



# CITY OF BELLAIRE TEXAS

## BOARD OF ADJUSTMENT

DECEMBER 17, 2015

Council Chamber

Regular Session

7:00 PM

7008 S. RICE AVENUE  
BELLAIRE, TX 77401

### 1. CALL TO ORDER

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

### 2. PLEDGE TO THE FLAG (US AND TEXAS)

Chairman Ligh led the Board and the public in the pledges to both flags.

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

### 3. CERTIFICATION OF A QUORUM

Chairman Ligh certified that there was a quorum present, consisting of the following members:

Attendee Name	Title	Status	Arrived
Patty McGinty	Board Member	Present	
Amar Raval	Vice Chairman	Present	
Tom Ligh	Chairman	Present	
Debbie Karakowsky	Board Member	Present	
Samir Sinha	Board Member	Present	
William Stone	Board Member	Present	
Seth A. Miller	Board Member	Present	
Ashley Parcus	Secretary	Absent	
ChaVonne Sampson	Development Services Manager	Present	
Scott Eidman	Attorney	Present	

### 4. APPROVAL OF MINUTES

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Chairman Ligh mentioned that on the last page he was listed as Vice Chairman instead of Chairman.

<b>RESULT:</b>	<b>APPROVED AS CORRECTED [UNANIMOUS]</b>
<b>MOVER:</b>	William Stone, Board Member
<b>SECONDER:</b>	Seth A. Miller, Board Member
<b>AYES:</b>	McGinty, Raval, Ligh, Karakowsky, Sinha, Stone, Miller

### 5. REPORTS FROM OFFICERS, COMMITTEES, SUB-COMMITTEES AND COMMUNICATIONS BOARD MEMBERS HAVE HAD OUTSIDE THE MEETING

There were no reports.

### 6. UNFINISHED BUSINESS

There was no unfinished business.

The Board then decided to change the order of the agenda in order to give the public hearing applicant more time to get to the meeting.

**Motion:** a motion was made by Vice Chairman Raval and was seconded by Board Member Stone to change the order of the agenda and discuss the Rules of Procedure next.

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

## **7. READING OF THE STANDARDS FROM SECTION 24-704, BELLAIRE CODE OF ORDINANCES**

Attorney Eidman read aloud the standards for special exceptions.

## **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].**

**William Kalkman & Thomas De Froy, Identity Architects**-The applicants informed the Board that they are asking for a reduction in the off-street parking requirement to 1.5 per 1,000 rather than the 3.8 that is currently required by Section 24-514a. They explained that the hardship deals with the fact that there are currently no parking spaces on this properties site, and only limited parking available on the adjacent tract that is currently under agreement with CenterPoint. Mr. De Froy informed the Board that there are currently 21 parking spots available on the CenterPoint tract, but with the reallocation of loading areas, re-striping, and a minor extension of the current lot toward Terminal Street they will be able to increase that number to at least 36. They hope to get additional, but cannot guarantee that at this point. He added that CenterPoint does not anticipate any need for the easement in the near future. Mr. De Froy informed the Board that they intend to keep the existing brick building, but will demo a portion of the property in order to provide a new two-story office in order to bring the project more in line with what is required within the UV-T Zoning District. The applicants then reviewed the standards for approval of a special exception and explained why their request complies with each. Mr. De Froy stated that they do recognize that there could be a small increase in traffic, but do not anticipate a significant amount that would negatively impact the area. They also pointed out that there should be a shift from bigger warehouse type vehicles to smaller vehicles, which will help the activity in the area. Mr. De Froy assured the Board that they will be following the code requirements for the district, therefore, they do not anticipate that it will negatively impact property values of the surrounding area. The applicants reiterated that they will attempt to provide as much parking as possible on the site, but are not able to guarantee that, and are therefore requesting the reduction from 3.8 per 1,000 to 1.5 per 1,000 in order to keep the building viable.

**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].**

Mrs. Sampson reiterated that the property is within the UV-T Zoning District, and informed the Board that the application was submitted on Nov 20, 2015, mail outs were sent on Dec 3, 2015, and the legal notice was published in the Southwest News on December 8, 2015. She explained that the applicant is requesting a special exception under the provisions of Section 24-716 of the City of Bellaire Code of Ordinances in order to reduce the off-street parking requirements of 4 spaces per 1,000 for general retail and 3.5 per 1,000 for medical office use regulation from Section 24-514a. Mrs. Sampson gave a little background information on the property, stating that it contains a 1 story structure that was built in 1950, with the previous use being a warehouse for a medical supply company. She added that the use has been permitted as long as the structure is not expanded from the current building footprint, or significantly altered as a non-conforming use. Mrs. Sampson stated that the applicant plans to develop a mixed-use space with retail and medical offices uses, which would be in conformance with the UV-T use regulations. She added that the applicant is also proposing improvements that will address specific characteristics in that zoning district which are outlined within the Comprehensive Plan. Mrs. Sampson reiterated that the property at 4950 Terminal has no on site parking, therefore the property owner has entered into a parking agreement with CenterPoint in order to utilize their site for parking. She added that the CenterPoint property has been used for previous tenants as well. Mrs. Sampson informed the Board that currently the lot is striped for 21 parking spaces, with the proposal of an additional 15 spaces. She explained that there is also street parking available along N 2nd, which has 17 spaces, N 3rd, which has 4, and Terminal, which contains 6, making the site total 63. Mrs. Sampson stated that upon review of the application and materials submitted, it is in the opinion of the Development Services Director that the application does meet the standards for a special exception, and is therefore eligible for consideration of granting of the special exception. She added that it is requested that the Board waive the parking study requirement within the Rules of Procedure, Article IV, Section M. based on the total absence of on site parking of this property. Mrs. Sampson explained that the special exception is warranted to ensure the use of the existing structure, and added that the proposed use is consistent with the UV-T, which will help to show that the UV-T is a viable commercial area.

**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].**

There were no public comments.

**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].**

There was no rebuttal by the applicant.

**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].**

Board Member Stone asked staff to verify the number of spaces that are/will be available on the CenterPoint site.

Mrs. Sampson confirmed that there are currently 21 spaces and room for 15 more.

Board Member Stone asked if the applicant was asking that the special exception be granted for a specific period of time.

Mrs. Sampson explained that unless conditions are added by the Board, the special exception is associated with the ownership and will not be void until the property is vacated and a new owner comes in.

Board Member Stone asked the applicants to show where all of the on-street parking is. He then asked if ADA spots were being taking into account.

Mr. De Froy used the diagram to explained where all of the parking is located. He assured the Board that there are currently a few ADA spaces, and that all new parking will be in compliance with the state's ADA regulations.

Board Member McGinty asked what would happen if the piece of property to the left of 4950 Terminal is developed. She added that it would take away the parking available on the west side of 2nd Street.

Mrs. Sampson explained that proposals for any future developments in the area will be evaluated on a case by case basis to ensure that all of the code requirements will be met. She added that this site currently has zero parking spaces available, so any improvement in that number is beneficial.

Mr. De Froy pointed out that any development going in there would most likely need to come before the Board for a special exception as well.

Board Member McGinty asked how many offices/stores would be within their project.

Mr. De Froy informed the Commission that there would be a minimum of two in order to comply with code regulations, but that they are looking into the possibility of more than that.

**Atilla Tuna, OFT Enterprises, potential owner of the property**-Mr. Tuna explained that it is market driven, but that the plan is to have some medical and some retail tenants.

Mr. Kalkman added that they are looking at 80% retail and 20% office.

Vice Chairman Raval asked if anyone else was currently using the parking located on CenterPoint's R.O.W.

Mr. De Froy and Mr. Tuna explained that it is strictly for 4950 Terminal's use, and that a copy of the contract was included in the application.

Board Member Karakowsky asked what would happen when the contract with CenterPoint expires.

Mr. De Froy stated that it is his understanding that the contracts are done in 5 year increments, and that CenterPoint has expressed that they are more than willing to discuss an extension once this project is underway. He added that the only thing that

they anticipate happening would be the potential replacement of a tower due to weather related damage.

Board Member Karakowsky pointed out that if the contract, for whatever reason, was not renewed then 4950 Terminal would no longer meet the requirements for the special exception. She asked staff what would happen in that situation.

Mrs. Sampson explained that they would either need to come back before the Board, or no new tenant would be granted a Certificate of Occupancy.

Board Member Karakowsky asked what the actual number of required spots is that correlates to the 3.8 spaces per 1,000.

Mr. De Froy stated that it is 95.

Board Member Karakowsky asked if any additional spaces could be added when they are removing part of the current structure and rebuilding.

Mr. De Froy explained that although they will be rebuilding, there are not many options when it comes to adding parking in that area. He also mentioned that in doing so, it would not be in line with the pedestrian friendly atmosphere that the UV-T is looking for.

Board Member Karakowsky mentioned that CenterPoint does not like to be used to meet the required minimum parking, they prefer to be used as an overflow site for additional parking.

Mr. De Froy pointed out that the contract does not specifically state that, but during conversations with CenterPoint they have voiced their concern with being held liable by the City to provide parking for a site that does not have sufficient parking otherwise.

Board Member Karakowsky asked the applicants if they were looking for the Board to include specific wording within the approval of the special exception in order to address that concern.

Mr. De Froy stated that they were really just trying to be transparent with the information that was given to the Board, and that no specific wording is needed at this time.

Board Member Karakowsky asked for confirmation that there were no residential properties in that area.

The applicants confirmed this.

Board Member Miller asked how they calculated that 95 spaces were required for this development.

Mr. De Froy then explained how they got to 95 spaces by using Table 24-514a.A for 80% retail (78 spaces) and 20% office (17 spaces).

Chairman Ligh asked for confirmation that the City would have no control over the contract between the property owners at 4950 Terminal and CenterPoint.

Staff confirmed this.

Board Member Stone asked what type of retail clients the applicant would be seeking for this space.

Mr. Tuna informed the Board that there is really a broad range of options, from fast food to furniture. The challenge would be the fact that currently there are no retail businesses in that area.

**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].**

Mrs. Sampson reminded the Board that the parking study would need to be waived in order for the Board to vote on the application.

**Motion:** a motion was made by Board Member McGinty and seconded by Vice Chairman Raval to waive the requirement for the parking study.

**Vote:** the motion failed with a vote of 3-4.

Chairman Ligh asked if the applicant had submitted a parking study.

Attorney Eidman and Mrs. Sampson informed the Board that there was no parking study submitted.

Mrs. Sampson reiterated that staff was asking the Board to waive the requirement for the parking study due to the fact that this site has zero parking as it is, which basically deems a parking study pointless.

Board Member Karakowsky pointed out that from the prior discussion on parking studies it was established that a parking demand analysis would be included in a parking study, which would be beneficial in this case to analyze what the demand for this building would be.

Mr. Tuna explained that currently there is a lot of eighteen wheeler traffic in the area, which would decrease if the proposed project were to come in. He added that it will change the quality of traffic and will make it more pedestrian friendly. Mr. Tuna informed the Board that everyone in that area has similar issues due to a lack of parking. He stated that it is a challenging project and every other potential buyer has declined. Mr. Tuna asked the Board to reconsider waiving the parking study.

Mr. De Froy added that often times parking studies only reflect peak time uses, and tend to gravitate towards the detrimental impact of restaurants or night clubs. He explained that retail tends to be quite the opposite with a lack of true peak times associated with it.

Mr. Tuna also mentioned that with retail the busier times tend to be on the weekend, which would not cause a problem due to the fact that the other properties in the area are not open on the weekend.

Board Member Karakowsky asked the applicant if there was ever a conversation with the City regarding a parking study.

Mr. De Froy stated that it was never discussed.

Mr. Kalkman added that the parking study would reflect the current warehouse use

and would not appropriately reflect the demand needed when the use changes to office and retail.

Mr. Tuna pointed out that the reality of this is that something is going to have to be worked out if the City wants this area to be prosperous.

Vice Chairman Raval asked if a condition could be put on the special exception stating that it would no longer be effective if the contract with CenterPoint is terminated.

Attorney Eidman confirmed that conditions of that nature could be put on the special exception.

Board Member Stone added that another option would be to put a time limit on the special exception.

Board Member Miller asked the applicant why a parking study was not done for the project.

Mr. Tuna explained that it is a difficult situation because he is not the owner of the property and that it is currently under contract. He added that they are also under somewhat of a time constraint.

Board Member Miller asked Mr. Tuna when he became under contract with the current owner.

Mr. Tuna said that he believed that it was on or around October 29th, and that the closing date is January 12th.

Board Member Miller asked if they had contacted a firm that conducts parking studies in order to get an idea of how long it would take.

Mr. Tuna stated that they did not. He added that normally it does take about 30-40 days, and with the holidays possibly even longer.

Board Member Karakowsky pointed out that she can somewhat understand why a parking study would not be beneficial in this case because there is no way to provide additional spaces for the site regardless of what the parking study reflects.

Board Member Raval asked what their time frame is for completion of the project if the special exception is granted.

Mr. Tuna explained that it could be anywhere from 6 months to 3 years depending on the market.

Board Member Sinha stated that he would like to vote again to waive the requirement for the parking study.

Board Member Stone agreed that he would be comfortable with waiving the parking study, but felt inclined to add a condition in terms of duration or performance.

**Motion:** a motion was made by Board Member Sinha and seconded by Board Member Stone to reconsider the vote to waive the parking study.

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

**Motion:** a motion was then made by Board Member Sinha and seconded by Vice Chairman Raval to waive the parking study.

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

**Motion:** a motion was made by Board Member Stone and seconded by Board Member McGinty to approve the special exception with a two year limitation.

Board Member McGinty asked how binding the special exception would be since the applicant does not currently own the property.

Mrs. Sampson explained that submitted in the application packet was a letter of affidavit from the current property owner giving Mr. Tuna permission to apply for the special exception.

Chairman Ligh then called for a vote. However, prior to the vote being tabulated, Board Member Karakowsky voiced her concern that adding a two year limitation to the application would be putting a hardship on the buyer. She then asked if she could put an alternate motion on the table.

Chairman Ligh asked that the Board go back to discussion.

**Motion:** an alternate motion was made by Board Member Karakowsky and seconded by Board Member Miller that the special exception be granted as requested by the applicant.

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

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

Board Member Stone mentioned that the rules reference a "parking study", a "parking demand analysis," and a "complete parking plan." He added that if all of those are the same thing then one consistent term should be used throughout the document.

Attorney Eidman pointed out that there are different levels of requirements with regard to parking.

Mrs. Sampson explained that a "parking demand analysis" is located within a "parking study," and that a "complete parking plan" could entail different facets depending on the situation.

Board Member Stone then pointed out that it seemed odd that the Board's Rules of Procedure would address something that the applicant is handling with City staff. He felt that it was not necessary, and suggested that it be taken out of the Rules.

Board Member Miller mentioned that even though the language is a little bit awkward, it also gives the Board the option to delay a hearing.

Board Member Stone felt that it would be read better if it actually said that rather than describing what the applicant needs to submit to the City.

Vice Chairman Raval stated that a parking study is required for the approval of a variance or special exception. He pointed out that the language in this section



informs all of the Board Members of that, and also explains that the Board would have to rule on a waiver of that requirement. Board Member Raval added that in his opinion, this language is intended to be more informational than anything else.

Board Member Stone reiterated that to him the Rules of Procedure should explain how the Board operates, not how an application should be submitted to City staff.

Board Member McGinty pointed out that several years back, she believed that the Board asked that Section M be added to the Rules of Procedure due to the need for a parking study requirement.

Mrs. Sampson mentioned that the requirement may not be listed anywhere in the zoning ordinance, and could have been added to the Rules of Procedure in order to have the power to enforce it with applicants. She informed the Board that she would verify that.

**Motion:** A motion was made by Board Member McGinty and seconded by Board Member Miller to table the item until staff could verify whether or not the requirement is listed in the zoning ordinance.

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

## **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).**

There were no comments from the public.

## **10. GENERAL COMMENTS FROM BOARD MEMBERS**

There were no general comments from the Board Members.

## **11. ANNOUNCEMENTS**

Chairman Ligh mentioned that the Rules of Procedure will need to be finalized and asked the Board if they would like to wait to do that until there is a docket item on the Board's agenda.

The Board was in agreement that a meeting should not be held solely to finalize the Rules of Procedure.

## **12. ADJOURNMENT**

**Motion:** a motion was made by Board Member McGinty to adjourn the Regular Meeting.

**Chairman Ligh adjourned the meeting at 8:22 PM.**