

BOARD OF ADJUSTMENT & BUILDING BOARD OF APPEALS
AGENDA
REGULAR MEETING
October 15, 2018
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE
REGULAR SESSION – 7:00 PM

I. REGULAR SESSION

IV. CALL TO ORDER

V. ROLL CALL

VI. SWEARING IN OF SPEAKERS

VII. MINUTES APPROVAL

- A. Consider approval of minutes from the August 6, 2018 BOA meeting.

VIII. VISITOR/CITIZENS FORUM

At this time, any person with business before the Board of Adjustment not scheduled on the Agenda may speak to the Board, provided that an official 'Speaker's Request Form' has been completed and submitted to the Board Secretary prior to the start of the meeting. All comments must be directed towards the Chair, rather than individual board members or staff. All speakers must limit their comments to the subject matter as listed on the 'Speaker's Request Form.' No formal action can be taken on these items.

IX. REGULAR ITEMS

- A. **CASE # BOA 18-04** to receive comments and consider action on a request by Tracey Holland for a variance as required by the Unified Development Code Section 6.3, "Spatial Requirements," to allow 5 foot side setback at 119 Industrial Drive, Kennedale, Tarrant County, Texas, more particularly described as Woodlea Acres Addition, Block 1, Lot 28G.

X. REPORTS/ANNOUNCEMENTS

XI. ADJOURNMENT

In compliance with the Americans with Disabilities Act, the City of Kennedale will provide for reasonable accommodations for persons attending City Council meetings. This building is wheelchair accessible, and parking spaces for disabled citizens are available. Requests for sign interpreter services must be made forty-eight (48) hours prior to the meetings. Please contact the City Secretary at 817.985.2104 or (TDD) 1.800.735.2989

CERTIFICATION

I certify that a copy of the January 4, 2018, Board of Adjustment & Building Board of Appeals agenda was posted on the City Hall bulletin board next to the main entrance of the City Hall building, 405 Municipal Drive, of the City of Kennedale, Texas, in a place convenient and readily accessible to the general public at all times and said agenda was posted at least 72 hours preceding the schedule time of said meeting, in accordance with Chapter 551 of the Texas Government Code.

A handwritten signature in black ink, appearing to read 'MD', followed by a horizontal line.

Melissa Dailey, AICP
Community Development Director

BOARD OF ADJUSTMENT & BUILDING BOARD OF APPEALS
MINUTES
REGULAR MEETING
August 8, 2018
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE
REGULAR SESSION - 6:00 PM

I. CALL TO ORDER

Chairman Mr. Young called the meeting to order at 6:30 PM

ROLL CALL

PLACE	COMMISSIONER	PRESENT	ABSENT
1	Eric Elam	X	
2	Josh Altom		X
3	Perry Clementi		X
4	Martin Young	X	
5	Lana Sather	X	
6	Jeff Nevarez, alternate	X	
7	Josh Virnoche, alternate		X
8	VACANT		
9	Azam Shaikh, alternate	X	

A quorum was present. Mr. Shaikh and Mr. Nevarez were asked to join the board for a full quorum.

Staff present: Melissa Dailey, Director of Planning & Economic Development, and Melinda Middleton, Board Secretary.

II. REGULAR SESSION

III. CALL TO ORDER

Chairman Mr. Martin Young called the regular session to order at 7:00PM

IV. ROLL CALL

PLACE	COMMISSIONER	PRESENT	ABSENT
1	Eric Elam	X	
2	Josh Altom		
3	Perry Clementi		X
4	Martin Young	X	
5	Lana Sather	X	
6	Jeff Nevarez, alternate	X	
7	Josh Virnoche, alternate		X
8 \	VACANT		
9	Azam Shaikh, alternate	X	

A quorum was present. Mr. Shaikh and Mr. Nevarez joined the board.

Staff present: Melissa Dailey, Director of Planning & Economic Development, Melinda Middleton, Board Secretary.

V. SWEARING IN OF SPEAKERS

Ms. Middleton swore in the speakers:

Mr. David Ward
Ms. Jenny Ward
Mr. Steve Parker

VII MINUTES APPROVAL

A. Consider approval of minutes from the July 3, 2018 BOA meeting.

Mr. Shaikh made the motion to approve the minutes. Ms. Sather seconded the motion. The motion passed unanimously.

VIII. VISITOR/CITIZENS FORUM

At this time, any person with business before the Board of Adjustment not scheduled on the Agenda may speak to the Board, provided that an official 'Speaker's Request Form' has been completed and submitted to the Board Secretary prior to the start of the meeting. All comments must be directed towards the Chair, rather than individual board members or staff. All speakers must limit their comments to the subject matter as listed on the 'Speaker's Request Form.' No formal action can be taken on these items.

No one was present to speak from the public.

IX. REGULAR ITEMS

- A. **CASE # BOA 18-02** to receive comments and consider action on a request by David Ward for a variance as required by the Unified Development Code Section 11.2, "Accessory Buildings," to allow an accessory building incidental to a principal use not

located on the same lot at 1310 Swiney Hiatt Road, more particularly described as Falcon Wood Estates, Block 1, Lot 17RA1.

1. Staff presentation: Melissa Dailey provided a summary of the application, including current zoning, land use, surrounding land uses and photographs of the site. The applicant would like to build a shed on a property adjacent to his principle structure property. Ms. Dailey stated that because there could be an issue created if the properties were to sell separately, staff recommends denial. However, this issue could be rectified with a condition that should either property be sold separately, the approval of the variance would be void. Staff received one letter in support and one letter in opposition of the application.
2. Applicant presentation: Mr. David Ward, the applicant, spoke about his application. He stated that the hardship in this case was that he needed to add an accessory building to house the extensive lawn equipment that he had purchased for the upkeep of his property and that his existing garage did not accommodate enough space for vehicles and tractors, etc. Mr. Ward spoke about the improvements he has made to the lot behind his house and showed photographs of before and after the improvements.
3. Public hearing: Mr. Steven Parker spoke in favor of the application.
4. The board discussed the case, and suggested replatting may be a better solution. David Ward stated that he feels expanding the lot size by replatting would drive the value of his property up which would reduce his options for selling should he ever decide to sell, and that the property behind his house, which is not currently within the HOA boundary, would then fall within HOW and it's dues and requirements. Eric Elam asked about an easement for electric power. Mr. Ward stated he had spoken to ONCOR about access and they told him there was access. Mr. Ward said no additional power would be needed at this time. Discussion was made about setting precedence if granted. Melissa Dailey recommended that a condition be made that if the property is sold, the variance would become void and the shed be demolished. Mr. Ward agreed to this possible condition.
5. Action by the Board of Adjustment: A motion was made by Eric Elam to approve the application with the condition that if the property sold separately, the variance becomes void and the shed would be demolished. The motion was seconded by Lana Sather. The motion failed 3-2 with Martin Young and Azam Shaikh opposing.

B. CASE # BOA 18-03 to receive comments and consider action on a request by Johann Van Beest for a variance as required by the Unified Development Code Section 11.2, "Accessory Buildings," to allow an accessory building incidental to a principal use not located on the same lot at 851 Potomac Parkway, more particularly described as Potomac Park, Block 1, Lot 1.

1. Staff presentation: Melissa Dailey provided a summary of the application, including current zoning, land use, surrounding land uses and photographs of the site. No letters of opposition or support from neighbors were received. Melissa Dailey stated that replatting in this case is

not possible due to the fact that the properties are in two separate cities. The existing home is located in Arlington and garage they are requesting would be located on the adjacent lot in Kennedale where the pool and driveway were permitted at an earlier date by the City of Kennedale. The City recommends approval based on the hardship of the two properties being in two different cities, which prevents the option of replatting.

2. Applicant presentation: The applicant was not present.
3. Public hearing: No one spoke about the case.
4. The board discussed the case. Mr. Elam stated that this case appeared to be very similar to the last case. It was suggested that this case is different, in that the properties are in two cities which would not allow for replatting.
5. Action by the Board of Adjustment: Mr. Azam to made a motion to approve the application, seconded by Mr. Altom. The motion failed 3-2, with opposition by Mr. Elam and Ms. Sather.

X. REPORTS/ANNOUNCEMENTS

Mr. Nevarez stated that a concert for the Food Bank will be held.

XI. ADJOURNMENT

Mr. Shaikh motioned to adjourn, Mr. Elam seconded the motion. The motion passed unanimously.

The meeting adjourned at 7:05PM



STAFF REPORT TO THE BOARD OF ADJUSTMENT

Date: October 15, 2018

Agenda Item No: REGULAR ITEMS (B)

I. SUBJECT

CASE # BOA 18-04 to receive comments and consider action on a request by Tracey Holland for a variance as required by the Unified Development Code Section 6.3, "Spatial Requirements," to allow 5 foot side setback at 119 Industrial Drive, Kennedale, Tarrant County, Texas, more particularly described as Woodlea Acres Addition, Block 1, Lot 28G.

II. SUMMARY

BACKGROUND AND OVERVIEW

Request	Variance from 10 foot required setback to allow 5 feet
Applicant	Tracey Holland
Location	119 Industrial Drive
Current Zoning	Industrial
Current Land Use	Industrial – Pure Solutions Water Treatment
Surrounding Uses	Primarily industrial, also Mobile Home Park, School
Future Land Use Plan Designation	Urban Village
Staff Recommendation	Approve

CURRENT STATUS OF PROPERTY

This property is zoned "I" industrial and is a business called Pure Solutions Water Treatment. The property is located on a dead-end street off of Kennedale Parkway that is entirely metal buildings utilized for various industrial uses.

SURROUNDING PROPERTIES & NEIGHBORHOOD

The property is located on a dead-end street, Industrial Drive, that is characterized by industrial uses in similar metal buildings. Access is from Kennedale Parkway. Uses around this industrial street including other industrial properties, a mobile home park, and a school, Fellowship Academy to the east. Industrial Drive does not connect to the school due to the dead-end on the east end of the street.

REQUIREMENTS FOR A VARIANCE

The Board of Adjustment is permitted to grant variances to the development regulations of Article 3 such as the front yard, side yard, rear yard, lot width, lot depth, lot coverage, minimum setback, off-street parking, off-street loading, lot area, maximum height, or other building regulations, where the literal enforcement of the provisions of this article would result in an unnecessary hardship, or where such variance is necessary to permit the reasonable development of a specific parcel of land which differs from other parcels of land in the same district by being of such area, shape or slope that it cannot be developed in a manner commensurate with the development permitted upon other parcels of land in the same district.

In order to grant a variance, the variance applicant is required to demonstrate that the property itself is unusually different enough from other properties in the same zoning district that it cannot be developed in the same way as other parcels in the same district, which creates a hardship. A hardship cannot be of the applicant's own making, and it cannot be financial (e.g., the applicant can't meet the development regulations simply due to the applicant's financial situation).

The board should consider the following questions in determining whether a variance request meets this standard:

- (1) is the request owing to a special condition inherent in the property itself;
- (2) is the condition unique to the property for which a variance is requested;
- (3) is the condition self-created;
- (4) will a strict enforcement of the zoning ordinance create hardship above that suffered by the general public; and
- (5) will the hardship deprive the property owner of the right to use his property?

If you find the answers above demonstrate conditions favorable to granting a variance, the board should also consider these questions:

- (6) would granting the variance be contrary to the public interest; and
- (7) is the request within the spirit of the ordinance and further substantial justice?

ANALYSIS

(1) Is the request owing to a special condition inherent in the property itself?

Yes. The property is located on a street that is entirely industrial, metal buildings situated very close to one another. Other uses that could be negatively impacted by minimal side setbacks do not exist on Industrial Drive. This street does not connect to other areas, other than the access from Kennedale Parkway, due to the dead end.

(2) Is the condition unique to the property for which a variance is created?

Yes. The unique condition is that Industrial Drive is a street characterized entirely by industrial uses and is essentially an industrial park. Many of the properties on the street currently have less than the required side setback, and some have as little as two feet. The property is unique due to the location on a street of closely situated industrial uses, many that already have little or no side setback.

(3) Is the condition self-created?

Yes, in that the owner does have the ability to not expand the building.

(4) Will a strict enforcement of the zoning ordinance create a hardship above that suffered by the general public?

No. Whether the building is expanded will not affect the public.

(5) Will the hardship deprive the property owner of the right to use his property?

Yes, to some extent. The property owner would not be able to expand the business by having less side setback, a condition that is common on Industrial Drive.

(6) Would granting the variance be contrary to the public interest?

No. The public would not be impacted.

(7) Is the request within the spirit of the ordinance and further substantial justice?

Yes. A 5 foot side setback would be consistent with many of the setbacks that currently exist on Industrial Drive.

STAFF RECOMMENDATION

Will the literal enforcement of the provisions of this article result in an unnecessary hardship?

Yes, the business owner would not be able to expand the building as other property owners on this street have done.

Based on the above analysis, staff recommends approval of the request.

ACTION BY THE BOARD OF ADJUSTMENT

The board may grant or deny the request or postpone its vote until a later date. If you postpone your decision, you should state in your motion when the case will be heard by the board again. Sample motions are provided for your reference below. You are not required to use either of the motions provided, but your motion should state why you are granting or denying the request.

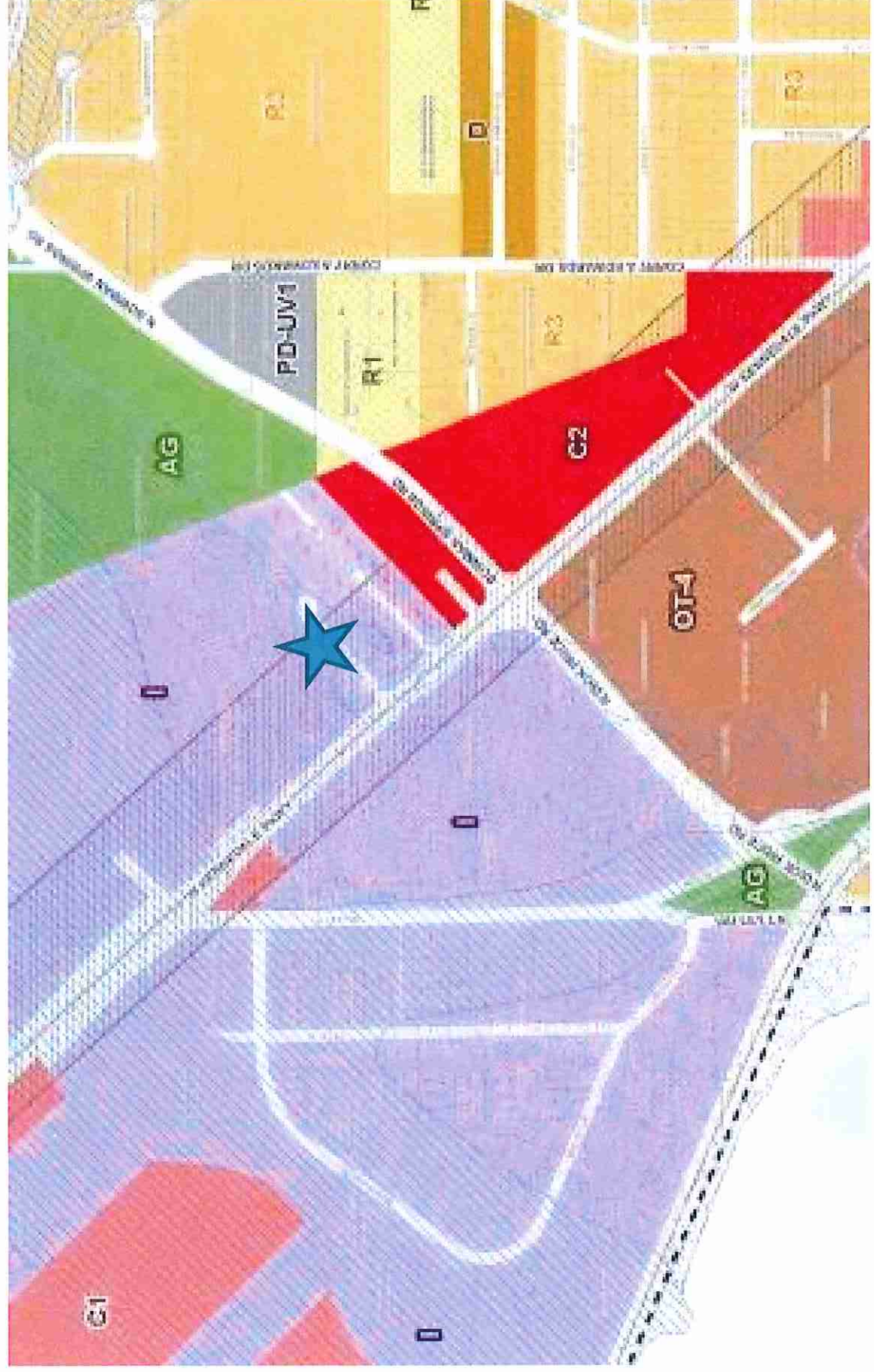
Approve: Based on the evidence and testimony provided, I find that the proposed request meets the standards for a variance and make a motion to approve the requested variance.

Deny: Based on the evidence and testimony provided, I find that the proposed use does not meet the standards for a variance and make a motion to deny the request.

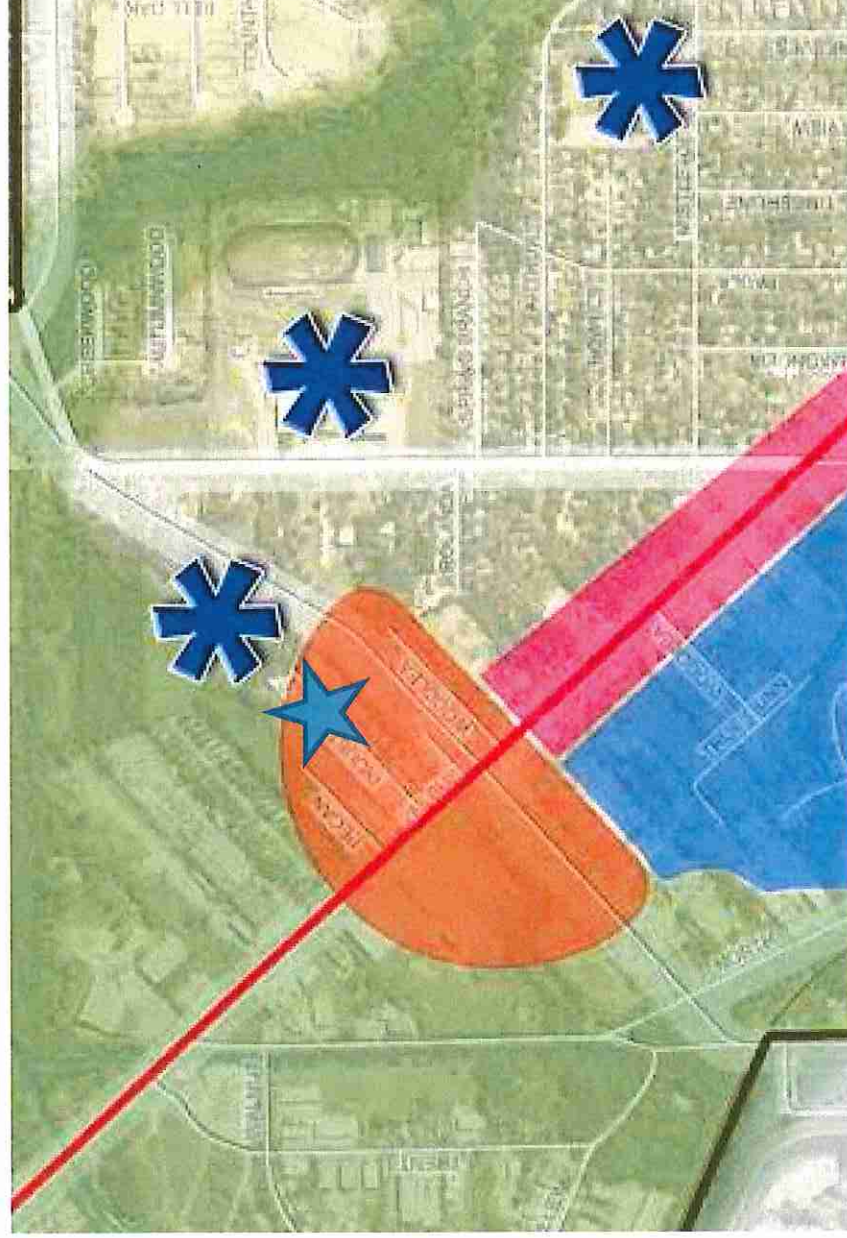
BOA 18-04
119 Industrial Drive



BOA 18-04
119 Industrial Drive
Existing Zoning – I



BOA 18-04 119 Industrial Drive Future Land Use – Comprehensive Plan



- Town Center
- Downtown Village
- Urban Village
- Urban Corridor
- Neighborhood Village
- Neighborhood Corridor
- Neighborhoods
- Employment Center
- Light Industrial District
- Park & Open Space
- Conservation Overlay
- Potential Commuter Train or Park & Ride Station
- Schools

Proposed Use: Urban Village