CITY OF BUNKER HILL VILLAGE

THE ZONING BOARD OF ADJUSTMENT OF THE CITY OF BUNKER HILL VILLAGE, TEXAS, WILL MEET ON WEDNESDAY, DECEMBER 2, 2026, AT 5:00 P.M. IN THE CITY HALL COUNCIL CHAMBERS AT 11977 MEMORIAL DRIVE FOR THE PURPOSE OF DISCUSSION AND POSSIBLE ACTION ON THE FOLLOWING:

This meeting agenda and the agenda packet are posted online at www.bunkerhilltx.gov

NOTICE OF MEETING BY TELEPHONE AND VIDEO CONFERENCE:
In accordance with Texas Government Code, Sec. 551.127, on a regular, non-emergency basis, Board members may attend and participate in a meeting remotely by video conference. Should such attendance transpire, a quorum of the Zoning Board of Adjustment will be physically present at the location noted above on this agenda.

Zoom Meeting:
https://us06web.zoom.us/j/81442535982?pwd=CqNgh9i27WTb5nkBT7Rn39kr56riFO.1

Meeting ID: 814 4253 5982

Passcode: 434236

Dial by your location: +1 346 248 7799 US (Houston)

The public will be permitted to offer public comments by video conference as provided by the agenda and as permitted by the presiding officer during the meeting. A recording of the meeting will be made and will be available to the public in accordance with the Open Meetings Act upon written request.

I. CALL TO ORDER

II. PUBLIC COMMENT

III. CONSIDERATION AND POSSIBLE ACTION TO APPROVE THE MINUTES OF THE OCTOBER 7, 2026, ZONING BOARD OF ADJUSTMENT MEETING

IV. PUBLIC HEARING, CONSIDERATION, AND POSSIBLE ACTION REGARDING A REQUEST FROM JUAN FIDALGO AND PARTNERS IN BUILDING FOR A VARIANCE FROM APPENDIX A, SECTION 5.04(A) OF THE CITY'S CODE OF ORDINANCES REQUIRING A MINIMUM LOT SIZE OF 20,000 SQUARE FEET FOR THE PROPERTY LOCATED AT 6 POWDERHORN

V. PUBLIC HEARING, CONSIDERATION, AND POSSIBLE ACTION REGARDING A REQUEST FROM JUAN FIDALGO AND PARTNERS IN BUILDING FOR A VARIANCE FROM APPENDIX A, SECTIONS 9.01 AND 9.02 OF THE CITY'S CODE OF ORDINANCES REGARDING NONCONFORMING LOT USE FOR THE PROPERTY LOCATED AT 6 POWDERHORN

VI. ADJOURN

I, Mallory Pack, City Secretary for the City of Bunker Hill Village, certify that the above notice of meeting was posted in a place convenient to the general public in compliance with Chapter 551, Texas Government Code, on November 16, 2026, by 5:00 p.m.

(SEAL)

Mallory A. Pack
City Secretary

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations must be made 48 hours prior to public meetings. Please contact the office of the City Secretary at 713-467-9762 for further information.

City of Bunker Hill Village
Zoning Board of Adjustment
Agenda Request

Agenda Date:	December 2, 2026
Agenda Item:	III
Subject:	Meeting Minutes
Exhibits:	October 7, 2026, Meeting Minutes
Presenter(s):	Gerardo Barrera, City Administrator

Executive Summary

The minutes of the October 7, 2026, meeting are enclosed for Board consideration and approval.

Recommended Action

Staff recommends the Zoning Board of Adjustment approve the October 7, 2026, Meeting Minutes.

MINUTES OF A PUBLIC MEETING
OF THE CITY OF BUNKER HILL VILLAGE
ZONING BOARD OF ADJUSTMENT
OCTOBER 7, 2026

I. CALL TO ORDER

Chair David Light called the Zoning Board of Adjustment Meeting to order at 5:00 p.m. based on a quorum of members present:

Present
David Light
David Marshall
Michelle Belco
Laurie Rosenbaum
Louie Crapitto, Alternate Member (voting member)
Ryan West, Alternate Member (arrived at 5:02 p.m., non-voting member)

Staff in Attendance
Gerardo Barrera, City Administrator
Elvin Hernandez, Public Works Director
Loren Smith, City Attorney
Mallory Pack, City Secretary
Keith Brown, Mayor

Absent
Scott Lamoreaux, Member

II. OATH OF OFFICE

Following the election of Mayor held in May of each odd-numbered year, City Council formally appoints members to the City's Boards and Commissions. At the June 17, 2025, City Council meeting, Council appointed the following members to the Zoning Board of Adjustment for a two-year term (2025-2027):

Zoning Board of Adjustment 2025-2027 5 Members, 4 Alternates
Appointed Members
Michelle Belco
Scott Lamoreaux*
David Light
David Marshall
Laurie Rosenbaum**
Louis Crappito (alternate)
Ryan West (alternate)

**Appointed by Council on August 19, 2025*
***Appointed by Council on September 16, 2025*

David Marshall received the Statement of Appointed Officer and Oath of Office. All other members of the Board were sworn in at the October 1, 2025, meeting.

No action was required for this item.

III. ELECTION OF A CHAIR AND VICE-CHAIR TO SERVE FOR A TWO-YEAR TERM

The Zoning Board of Adjustment is established in accordance with Chapter 211 of the Local Government Code and as outlined by Appendix A, Article XI of the City's Code of Ordinances.

Staff recommended that the Board elect a Chair and Vice-Chair to conduct the business of the Board.

A motion was made by Michelle Belco and seconded by Laurie Rosenbaum to elect Michelle Belco as Vice-Chair of the Zoning Board of Adjustment for a two-year term (2025-2027).

The motion carried 5-0

A motion was made by David Light and seconded by David Marshall to elect David Marshall as Chair of the Zoning Board of Adjustment for a two-year term (2025-2027).

The motion carried 5-0

IV. PUBLIC COMMENT

There were no public comments.

V. CONSIDERATION AND POSSIBLE ACTION REGARDING APPROVAL OF THE APRIL 30, 2025, MEETING MINUTES

A motion was made by David Light and seconded by Michelle Belco to approve the April 30, 2025, meeting minutes.

The motion carried 5-0

VI. CONSIDERATION AND POSSIBLE ACTION REGARDING APPROVAL OF THE OCTOBER 1, 2025, MEETING MINUTES

A motion was made by David Marshall and seconded by Michelle Belco to approve the October 1, 2025, meeting minutes.

The motion carried 5-0

VII. PUBLIC HEARING, CONSIDERATION, AND POSSIBLE ACTION REGARDING A REQUEST FROM VALERIE LOWE AND LESLIE WISE FOR A VARIANCE FROM APPENDIX A, SECTION 5.06(A) OF THE CITY'S CODE OF ORDINANCES REQUIRING A FIVE-FOOT-WIDE GREENSPACE ALONG THE LOT LINES WITHIN THE REQUIRED FRONT YARD OF A LOT FOR THE PROPERTY LOCATED AT 335 KNIPP FOREST STREET

Public Works Director Hernandez introduced the request for a variance to Section 5.06(A) of Appendix A of the City's Code of Ordinances, which requires a five-foot (5') wide greenspace to be maintained along side lot lines. The request specifically concerns the driveway for proper ingress and egress to the property as part of a planned new construction project.

Director Hernandez explained that the lot lines are nine feet (9') wide in total. Therefore, the required five-foot-wide greenspace on each side would eliminate reasonable ingress and egress. He noted that City staff is responsible for enforcing ordinances as written.

Laurie Rosenbaum asked whether the driveway could be relocated elsewhere on the property. Director Hernandez explained that moving the driveway to the right would encroach on the neighboring private property, and moving it to the left would place it over an open ditch.

Chair David Marshall opened the public hearing at 5:12 p.m.

Applicant's Request

Valerie Lowe, property owner, and Joel James, architect for the project, presented a variance request to maintain the driveway in its existing location and retain the current side lot lines.

Mr. James stated that he is working with Ms. Lowe to design a new home on the property, which includes replacing the existing driveway with new concrete. He explained that during a pre-development meeting with Public Works Director Hernandez, he learned the driveway would not comply with the City's requirement to maintain a five-foot-wide greenspace along the side lot lines.

Mr. James stated that due to the shape of the lot, there are no alternative locations for the driveway. He explained the variance request is to allow the driveway to remain in its existing location, with the existing side lot lines maintained, while replacing the driveway with new concrete.

Ms. Lowe noted that the lot is narrow and condensed, and that her mailbox is located on the neighboring property rather than her own. She stated that her neighbors are aware and have no objections to the proposed driveway improvements and its location.

Public Comment

There were no public comments.

Chair David Marshall closed the public hearing at 5:14 p.m.

City Attorney Smith addressed the Board that the motion must be made in the affirmative, per Local Government Code. This does not automatically constitute granting the variance but allows for discussion before making a final motion to grant or deny the variance request.

A motion was made by David Light and seconded by Michelle Belco to grant a variance from Section 5.06(A) of Appendix A of the City's Code of Ordinances requiring a five-foot-wide greenspace be maintained alongside lot lines within the required front yard for the property located at 335 Knipp Forest Street.

Roll Call Vote
David Light……. YES
Michelle Belco……..... YES
David Marshall…… YES
Laurie Rosenbaum…….. YES
Louie Crapitto……. YES

The motion carried 5-0

VIII. ADJOURN

Chair David Marshall adjourned the meeting at 5:20 p.m.

Approved and accepted on December 2, 2026.

_____
David Marshall
Chair

ATTEST:

_____
Mallory A. Pack
City Secretary

City of Bunker Hill Village
Zoning Board of Adjustment
Agenda Request

Agenda Date:	December 2, 2026
Agenda Item:	IV-V
Subject:	Variance Requests
Exhibits:	Application
Presenter(s):	Elvin Hernandez, Public Works Director

Executive Summary

ITEM IV – The applicants request a variance from Appendix A, Section 5.04(A) of the City's Code of Ordinances for the property located at 6 Powderhorn.

§ 5.04. Area regulations, size of lot.

The following area regulations shall apply to all lots and building areas.

A. ***Lot area.*** **No building shall be erected, constructed, or placed on a lot having less than twenty thousand (20,000) square feet in area.**

B. *Impermeable building area calculation.* The impermeable building area shall not exceed forty-five (45) percent of the area of the lot. For the purposes hereof, impermeable building area shall include portions of a lot which are covered with buildings or structures including, but not limited to, building foundations, driveways, sidewalks, walkways, sundecks, patios, or tennis courts, and other impervious surfaces. Notwithstanding the foregoing, the actual water surface area of swimming pools shall be considered a permeable surface. Artificial turf shall be considered a permeable surface so long as it is inspected by the City at the time of installation and meets the criteria established by the City or that of the manufacturer. Artificial turf shall not be permitted in the required front yard and shall not be visible from any public or private street.

C. *Maximum lot coverage calculation.* The maximum lot coverage calculation shall not exceed fifty-five percent (55) of the area of the lot. This shall include both impermeable and permeable surfaces.

D. *Lot depth.* The average depth of a lot shall be at least one hundred forty (140) feet.

E. *Lot width, standard lot.* The width of a standard lot at the front property line, the width of that portion of the front property which must abut the front street line, and the average width of the lot shall be at least one hundred ten (110) feet each.

F. *Lot width, cul-de-sac lot.* A cul-de-sac lot shall abut a portion of the front street line which forms the bulb or arc of the cul-de-sac. The lot frontage along the front property line shall be at least forty (40) feet measured along the property line; and the width of the lot at the front setback line shall be at least one hundred ten (110) feet measured on a straight line tangent to the front setback line.

G. In the event of a reconstruction of an existing structure (50% or more) as an "In Kind/Same Kind" as defined in the City's subdivision ordinance, meaning that there is no modification to the existing

footprint or exterior structural components, the foregoing regulations relating to lot coverage shall not prohibit the reconstruction of a single-family dwelling, provided that the construction is in compliance with all other provisions of the City's zoning ordinance.

***Note:** The applicants request a variance from Chapter 14, Section 14-5.2(A)(9)(10). However, there is not a variance provision in the City's Subdivision Ordinance.*

ITEM V – The applicants request a variance from Appendix A, Sections 9.01 and 9.02 of the City's Code of Ordinances for the property located at 6 Powderhorn.

****Note:**** On November 2, 2026, the applicants submitted an amended application for the above-mentioned variance request.

§ 9.01. Intent.

Within the districts established by this ordinance or any amendments thereto, there may exist lots, buildings, or structures, uses of land, buildings, or structures, and characteristics of use which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments thereof. It is the intent of this ordinance to permit those nonconformities to continue until they close or are removed, but not to encourage their survival. It is further the intent of this ordinance that nonconformities shall not be enlarged, expanded, or extended, or be used as grounds for adding other buildings, structures, or uses prohibited elsewhere in the same district.

§ 9.02. Prohibition of expansion of nonconforming uses.

Nonconforming uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. Unless otherwise specifically permitted by this ordinance, a nonconforming use of land, of a building or structure, or of land and a building or structure in combination shall not be extended or enlarged from and after the effective date of this ordinance.

The applicants will present the variance requests. City staff will be available to address any questions or comments from the Board regarding the City's Code of Ordinances.

Recommended Action

Staff recommends that the Zoning Board of Adjustment take the following actions for Item IV:

1. Hold a public hearing.
2. Discuss the request and take any desired action.

Staff recommends that the Zoning Board of Adjustment take the following actions for Item V:

1. Hold a public hearing.
2. Discuss the request and take any desired action.

AMENDED APPLICATION FORM

VARIANCE REQUEST

5 & 6 POWDERHORN ST. HOUSTON, TX 77024

CITY OF BUNKER HILL VILLAGE
APPLICATION FOR
BOARD OF ADJUSTMENT REQUEST

Owner's Name: JUAN FIDALGO C/O KENT MOTAMEDI, ESQ. Phone: (832) 582-5867

Mailing Address: 952 ECHO LANE, SUITE 320, HOUSTON, TX Zip: 77024

Property Address (If Different): 6 POWDERHORN ST., HOUSTON, TX 77024

Action Requested: Variance X Appeal __ Special Exceptions ___ Zoning District A X B

Project Description and Request:
5 POWDERHORN IS LANDLOCKED BY 6 POWDERHORN. THE HOMEOWNERS HAVE REACHED AN AGREEMENT TO SELL THE DRIVEWAY EASEMENT BY NECESSITY, HOWEVER, THE PROPERTY WILL BE LESS THAN 20,000 SQ/FT. 6 POWDERHORN WAS ORIGINALLY GRANDFATHERED IN FROM THE PLAT SIZE REQUIREMENT. THE AMOUNT OF LAND TO BE SOLD TO 5 POWDERHORN IS LESS THAN 1,800 SQ/FT. THE HOMEOWNERS WILL SUSTAIN UNNECESSARY HARDSHIP IF THIS EASEMENT CANNOT BE RESOLVED PERMANENTLY. SUPPORTING DOCUMENTS ARE ATTACHED HEREWITH.

Section of Code at Issue:

SECTION 5.04(A); SECTION 14-5.2(a)(9), (10); AND CHAPTER 9 (SPECIFICALLY SECTIONS 9.01 AND 9.02 (APPENDIX A).

Attachments as applicable:

- Site Plan
- Letter of Permit Denial
- Any Additional Information

A fee of $300.00 is required for processing

Signature of Applicant: Date: 11/02/2026

Attorney for Applicant
Juan Fidalgo

CITY OF BUNKER HILL VILLAGE
APPLICATION FOR
BOARD OF ADJUSTMENT REQUEST

Owner's Name: PARTNERS IN BUILDING (PIB) C/O JOHN KRUGH, ESQ. Phone: (832) 594-5834

Mailing Address: 1800 BERING DR., STE 350, HOUSTON, TX Zip: 77057

Property Address (If Different): 5 POWDERHORN ST., HOUSTON, TX 77024

Action Requested: Variance X Appeal __ Special Exceptions ___ Zoning District A X B

Project Description and Request:
5 POWDERHORN IS LANDLOCKED BY 6 POWDERHORN. THE HOMEOWNERS HAVE REACHED AN AGREEMENT TO SELL THE DRIVEWAY EASEMENT BY NECESSITY, HOWEVER, THE PROPERTY WILL BE LESS THAN 20,000 SQ/FT. 6 POWDERHORN WAS ORIGINALLY GRANDFATHERED IN FROM THE PLAT SIZE REQUIREMENT. THE AMOUNT OF LAND TO BE SOLD TO 5 POWDERHORN IS LESS THAN 1,800 SQ/FT. THE HOMWONERS WILL SUSAIN UNNECESSARY HARDSHIP IF THIS EASEMENT CANNOT BE RESOLVED PERMANENTLY. SUPPORTING DOCUMENTS ARE ATTACHED HEREWITH.

Section of Code at Issue:

SECTION 5.04(A); SECTION 14-5.2(a)(9), (10) ; AND CHAPTER 9 (SPECIFICALLY SECTIONS 9.01 AND 9.02. (APPENDIX A)

Attachments as applicable:

- Site Plan
- Letter of Permit Denial
- Any Additional Information

A fee of $300.00 is required for processing

Signature of Applicant: John R. Krugh Date: 11/2/26

John R. Krugh for Partners in Building, LP

CITY OF BUNKER HILL VILLAGE
APPLICATION FOR
BOARD OF ADJUSTMENT REQUEST

Owner's Name: JUAN FIDALGO C/O KENT MOTAMEDI, ESQ. Phone: (832) 582-5867

Mailing Address: 952 ECHO LANE, SUITE 320, HOUSTON, TX Zip: 77024

Property Address (If Different): 6 POWDERHORN ST., HOUSTON, TX 77024

Action Requested: Variance X Appeal __ Special Exceptions ___ Zoning District A X B

Project Description and Request:
5 POWDERHORN IS LANDLOCKED BY 6 POWDERHORN. THE HOMEOWNERS HAVE REACHED AN AGREEMENT TO SELL THE DRIVEWAY EASEMENT BY NECESSITY, HOWEVER, THE PROPERTY WILL BE LESS THAN 20,000 SQ/FT. 6 POWDERHORN WAS ORIGINALLY GRANDFATHERED IN FROM THE PLAT SIZE REQUIREMENT. THE AMOUNT OF LAND TO BE SOLD TO 5 POWDERHORN IS LESS THAN 1,800 SQ/FT. THE HOMEOWNERS WILL SUSTAIN UNNECESSARY HARDSHIP IF THIS EASEMENT CANNOT BE RESOLVED PERMANENTLY. SUPPORTING DOCUMENTS ARE ATTACHED HEREWITH.

Section of Code at Issue:

SECTION 5.04(A); SECTION 14-5.2(a)(9), (10);

Attachments as applicable:

- Site Plan
- Letter of Permit Denial
- Any Additional Information

A fee of $300.00 is required for processing

Signature of Applicant: _____ Date: 10/15/2026

Attorney for Applicant
Juan Fidalgo

CITY OF BUNKER HILL VILLAGE
APPLICATION FOR
BOARD OF ADJUSTMENT REQUEST

Owner's Name: PARTNERS IN BUILDING (PIB) C/O JOHN KRUGH, ESQ. Phone: (832) 594-5834

Mailing Address: 1800 BERING DR., STE 350, HOUSTON, TX Zip: 77057

Property Address (If Different): 5 POWDERHORN ST., HOUSTON, TX 77024

Action Requested: Variance X Appeal __ Special Exceptions ___ Zoning District AX B

Project Description and Request:
5 POWDERHORN IS LANDLOCKED BY 6 POWDERHORN. THE HOMEOWNERS HAVE REACHED AN AGREEMENT TO SELL THE DRIVEWAY EASEMENT BY NECESSITY, HOWEVER, THE PROPERTY WILL BE LESS THAN 20,000 SQ/FT. 6 POWDERHORN WAS ORIGINALLY GRANDFATHERED IN FROM THE PLAT SIZE REQUIREMENT. THE AMOUNT OF LAND TO BE SOLD TO 5 POWDERHORN IS LESS THAN 1,800 SQ/FT. THE HOMWONERS WILL SUSAIN UNNECESSARY HARDSHIP IF THIS EASEMENT CANNOT BE RESOLVED PERMANENTLY. SUPPORTING DOCUMENTS ARE ATTACHED HEREWITH.

Section of Code at Issue:

SECTION 5.04(A); SECTION 14-5.2(a)(9), (10)

Attachments as applicable:

- Site Plan
- Letter of Permit Denial
- Any Additional Information

A fee of $300.00 is required for processing

Signature of Applicant: John R. Krugh Date: October 15, 2016

John R. Krugh
Attorney in Fact

Office: 952 Echo Lane, Suite 320
Houston, TX 77024

Email: staff@motamedilaw.com

Phone: (832) 582-5867

Motamedi Law, PLLC

Kent Motamedi
Managing Partner

Edward A. Rose, Jr.
Of Counsel

October 8, 2026

Sent Via: E-Service; Email

CITY OF BUNKER HILL
c/o Elvin Hernandez, Director of Public Works
c/o Loren Smith, City Attorney
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Attorney for Partners in Building 5 Powderhorn St.

Re: Application for Variance and Replatting of 5 and 6 Powderhorn St.; Board of Adjustments and City of Bunker Hill

PARTIES' MEMORANDUM IN SUPPORT OF REPLATTING AND VARIANCE

Dear Mr. Smith, Mr. Hernandez, and the Board of Adjustments,

Please let this letter serve as both Mr. Juan Fidalgo ("*Fidalgo*"), of 6 Powderhorn, and Partners in Building ("*PIB*"), of 5 Powderhorn, (collectively the "*Parties*") joint legal position on their agreed application and request to have their properties replatted respectively.

The City of Bunker Hill ("*City*") has previously indicated and represented that a replatting would not be possible as such would cause 6 Powderhorn to fall into noncompliance as to the minimum lot size requirement of 20,000 sq/ft. pursuant to City Ordinance, Section 5.04(A). Moreover, the City has concerns as to whether Fidalgo and PIB can meet the necessary requirement of '***undue hardship***' as outlined in the City's administrative regulations. Finally, the City has expressed concerns regarding strict compliance with Local Government Code Chapter 211, *et seq.* Due to the following issues raised by the City, this memorandum follows to apprise the City of the property owners' joint response in preparation for the upcoming variance hearing to be docketed and scheduled in due course.

ISSUE 1: 20,000 sq/ft. minimum lot size requirement.

The Parties are of the legal position that the 20,000 sq/ft. lot requirement does not apply to the current request for re-platting. As a predicate to the argument, should this variance be granted

to afford the parties re-platting of their respective lots, 5 Powderhorn will be in compliance as it is currently undergoing construction of its residential home on a lot which is larger than 20,000 sq/ft. Thus, the issue rests on 6 Powderhorn which will fall below the 20,000 sq/ft. requirement after the replatting is completed.

However, please note that 6 Powderhorn has always been under the 20,000 sq/ft. requirement and was grandfathered in as a non-conforming property given the City's ordinance requirements were not passed and codified until 2014. Fidalgo has owned this property since 2002 and the dwelling has been present prior to his ownership the same.

Moreover, the ordinance specifically states, verbatim, as follows:

The following area regulations shall apply to all lots and building areas.

A. Lot area. ***No building shall be erected, constructed, or placed*** *on a lot having less than twenty thousand (20,000) square feet in an area.*

Analyzing and interpreting the statute on its face (*see* Tex. Gov't Code § 311.011; 312.002), and providing the statute with its plain meaning and interpretation, yields itself to the infallible conclusion that this restriction **only** takes effect in the event of construction, erection, or placement of a building or appurtenant. The replatting which the Parties seek to perform does not render the nonconforming lot – 6 Powderhorn – subject to this restriction as Fidalgo is neither erecting, constructing nor placing any type of building or structure which would trigger this restriction. Had the circumstances been reversed, such would hold true as PIB is currently undergoing construction on 5 Powderhown, however, its lot is conforming.

Furthermore, pursuant to the City's ordinance Section 14-5.2, the Parties have sufficiently met the requirements necessary for amending their plats. Specifically, Item 9 of the aforesaid section requires the owners of all lots join in on the application to amend; the amendment does not remove any covenants or restrictions; and the amendment does not increase the number of lots. The Parties can and have demonstrated meeting all three criteria.

Therefore, the City does not have basis to deny this replatting request as submitted by the Parties in this current variance application.

ISSUE 2: The standard of a variance is not undue hardship but unnecessary hardship.

The City has set forth in its policies and procedures that in order for a variance to be granted by the Board of Adjustments, the applicant must demonstrate undue hardship.

First, the Local Government code, which the City relies upon to adopt such standards, sets forth a lower threshold and requirement. Specifically, Tex. Loc. Gov't Code § 211.009 sets forth the requirement of unnecessary hardship and states, *inter alia*:

(a) The board of adjustment may: . . . (3) authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due

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to special conditions, a literal enforcement of the ordinance would result ***in unnecessary hardship****, and so that the spirit of the ordinance is observed and substantial justice is done.*

There is no language in the Local Government Code which sets for an undue hardship requirement and, therefore, the Parties argue that the threshold is a lower bar to meet for unnecessary versus that of undue.

In *Ferris v. City of Austin*, 150 S.W.3d 514, 516 (Tex. App. – Austin 2004, no pet.), there the Third Court of Appeals opined, *inter alia*, the Board of Adjustment is authorized to grant a variance from the terms of a zoning ordinance where the strict application of the zoning laws deprives the property owner of privileges enjoyed by others similarly situated. In granting a variance, the board must make the following factual findings: (1) the restrictions in the current zoning ordinance do not allow for a reasonable use; (2) the hardship necessitating the variance is unique to the property and not generally characteristic of the area; and (3) development under the variance will not impair or alter the use or character of adjacent property or clash with the underlying purposes of the zoning restrictions.

Whether a hardship exists is a question of fact to be determined by the board of adjustment (board). In order to justify a variance, a hardship must not be self-imposed, nor financial only, and must relate to the very property for which variance is sought, i.e. a condition unique, oppressive, and not common to other property. *Id.*

Ferris dealt with the application of municipal land-use regulations and the judicial deference afforded to the decisions made by administrative bodies to vary the terms of those regulations. Appellee, the City of Austin, in its proprietary capacity as developer of certain property in East Austin, sought relief from its own zoning regulations, those governing the size and shape of lots prior to development, so that it could construct between ten and twenty townhomes on property along East 12th Street and Navasota Street in Austin. At a public hearing, appellant Richard Ferris owner of rental property near the proposed development, testified in opposition to the City's plan. He argued that the neighborhood needed commercial not residential services. After the variances were granted by the City's Board of Adjustment, Ferris sought review of the Board's decision in district court, which affirmed the Board's decision by summary judgment.

Several points were raised in the *Ferris* analysis which are important to denote and highlight in the current application:

A. The appellate court examined the '***self-imposed hardship***' requirement and held:

> *"Where, owing to no fault of the owner, the lots are configured in such a way as to make them incompatible with zoning laws and the strict application of those zoning laws would deny the property owner reasonable use of the property, the Board has the authority to grant a variance from the zoning restrictions. Such is the case here. There is no evidence that the City was the original developer of the property or that it was responsible for subdividing the lots into their present non-conforming shapes. In the absence of evidence*

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the substandard lot configuration was the product of deliberate conduct of the City, the City's hardship was not self-imposed. We overrule appellant's first hardship issue.

B. The appellate court next examined '***financial hardship***' requirement and held:

"The evidence showed that the property along East 12th Street and Navasota consisted of 12 irregularly sized lots. The lots were subdivided into irregular shapes before the City zoned the property and created the various minimum lot-size requirements. The lots on Navasota were less than 50 feet wide and 5,750 square feet in size and could not support commercial or residential use. Of the nine lots on 12th Street, only two were large enough to accommodate any commercial or residential use--the lots at 1105 and 1111 East 12th Street. The latter was the address of the Connelly-Yearwood home, which was scheduled for renovation. The City's plan to carve out the Connelly-Yearwood home from the remainder of the lot and put the remainder to residential use was stymied by a large tree present on the lot. Other lots were burdened by topographical restraints making residential use impracticable. We find this evidence sufficient to support the Board's decision and overrule appellant's second issue."

In the current occurrence, the properties of the Parties are of non-conforming shapes; they are not the original developers responsible for the subdividing of the lots to their present non-conforming shapes; and the hardship was not self-imposed by either party in this application. Additionally, the hardship of both property owners stems from the restriction of the use of their lots as well as the accessibility of their lots and is not tied to pure financial loss or self-imposed hardship.

The board has the ability to grant this variance as no ordinance is directly on point which would preclude or prohibit such a variance being granted. In *Currey v. Kimple*, 577 S.W.2d 508, 510 (Tex. Civ. App. – Texarkana 1978, writ ref'd n.r.e.), there the Sixth Court of Appeals held that the complaining party has the burden of proof to show that the decision of the Board of Adjustments is illegal and in order to establish illegality of an order, the complaining party must present a very clear showing of abuse of discretion. If the trial court finds there is substantial evidence to support the board's determination, the legality of the board's order is established. The substantial evidence rule is fulfilled if the evidence before the court, as a whole, is such that reasonable minds could have reached the conclusion that the board must have reached in order to justify its action. In this application, it would not be an abuse of discretion to grant the Parties variance premised on the arguments and evidence proffered.

ISSUE 3: The Local Government Code, Chapter 211, is permissive not mandatory.

In the City's rules and policies, it sets forth a mandatory requirement of compliance with Local Government Code, Chapter 211. However, Tex. Loc. Gov't Code § 211.009 sets forth that the Board of Adjustment "***may***" hear and decide on matters not that is shall or must. Therefore, the Texas Legislature codified this statute with the intent to leave a certain degree and level of discretion to the municipalities when governing variances, special exceptions, and zoning issues.

Motamedi Law, PLLC | 952 Echo Lane, Suite 320, Houston, TX 77024 | (832) 582-5867 | staff@motamedilaw.com

The City has the authority to grant this replatting and variance request pursuant to Tex. Loc. Gov't Code § 212.014, which holds a replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat: (1) is signed and acknowledged by only the owners of the property being replatted; (2) is approved by the municipal authority responsible for approving plats; and (3) does not attempt to amend or remove any covenants or restrictions. The only element missing to approve this replat is the approval of the City as all Parties are in agreement and no covenants or restrictions will be affected by this replat request. *See also* Tex. Loc. Gov't Code § 212.016 (amending plats).

PRAYER

On behalf of the Parties, we appreciate the City's time, attention, and consideration in this matter and look forward to elaborating on these arguments and authorities during our variance hearing before the Board of Adjustment.

Respectfully submitted jointly,

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6 Powderhorn St.

TEX. CIV. PRAC. & REM. CODE 132.001 UNSWORN DECLARATION OF PARTNERS IN BUILDING CORPORATE REPRESENTATIVE

STATE OF TEXAS §
§
HARRIS COUNTY §

COMES NOW, Declarant, **CHRISTOPHER LEMMING**, and avers as follows:

1. "My name is **CHRISTOPHER LEMMING**. I am over the age of 18 and my address is 10707 Clay Road, Houston, Texas 77041.

2. I am the duly designated authorized agent and corporate representative on behalf of Partners in Building.

3. The property located at 5 Powderhorn Street, Houston, Texas 77024 is landlocked except for the easements granted in Volume 452, Page136 and Volume 1396, Page 733 (collectively the "Easements").

4. The Easement are located across the southern boundary line of 6 Powderhorn Street (Lot 8).

5. The owner of 6 Powderhorn Street (Lot 8) pay ad valorem taxes on the portion of the lot that is encumbered by the Easements.

6. The Easements are not clear regarding the rights, duties and obligations of the respective property owners (meaning 5 Powderhorn and 6 Powderhorn).

7. The respective property owners have agreed on a transaction that would convey ownership of the property covered by the Easements to the owner of 5 Powderhorn. This will result in fixing the unfair taxation for the owner of 6 Powderhorn. This transaction will also clarify maintenance of the Easements.

8. A replat of these two properties will provide clarity between the two property owners.

9. I declare and swear under penalty of perjury that the foregoing is true and correct.

Print Name: Christopher Lemming
[*Declarant*]

[*Declarant's Signature*]

NOTICE: EXCEPT AS PROVIDED BY CIV. PRAC. & REM. CODE § 132.001(b) – INVOLVING LIENS, INSTRUMENTS CONCERNING REAL OR PERSONAL PROPERTY RECORDED WITH THE COUNTY CLERK, OR OATHS OF OFFICE OR OATHS REQUIRED TO BE TAKEN BEFORE A SPECIFIED OFFICIAL OTHER THAN A NOTARY PUBLIC – AN UNSWORN DECLARATION MAY BE USED IN LIEU OF A WRITTEN SWORN DECLARATION, VERIFICATION, CERTIFICATION, OATH, OR AFFIDAVIT REQUIRED BY STATUTE OR REQUIRED BY A RULE, ORDER, OR REQUIREMENT ADOPTED AS PROVIDED BY LAW.

TEX. CIV. PRAC. & REM. CODE 132.001 UNSWORN DECLARATION OF JUAN FIDALGO, SR.

STATE OF TEXAS §
§
HARRIS COUNTY §

COMES NOW, Declarant, **JUAN FIDALGO, SR.**, and avers as follows:

1. "My name is Juan Fidalgo. My date of birth is [redacted], and my address is 6 Powderhorn, Houston Tx 77024.

2. I am the titleholder and owner of 6 Powderhorn St., Houston, TX 77024 in fee simple absolute. I have owned my property since 2002 without incident. However, on or about the year of 2024, 5 Powderhorn, the adjacent property to my land, was subdivided by the prior owner, ***Michael R. McGrath***, who partitioned the property in kind during his ownership and the two tracts were sold: 1.2125 acres being conveyed in fee simple to ***Charles and Christy Smith***, a married couple, under Instrument #RP-2024-195793, and the other 1.0688 acres being conveyed to grantee, ***Bruce Baker***, under Instrument #RP-2024-186920. Subsequently, Mr. Baker sold to ***Partners in Building*** (PIB) his divisible portion of the tract on or about April 21, 2025, which was duly recorded under Instrument #RP-2025-146037.

3. Unbeknownst to me, 5 Powderhorn is landlocked by my lot and which the only means of ingress and egress is through a driveway easement which runs through my land. The new homeowner, PIB, intends to use my driveway actively and daily as such is its only means of accessing its property. I am unable to use the realty I own freely due to this easement restriction and I am further forced to pay taxes on a section of my lot which is restricted and infringing on my property rights.

4. Moreover, the express easement contained in my deed is ambiguous on its face and neither myself nor PIB is aware of the rights, remedies, duties, and responsibilities the easement

confers or restricts. As a result, both parties are willing, ready, and able to resolve this vague easement by replatting and dispensing with the need for this easement.

5. The property taxes I am forced to incur on this near 1,800 square feet of property accounts for just under 10% of my ad valorem taxes (school district, city, and county) at approximately $33,000.00 in aggregate.

6. Furthermore, my new neighbor and I have had several disagreements and concerns as to (a) the frequency of vehicles accessing the driveway; (b) the maintenance of the disputed area of land; and (c) damages sustained to the driveway by means of the use (landscaping, fencing, etc.).

7. Both myself and PIB are in agreement as to seeking a resolution to this issue to finality and with permanency. We have agreed to enter into an agreement for the purchase and sale of the driveway so that I do not incur any financial or legal obligations as it relates to the driveway and existing easement and PIB will acquire a new driveway so that its property is no longer landlocked and has ownership of the driveway free and clear. This will not affect the city or general public and will be beneficial to both property owners.

8. I declare and swear under penalty of perjury that the foregoing is true and correct.

Print Name: Juan Fidalgo
[*Declarant*]

[*Declarant's Signature*]

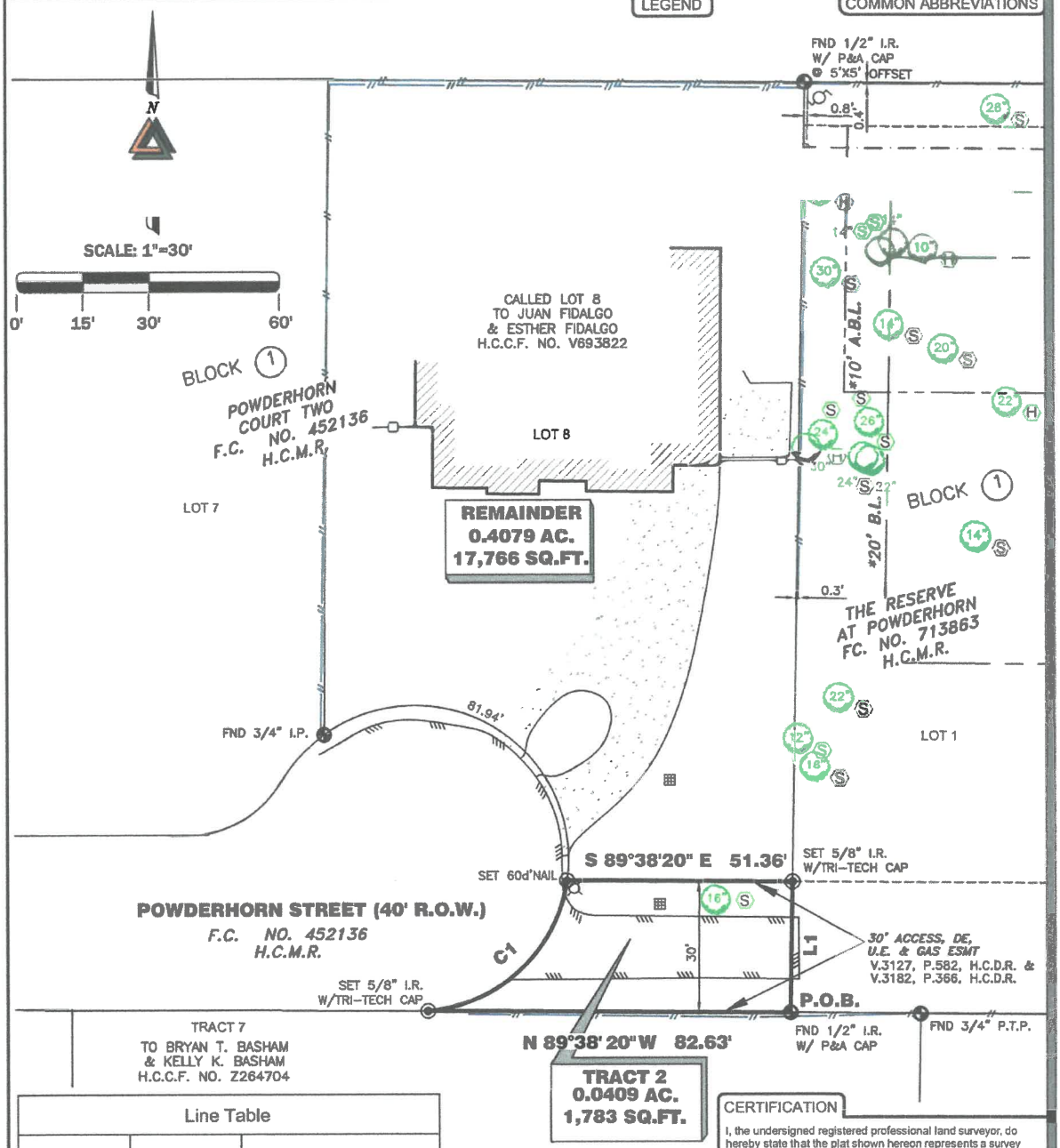
NOTICE: EXCEPT AS PROVIDED BY CIV. PRAC. & REM. CODE § 132.001(b) – INVOLVING LIENS, INSTRUMENTS CONCERNING REAL OR PERSONAL PROPERTY RECORDED WITH THE COUNTY CLERK, OR OATHS OF OFFICE OR OATHS REQUIRED TO BE TAKEN BEFORE A SPECIFIED OFFICIAL OTHER THAN A NOTARY PUBLIC – AN UNSWORN DECLARATION MAY BE USED IN LIEU OF A WRITTEN SWORN DECLARATION, VERIFICATION, CERTIFICATION, OATH, OR AFFIDAVIT REQUIRED BY STATUTE OR REQUIRED BY A RULE, ORDER, OR REQUIREMENT ADOPTED AS PROVIDED BY LAW.

May 15,2026-4:35pm G:\2025\Partners in Building (PIB)\PIB1102-25\DWG\PIB1102-25 PAR EX 2026.dwg

GRATE INLET | LIGHT STANDARD | IRON FENCE | CALL
SIGN | WATER VALVE | WOOD FENCE | CONCRETE
MANHOLE | CLEAN OUT | POWER LINE | ELECTRIC BOX | COVERED
BOLLARD | SANITARY MANHOLE | CHAIN LINK FENCE | FIRE HYDRANT
POWER POLE | GUY ANCHOR | STORM MANHOLE | WATER METER

OHU = OVERHEAD UTILITIES
UE = UTILITY EASEMENT
AE = AERIAL EASEMENT
WLE = WATERLINE EASEMENT
STM MH = STORM SEWER MANHOLE
SAN MH = SANITARY SEWER MANHOLE
FND = FOUND
I.R. = IRON ROD
BL = BUILDING LINE
PL = BOUNDARY LINE
PP = POWER POLE
MH = MANHOLE
I.P. = IRON PIPE
FNC = FENCE
R.C.P. = REINFORCED CONCRETE PIPE
P.V.C. = POLYVINYL CHLORIDE PIPE

LEGEND | COMMON ABBREVIATIONS



Line Table		
Line #	Length	Direction
L1	30.00	S 01°06'40" W

Curve Table				
Curve #	Length	Radius	Chord Bearing	Chord
C1	47.09'	35.00	N 46°51'38" E	43.58

NOTE: THIS PARTITION SURVEY IS BASED SOLEY ON THE RECORDED PLAT OF "THE RESERVE AT POWDERHORN" AS PREPARED BY PROBSTFELD & ASSOCIATES DATED 10-08-25, RECORDED UNDER F.C. NO. 713863, HCMR.

CERTIFICATION

I, the undersigned registered professional land surveyor, do hereby state that the plat shown hereon represents a survey made on the ground under my supervision of the tract or parcel of land, according to the map or plat and/or deeds thereof, indicated hereon.

THIS SURVEY IS VALID FOR THIS TRANSACTION ONLY.
©2026, TRI-TECH SURVEYING COMPANY, L.P.

STATE OF TEXAS REGISTERED DANIEL S. SULLIVAN 5828 PROFESSIONAL LAND SURVEYOR

5-15-26

SURVEYOR REGISTRATION

PARTITION OF LOT 8, BLOCK 1, POWDERHORN COURT 2, F.C. NO. 452136 (H.C.M.R.) EXHIBIT
TO #5 POWDERHORN STREET, HOUSTON, TEXAS 77024
(CITY OF BUNKER HILL VILLAGE)

LOT: 1
BLOCK: 1
SUBDIVISION: THE RESERVE AT POWDERHORN
RECORDING: FILM CODE 713863 MAP RECORDS HARRIS COUNTY, TEXAS
SURVEYED FOR: PARTNERS IN BUILDING

DRAWING INFORMATION
JOB NO.: PIB1102-25
DRAWN BY: EJH/DSS

REVISIONS NO.	DATE	REASON	BY

TRI-TECH SURVEYING COMPANY, L.P.
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PH: 713-667-0800
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