

# CITY OF BELLAIRE TEXAS

## BOARD OF ADJUSTMENT

DECEMBER 17, 2015

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|                 |                 |         |
|-----------------|-----------------|---------|
| Council Chamber | Regular Session | 7:00 PM |
|-----------------|-----------------|---------|

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7008 S. RICE AVENUE  
BELLAIRE, TX 77401



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### Board Member

Patty McGinty

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### Vice Chairman

Amar Raval

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### Chairman

Tom Ligh

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### Board Member

Debbie Karakowsky

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### Board Member

Samir Sinha

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### Board Member

William Stone

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### Board Member

Seth A. Miller

### **Mission Statement:**

***The City of Bellaire is dedicated to outstanding quality service and facilities to ensure an open, progressive, and secure community.***

**1. CALL TO ORDER****2. PLEDGE TO THE FLAG (US AND TEXAS)**

**Texas Pledge: (Honor the Texas Flag: I pledge allegiance to thee, Texas one state under God, one and indivisible).**

**3. CERTIFICATION OF A QUORUM****4. APPROVAL OF MINUTES**

1. Board of Adjustment - Regular Session - Jul 16, 2015 7:00 PM

**5. REPORTS FROM OFFICERS, COMMITTEES, SUB-COMMITTEES AND COMMUNICATIONS BOARD MEMBERS HAVE HAD OUTSIDE THE MEETING****6. UNFINISHED BUSINESS****7. READING OF THE STANDARDS FROM SECTION 24-704, BELLAIRE CODE OF ORDINANCES****8. NEW BUSINESS****A. Public Hearings**

1. Docket# BOA-2015-03-Consideration and possible action on a request for a special exception to allow for reduced off-street parking of 1.5 spaces per 1,000 square feet in lieu of the requirements set forth in Section 24-514a of the City of Bellaire Code of Ordinances. The property is addressed as 4950 Terminal Street, and is in the UV-T Zoning District.

**a. Presentation by the Applicant, Appellant, Property Owner, Counsel, or other Agent. [Limitations: Fifteen (15) minutes with extensions in five (5) minute increments as approved by a majority vote of the Board members present].**

**b. Presentation by the City [Limitations: Fifteen (15) minutes with extensions in five (5 ) minute increments as approved by a majority vote of the Board Members present].**

**c. Public Comments on Docket Item [Limitations: Names of those desiring to comment shall come from sign-up list and shall be limited to six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board Members present].**

**d. Rebuttal by Applicant, Appellant, Property Owner, Counsel, or other Agent. [Limitations: Six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board Members present].**

**e. Questions by the Board [Limitations: The Board may ask germane questions of the Applicant, Appellant, Property Owner, Counsel, or other Agent, and/or City Staff].**

**f. Consideration of, deliberation by, and action on Docket Item by the Board [Requires 75%, or 6 affirmative votes for approval pursuant to Section 211.009 (c), Texas Local Government Code].**

- B. Discussion, consideration, and possible action on the Board of Adjustment's 2015-2016 Rules of Procedure.

**9. GENERAL COMMENTS**

**(Limitations: Six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board Members present).**

**10.GENERAL COMMENTS FROM BOARD MEMBERS**

**11.ANNOUNCEMENTS**

**12.ADJOURNMENT**



# CITY OF BELLAIRE TEXAS

## BOARD OF ADJUSTMENT

JULY 16, 2015

Council Chamber

Regular Session

7:00 PM

7008 S. RICE AVENUE  
BELLAIRE, TX 77401

### I. CALL TO ORDER (BY OUTGOING CHAIRMAN)

Chairman Sharp called the meeting to order at 7:00 PM.

### II. PLEDGE OF ALLEGIANCE (THE US AND TEXAS)

Chairman Sharp led the Board in the pledges to both flags.

### III. CERTIFICATION OF A QUORUM (OUTGOING AND INCOMING BOARD)

Chairman Sharp announced that a quorum was present, consisting of the following members:

| Attendee Name     | Title                        | Status  | Arrived |
|-------------------|------------------------------|---------|---------|
| Patty McGinty     | Board Member                 | Present |         |
| Amar Raval        | Board Member                 | Present |         |
| Tom Ligh          | Vice Chairman                | Present |         |
| Debbie Sharp      | Chairman                     | Present |         |
| Debbie Karakowsky | Board Member                 | Present |         |
| Sean Wheeler      | Board Member                 | Present |         |
| Seth A. Miller    | Board Member                 | Present |         |
| William Stone     | Board Member                 | Present |         |
| Samir Sinha       | Board Member                 | Present |         |
| Alan P. Petrov    | City Attorney                | Present |         |
| ChaVonne Sampson  | Development Services Manager | Present |         |
| Ashley Parcus     | Secretary                    | Present |         |

### IV. APPROVAL OF REGULAR MEETING MINUTES (OUTGOING BOARD ONLY)

- Board of Adjustment - Regular Session - Apr 16, 2015 7:00 PM

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** Patty McGinty, Board Member  
**SECONDER:** Amar Raval, Board Member  
**AYES:** McGinty, Raval, Ligh, Sharp, Karakowsky, Wheeler, Miller

### V. COMMUNICATIONS AND REPORTS (OUTGOING BOARD ONLY)

There were no communications or reports.

### VI. UNFINISHED BUSINESS (OUTGOING BOARD ONLY)

There was no unfinished business.

### VII. SWEARING IN OF NEW BOARD MEMBERS (INCOMING BOARD ASSUMES DUTIES AND OUTGOING BOARD RETIRES)

Minutes Acceptance: Minutes of Jul 16, 2015 7:00 PM (Approval of Minutes)

Attorney Petrov swore in the two new members, Samir Sinha and Bill Stone, as well as Amar Raval, who was being re-appointed to the Board.

### **VIII. INTRODUCTION OF INCOMING BOARD MEMBERS**

This part of the agenda was mistakenly skipped. No introductions were given.

### **IX. ELECTION OF CHAIRMAN AND VICE-CHAIRMAN (INCOMING BOARD ONLY)**

#### **Nominations for Chairman of the Board:**

Board Member McGinty nominated Board Member Ligh for Chairman of the Board.

Board Member Ligh stated that he has been Chairman twice previously and felt that someone else should be given the opportunity, if desired.

Board Member Karakowsky nominated Board Member McGinty for Chairman of the Board.

Board Member McGinty declined the nomination.

Board Member Raval nominated Board Member Miller for Chairman of the Board.

Board Member Miller declined the nomination.

Board Member Miller nominated Board Member Raval for Chairman of the Board.

Board Member Raval declined the nomination, but stated that he would be Vice Chairman if the Board Members so wished.

Board Member Ligh stated that he would accept the position of Chairman if no one else wanted it.

**Vote on Chairman:** 7-0.

**Board Member Ligh was elected Chairman of the Board.**

#### **Nominations for Vice Chair:**

Board Member McGinty nominated Board Member Raval as Vice Chairman.

**Vote: 7-0.**

**Board Member Raval was elected Vice Chairman of the Board.**

### **X. CONSIDERATION AND ADOPTION OF RULES OF PROCEDURE (INCOMING BOARD ONLY)**

#### **1. Rules of Procedure**

**Motion:** a motion was made by Chairman Ligh and seconded by Board Member Miller to temporarily adopt the Rules of Procedure until the next meeting in order to give the new Board Members additional time for review.

Board Member Stone mentioned that there were some corrections/revisions that he felt should be made to the Rules of Procedure and that he would like to discuss those in greater detail at the next meeting.

Minutes Acceptance: Minutes of Jul 16, 2015 7:00 PM (Approval of Minutes)

**Vote:** the motion carried on a unanimous vote of 7-0.

|                  |  |
|------------------|--|
| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>                               |
| <b>MOVER:</b>    | Tom Ligh, Vice Chairman                                  |
| <b>SECONDER:</b> | Seth A. Miller, Board Member                             |
| <b>AYES:</b>     | McGinty, Raval, Ligh, Sharp, Karakowsky, Wheeler, Miller |

#### **XI. COMMUNICATIONS AND REPORTS (INCOMING BOARD ONLY)**

There were no communications or reports.

#### **XII. GENERAL COMMENTS FROM PUBLIC (LIMITATIONS: SIX (6) MINUTES PER SPEAKER WITH EXTENSIONS IN TWO (2) MINUTE INCREMENTS AS APPROVED BY A MAJORITY VOTE OF THE BOARD MEMBERS PRESENT)**

**Councilman Andrew Friedberg**-Councilman Friedberg thanked the former board members and welcomed the new ones aboard. He explained that in the past, the Board has had some issues with attendance, which is why staff was looking into changing the membership from 7 full-term members to 5 full members with 2 alternates. Councilman Friedberg added that this item failed at Council for lack of a second, and therefore the Board will continue with 7 full memberships. He then mentioned the importance of attendance, and suggested that Board Members take it under assumption that there will be a meeting every month.

#### **XIII. GENERAL COMMENTS FROM BOARD MEMBERS (INCOMING BOARD ONLY)**

Board Member Stone mentioned that there was some terminology within the Rules of Procedure that he felt needed to be made uniform throughout the document, and reiterated that he would like to discuss that at the next meeting.

#### **XIV. ANNOUNCEMENTS (IF ANY)**

There were no announcements made.

#### **XV. ADJOURNMENT**

**Motion:** a motion was made by Board Member McGinty and seconded by Board Member Stone to adjourn the regular meeting.

**Vote:** the motion passed on a unanimous vote of 7-0.

**The meeting adjourned at 7:16 PM.**

Minutes Acceptance: Minutes of Jul 16, 2015 7:00 PM (Approval of Minutes)

**Board of Adjustment**  
Council Chambers, First Floor of City  
Hall  
Bellaire, TX 77401



Meeting: 12/17/15 07:00 PM  
Department: Development Services  
Category: Special Exception  
Department Head: John McDonald  
DOC ID: 1764

**SCHEDULED  
ACTION ITEM (ID # 1764)**

**Item Title:**

Docket# BOA-2015-03-Consideration and possible action on a request for a special exception to allow for reduced off-street parking of 1.5 spaces per 1,000 square feet in lieu of the requirements set forth in Section 24-514a of the City of Bellaire Code of Ordinances. The property is addressed as 4950 Terminal Street, and is in the UV-T Zoning District.

**Background/Summary:**

Address: 4950 Terminal Street  
Applicant: Thomas De Froy of Identity Architects on behalf of OFT Enterprises  
Zoning: UVT Zoning District  
Date Filed: November 20, 2015  
Mail Outs: Notice of Public Hearing letters mailed out on December 3, 2015  
Legal Notice: Published in the Southwest News on December 8, 2015

**Request:**

Thomas De Froy, on behalf of the owner of 4950 Terminal Street, Bellaire, Texas, has requested a Special Exception in accordance with the provisions of Section 24-716 of the City of Bellaire Code of Ordinances in order to reduce the off-street parking of 4 spaces per 1,000sf for general retail use and 3.5 per 1,000sf for medical office use regulation (Sec. 24-514A).

**Background:**

4950 Terminal contains a one-story structure built in 1950. The previous use of this space was warehouse for a medical supply company. This use is permitted in the current zoning district as long as the structure is not expanded from the current building footprint or significantly altered, as a non-conforming use. The applicant plans to develop a mixed use space comprised of retail and medical office. As proposed, this property would be in conformance with the Urban Village Transit Oriented development (UVT) use regulations. The applicant proposes improvements to addresses specific characteristics for the UVT outlined in the Comprehensive Plan and Sec 24-547, Urban Village Transit District.

The property at 4950 Terminal has no parking on-site. OFT Enterprises has entered into a parking agreement with CenterPoint Energy, owner of the lot next to this site, to utilize the site for parking. The CenterPoint property has been used by previous tenants for parking as well. Currently, the lot is striped for twenty-one (21) parking spaces, with a proposal of adding fifteen (15) additional spaces. There is also street parking along N. 2<sup>nd</sup> (17), N. 3<sup>rd</sup> (4), and Terminal (6). The site total proposed parking spaces will be sixty-three (63).

The applicant requests a Special Exception to the off-street parking requirement to allow a decrease in the number of spaces in order to provide parking for the site. As, aforementioned, additional parking will be added to adjacent parking area this is an increase to previous parking plans.

**General Requirements:**

Special exceptions may not be granted unless the Board makes written findings based directly upon the particular evidence presented to it which support written conclusions that the granting of the special exception will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located, nor impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public health, safety and well-being, or substantially diminish or impair property values within the neighborhood.

**Staff Review:**

Upon review of the application and the materials submitted, it is the opinion of Development Services Director's, that the application does meet the Standards for Special Exceptions as Outlined in Article V, Division 2, Section 24-718, and therefore is eligible for consideration for the granting of a Special Exception. As the site currently has no parking, it is requested that the Board is waive the parking study required in the Rules and Procedure Article IV, Section M.

Based upon the total absence of on-site parking of this property, a special exception is warranted in order to ensure the use of an existing structure. The proposed use is consistent with the UVT, and helps to show that the UVT is a viable commercial area.

**ATTACHMENTS:**

- 4950 Terminal Application Package (PDF)



## APPLICATION FOR VARIANCE REQUEST

Applicant shall specifically explain the variance being requested and why the literal enforcement of the zoning regulations of Chapter 24 of the City of Bellaire Code of Ordinances will result in unnecessary hardship. A site plan/survey showing the improvements requiring the variance shall be attached to this application.

### DESCRIPTION OF PROPOSED VARIANCE

Address 4950 TERMINAL STREET

Legal Description (Subdivision, Block, Lot) SEE ATTACHED LEGAL DESCRIPTION,

WHICH DENOTES LOTS 45, 46, 47, 48, 49.

Applicant's Name THOMAS DEFROY, IDENTITY ARCHITECTS

Address, Phone number and Email 111 TRAVIS ST, HOUSTON TX 77002

DIRECT: 713-595-2156 ; e: tdefroy@identityarchitects.com

Property Owner's Name ATILLA TUNA, OFT ENTERPRISES

Authorized Agent THOMAS DE FROY

### DESCRIPTION OF VARIANCE REQUEST

SEE ATTACHED NARRATIVE FOR FULL DESCRIPTION.

BRIEFLY: A SPECIAL EXCEPTION IS REQUESTED FOR

THE REDEVELOPMENT OF 4950 TERMINAL ST. WITH

RESPECT TO OFF-STREET PARKING REQUIREMENTS.

SPECIFICALLY, A REQUEST OF 1.5 SPACES PER

1,000 SF DUE TO EXISTING LIMITED PARKING OPTIONS.

The section of the Code of Ordinances

That variance request is being made from Chapter 24, Section 514

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NOV 20 2015

COMMUNITY DEVELOPMENT

HARDSHIPS THAT HAVE OCCURRED OR WILL OCCUR WITHOUT THIS VARIANCE

NO ON-SITE PARKING EXISTS DUE TO EXISTING STRUCTURE TAKING UP MOST OF SITE. REDEVELOPMENT (WHILE MAINTAINING MOST OF THE EXISTING STRUCTURE) IS SEVERELY LIMITED IF AS-OF-RIGHT CONFORMANCE W/ PARKING REGULATIONS ARE ENFORCED.

Site Plan Included shows existing structure with proposed additions.

Yes

No

✓

Year Approved

Year Denied

List previous variance request N/A

#### VARIANCE TO MINIMUM STANDARDS CRITERIA

|                                 | Minimum<br>Proposed         | Proposed                    | Exceeds Min.                |
|---------------------------------|-----------------------------|-----------------------------|-----------------------------|
| Front Setback                   | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| Side Setback                    | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| Rear Setback                    | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| Lot Coverage                    | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| Height of Proposed<br>Structure | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| Tract or Lot Size               | <u>                    </u> | <u>                    </u> | <u>                    </u> |

Indicate any measures designed into the project to reduce any adverse effect of the proposed variance request.

SEE NARRATIVE FOR SPECIFIC KEY POINTS WHICH WILL LIMIT ANY ADVERSE EFFECTS AND PROMOTE THE UV-T DISTRICT STANDARDS.

APPEAL FROM BOARD OF ADJUSTMENT DECISION MUST BE MADE TO THE DISTRICT COURT.

November 17, 2015

Board of Adjustment  
7008 South Rice  
Bellaire, Texas

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RE: Special exception request with regards to minimum parking requirements

To the Board of Adjustment of Bellaire:

**Purpose of Variance Request:**

With regard to the property located at 4950 Terminal Street, located within the Urban Village (UV-T) Zoning District, the board's consideration for a special exception is requested as it pertains to Article V. Division 1. Section 24-514 "Off Street Parking and Loading."

**Address & Legal Description:**

4950 Terminal Street, Bellaire TX:

*23,334 square feet of land being all of Lots 45, 46, 47, 48 and 49, TERMINAL ADDITION, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 353, Page 396 of the Deed Records of Harris County, Texas, SAVE AND EXCEPT the East 17.50 feet of said lots conveyed in fee to Houston Lighting & Power Company by deed recorded in Volume 7563, Page 14 of the Deed Records of Harris County, Texas, said 25,334 square feet to land being more particularly described by metes and bounds as follows:*

*Beginning at a found 1 1/4" iron pipe at the Southwest corner of said lot 49 of Terminal Addition, said point being at the intersection of the east line of 2<sup>nd</sup> Street \*50 feet R.O.W.) and the north line of Terminal Avenue (50 feet R.O.W.);*

*Thence East, along the east line of said 2<sup>nd</sup> Street, a distance of 284.27 feet to a found 1 1/4" iron pipe for the Northwest corner of Lot 45, and the Northwest corner of the herein described tract;*

*Thence North 85 degrees 18 minutes 30 seconds east, along the southerly line of a 10 foot alley way, a distance of 88.30 feet to a set 1/2 iron rod for the Northeast corner of the herein described tract;*

*Thence south, along the west line of said Houston Lighting & Power Fee Strip, a distance of 291.49 feet to a set 1/2 inch pipe for the Southeast corner of the herein described tract;*

*Thence west, along the north-line of said Terminal Avenue, a distance of 88.00 feet to the Point of Beginning, containing 25,334 square feet of land area.*

**Background Information:**

OFT Enterprises of Houston, TX intends to redevelop this site, in which an existing 1-story structure of 22,300 SF currently stands, in accordance with the Bellaire, TX Zoning Regulations (Article IV), with specific attention & conformance with the Urban Village Transit Oriented development (UV-T) regulations (Sec. 24-547). The following key elements show how the redevelopment intends to specifically conform to the district's UV-T development standards:

1. Character. A high-quality, pedestrian-oriented urban character will be created by maintaining the vast majority of the existing masonry structure and adding warehouse-styled canopies and additional storefront to improve visual interest and promote an urban experience.
2. Uses. This development will be mixed-use by offering 2 approved uses (particularly 80% retail & 20% Medical Office). In the event that the use mix changes, no less than 2 uses will be offered per the UVT standards.

[www.identityarchitects.com](http://www.identityarchitects.com)

Voice: 713.595.2150 Email: [info@identityarchitects.com](mailto:info@identityarchitects.com)

111 Travis Street Houston, Texas 77002



3. Landscaping. Per section 24-513 – Landscaping, screening, and buffering, trees in grates will be planted at 30' intervals on Terminal Street and in full accordance with the particular UV-T district.
4. This development will continue to maintain the East-West connectivity on Terminal Street.
5. The existing 2,080 1-story addition facing Terminal street, which is stylistically incompatible, opaque, and not aesthetically congruous w/ the remaining structure or the district at large, will be replaced with a more visible, glassy lantern-like 2-story structure which will better conform to the districts pedestrian and urban feel.
6. The existing structure has an existing F.A.R. of .88. Improving the existing 1-story Terminal Street façade to a 2-story space will increase the total SF by 2,080, leading to a revised FAR of .96 (far exceeding the .75 minimum for new construction, despite the development not falling under new construction guidelines).
7. The modification listed in (4) will also increase visibility and support the desired development intensity for the district.

**Meeting Special Exception Standards:**

In addition to conforming to the key UV-T standards listed above, the following items highlight how the redevelopment will conform with specific relation to Special Exception Standards:

1. The redevelopment will be minor in scope and not detrimental to other properties. The primary property which will be directly affected is the Centerpoint property directly east of the redeveloped property. This narrative goes into further detail pertaining to the adjacent property in the following paragraph.
2. Light & air to neighboring properties will not be impaired. The additional second story proposed on Terminal Street will not impair an adequate supply of light to neighboring properties and have no effect on access to air.
3. There will be an increase in public street traffic due to the the redevelopment's proposed uses. Consequently, the anticipated parking will increase beyond the required parking needs of the current use (Medical Office & Manufacturing). However, it is believed this increase will not be a "substantial" increase in congestion due to the fact that the redevelopment is relatively small in scale to other large, multi-story developments in the vicinity. Furthermore, the proposed retail element will likely provide varied hours of business, therefore eliminating congested in & out times typical of office uses.
4. An increase in the danger of fire is not anticipated, as the redevelopment will follow the current building code & fire code requirements.
5. An endangerment in public health, safety and well-being is not anticipated. Conversely, the intent of this development is to dramatically improve the public safety as it pertains to this property. Particularly, the redevelopment proposes re-using the existing docks on the East façade by replacing guard railing and stair railing to ensure a safe retail & office experience.
6. The intent of this redevelopment is to improve upon the property; therefore, diminishing or impairing neighboring property values is not anticipated.

**Special Exception Request:**

Due to the unique circumstances of the site, a special exception is requested with respect to parking requirements. Particularly, the existing property offers no on-site parking (for the required 46 spaces estimated by current use) and is currently under-served by an existing 21 parking spaces located in the abutting property directly east of the site. This property is owned by Centerpoint and functions primarily as the North-South high voltage electrical corridor which currently bisects the district. An easement with Centerpoint allows this parking condition, and the intent is to continue this easement agreement w/ Centerpoint. *See attached parking agreement.*

Due to the proposed (and permitted) uses listed above (i.e. retail and medical office), there is a considerable parking deficit in order to comply with City of Bellaire parking regulations. The proposed uses will require 95 parking spaces. Currently, approximately 21 parking spaces exist on the adjacent Centerpoint lot, which is a deficit of 78 spaces. In order to mitigate this deficit, the following steps are proposed in order to greatly reduce pressure on the required parking deficit:

1. Pending approval from Centerpoint & a continuation of the easement agreement, the intent is to utilize the current available parking on the adjacent lot with minimal site improvements. These include a re-

allocation of loading areas, restriping, and a minor extension of the current lot toward Terminal Street. These modifications will improve the count from 21 to approximately 36 spaces, and would be acceptable under the current easement agreement. *See attached site plan.*

2. Due to the dead-end termination of N 2<sup>nd</sup> Street & N 3<sup>rd</sup> Street, the intent is to allow parallel spaces on these streets and Terminal Street to be accounted into the parking count. The three immediate streets can accommodate approximately 29 spaces within the immediate vicinity of 4950 Terminal Street. Each space will have a 9' width and 23' length, per City of Bellaire Code. It is not the intent that these spaces are specifically dedicated to 4950 Terminal Street; rather, that these spaces follow a more urban-like function as general public parking for the immediate surroundings. *See attached site plan.*

Though the two points listed above may reduce pressure on parking requirements, the primary method sought for parking relief is in the form of a special exception.

**Due to the development hardships outlined in this narrative, OFT Enterprises seeks the Board of Adjustment's granting of a special exception which would allow a reduced required off-street parking of 1.5 spaces per 1,000 SF, (or a total count of 36 parking spaces),** which is equal to the quantity of spaces that can be reasonably provided on the Centerpoint Property without significantly modifying permeable coverage and thereby creating draining issues, the latter of which would not in accordance with the Centerpoint easement agreement.

If granted, it is understood that the maximum allowed parking for any and all allowed uses never exceed the 95 spaces currently proposed.

On behalf of OFT Enterprises, please feel free to contact me for any questions pertaining to this particular request for special exception.

Thank you for your consideration,

Thomas De Froy  
tdefroy@identityarchitects.com  
Identity Architects  
111 Travis Street  
Direct: 713.595.2156

**Property Ownership Affidavit**

November 30, 2015

City of Bellaire  
Development Services  
7008 South Rice  
Bellaire, Texas  
Harris County

RE: Permission for Special exception application for 4950 Terminal Street

To the Development Services department of Bellaire, Texas:

I, Travis Adkins, representing A4353 LLC, hereby certify that I am the Owner of the property described in the attached legal description, EXHIBIT "A", located at 4950 Terminal Street, Bellaire TX, and that I give permission to OFT Enterprises & Identity Architects filing an application for special exception for the property.

[Signature]  
(Owner's Signature)

**(For Notary Use Only):**

State of Texas

City/County of Bellaire / Harris

I, Angela Reese, a Notary Public in and for the aforesaid

State/District hereby certify that the following person: Travis Adkins

appeared before me in the State / District and City/County aforesaid and executed this affidavit on the following date: (month, day, year): November 30, 2015

Notary Signature: [Signature] Registration number: 160260622

My Commission Expires: May 19, 2019

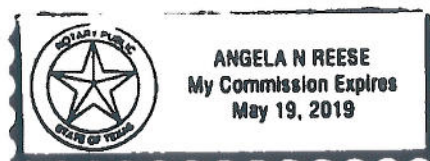




EXHIBIT "A"

23,334 square feet of land being all of Lots 45, 46, 47, 48 and 49, TERMINAL ADDITION, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 353, Page 396 of the Deed Records of Harris County, Texas, SAVE AND EXCEPT the East 17.50 feet of said lots conveyed in fee to Houston Lighting & Power Company by deed recorded in Volume 7563, Page 14 of the Deed Records of Harris County, Texas, said 25,334 square feet to land being more particularly described by metes and bounds as follows:

Beginning at a found 1 1/4 inch iron pipe at the Southwest corner of said Lot 49 of Terminal Addition, said point being at the intersection of the east line of 2nd Street (50 feet R.O.W.) and the north line of Terminal Avenue (50 feet R.O.W.);

Thence North, along the east line of said 2nd Street, a distance of 284.27 feet to a found 1 1/4 inch iron pipe for the Northwest corner of Lot 45, and the Northwest corner of the herein described tract;

Thence North 85 degrees 18 minutes 30 seconds East, along the southerly line of a 10 foot alley way, a distance of 88.30 feet to a set 1/2 inch iron rod for the Northeast corner of the herein described tract;

Thence South, along the west line of said Houston Lighting & Power Fee Strip, a distance of 291.49 feet to a set 1/2 inch pipe for the Southeast corner of the herein described tract;

Thence West, along the north-line of said Terminal Avenue, a distance of 88.00 feet to the Point of Beginning, containing 25,334 square feet of land area.

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COMMUNITY DEVELOPMENT

CITY OF BELLAIRE  
RECEIVED

NOV 20 2015

COMMUNITY DEVELOPMENT

**ASSIGNMENT and ASSUMPTION OF PARKING LICENSE AGREEMENT**

THE STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS           §

KNOW ALL MEN BY THESE PRESENTS: That **TERMINAL STREET, LTD.**, referred to in the License, defined below, as Terminal Street, L.T.D. (the "Assignor"), a Texas limited partnership, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to it in hand paid by **A4353, LLC** ("Assignee"), a Texas limited liability company, the receipt and sufficiency of which is hereby acknowledged, has Assigned and Transferred and by these presents does hereby Assign and Transfer to the Assignee, to the extent transferrable, the Assignor's interest in and to that certain Parking License Agreement (the "License") dated November 23, 2009, by and between CenterPoint Energy Houston Electric, LLC, as "Licensor" and Assignor, as "Licensee", and all Assignor's rights, if any, to the prepaid rentals, if any (the "Rents") relating to the License. A true copy of the License is attached hereto as **Exhibit "A"**, and incorporated herein for all purposes.

The Assignor's interest in the License is being assigned and transferred in connection with the sale and conveyance by Assignor to Assignee of the following described real property and improvements thereon:

**All that tract or parcel more particularly described in Exhibit "B", attached hereto and incorporated herein for all purposes (the "Real Property").**

The Assignor represents to Assignee rent for the License has been paid through October 31, 2010. Other than set forth in the preceding sentence, the License is assigned and transferred to Assignee without representation or warranty of any kind.



Assignee acknowledges that it has read and fully understands the License, including without limitation, (a) the provisions of Article XV [prohibiting the sale, conveyance, devise, subletting or assigning of the License] without the prior written consent of the Licensor, and (b) the provisions of Article XVI [relating to termination in the event the Licensee breaches any terms of the License]. Notwithstanding such provisions, the Assignee has, by accepting this Assignment and Assumption of Parking License Agreement, waived any and all right to seek damages or other compensation from Assignor in the event the License is terminated by Licensor for any reason. Assignee shall undertake, at its cost and expense, obtaining any consent by Licensor to this Assignment and Assumption of Parking License Agreement or attempting to secure a replacement Parking License Agreement with Licensor. Assignee acknowledges, that in the event of the Licensor's approval of this Assignment and Assumption of Parking License Agreement or a replacement Parking License Agreement is obtained by Assignee, the rent for the same may be increased. Assignee acknowledges that there is no assurance that Licensor shall either approve this Assignment and Assumption of Parking License Agreement or enter into a replacement agreement with Assignee.

Assignee covenants and agrees to indemnify and hold Assignor harmless from any and all obligations of Assignor under the Parking License Agreement (without limitation, the provisions of Article XVII), including any attorney's fees and costs in the enforcement of such indemnity.

[Signatures on following page]

EXECUTED in multiple counterparts, each to be deemed one and the same original, as of  
the 28 day of ~~April~~ MAY, 2010.

Assignor:

Terminal Street, Ltd., a Texas limited partnership

By: Iron Door, Inc., a Texas corporation, its  
General Partner

By: Bruce Ripper  
Bruce Ripper, President

Assignee:

A4353, LLC ("Assignee"), a Texas limited liability  
company

By: Jessica Dubose  
Jessica Dubose, Managing Member

By: James Dubose  
James Dubose, Managing Member

THE STATE OF TEXAS

COUNTY OF HARRIS

§  
§  
§

This instrument was acknowledged before me on the 28 day of MAY, 2010,  
by **Bruce Ripper**, the President of Iron Door, Inc., a Texas corporation that is the General Partner  
of Terminal Street, Ltd., a Texas limited partnership, on behalf of said corporation, and in the  
capacity therein stated.



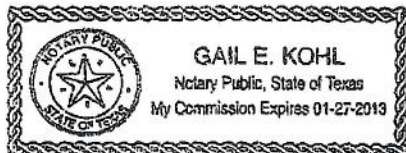
[Signature]  
NOTARY PUBLIC - STATE OF TEXAS

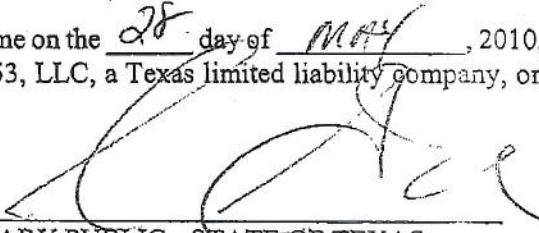
Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

THE STATE OF TEXAS       §  
                                     §  
COUNTY OF HARRIS       §

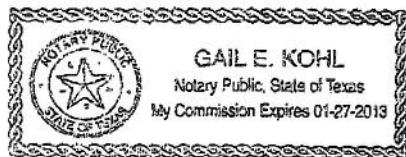
This instrument was acknowledged before me on the 28 day of MAY, 2010,  
by **Jessica Dubose**, a Managing Member of A4353, LLC, a Texas limited liability company, on  
behalf thereof, and in the capacity therein stated.

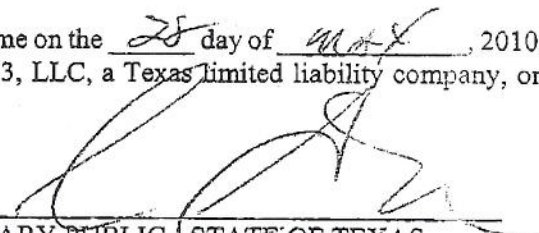


  
\_\_\_\_\_  
NOTARY PUBLIC - STATE OF TEXAS  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

THE STATE OF TEXAS       §  
                                     §  
COUNTY OF HARRIS       §

This instrument was acknowledged before me on the 28 day of MAY, 2010,  
by **James Dubose**, a Managing Member of A4353, LLC, a Texas limited liability company, on  
behalf thereof, and in the capacity therein stated.



  
\_\_\_\_\_  
NOTARY PUBLIC - STATE OF TEXAS  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**

Copy of Parking License Agreement attached.



License No. L1035

PARKING LICENSE AGREEMENT

THE STATE OF TEXAS }

COUNTY OF HARRIS }

WHEREAS, CenterPoint Energy Houston Electric, LLC, a Texas limited liability company, or its legal antecedent entity (hereinafter referred to as "Licensor"), was conveyed fee simple title to the following described property, to wit:

Being approximately a 0.7904 acre (34,429 gross square feet) parcel of land of which 0.368 acre (16,016 net square feet) is paved, more or less, out of the M. B. Gray Survey, A - 284, Harris County, Texas, being Lots 62, 63, 64, 65, 66 and 67 and the eastern 17.5 feet of Lots 45 through 49 of Terminal Addition, said addition being a subdivision of Lot No. Two in Block No. Thirteen of Westmoreland Farms First Subdivision as per map of said Terminal Addition recorded in Volume 353, Page 385 of the Deed Records of Harris County, Texas, being the same properties conveyed to Houston Lighting & Power Company by deeds as recorded in Volume 1372, Page 277, in Volume 1350, Page 684, in Volume 1398, Page 11, and in Volume 1391, Page 711, respectively, of the Deed Records of Harris County, Texas. Said 0.7904 acre parcel of land (hereinafter referred to as "Licensed Property") is depicted for locative purposes only on EXHIBIT "A", attached hereto and made a part hereof; and

WHEREAS, Licensor is now occupying or intends to occupy, in part, the Licensed Property for the purpose of erecting and maintaining across and thereon structures and facilities for or incidental to the transmission of electric energy; and

WHEREAS, Terminal Street, L.T.D., (hereinafter referred to as "Licensee"), is desirous of acquiring from Licensor, the right to use the Licensed Property for parking, subject to Licensor's continuing right and option to cancel or terminate the license, to alter the area which Licensee may occupy or use under the license and/or the conditions under which Licensee may thereafter occupy or use same; it being understood and agreed that this right and option may be exercised by Licensor in its sole discretion based on Licensor's present or future use of the Licensed Property, all as Licensor's requirements may dictate during the term of said license, and in recognition of the fact that Licensor's need for the Licensed Property may change or be altered by future conditions; and

WHEREAS, Licensor, being an energy delivery company that must maintain the ability to immediately access its rights of way for diverse activities including maintenance, operational and emergency needs, must ensure that any ancillary uses of its properties are subordinate to the primary use of serving electrical purposes and needs;

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, that for and in the consideration of the mutual promises herein contained, the parties hereto do hereby covenant and agree as follows:

R/W: Bellaire-Jeanetta

Map#B508

License No. LI035

I

Subject to the terms and conditions contained in this Agreement, the Licensor grants to the Licensee a license for the building and maintaining of a parking area for the purpose of parking automotive vehicles, in operative condition and not to exceed fifteen feet (15') in height above natural ground level, on the Licensed Property. If any use of the Licensed Property other than parking of operative vehicles occurs, it will be incumbent upon Licensee to immediately notify Licensor of this non-compliance.

II

The term of this license shall be for FIVE (5) years, commencing November 1, 2009 and ending October 31, 2014, unless Licensee exercises the option to renew or extend the license as provided in Paragraph IV below.

III

Licensee agrees to pay to Licensor, as rent, the following sum:

For the period November 1, 2009 thru October 31, 2010 the sum of \$6,238.75  
For the period November 1, 2010 thru October 31, 2011 the sum of \$7,174.56  
For the period November 1, 2011 thru October 31, 2012 the sum of \$8,250.75  
For the period November 1, 2012 thru October 31, 2013 the sum of \$9,488.36  
For the period November 1, 2013 thru October 31, 2014 the sum of \$10,911.61

Each subsequent rental payment shall be due on the first day of each subsequent annual period during the original term or any extended term of this license. If payment has not been received within thirty (30) days of the due date, a late fee of \$25.00 or 15% of the balance due, whichever is greater, will be assessed. If not paid within sixty (60) days of the due date, Licensor may terminate said license by written notice effective ten (10) days from the posting by mail of said notice addressed to Licensee. Licensor reserves the right to adjust the rental amount at any time and at its sole discretion based on the condition of the Licensed Property and Licensor's assessment of the current market value, tax levies, and other variables affecting the Licensed Property.

IV

Licensee shall have an option to renew or extend this license for an additional period of five (5) years at such rental as may be determined by Licensor, provided that Licensee shall within not less than six (6) months of the end of the term notify Licensor in writing of Licensee's desire to exercise such option. Upon Licensor's receipt of notice from Licensee of a desire to exercise the option for renewal, Licensor shall notify Licensee in writing of the amount of the rental for the renewal term. Unless Licensee, within thirty (30) days after receipt of notice of the new rent, notifies Licensor of acceptance of such rental for the renewal term, the License shall terminate at the end of the term under which Licensee is then occupying the Licensed Property. Licensee shall not be released from any of the conditions (including any unpaid license rentals



License No. L1035

accrued) herein until final inspection and approval of the Licensed Property has been made by Licensor.

V

Licensor shall have the option during the primary or any extended term of this license to require Licensee to vacate said Licensed Property, or any part thereof, by giving Licensee written notice to so vacate not later than thirty (30) days from the date said written notice, addressed to Licensee, is posted by mailing. If Licensor shall specify in said notice that the whole of said Licensed Property shall be vacated, such notice shall serve to cancel or terminate this license at the expiration of such thirty (30) day period. If Licensor shall specify in said notice that only part of the above described Licensed Property shall be vacated, the rental due hereunder from Licensee shall be adjusted proportionately effective as of the date Licensee vacates as required, according to the square feet of area remaining available for Licensee's use. In the event Licensee shall be required to vacate more than one-half (1/2) of the Licensed Property, Licensee, at its option, may cancel this license as of the date Licensee is required to vacate without penalty or further obligation except for rent through the date Licensee vacates, prorated to the date of cancellation. Licensee shall not be released from any of the conditions (including any unpaid license rentals accrued) herein until final inspection and approval of the Licensed Property has been made by Licensor. All prepaid license rentals will be returned to the Licensee if the inspection of the Licensed Property finds that Licensee has restored the Licensed Property to Licensor's satisfaction.

VI

If Licensee elects to cancel this license during its primary term or any extended term and is not in default under the provisions set forth herein, Licensee must give thirty (30) days written notice to Licensor of its intention to do so. Licensee, however, shall not be released from any of the conditions (including any unpaid license rental accrued) herein until final inspection and approval of the Licensed Property has been made by Licensor. Licensee agrees, whether said cancellation or termination is initiated by Licensee or Licensor, that the Licensee shall leave the Licensed Property in a satisfactory condition to the Licensor, which shall include, but is not limited to, the removal of all personal property and improvements made to the Licensed Property by Licensee, including parking stops and fencing. In the event Licensee damages the Licensed Property, Licensor can request the Licensee to repair the Licensed Property to its original condition. In the event the Licensee fails to make such remedy after thirty (30) days, then the Licensor, without liability to the Licensee, can repair the Licensed Property to its original condition and invoice Licensee for the costs thereof. Upon receipt of invoice, the Licensee shall promptly reimburse Licensor for all costs incurred with the repair of the Licensed Property. If the inspection finds that Licensee has restored the Licensed Property to Licensor's satisfaction, and Licensee has met all other prior conditions of the agreement, all prepaid license rentals will be reimbursed to Licensee, prorated to the date of cancellation, less reasonable administrative costs.

License No. L1035

VII

Licensee agrees that the Licensor and/or assigns shall at all times during the primary or any extended term of this license have the right to enter upon the Licensed Property for any purposes, including the repairing, inspecting and/or maintaining of Licensor's facilities which are now or may hereafter be located thereon; and may do so without any liability to Licensee for damage which may be incidental thereto. Licensor shall retain the right to grant to third parties use of the Licensed Property, including but not limited to the installation and maintenance of pipelines and telecommunications facilities, including cell sites and other such uses, provided such use will not unreasonably interfere with Licensee's use and enjoyment of the Licensed Property on a continuous basis.

VIII

Licensee, prior to making any use of said Licensed Property, agrees, at its own expense, to erect a protective guard rail or barricade around each of Licensor's present or future structures located on said Licensed Property and to erect the same in accordance with the specifications attached hereto as EXHIBIT "B".

IX

This License is granted for the sole purpose of building and maintaining a parking area, as provided in Paragraph I above. Licensee will be responsible for excluding any and all unauthorized traffic from the Licensed Property. Licensee shall engage in no activity which at any time interferes with Licensor's present or future use of said Licensed Property or which violates any federal, state or city law, regulation or ordinance, including all applicable electrical safety codes. There shall be no discharging of firearms or use of alcohol or illegal drugs on the Licensed Property. Licensee at all times shall keep the Licensed Property in a neat and orderly condition and shall not permit the accumulation of trash or other debris thereon. Licensee further agrees not to make any separate or distinct charge to third parties of any fees for the parking of vehicles on, or otherwise using, the Licensed Property.

X

Licensee further agrees not to use, store or transfer any hazardous, harmful or toxic material, waste or substance or any pollutant, as such terms may be used in any Federal, state or local statute, ordinance or regulation, upon the Licensed Property except in strict accordance with any and all laws, regulations and ordinances regulating such use, possession or disposal. Licensor shall not dispose of any type of waste, as such term is defined by any statute, regulation or ordinance, on or adjacent to the Licensed Property.

XI

Licensee may, at its sole cost and expense, grade, pave or shell the surface of the Licensed Property. Licensee shall first submit to Licensor for approval a sketch or full information in writing showing the proposed plans for all new improvements or changes to existing improvements. In the event the Licensor determines that the grading, paving or shelling



License No. L1035

installed by Licensee creates drainage problems, Licensee shall correct the drainage problem(s) at Licensee's sole cost and expense, in a manner approved by Licensor. In the event that Licensee fails to correct any drainage problems caused by Licensee's operations as required herein, within thirty (30) days of receiving written notification, Licensor shall have the option to terminate this license or to repair and correct said drainage problems in which case Licensee shall promptly reimburse Licensor for the cost of making the needed corrections. All surface grading, paving or shelling by Licensee shall be subject to change or removal by Licensor without any liability to Licensee, if such become necessary in Licensor's judgment for the exercise of Licensor's rights under Paragraph V above.

## XII

Licensee shall erect no buildings or structures on the Licensed Property, except fences, as fences are defined herein. The permitted construction of fences, defined for the purposes of this license, shall be limited to those fences constructed in a manner that permits the movement of the fence and shall consist of only wooden or metal poles and chain link or barbed wire. Concrete, bricks, rocks or any other material of like kind are considered permanent structures and are not permitted. Should fences be erected, Licensee will place 20-foot gates or gaps in the fence. Licensor shall at all times have access through said gates. Licensee shall be solely responsible for the erection, maintenance and removal of said fencing; and the specification by Licensor, of materials and dimensions for said fencing shall not serve to make Licensor responsible for the safety, stability or fitness of any fence. No dumpsters or trash containers shall be kept on the Licensed Property. Licensee shall not extend any gas, water or electric service to or within the Licensed Property. Licensee agrees to keep that portion of Licensor's property located between the Licensed Property and any of the Licensor's property lines, adjacent licenses, or public roadways, properly mowed and edged. Licensee further agrees not to plant shrubs, bushes or any landscaping on the Licensed Property without the prior written permission of Licensor. Under no circumstances is Licensee permitted to plant trees upon the Licensed Property.

## XIII

Licensee shall suffer no liens to be created on the Licensed Property, but if any lien should become fixed thereon as a result of Licensee's operations, Licensee agrees to fully discharge the same within ten (10) days from receipt of notice thereof.

## XIV

If by reason of Licensee's operations or by reason of any improvement made on the Licensed Property by Licensee, Licensor's ad valorem taxes shall increase during any year of the initial term or any extended term of this license, Licensee shall reimburse Licensor for the amount of such increase in taxes upon receipt of notice thereof from Licensor.

## XV

It is agreed and understood by the Licensee that the rights, privileges and obligations conferred and imposed upon the Licensee by this license may not be sold, conveyed, devised, sublet or assigned by Licensee to a third party without the written consent of Licensor. Failure to

License No. L1035

obtain written consent from Licensor shall render this license null and void, and result in the immediate termination of all rights pertaining to the Licensed Property as granted within this license.

XVI

In addition to the provisions of Paragraph III above, if Licensee breaches any of the terms or conditions of this license without curing such default within ten (10) days from the receipt of written notice, of such default from Licensor, Licensor may terminate said license by written notice, addressed to Licensee, effective ten (10) days from the date said notice is posted by mailing.

XVII

LICENSEE ACCEPTS THE ABOVE SAID LICENSED PROPERTY IN ITS PRESENT CONDITION, WITH LICENSOR'S FACILITIES THEREON, WITHOUT ANY OBLIGATION ON LICENSOR'S PART TO REPAIR OR MAINTAIN THE SAME, AND ASSUMES ALL RISK OF DAMAGE OR LOSS TO LICENSEE'S PROPERTY WHICH MAY BE INCIDENT TO LICENSOR'S PRESENT OR FUTURE USE OF SAID LICENSED PROPERTY. LICENSEE HEREBY BINDS ITSELF, ITS SUCCESSORS, ASSIGNS, AGENTS AND LICENSEES TO INDEMNIFY AND HOLD HARMLESS LICENSOR FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, LIABILITIES, COSTS, LOSSES, EXPENSES AND DAMAGES, IN CONTRACT, STRICT LIABILITY OR IN TORT, FOR INJURY TO ANY PERSON (INCLUDING DEATH) OR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE CONSTRUCTION, USE AND EXISTENCE OF SAID VEHICULAR PARKING ON LICENSOR'S PROPERTY, WHERE SUCH INJURY OR DAMAGE IS CAUSED BY THE SOLE, JOINT, CONCURRENT, CONTRIBUTING OR COMPARATIVE NEGLIGENCE OR FAULT OF LICENSEE, ITS AGENTS OR EMPLOYEES, AND EVEN WHEN CAUSED BY THE SOLE, JOINT, CONCURRENT, CONTRIBUTING OR COMPARATIVE NEGLIGENCE OR FAULT OF THE LICENSOR, ITS AGENTS OR EMPLOYEES.

LICENSEE HEREBY BINDS ITSELF, ITS SUCCESSORS, ASSIGNS, AGENTS, CONTRACTORS AND LICENSEES TO INDEMNIFY AND HOLD LICENSOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, LIABILITIES, COSTS, LOSSES, EXPENSES AND DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES TO REAL OR PERSONAL PROPERTY OR NATURAL RESOURCES, PERSONAL INJURY OR DEATH CLAIMS, AND PUBLIC OR PRIVATE CLAIMS OR DEMANDS FOR DIRECT PAYMENT OR REIMBURSEMENT OF INVESTIGATION, REMEDIATION AND GOVERNMENT OVERSIGHT COSTS, ARISING OUT OF, OR IN ANY WAY RELATED TO, THE PRESENCE OR RELEASE OF HAZARDOUS SUBSTANCES, POLLUTANTS OR OTHER CONTAMINANTS AT OR ON LICENSOR'S PROPERTY WHERE SUCH HAZARDOUS SUBSTANCES, POLLUTANTS OR OTHER CONTAMINANTS MIGRATE OR ARE OTHERWISE TRANSPORTED OR RELEASED FROM LICENSEE'S OR ITS AGENT'S OR ITS LICENSEE'S OR ITS CONTRACTOR'S

**Board of Adjustment**

Council Chambers, First Floor of City  
Hall  
Bellaire, TX 77401



Meeting: 12/17/15 07:00 PM  
Department: Development Services  
Category: Policy  
Department Head: John McDonald  
DOC ID: 1767

**SCHEDULED  
ACTION ITEM (ID # 1767)**

---

**Item Title:**

Discussion, consideration, and possible action on the Board of Adjustment's 2015-2016 Rules of Procedure.

**Background/Summary:**

This item was put on the agenda at the request of the Chair in order to allow for a more in-depth review of the Rules of Procedure.

**ATTACHMENTS:**

- Rules of Procedure 2015 (PDF)



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**RULES**  
**OF**  
**PROCEDURE**  
**FOR THE**  
**BOARD OF**  
**ADJUSTMENT**  
**CITY OF BELLAIRE, TEXAS**

**Adopted**  
**July 2015**

---

Attachment: Rules of Procedure 2015 (1767 : Rules of Procedure)

# **RULES OF PROCEDURE**

## **FOR THE**

### **BOARD OF ADJUSTMENT**

**CITY OF BELLAIRE, TEXAS**

**Adopted – July 2015**

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City of Bellaire  
7008 South Rice Avenue  
Bellaire TX 77401-4411  
Tel - 713/662-8222  
Fax - 713/662-8212  
Web Page - <http://www.bellairetx.gov>  
E-Mail – [aparcus@bellairetx.gov](mailto:aparcus@bellairetx.gov)

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#### **Board of Adjustment July 2015 - June 2016**

Tom Ligh, Chairman  
Amar Raval, Vice Chairman  
Patty McGinty  
Seth Miller  
Debbie Karakowsky  
Bill Stone  
Samir Sinha

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#### **Staff**

ChaVonne Sampson - Staff Liaison  
Ashley Parcus - Secretary

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#### **City Council Liaison**

Andrew Friedberg

Attachment: Rules of Procedure 2015 (1767 : Rules of Procedure)

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## ARTICLE I Name and Authority

The name of this body is the Board of Adjustment pursuant to state and local law. The Board is authorized within the statutory guidelines contained in Sections 211.008 - 211.011, of the Texas Local Government Code and Chapter 2, Administration, of the City of Bellaire Code of Ordinances.

## ARTICLE II Membership

Membership to the Board of Adjustment is by appointment made by the Mayor and the City Council of the City of Bellaire, Texas pursuant to Section 24-303 Planning and Zoning Regulations of the City of Bellaire, Texas as amended. The membership of the Board of Adjustment is seven (7) members, each with a two year term alternatively, such that four (4) members are appointed to a two (2) year term in one year and three (3) members are appointed to a two (2) year term in the following year. Vacancies shall be filled by the Mayor and City Council as necessary.

## ARTICLE III Officers

**Section A. Officers Named:** The officers shall be Chairman and Vice-Chairman. The Board shall elect the Chairman and Vice-Chairman at the first meeting of a newly appointed Board pursuant to Section 24-303(d) of the Code of Ordinances of the City of Bellaire.

**Section B. Chairman's Duties:** The Chairman is the Presiding Officer and Spokesperson for the Board. The Chairman may delegate Board business from time to time.

**Section C. Vice-Chairman's Duties:** The Vice- Chairman shall serve as Chairman in the absence of the Chairman.

## ARTICLE IV Meetings

**Section A. Quorum Requirement:** A quorum of the Board shall be a majority of the Board [or four (4) members of a seven member Board] provided however, that if docket items and/or cases before the Board are heard, the quorum for such item shall be not less than 75% [or six (6) members of a seven (7) member Board] of the Board pursuant to Section 211.008 (d) of the Texas Local Government Code.

**Section B. First Meeting of a New Board:** The first meeting of a new Board shall be a joint meeting of the outgoing (old) Board and the incoming (new) Board. The outgoing Chairman shall call the meeting to order and shall preside until the new chairman is elected. There shall be no Docket Items for any variance, appeal, or exception on the agenda for this meeting. The outgoing Board shall approve the minutes of all previous meetings. The incoming Board shall adopt temporary or permanent Rules of Procedure and such rules shall take effect immediately and remain in effect until amended as outlined in **Article VIII - Amendments to Rules of Procedure**. Said Rules may be adopted "As Is" or adopted "As Amended" by a majority vote [that's four (4) or more votes] of the Board. All other amendments shall be adopted pursuant to **Article VIII - Amendments to Rules of Procedure**. The Agenda for the meeting shall be as follows:

1. Call to Order [by outgoing Chairman]
2. Pledge to the Flag [US and Texas]
3. Certification of a Quorum [outgoing and incoming Board]
4. Approval of minutes [outgoing Board only]
5. Communications and Reports [outgoing Board only]
6. Unfinished Business [outgoing Board only]
7. Swearing In of New Board Members [incoming Board assumes duties and outgoing Board retires]

8. Introduction of incoming Board members
9. Election of Chairman and Vice-Chairman [incoming Board only]
10. Adoption of Rules of Procedure [incoming Board only]
11. Communications and Reports [incoming Board only]
12. General Comments from the Public [**Limitations:** Six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board members present].
13. General Comments from Board members [incoming Boards]
14. Announcements (if any)
15. Adjournment

**Section C. Regular Meetings:** Regular meetings of the Board of Adjustment shall be held at 7:00 P.M. on the third Thursday of each month in the Council Chambers of the City of Bellaire, 7008 South Rice Avenue, Bellaire Texas.

**Section D. Special Meetings:** Special meetings may be called by the Chairman or any two members of the Board, of which notice shall be given in conformity with the Texas Open Meetings Act and procedures of the City of Bellaire, Texas.

**Section E. Open Meetings Act:** All meetings shall comply with the Texas Open Meetings Act pursuant to Chapter 551, Texas Government Code.

**Section F. Adding Agenda Items:** Agenda items may be added by the Staff Liaison, the Chairman or any two members of the Board not later than 12:00 noon on the seventh (7<sup>th</sup>) calendar day prior to a meeting.

**Section G. Sign-Up Form for Speakers:** There shall be Sign-Up Forms for the purpose of permitting members of the public to address agenda items. Such forms shall be available to the public and forwarded to the Secretary and to the Chairman so that such person's names may be called to address the Board at the appropriate time. All testimony shall be given under oath.

**Section H. The Agenda:** Except as provided in Section B of this Article, the Agenda at all regular and special meetings of the Board shall be as follows:

1. Call to Order
2. Pledge to the Flag (US and Texas)
3. Certification of a Quorum
4. Approval of Minutes
5. Reports from Officers, Committees, Sub-committees and Communications Board Members have had outside the meeting
6. Unfinished Business
7. Reading of the Standards from Section 24-704, Bellaire Code of Ordinances.
8. New Business - Public Hearings on Docket Item for a Variance, Appeal or Exception [**Repeated and sequentially numbered for each Docket Item considered at each meeting.**
  - a) Presentation by Applicant, Appellant, Property Owner, Counsel or other Agent [**Limitations:** Fifteen (15) minutes with extensions in five (5) minute increments as approved by a majority vote of the Board members present].
  - b) Presentation by the City [**Limitations:** Fifteen (15) minutes with extensions in five (5) minute increments as approved by a majority vote of the Board members present].
  - c) Public comments on Docket Item [**Limitations:** Names of those desiring to comment shall come from sign-up list and shall be limited to six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board members present].
  - d) Rebuttal by Applicant, Appellant, Property Owner, Counsel or other Agent. [**Limitations:** Six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board members present].
  - e) Questions by Board [**Limitations:** The Board may ask germane questions of the Applicant, Appellant, Property Owner, Counsel or other Agent, and/or City Staff].
  - f) Consideration of, deliberation by and action on Docket Item by the Board [**Requires** 75% or six (6) affirmative votes for approval pursuant to Section 211.009(c), Texas Local Government Code].



General Comments from the Public [**Limitations:** Six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board members present].

General Comments from Board members

Announcements (if any)

Adjournment

**Section I. Motions in the Affirmative:** All motions on final disposition of a Docket Item shall be in the affirmative.

**Section J. Previous Question:** A motion to move the Previous Question (close debate) shall be in order following a reasonable time for deliberation. Such motion shall require a second and a two-thirds (2/3) vote for passing.

**Section K. Revising the Order of the Agenda During a Meeting:** The order of the Agenda may be amended following Item three (3), by a simple majority vote of the Board.

**Section L. Withdrawal of Application:** Any appellant or applicant may request that his or her appeal or application be withdrawn at any time prior to a final vote or disposition by the Board. Such request shall be granted by the Board.

**Section M. Parking Study Required:** Any applicants that request a Variance or Special Exception from Chapter 24, Section 514 and/or 514a of the City of Bellaire Code of Ordinances must submit with their application a “parking demand analysis”. This analysis along with the complete parking plan that is to be presented to the board must be given to the City of Bellaire ten days in advance of the board meeting for their review. In the event the Board of Adjustment or the applicant wishes to revise the proposal at or before the hearing, the City of Bellaire may request and receive the right to delay the process until the next board meeting to review the changes.

## ARTICLE V Docket Items

**Section A. Numbering Docket Items:** Each appeal or application for variation or modification filed in proper form with the required data and fees, shall be numbered serially, docketed, and shall be placed upon the calendar of the Board by the Secretary thereof. The docket numbers shall begin anew on January 1 of each year, and shall be hyphenated with the number of the year in which the said appeal or application is filed pursuant to Section 24-303 of the Bellaire Code of Ordinances.

**Section B. Timing of Docket Items:** All cases docketed more than fifteen (15) days next preceding a regular meeting day, and which the Texas Open Meeting Act requirement has been complied with, shall be automatically set for hearing on the succeeding regular meeting day. Cases docketed within fifteen (15) or fewer days of the regular meeting day shall be set for hearing on the second regular meeting day after docketing of the appeal or application.

**Section C. Method of Appeal:** Each appeal to the Board from an order, decision or determination of the City Building Official or designee or application for variation or modification of any of the provisions of the Zoning Regulations and all other applicable communication concerning Board business shall be made in writing to the Secretary of the Board.

**Section D. Time Limitations of Order or Relief Granted:** Unless otherwise modified by the Board, if any application for variation or modification is granted by the Board, the variance order shall include a requirement that all permits necessary for the prosecution of the work shall be obtained within one (1) year and construction begun within two (2) years of the order by the Board. The application form shall contain a notice of this section. The Board may modify this requirement.

**Section E. Notification:** The Order notifying the appellant or applicant shall also notify same of their appeal right to State District Court pursuant to Section 211.011, Texas Local Government Code, within ten (10) days of the date of the order is filed in the Board office.

**Section F. Precedents:** No action of the Board of Adjustment shall set a precedent. Each case shall be decided upon its merits and upon the circumstances attendant thereto.

**Section G. Advice and Moot Questions:** No formal requests for advice, or moot questions will be considered by the Board. Any advice, opinion or information given by any Board member or the Secretary or any other official or employee of the City of Bellaire shall not be binding on the Board.

**Section H. Fees:** All Applicants and Appellants shall pay a non-refundable application fee set by the City of Bellaire to the Secretary of the Board.

**Section I. Application for Re-Hearings:** No application or appeal to the Board shall be permitted on substantially the same subject matter in reference to the same property prior to the expiration of twelve (12) months from an order of the Board. No application or appeal shall be allowed on substantially the same subject matter in reference to the same piece of property during litigation against the City of Bellaire and/or the Board of Adjustment on said property.

**Section J. Disposition:** In the final disposition of any appeal or application for variation or modification, the decision shall affirm, modify or reverse the refusal of a permit by, or any order or decision of the City Building Official. In case of an application for variation or modification the decision shall set forth that the application is denied or that it is granted with or without conditions. The vote of each member present on each decision shall be by record vote.

**Section K. The Lack of a Quorum for a Variance Hearing:** In the event that the Appellant, Applicant, Property Owner, Counsel, or other Agent is present at the scheduled hearing, but the Board of Adjustment is lacking a quorum for the hearing, the hearing shall be rescheduled without any penalties for the appellant or applicant and no additional application fee shall be imposed.

## ARTICLE VI Definitions

**Appeal:** A process to permit a request for relief through application by a person aggrieved by a decision of the City Building Official pursuant to Bellaire's Planning and Zoning Regulations.

**Appellant:** A person aggrieved by a decision made by the City Building Official affected by the decision, who appeals in person or through his designated representative for relief to the Board of Adjustment.

**Applicant:** A person who requests in person or through his designated representative, either a special exception to the terms of Bellaire's Planning and Zoning Regulations or a request for a variance from the terms of Bellaire's Planning and Zoning Regulations.

**Application:** An appeal or a request for a variance or a special exception in writing specifying the grounds for an appeal contained in a standardized form issued by the City Building Official.

**Board of Adjustment:** A public and quasi-judicial body charged with the duty to hear and determine zoning appeals, special exceptions and variances pursuant to Section 211.009 of the Texas Local Government Code and Section 24-303 of the Bellaire Code of Ordinances.

**City Building Official:** The person duly appointed by the City Manager of the City of Bellaire, as provided by Chapter 24 of the Bellaire Code of Ordinances, charged with the duty and obligation of issuing permits and certificates of occupancy and with the responsibility for enforcing the provisions of the Building Code and Zoning Regulations for the City of Bellaire.

**Error:** Refer to Section 211.009(a)(1), Texas Local Government Code.

**Hardship:** A determination to be made by a Board of Adjustment or, in the event of its Appeal to a District Court. It is defined in Black's Law Dictionary as a condition, which may be unreasonable, unduly oppressive, arbitrary or confiscatory which, if, found to be true in the opinion of a Board of Adjustment, is grounds for the granting of a variance. The burden of proof of such hardship lies with an applicant.

**Special Exception:** Refer to Section 211.009(a)(2), Texas Local Government Code.

**Staff Liaison:** The city staff member appointed by the City Manager of the City of Bellaire to assist the Board of Adjustment.

**Variance:** Refer to Section 211.009(a)(3), Texas Local Government Code.

**Zoning:** A power over land use granted to a city pursuant to Chapter 211, Texas Local Government Code, for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.

## ARTICLE VII Civil and Parliamentary Authority

**Section A. Construction of Authority:** The construction of authority in all matters associated with the Board of Adjustment, including the Agenda, shall be: **1)** the Constitution and statutes of the United States of America; **2)** the Constitution and statutes of the State of Texas; **3)** the Charter of the City of Bellaire; **4)** the Code of Ordinances of the City of Bellaire; **5)** these Rules of Procedure; and **6)** Robert's Rules of Order, Newly Revised.

**Section B. Reference to State and Local Statutes:** The conduct and scope of activity of the Board of Adjustment is governed by and subject to State and local laws including, but not limited to, Chapters 211, 213 and 216, Texas Local Government Code, Chapters 551 and 552, Texas Government Code, the Charter of the City of Bellaire, Texas, and Chapter 2, Administration of the City of Bellaire Code of Ordinances.

**Section C. Parliamentary Authority:** The Rules contained in the most recent edition of Robert's Rules of Order, Newly Revised shall govern the Board of Adjustment in all cases in which they are applicable and not inconsistent with a superior authority.

## ARTICLE VIII Amendments to Rules of Procedure

**Section A. Amendments by Existing Board:** These Rules of Procedure may be amended by a majority vote of the entire Board of Adjustment provided previous notice is given at one meeting in advance of any such consideration, and further provided, that an amendment to bring these Rules of Procedure in compliance with a superior statute, rule, procedure or other authority may be considered without previous notice.

**Section B. Annual Review:** These Rules of Procedure shall be reviewed not less frequently than annually. The adoption of these Rules of Procedure by a New Board shall not constitute such review.

## ADOPTION OF RULES OF PROCEDURE

Adopted by the Board of Adjustment of the City of Bellaire on the 16<sup>th</sup> day of July, 2015.  
Attest:

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Signature of Chairman