acres within BB 18, East of Water Street (R47622); 1011 College for +/-0.1 acres within BB 23, East of Water Street (R47625); 1003 College for +/-0.098 acres within BB 23, East of Water Street (R34481); 1007 College for +/-0.2440 acres within BB 23, East of Water Street (R34513); 1001 College for +/-0.098 acres within BB 23, East of Water Street (R39271); 1013 College for +/-0.095 acres within BB 23, East of Water Street (R47626); For lot described as +/-0.458 acres within BB 38, East of Water Street (between Hill St and Lovers Ln); and 1215 College for +/-0.306 acres within BB 43, East of Water Street (R47700); Bastrop, Bastrop County, Texas ("Property"); and

	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 City initiated request aligns with the May, 2014 rezoning and hopes that these properties will allow owners 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	2. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; *This area is unique between the frontage roads of Highway 71 (College Streets) and the existing ROW of Gutierrez Street (Newton Street).*
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 being applied and are applicable to other blocks similarly situated being Building Block (BB) 3, BB 18, 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. *Many of the owners have owned this property since 1920 and owned this property prior to ROW acquisition. The City is asking/applying for this variance prior to property owners submitting any applications 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, Paul C. Bell, and Gutierrez Street) where 25' (twenty-five feet) is require for the property, as noted herein, IS HEREBY GRANTED, with the following conditions, if any:

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

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 May 4, 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, City of Bastrop ("Applicant") of Bastrop, Texas, initiated for all properties fronting on public right-of-way (ROW) for the following properties zoned C-1, Commercial -1 (Light) located within the City Limits. The properties legally described as: 803 College for +/-0.3190 acres within BB 3, East of Water Street (R45734); 807 College for +/-0.318 acres within BB 3, East of Water Street (R33031); 901 College for +/-0.29 acres within BB 18, East of Water Street (R47621); 905 College for +/-0.137 acres within BB 18, East of Water Street (R32963); 907 College for +/-0.206 acres within BB 18, East of Water Street (R47622); 1011 College for +/-0.1 acres within BB 23, East of Water Street (R47625); 1003 College for +/-0.098 acres within BB 23, East of Water Street (R34481); 1007 College for +/-0.2440 acres within BB 23, East of Water Street (R34513); 1001 College for +/-0.098 acres within BB 23, East of Water Street (R39271); 1013 College for +/-0.095 acres within BB 23, East of Water Street (R47626); For lot described as +/-0.458 acres within BB 38, East of Water Street (between Hill St and Lovers Ln); and 1215 College for +/-0.306 acres within BB 43, East of Water Street (R47700); Bastrop, Bastrop County, Texas ("Property"); and

WHEREAS, said Properties are 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, Paul C. Bell, 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 May 4, 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 properties legally described as: 803 College for +/-0.3190 acres within BB 3, East of Water Street (R45734); 807 College for +/-0.318 acres within BB 3, East of Water Street (R33031); 901 College for +/-0.29 acres within BB 18, East of Water Street (R47621); 905 College for +/-0.137 acres within BB 18, East of Water Street (R32963); 907 College for +/-0.206 acres within BB 18, East of Water Street (R47622); 1011 College for +/-0.1 acres within BB 23, East of Water Street (R47625); 1003 College for +/-0.098 acres within BB 23, East of Water Street (R34481); 1007 College for +/-0.2440 acres within BB 23, East of Water Street (R34513); 1001 College for +/-0.098 acres within BB 23, East of Water Street (R39271); 1013 College for +/-0.095 acres within BB 23, East of Water Street (R47626); For lot described as +/-0.458 acres within BB 38, East of Water Street (between Hill St and Lovers Ln); and 1215 College for +/-0.306 acres within BB 43, East of Water Street (R47700); Bastrop, Bastrop County, Texas ("Property"); and

	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 a 10' (ten foot) setback from each street (College, Paul C. Bell, 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 May 4, 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__