



**CITY OF WHARTON
PLANNING COMMISSION MEETING**

**Monday, February 05, 2024
4:30 PM**

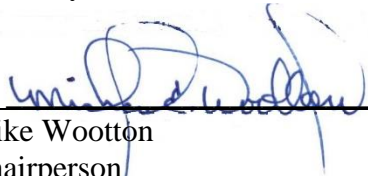
120 E. CANEY ST., WHARTON, TEXAS 77488

**NOTICE OF
CITY OF WHARTON
PLANNING COMMISSION MEETING**

Notice is hereby given that a Planning Commission Meeting will be held on Monday, February 05, 2024 at 4:30 PM at the Wharton City Hall, 120 East Caney Street, Wharton, Texas, at which time the following subjects will be discussed to-wit:

SEE ATTACHED AGENDA

Dated this 2 day of February 2024.

By: 

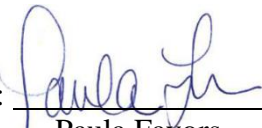
Mike Wootton
Chairperson

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Planning Commission Meeting is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board, at City Hall of said City in Wharton, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted on February 2, 2024, at 4:30 p.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

The Wharton City Hall is wheelchair accessible. Access to the building and special parking is available at the primary entrance. Persons with disabilities, who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at (979) 532-4811 Ext. 225 or by FAX (979) 532-0181 at least two (2) days prior to the meeting date. BRAILLE IS NOT AVAILABLE.

Dated this 2 day of February 2024.

CITY OF WHARTON

By: 

Paula Favors
City Secretary



A G E N D A
CITY OF WHARTON
Planning Commission Meeting
Monday, February 05, 2024
City Hall - 4:30 PM

Call to Order.

Roll Call.

Review & Consider:

1. Reading of the minutes from the regular called meeting held November 20, 2023.
2. Request from Ms. Latoya Williams of 120 W. Mulberry Ave., Hawes, Block 6, Lot 12 & 13 for a variance to build over the property line of 2 adjoining lots and a 5-foot variance from the required 25-foot front setback required.
3. Request from Ms. Elizabeth Ewing on behalf of 902 W. Milam St., Wharton, Block 62, Lot 10 for a variance to encroach the alleyway between the leased property and the CenterPoint property.

Adjournment.

City of Wharton
120 E. Caney Street
Wharton, TX 77488

PLANNING COMMISSION

Meeting Date:	2/5/2024	Agenda Item:	Reading of the minutes from the regular called meeting held November 20, 2023.
<p>At this time, the Commission may review and approve the minutes from the regular called meeting held November 20, 2023.</p>			
Director of Planning & Development: Gwyneth Teves		Date: Friday, February 2, 2024	
Approval:			
Chairperson: Mike Wootton			

**MINUTES OF
CITY OF WHARTON
REGULAR CALLED
PLANNING COMMISSION MEETING
CITY HALL
120 EAST CANEY STREET
WHARTON, TEXAS 77488**

**Monday, November 20, 2023
4:30 P.M.**

Mike Wootton, Chairperson declared the meeting of the Planning Commission duly open for the transaction of business at 4:38 p.m.

Commissioners present were: Mike Wootton, Joel Williams, Johnnie Gonzales and Rob Kolacny.

Commissioners absent were: Marshall Francis, Adryalle Watson and Michael Quinn.

Staff members present were: Gwyneth Teves, Director of Planning & Development

Visitors present were: None

Call to Order.

Roll Call.

Review and Consider:

The first item on the agenda was to review and consider the reading of the minutes from the regular called meeting held November 6, 2023. Joel Williams, Commissioner, moved to approve the minutes as presented. Rob Kolacny, Commissioner, seconded the motion.

The second item on the agenda was to review and consider a request from Ms. Terry Arceo of 515 Olive St., Barbee, Block 5, Lot 17, 8A, 8B & 9 for a 2-foot variance of the rear building line setback from the required 5-foot setback for construction of a 16-foot by 40-foot prefab metal building. Rob Kolacny, Commissioner, moved to recommend the variance to the City Council for final approval. Johnnie Gonzales, Commissioner, seconded the motion. All voted in favor.

Adjournment. The meeting adjourned at 4:44 p.m.

Mike Wootton, Chairperson

Rob Kolacny, Secretary

City of Wharton
120 E. Caney Street
Wharton, TX 77488

PLANNING COMMISSION

Meeting Date:	2/5/2024	Agenda Item:	Request from Ms. Latoya Williams of 120 W. Mulberry Ave., Hawes, Block 6, Lot 12 & 13 for a variance to build over the property line of 2 adjoining lots and a 5-foot variance from the required 25-foot front setback required.
<p>At this time, the Commission may review and consider a request from Ms. Latoya Williams of 120 W. Mulberry Ave., Hawes, Block 6, Lot 12 & 13 for a variance to build over the property line of 2 adjoining lots and a 5-foot variance from the required 25-foot front setback required for new residential construction.</p> <p>See attached supporting documents.</p>			
Director of Planning & Development: Gwyneth Teves		Date: Friday, February 2, 2024	
Approval:			
Chairperson: Mike Wootton			

**CITY OF WHARTON
PLANNING COMMISSION
APPLICATION FOR VARIANCE**

Item-2.

NOTE: If variance request is approved by the Planning Commission, the request will then be presented at the next City Council meeting for City Council consideration. Attendance by the applicant requesting the variance is mandatory during the City Council meeting. If applicant fails to attend the meeting, the variance request will not be considered by the City Council at that time. The expiration date for approved variance application will be six months from the date of approval of the variance. If construction has not commenced within that six month period, the applicant must re-apply for the variance.

Latoya Williams Feb. 01-2024
 Name (Printed) Date
120 west Mulberry St. Wharton TX 77488 16550 Kettlebrook Ln.
 Physical Address Mailing Address Houston, TX 77049
Lot 12 Block 6 Hawes Third Addition 281-515-3100
 Legal Address Phone

Describe the variance request and the reason for requesting variance:

To Build A house 1688 sq ft. over the Live.

ATTACH A SITE PLAN WITH DIMENSIONS TO PROPERTY LINES:

SIGNATURE OF APPLICANT:

[Signature] 02-01-24
 Signature Date
 Planning Commission Meeting: 2/05/24 @ 4:30p.
 City Council Meeting: 2/12/24 @ 7pm.

Building line setbacks Only
 Residential \$100.00
 Non-Residential \$150.00
Non-Refundable fee
 Effective November 3, 2006

ADJACENT PROPERTY OWNER (S):

_____ Name	_____ Phone
_____ Legal Address	_____ Physical Address
_____ Name	_____ Phone
_____ Legal Address	_____ Physical Address
_____ Name	_____ Phone
_____ Legal Address	_____ Physical Address

Ronald
[Signature]
 Planning Department

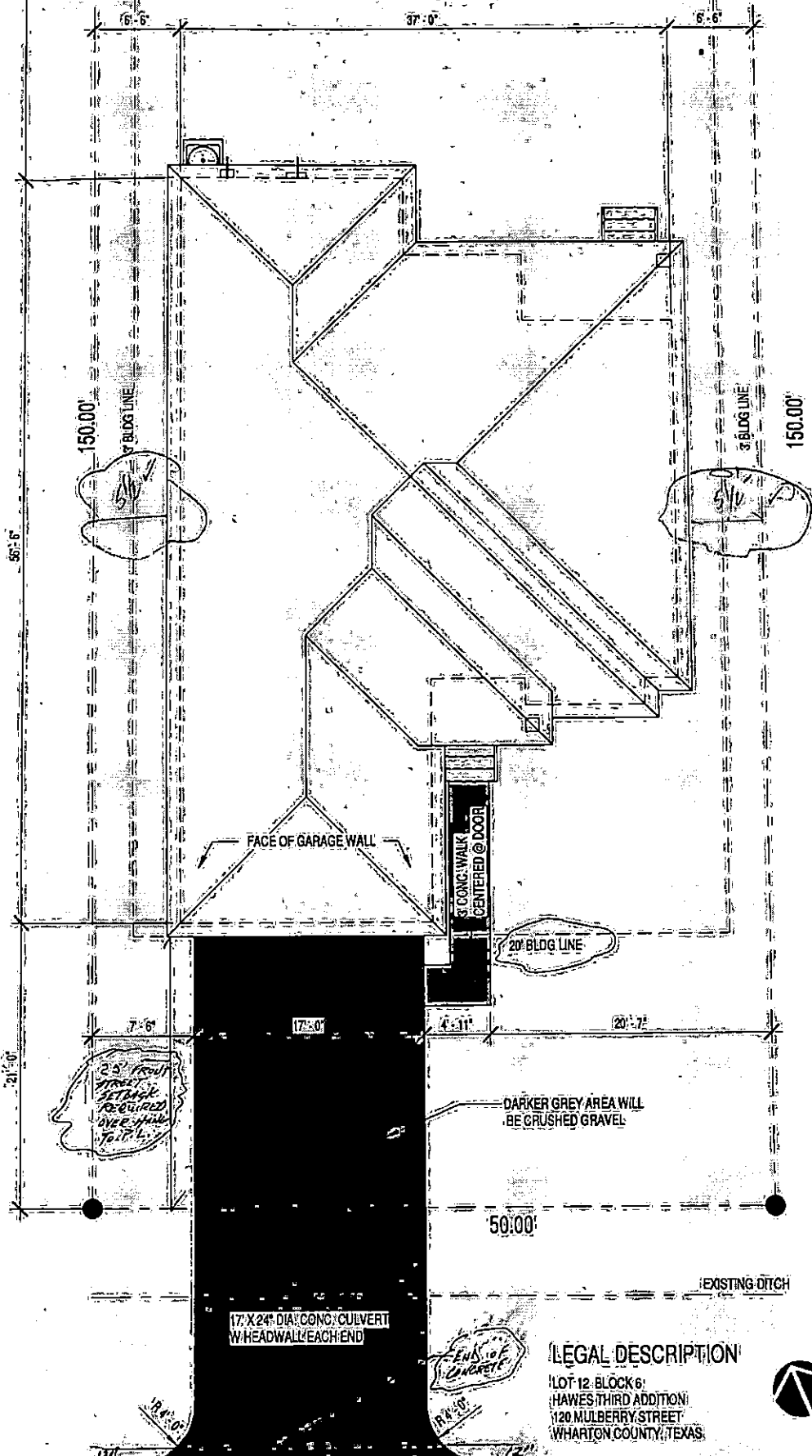
2.1.24
 Date

 Date

 Chairman of the Planning Commission

 Mayor

 Date



25' FROM STREET SETBACK REQUIRED OVER HALF FOOT L.S.

DARKER GREY AREA WILL BE CRUSHED GRAVEL

17" X 24" DIA. CONC. CULVERT W. HEADWALL EACH END

LEGAL DESCRIPTION

LOT 12, BLOCK 6;
 HAWES THIRD ADDITION
 120 MULBERRY STREET
 WHARTON COUNTY, TEXAS

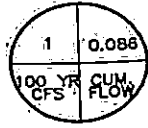
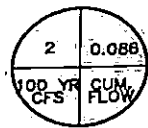


CITY WILL FILL IN AFTER FORMS ARE REMOVED
 SEE ATTACHMENT

Item-2.

0+00

NG +



NG +

95.7 NG

NG +

(N 20°14' E 150')
N 17°31'45" E 150.00'

NG +

(N 20°14' E 150')
N 17°31'45" E 150.00'

3 BLDG LINE

3 BLDG LINE

PROPOSED BUILDING
F.F. ELEV. = 101.15

EG96.1

EG97.0

96.7 NG

96.7 NG

0+00

C

EG97.0

(Lot 13)

(Lot 12)
(Lot 13)

TP98.20

20' BLDG LINE

TP98.10

97.3 NG

97.3 NG

97.3 NG

10 LF 6" PVC STM SWR

17 LF 6" PVC STM SWR

6" FL 96.05

6" FL 96.05

6" FL 96.10

(S 70°45' E 100')

S 72°51'35" E 100.0

E 100'

Set 1/2" = 1' City of #5449

TP97.65

Sec. 18-77. - Building line setback requirements.

Item-2.

(a) *Definitions:*

- (1) *Abut/abutting* shall mean to physically touch or border upon; or to share a common property line or border. This term implies a closer proximity than the term "adjacent."
- (2) *Accessory building* shall mean a building, the use of which is incidental to that of the principal building and which is located on the same lot. An accessory building is not an unattached residential vehicular garage that supports the use of the principal building.
- (3) *Adjacent* shall mean lying near or close to. (See "abut/abutting")
- (4) *Building/yard setback line* shall mean a line or lines within a property defining the minimum horizontal distance between a building/structure outermost projection and property line.
- (5) *Commercial* shall mean a building(s)/structure(s) where the occupation, employment or enterprise is carried on for profit generally located on a smaller site than industrial. (A business, non-residential).
- (6) *Duplex/two-family dwelling* shall mean a building containing two dwelling units designed to be occupied by two families living independently of each other.
- (7) *Dwelling* shall mean a building, or portion thereof, which is used exclusively for human habitation. An unattached residential vehicular garage is considered to be part of the dwelling.
- (8) *Exterior side building/yard setback line* shall mean a line or lines within a property defining the minimum horizontal distance between a building/structure outermost projection and an exterior property line. (See "setback measurements".)
- (9) *Front building/yard setback line* shall mean a line or lines within a property defining the minimum horizontal distance between a building/structure outermost projection and the property line facing a street right-of-way. The front of a building/structure is the primary access to it as originally intended by the builder/architect and inherent to the style and design of the building structure.
- (10) *Industrial* shall mean a building(s)/structure(s), which is used to engage in the basic processing and manufacturing of materials or products predominantly from extracted, or raw materials. Engaged in the manufacture, predominately from previously prepared materials of finished parts, including processing, fabrication, assembly, treatment, packaging, storage, sales and distribution of such products; or engaged in storage, wholesale and distribution of manufactured products, supplies and equipment. An industrial building(s)/structure(s) may generate high levels of noise, vibrations, smoke, dust, odors or light.
- (11)

Interior side building/yard setback line shall mean a line or lines within a property defining the minimum horizontal distance between a building/structure outermost projection and the interior property line. (See "setback measurements".) Item-2.

- (12) *Lot* shall mean a plot of land having frontage on at least one public street, which is or in the future may be offered for sale, conveyance, transfer or improvement.
- (13) *Multi-family residential* shall mean buildings designed to contain three or more complete separate living facilities for single-family occupancy. Multi-family dwellings shall include apartments and condominiums.
- (14) *Parcel* shall mean a contiguous area of land in the possession of or owned by, or recorded as the property of, the same person or persons. Parcels of land generally are large enough to be subdivided into lots.
- (15) *Principal building* shall mean the building in which the principal use of the lot, which it is located on, is conducted.
- (16) *Property line* shall mean the surveyed line(s) bounding the property to form a legal boundary.
- (17) *Rear building/yard setback line* shall mean a line or lines within a property defining the minimum horizontal distance between a building/structure outermost projection and the rear property line.
- (18) *Setback measurements* shall be measured from the outermost projection of the structure to the appropriate property line. An exterior side property line is one, which abuts or is adjacent to a street right-of-way. An interior side property line has no street frontage and is one which abuts another lot(s) or parcel(s) boundary. A rear property line is one which abuts another lot(s) or parcel(s), or a street right-of-way.
- (19) *Single-family residential* shall mean a building/structure containing one dwelling designed to be occupied primarily by one family and with the total of all habitable areas not to be less than 700 square feet excluding the garage.
- (20) *Street* shall mean a public right-of-way, however designated, which provides vehicular circulation and access to adjacent property.
 - a. A major thoroughfare means a principal traffic artery or trafficway, usually of more or less continuous routing over long distances, whose function is to serve as a principal connecting street with state and federal highways, and shall include each street designated as a major thoroughfare on the current major thoroughfare plan formally adopted and designated by the planning commission and city council. Minimum width of right-of-way shall be 100 feet.
 - b. A collector street means a street whose function is to collect and distribute traffic between major thoroughfares and minor streets. It is not necessarily of continuous routing for long distances, has intersections at grades, provides direct access to a

property, and shall include each street designated as a collector street on the thoroughfare plan form Item-2. adopted and designated by the planning commission and city council. Minimum width of right-of-way shall be 80 feet.

c. A minor street means a street whose function is to provide access to abutting residential property within neighborhoods, with all intersections at grade, and not of continuous routing for any great distance so as to discourage heavy, through traffic. Minimum width of right-of-way shall be 60 feet.

(21) *Utility easement* shall mean an area for restricted use on private property upon which a public or private utility shall have the right to remove and keep removed; all or part of any permanent or portable building; obstructing fences without proper gate configuration to allow reasonable ingress or egress; trees, shrubs, or other improvements or growths which in any way endanger, tend to endanger, or significantly interfere with the construction or maintenance, or efficiency of its respective utility systems on any of these easements. The public utility shall at all times have the right of ingress and egress to, from, over, under and upon the said easement for the purposes of constructing, reconstructing, inspecting, patrolling, maintaining, and adding to or removing all or part of its respective systems without the necessity of procuring the permission of anyone. The ownership or title to the land encompassed by the easement is retained by the owner, while the dominant right to use the area is retained by the public or private and encumbered utility. Private owners may only make temporary and incidental use of the easement surface area in ways that do not interfere with the superior rights of the utility.

(22) *Variance* shall mean a deviation from the required norm that may be granted following certain procedures specified herein.

(b) *Single-family residential:*

- (1) Minimum front yard setback shall be 25 feet from the front property line except where abutting or adjacent to a major thoroughfare, in which event the minimum setback for the principal building shall be 35 feet. This shall also apply for accessory buildings.
- (2) Minimum interior side yard setback shall be five feet for the principal building. Accessory buildings shall be permitted to maintain a minimum of five feet setback from the property line to the accessory building line.
- (3) Minimum exterior side yard setback shall not be less than 15 feet, except that where the lot is adjacent or abuts on a major thoroughfare, the building line shall not be less than 25 feet from the side property line. Where the side of a corner lot is across from, or adjacent to the front yards of other lots, the building line shall be at the same setback distance from the street as the front building line of the opposite or adjacent lots.

(4)

Minimum rear yard setback for the principal building shall be five feet from the rear property line.

Accessory buildings shall be permitted to maintain a minimum of five feet setback from the rear property line. When the rear yard abuts any street, a minimum of 15 feet shall be required from the rear property line to the building line of the principal buildings and accessory buildings. If the rear public right-of-way is a major thoroughfare, a minimum 25-foot setback from the rear property line to the building line shall be required.

(5) Principal buildings and accessory buildings shall not be allowed to encroach upon public or private utility easements even if such buildings are portable.

(c) *Duplex/two-family dwellings:* Same requirements as single-family residential.

Exception: Duplex buildings may either be constructed entirely on one lot; or two lots, in which case when on two lots the two units shall be separated by a common fire-resistive wall on the common property line.

(d) *Multiple-family residential:*

(1) Same requirements as single-family residential.

Exception: Multiple-family buildings on the same lot shall maintain a minimum separation of ten feet between outermost projection of the structures.

(2) Where interior side yard setback is abutting existing or proposed single-family or duplex residential uses, the minimum interior side yard setback shall be ten feet.

(e) *Commercial:*

(1) Minimum front building line setback: 25 feet, except that where abutting or adjacent to major thoroughfare, the minimum front building line setback requirement shall be 35 feet.

(2) Minimum interior side building line setback: Ten feet, except where abutting existing or proposed residential uses, in which case the minimum interior side building line setback shall be 20 feet.

(3) Minimum exterior side building line/street setback: Abutting or adjacent to a major thoroughfare, a minimum 25-foot setback shall be maintained. Abutting or adjacent to other streets, 15 feet minimum setback shall be maintained.

(4) Minimum rear building line setback: Ten feet, except where abutting existing or proposed residential uses, in which event the rear building line setback shall be 20 feet. Also, if the building is abutting or adjacent to a major thoroughfare, the minimum rear building line setback shall be 25 feet. Other streets shall require a minimum 15 feet rear building line setback.

(f) *Industrial:*

(1) Minimum front building line setback: 25 feet, except that where abutting or adjacent to major

thoroughfare, the minimum front building line setback requirement shall be 35 feet.

Item-2.

- (2) Minimum interior side building line setback: Ten feet, except where abutting existing or proposed residential uses, in which case the minimum interior side building line setback shall be 20 feet.
 - (3) Minimum exterior side building line/street setback: Abutting or adjacent to a major thoroughfare, a minimum 25-foot setback shall be maintained. Abutting or adjacent to other streets, 15 feet minimum setback shall be maintained.
 - (4) Minimum rear building line setback: Ten feet, except where abutting existing or proposed residential uses, in which event the rear building line setback shall be 20 feet. Also, if the building is abutting or adjacent to a major thoroughfare, the minimum rear building line setback shall be 25 feet. Other streets shall require a minimum 15-foot rear building line setback.
- (g) *Building permits required:* No building permit shall be issued for the construction, exterior alteration, enlargement, or location of any building which does not conform to the building line setback requirements herein.
- (h) *Variances:* When an applicant can show that a provision of these regulations would cause excessive regulatory hardship if strictly adhered to and where, because of some unique condition peculiar to the site (e.g., multiple boundaries, irregular shaped lot, three sided lot, etc.), which in the sole opinion of the planning commission would warrant a limited departure from standard application of the regulations without destroying the general intent of such provisions, the planning commission may authorize a specified variance. An application for a variance shall be obtained through the planning department for a non-refundable fee and submitted to the planning commission for consideration. If the application is approved by the planning commission, then the application will be submitted to the city council for final approval. Upon approval, the variance shall be effective for six months from that date. A new variance application and fee must be submitted if no work has commenced by the expiration date. If the applicant is denied, the applicant may appeal the decision of the planning commission to the city council within ten days from the date the planning commission decision. If the city council denies the application, the applicant may appeal to the district court and, upon perfection of the appeal, such appeal shall be by a trial de novo. The person appealing the decision of the city council must also file an original petition in the appropriate district court within 20 days from the date of the city council's decision; otherwise, the decision of the city council shall be final.
- (i) *Application:* These building line setbacks established herein shall apply to or supersede the following:
- (1) Unplatted property;
 - (2)

Property platted but not yet built upon including undeveloped properties with deed restriction self-imposing setback requirements and undeveloped subdivisions platted with setback requirements.

- (j) The developer or owner pays an application for variance fee as established by the City Council of the City of Wharton under separate resolution.

(Ord. No. 2000-03, § 2, 1-10-00; Ord. No. 2006-07, 4-24-06; Ord. No. 2006-21, 10-23-06; Ord. No. 2019-19, 8-26-19)



Map Search

Address



PROPERTY INFORMATION

Taxing units
CWH,ED1,ED3,GWH,JRC,RD1,SWH,WDCB

Market Area	Legal Acreage
Wharton 3	0.3444
Abstract/Subdv Code	Block
S10575	6
	Lot
Tract	12,13
School Code	City Code
SWH	CWH
Latitude	Longitude
29.336536211017034	-96.09116110653233

OWNER INFORMATION

Owner Name & Mailing Address
KBE International LLC (3711336)
 16550 Kettlebrook Ln
 Houston TX 77049

IMPROVEMENT AND LAND INFORMATION

Liv Area	Class	State Cd	Use
0	N/A		
Land Size		Type	
0.3444	Lnd Class	NHS	Ag/Tim

ADJUSTMENTS

Improvement 1 Adj	Land 1 Adj
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City of Wharton
120 E. Caney Street
Wharton, TX 77488

PLANNING COMMISSION

Meeting Date:	2/5/2024	Agenda Item:	Request from Ms. Elizabeth Ewing on behalf of 902 W. Milam St., Wharton, Block 62, Lot 10 for a variance to encroach the alleyway between the leased property and the CenterPoint property.
<p>At this time, the Commission may review and consider a request from Ms. Elizabeth Ewing on behalf of 902 W. Milam St., Wharton, Block 62, Lot 10 for a variance to encroach the alleyway between the leased property and the CenterPoint property.</p> <p>See attached supporting documents.</p>			
Director of Planning & Development: Gwyneth Teves		Date: Friday, February 2, 2024	
Approval:			
Chairperson: Mike Wootton			

CITY OF WHARTON PLANNING COMMISSION APPLICATION FOR VARIANCE

NOTE: If variance request is approved by the Planning Commission, the request will then be presented at the next City Council meeting for City Council consideration. Attendance by the applicant requesting the variance is mandatory during the City Council meeting. If applicant fails to attend the meeting, the variance request will not be considered by the City Council at that time.

Elizabeth Ewing	01/16/2024 (updated 01/17/2024)
_____ Name (Printed)	_____ Date
902 W Milam	
_____ Physical Address	_____ Mailing Address
902 W Milam	281-630-3905
_____ Legal Address	_____ Phone

Describe the variance request and the reason for requesting variance:

The project is requesting a variance to construct within the paper ally along the western parcel boundary,

please see attached letter for additional details.

ATTACH A SITE PLAN WITH DIMENSIONS TO PROPERTY LINES:

SIGNATURE OF APPLICANT:

Elizabeth Ewing

Signature

01/17/2024

Date

Planning Commission Meeting: *2.5.24 430p*
City Council Meeting: *2.12.24 7pm*

Building line setbacks Only
Residential \$100.00
Non-Residential \$150.00 ^x
Non-Refundable fee
Effective November 3, 2006

ADJACENT PROPERTY OWNER (S):

Elionay Martinez	_____ Phone
_____ Name	908 W Milam
908 W Milam	_____ Physical Address
_____ Legal Address	_____ Phone
Byron Gartica	831 W Caney
_____ Name	_____ Physical Address
831 W Caney	_____ Phone
_____ Legal Address	0 N Ford
Centerpoint Energy Houston	_____ Physical Address
_____ Name	
PO Box 1475, Houston TX	
_____ Legal Address	

Frank Teves

Planning Department

RECEIVED
gt

1.23.24

Date

Chairman of the Planning Commission

Date

Mayor

Date

Bowman

January 17,2024

Variance Request Application
City of Wharton
120 E Caney St.
Wharton, TX 77488

Re: Agilitas/Saber Power I-Eye BESS Project
902 W Milam St.

Dear Planning Commission:

Bowman on behalf of Agilitas and Saber Power is submitting a variance request for the I-Eye Battery Energy Storage System (BESS) project located at 902 W Milam Street in Wharton, Texas. The purpose of the project is to construct and operate a BESS facility that will provide grid support to the local area.

We are requesting a variance to build within the 15-foot paper alley on the eastern side of the parcel to enable a setback of 10-ft from the eastern property line This will enable the project to be sited farther away from the residence to the west.

If you have any questions, please feel free to contact me, Elizabeth Ewing at 281-630-3905 or ewing@bowman.com.

Sincerely,



Elizabeth Ewing
Project Manager – Environmental



City of Wharton

120 E. Caney • Wharton, TX 77488
Phone (979) 532-2491 • Fax (979) 532-0181

MEMORANDUM

DATE: February 2, 2024
FROM: Gwyneth Teves, Director of Planning & Development
TO: Honorable Mayor and City Council
SUBJECT: Variance Request at 902 W. Milam St.

A request for a variance to authorize encroachment on the alley at 902 W. Milam St. has been received by this department for presentation to the Planning Commission. Upon review of the application and attached site plan, it is the recommendation of the Planning & Development Department to deny the variance request. The alleyway is still in existence and has not been abandoned by the City. It also appears on the survey/site plan that there are existing utilities within the alley that could be in conflict if approval was granted.

A representative of the company who is leasing the property has been requested to attend the Planning Commission meeting on Monday, February 2, 2024.

If you should have any questions, please contact me at 979-532-2491 ext. 238. Thank You.

Sec. 70-61. - Findings and purpose.

The purpose of this article is to:

- (1) Assist in the management of facilities placed in, on or over the public rights-of-way in order to minimize the congestion, inconvenience, visual impact and other adverse effects, and the costs to the citizens resulting from the placement of facilities within the public rights-of-way;
- (2) Govern the use and occupancy of the public rights-of-way;
- (3) Assist the city in its efforts to protect the public health, safety and welfare;
- (4) Conserve the limited physical capacity of the public rights-of-way held in public trust by the city;
- (5) To preserve the physical integrity of the streets and highways;
- (6) To control the orderly flow of vehicles and pedestrians;
- (7) Keep track of the different entities using the rights-of-way to prevent interference between them;
- (8) Assist on scheduling common trenching and street cuts; and
- (9) Protect the safety, security, appearance, and condition of the public rights-of-way.

This article may be referred to as the "Construction in the Public Rights-of-Way Ordinance."

(Ord. No. 1999-13, § 1, 10-25-99)

Sec. 70-62. - Authority; scope.

This article applies to all persons that place facilities in, on or over public rights-of-way.

(Ord. No. 1999-13, § 2, 10-25-99)

Sec. 70-64. - Municipal authorization required.

- (a) Any person seeking to place facilities on, in or over the public rights-of-way, shall first file an application for a building permit with the city and shall abide by the terms and provisions of this article pertaining to use of the public rights-of-way.
- (b) Any person, except a certificated telecommunications provider, prior to placing, reconstructing, or altering facilities in, on or over the public rights-of-way, must obtain separate municipal authorization from the city.
- (c) Any person with a current, unexpired consent, franchise, agreement or other authorization from the city (grant) to use the public rights-of-way that is in effect at the time this article takes effect shall continue to operate under and comply with that grant until the grant expires or until it is

terminated by mutual agreement of the city and the person, or terminated as otherwise provided for in law. Item-3.

(Ord. No. 1999-13, § 4, 10-25-99)

Sec. 70-65. - Administration and enforcement.

- (a) The city manager shall administer and enforce compliance with this article.
- (b) A person shall report information related to the use of the public rights-of-way that the city manager requires in the form and manner reasonably prescribed by the city manager.
- (c) The city manager shall report to the city council upon the determination that a person has failed to comply with this article.

(Ord. No. 1999-13, § 5, 10-25-99)

Sec. 70-66. - Construction obligations.

A person is subject to reasonable police power regulation of the city to manage its public rights-of-way in connection with the construction, expansion, reconstruction, maintenance or repair of facilities in the public rights-of-way, pursuant to the city's rights as a custodian of public property, based upon the city's historic rights under state and federal laws. Such regulations include, but are not limited to, the following:

- (1) At the city's request, a person shall furnish the city accurate and complete information relating to the construction, reconstruction, removal, maintenance, operation and repair of facilities performed by the person in the public rights-of-way.
- (2) A person may be required to place certain facilities within the public rights-of-way underground according to applicable city requirements absent a compelling demonstration by the person that, in any specific instance, this requirement is not reasonable or feasible nor is it equally applicable to other similar users of the public rights-of-way.
- (3) A person shall perform operations, excavations and other construction in the public rights-of-way in accordance with all applicable city requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the public rights-of-way. The city shall waive the requirement of trenchless technology if it determines that the field conditions warrant the waiver, based upon information provided to the city by the person. All excavations and other construction in the public rights-of-way shall be conducted so as to minimize interference with the use of public and private property. A person shall follow all reasonable construction directions given by the city in order to minimize any such interference.
- (4) A person must obtain a permit, as reasonably required by applicable city codes, prior to any excavation, construction, installation, expansion, repair, removal, relocation or maintenance of the persons facilities. Once a permit is issued, person shall give to the city a minimum

forty-eight (48) hours notice (which could be at the time of the issuance of the permit) prior to undertaking any of the above listed activities on its network in, on or under the public rights-of-way. The failure of the person to request and obtain a permit from the city prior to performing any of the above listed activities in, on or over any public rights-of-way, except in an emergency as provided for in subsection (11) below, will subject the person to a stop-work order from the city and enforcement action pursuant to the city's code of ordinances. If the person fails to act upon any permit within 90 calendar days of issuance, the permit shall become invalid, and the person will be required to obtain another permit.

Item-3.

- (5) When a person completes construction, expansion, reconstruction, removal, excavation or other work, the person shall promptly restore the rights-of-way in accordance with applicable city requirements. A person shall replace and properly relay and repair the surface, base, irrigation system and landscape treatment of any public rights-of-way that may be excavated or damaged by reason of the erection, construction, maintenance, or repair of the persons facilities within thirty (30) calendar days after completion of the work in accordance with existing standards of the city in effect at the time of the work.
- (6) Upon failure of a person to perform any such repair or replacement work, and five (5) days after written notice has been given by the city to the person, the city may repair such portion of the public rights-of-way as may have been disturbed by the person, its contractors or agents. Upon receipt of an invoice from the city, the person will reimburse the city for the costs so incurred within thirty (30) calendar days from the date of the city invoice.
- (7) Should the city reasonably determine, within two (2) years from the date of the completion of the repair work, that the surface, base, irrigation system or landscape treatment requires additional restoration work to meet existing standards of the city, a person shall perform such additional restoration work to the satisfaction of the city, subject to all city remedies as provided herein.
- (8) Notwithstanding the foregoing, if the city determines that the failure of a person to properly repair or restore the public rights-of-way constitutes a safety hazard to the public, the city may undertake emergency repairs and restoration efforts. A person shall promptly reimburse the city for all costs incurred by the city within thirty (30) calendar days from the date of the city invoice.
- (9) A person shall furnish the city with construction plans and maps showing the location and proposed routing of new construction or reconstruction at least fifteen (15) days before beginning construction or reconstruction that involves an alteration to the surface or subsurface of the public rights-of-way. A person may not begin construction until the location of new facilities and proposed routing of the new construction or reconstruction and all

required plans and drawings have been approved in writing by the city, which approval will not be unreasonably withheld, taking due consideration of the surrounding area and alternative locations for the facilities and routing.

- (10) If the city manager declares an emergency with regard to the health and safety of the citizens and requests by written notice the removal or abatement of facilities, a person shall remove or abate the person's facilities by the deadline provided in the city manager's request. The person and the city shall cooperate to the extent possible to assure continuity of service. If the person, after notice, fails or refuses to act, the city may remove or abate the facility, at the sole cost and expense of the person, without paying compensation to the person and without the city incurring liability for damages.
- (11) Except in the case of customer service interruptions and imminent harm to property or person (emergency conditions), a person may not excavate the pavement of a street or public rights-of-way without first complying with city requirements. The city manager or designee shall be notified immediately regarding work performed under such emergency conditions, and the person shall comply with the requirements of city standards for the restoration of the public rights-of-way.
- (12) Within sixty (60) days of completion of each new permitted section of a person's facilities, the person shall supply the city with a complete set of "as built" drawings for the segment in a format used in the ordinary course of the persons business and as reasonably prescribed by the city, and as allowed by law.
- (13) The city may require reasonable bonding requirements of a person, as are required of other entities that place facilities in the public rights-of-way.

(Ord. No. 1999-13, § 6, 10-25-99)

Sec. 70-77. - Conditions of public rights-of-way occupancy.

- (a) In the exercise of governmental functions, the city has first priority over all other uses of the public rights-of-way. The city reserves the right to lay sewer, gas, water, and other pipe lines or cables and conduits, and to do underground and overhead work, and attachments, restructuring or changes in aerial facilities in, across, along, over or under a public street, alley or public rights-of-way occupied by a person, and to change the curb, sidewalks or the grade of streets.
- (b) The city shall assign the location in or over the public rights-of-way among competing users of the public rights-of-way with due consideration to the public health and safety considerations of each user type, and to the extent the city can demonstrate that there is limited space available for additional users, may limit new users, as allowed under state or federal law.
- (c)

If the city authorizes abutting landowners to occupy space under the surface of any public street, alley, public rights-of-way, the grant to an abutting landowner shall be subject to the rights of the previously authorized user of the public rights-of-way. If the city closes or abandons a public rights-of-way that contains a portion of a person's facilities, the city shall close or abandon such public rights-of-way subject to the rights of the person.

- (d) If the city gives written notice, a person shall, at its own expense, temporarily or permanently, remove, relocate, change or alter the position of person's facilities that are in the public rights-of-way within 120 days, except in circumstances that require additional time as reasonably determined by the city based upon information provided by the person. For projects expected to take longer than 120 days to remove, change or relocate, the city will confer with person before determining the alterations to be required and the timing thereof. The city shall give notice whenever the city has determined that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a city or other governmental public improvement in the public rights-of-way. This section shall not be construed to prevent a person's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal, nor shall it be required if improvements are solely for beautification purposes without prior joint deliberation and agreement with person.

If the person fails to relocate facilities in the time allowed by the city in this section, the person may be subject to liability to the city for such delay and as set forth in the city codes or ordinance, now or hereafter enacted.

Notwithstanding anything in this subsection (d), the city manager and a person may agree in writing to different time frames than those provided above if circumstances reasonably warrant such a change.

- (e) During the term of its municipal consent, a person may trim trees in or over the rights-of-way for the safe and reliable operation, use and maintenance of its facilities. All tree trimming shall be performed in accordance with standards promulgated by the city. Should the person, its contractor or agent, fail to remove such trimmings within 24 hours, the city may remove the trimmings or have them removed, and upon receipt of a bill from the city, the person shall promptly reimburse the city for all costs incurred within 30 working days.
- (f) Persons shall temporarily remove, raise or lower its aerial facilities to permit the moving of houses or other bulky structures, if the city gives written notice of no less than 48 hours. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. Person may require prepayment or prior posting of a bond from the party requesting temporary move.

(Ord. No. 1999-13, § 7, 10-25-99)



Map Search

Address



PROPERTY INFORMATION

Prop ID: **26753** Geo ID: 11445-062-100-00

Situs Address: **902 W MILAM, WHARTON**

Legal Description: WHARTON BLOCK 62 LOT 10

Taxing Units: CWH,ED1,ED3,GWH,JRC,RD1,SWH,WDCB

Market Area	Legal Acreage
Wharton 2	0.3444
Abstract/Subdv Code	Block
S11445	62

OWNER INFORMATION

Owner Name & Mailing Address:

TOSL LLC (3711846)
 8902 Empire Club DR Unit 602
 Park City UT 84060

IMPROVEMENT AND LAND INFORMATION

Liv Area	Class	State Cd	Use
0	N/A		
Land Size	Lnd Class	NHS	Ag/Tim
0.3444			

ADJUSTMENTS

Improvement 1 Adj	Land 1 Adj
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