



College Station, TX

Meeting Agenda
Zoning Board of Adjustment
1101 Texas Ave, College Station, TX 77840
Internet: <https://us06web.zoom.us/j/89255537961>
Phone: 888.475.4499 and Webinar ID: 892 5553 7961

The City Council may or may not attend this meeting.

April 4, 2023

6:00 PM

Council Chambers

Notice is hereby given that a quorum of the meeting body will be present in the physical location stated above where citizens may also attend in order to view a member(s) participating by videoconference call as allowed by 551.127, Texas Government Code. The City uses a third-party vendor to host the virtual portion of the meeting; if virtual access is unavailable, meeting access and participation will be in-person only.

1. Call meeting to order and consider absence requests.

2. Agenda Items

2.1. Consideration, discussion, and possible action to approve meeting minutes:

- Attachments:**
1. February 7, 2023
 2. February 16, 2023

2.2. Public Hearing, presentation, discussion, and possible action regarding an Appeal to the Administrator's Written Interpretation regarding a proposed use being classified as "Wholesales/Services" for a property zoned M-1 Light Industrial.

Sponsors: Michael Ostrowski

- Attachments:**
1. Project Statement
 2. Project Review Comments
 3. Project Review Comments Responses
 4. Administrative Interpretation
 5. Request for Appeal to Written Interpretation
 6. UDO Section 3.17 and Section 3.20

3. Discussion and possible action on future agenda items.

A member may inquire about a subject for which notice has not been given. A statement of specific factual information or the recitation of existing policy may be given. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting.

4. Adjourn.

Adjournment into Executive Session may occur in order to consider any item listed on the agenda if a matter is raised that is appropriate for Executive Session discussion.

I certify that the above Notice of Meeting was posted on the website and at College Station City Hall, 1101 Texas Avenue, College Station, Texas, on March 31, 2023 at 11:00 a.m.

Deputy City Secretary

This building is wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need accommodations, auxiliary aids, or services such as interpreters, readers, or large print are asked to contact the City Secretary's Office at (979) 764-3541, TDD at 1-800-735-2989, or email adaassistance@cstx.gov at least two business days prior to the meeting so that appropriate arrangements can be made. If the City does not receive notification at least two business days prior to the meeting, the City will make a reasonable attempt to provide the necessary accommodations.

Penal Code § 30.07. Trespass by License Holder with an Openly Carried Handgun.

"Pursuant to Section 30.07, Penal Code (Trespass by License Holder with an Openly Carried Handgun) A Person Licensed under Subchapter H, Chapter 411, Government Code (Handgun Licensing Law), may not enter this Property with a Handgun that is Carried Openly."

Codigo Penal § 30.07. Traspasar Portando Armas de Mano al Aire Libre con Licencia.

"Conforme a la Seccion 30.07 del codigo penal (traspasar portando armas de mano al aire libre con licencia), personas con licencia bajo del Sub-Capitulo H, Capitulo 411, Codigo de Gobierno (Ley de licencias de arma de mano), no deben entrar a esta propiedad portando arma de mano al aire libre."



**Minutes
Zoning Board of Adjustment
Regular Meeting
February 7, 2023**

MEMBERS PRESENT: Chairperson Fred Dupriest, Board Members Rachel Smith, James Hutchins, Michael Martinez, and Chad Jackson

CITY STAFF PRESENT: Director of Planning and Development Services Michael Ostrowski, Assistant Director of Planning and Development Services Molly Hitchcock, Land Development Review Administrator Anthony Armstrong, Deputy City Attorney Leslie Tipton-Whitten, Assistant City Attorney Gavin Madgley, Senior Planner Jeff Howell, Staff Planner Gabriel Schrum, Technology Service Specialist Jeremy Halling, and Staff Assistant II Crystal Fails

1. Call meeting to order.

Chairperson Dupriest called the meeting to order at 6:02 p.m.

2. **Agenda Items**

- 2.1. Consideration, discussion, and possible action to approve meeting minutes:

Board Member Smith motioned to approve the meeting minutes from January 3, 2023, Board Member Martinez seconded the motion, the motion passed 5-0.

- 2.2. Public Hearing, presentation, discussion, and possible action regarding a height variance to the Airport Zoning Ordinance for the property located at W.C. Boyett Estate Partition, Block 12, Lots 1-4, generally located at 203 Church Avenue. The property is zoned NG-1 Core Northgate. Case #AWV2022-000020

Senior Planner Howell presented the item to the Board and stated that the applicant is requesting a 107.4-foot height variance to the Airport Zoning Ordinance to allow for the construction of a multi-family residential building.

Staff recommended approval of the request due to the fact that it meets the specified criteria. Specifically:

1. A literal application or enforcement of the regulation would result in practical difficulty or unnecessary hardship.
2. The granting of the relief would result in substantial justice being done.
3. The granting of the relief would not be contrary to the public interest.
4. The granting of the relief would be in accordance with the spirit of the regulation.

Chairperson Dupriest asked how this item differs from the other items the Board has seen before.

Senior Planner Howell stated that it is similar but was taller than the others.

Chairperson Dupriest opened the public hearing.

No one spoke during the public hearing.

Chairperson Dupriest closed the public hearing.

Board Member Jackson motioned to approve the variance as it will not be contrary to the public interest, the fact that the Federal Aviation Administration (FAA) and Texas A&M University did not have concerns, and that the approval was within the Zoning Board of Adjustment's jurisdiction, Board Member Martinez seconded the motion, the motion passed 5-0.

Chairperson Dupriest recused himself at 6:15 p.m.

- 2.3. Public Hearing, presentation, discussion, and possible action regarding a variance to the maximum size of accessory structures per the Unified Development Ordinance Section 6.5.B.1 'Accessory Structures,' for the property located at Oakwood Subdivision, Block 3, Lots 1-2 & 18' of Lot 3, generally located at 101 Lee Avenue. The property is zoned GS General Suburban. Case #AWV2022-000027

Staff Planner Schrum presented the item the Board and stated that the applicant is requesting a variance to allow the total accessory structures on the lot to exceed the 25% maximum by allowing an additional 243.5 square feet of accessory structures on the lot, which is 36.7% of the size of the home.

Staff recommended denial of the request due to the fact that it does not meet the specified criteria. Specifically:

1. There are no extraordinary conditions affecting the land that relate to a need to exceed the square footage of accessory structures on site, depriving the owner of its use;
2. The variance is not necessary for the enjoyment of a substantial property right;
3. The property is not unique compared to the other property in the area; and
4. A hardship has only occurred due to the applicant's own actions.

Kerry Stein, Applicant, presented to the Board the history of the property as well as the plans that he has to add a new addition to the accessory structure.

Acting Chairperson Smith opened the public hearing.

Elianor Vessali, South Oakwood, spoke in favor and stated that staff's recommendation of the criteria does not make the decision, and the findings are made by the Zoning Board of Adjustments.

Acting Chairperson Smith closed the public hearing.

Acting Chairperson Smith asked staff to expand on how the Unified Development Ordinance does not fit this property.

Staff Planner Schrum stated that ultimately the UDO is not a one size fits all. Bringing the request forward to the Board allows for more public input and discussion and they ultimately make the decision of approval or denial.

Board Member Jackson asked about the accessory structure size in comparison to the principal structure.

Staff Planner Schrum stated that the square footage of the principal structure is 2078 square feet, and the allowed maximum accessory structure size is 519.5 square feet without a variance. The proposed addition would add 243 square feet to the total accessory structure square footage for the property.

Acting Chairperson Smith opened the public hearing.

Mr. Stein, Applicant, spoke to the Board stating that all nine criteria have been met in his opinion.

Acting Chairperson Smith closed the public hearing.

Acting Chairperson Smith motioned to deny the variance as it will be contrary to the public interest due to the lack of any special conditions, and because a strict enforcement of the provisions of the ordinance would not result in unnecessary hardship to the Applicant, Board Member Hutchins seconded the motion, the motion passed 4-0.

Chairperson Dupriest returned to the meeting at 6:47 p.m.

- 2.4. Public Hearing, presentation, discussion, and possible action regarding a setback variance to 6.5.B.5.A 'Accessory Structures' for the property located at Oakwood Addition, Block 1A, Lot 4, generally located at 200 Suffolk Ave. The property is zoned GS General Suburban. Case #AWV2022-000025

Chairperson Dupriest recused himself at 6:49 p.m.

Staff Planner Schrum presented the item to the Board and stated that the applicant is requesting a 15-foot variance to the rear setback of an accessory structure.

Staff recommended denial of the request due to the fact that it does not meet the specified criteria. Specifically:

1. There are extraordinary conditions affecting the land, but none that deprive the owner of its use;
2. The variance is not necessary for the enjoyment of a substantial property right;
3. The property is not unique compared to the other property in the area; and
4. A hardship has only occurred due to the applicant's own actions.

Acting Chairperson Smith asked staff about the case from 2020 that was brought before the Board and the difference between that lot line and the lot line in this case.

Assistant Director Hitchcock asked to which property Acting Chairperson Smith was referring.

Acting Chairperson Smith stated the one at 101 Lee Avenue.

Assistant Director Hitchcock stated that there was a different set of circumstances on that property and does not have that measurement available.

Acting Chairperson Smith opened the public hearing.

Crissy Hartl, Applicant, Mitchell and Morgan Engineers, presented to the Board about the history and configuration of the property. She also commented on the nine criteria that the property meets for approval.

Gaines West, Property Owner, spoke to the Board regarding his property and the difficulties that the Board has in regard to their duties.

Elianor Vessali, South Oakwood, spoke in favor of the variance stating that the historic nature of this property directly relates to all nine criteria items.

Kerry Stein, South Oakwood, spoke in favor of the item and stated that this is a good example of why we have a Zoning Board of Adjustments.

Acting Chairperson Smith closed the public hearing.

Acting Chairperson Smith asked if the only thing the owner is doing is running utilities to this shed.

Staff Planner Schrum answered that is correct.

Acting Chairperson Smith asked if the utilities lie directly beside the shed.

Assistant Director Hitchcock stated that she is unaware of where the utilities on this property are.

Acting Chairperson Smith asked if they were increasing the size of the shed.

Director Ostrowski stated that the size of the shed is not increasing and adding the utilities would make it a more permanent structure, which is why it would require a building permit. Once you add utilities, a foundation, or the accessory structure exceeds a certain size it then needs to fall into compliance with the setback requirements. Running the utilities to the structure makes it a more permanent structure and that is why it justifies the additional setback.

Acting Chairperson Smith opened the public hearing.

Veronica Morgan, Applicant Mitchell and Morgan Engineer, stated that the utilities are beside the structure.

Acting Chairperson Smith closed the public hearing.

Board Member Jackson asked staff if just running utilities to the structure would put it in the category of a permanent structure.

Staff Planner Schrum answered that is correct.

Board Member Jackson asked staff that if the applicant was to run an extension cord and a water hose to the shed it would still not be a permanent structure, but could still have the basic function of it.

Director Ostrowski answered that was correct because a garden hose or an extension cord would be of a temporary nature.

Acting Chairperson Smith asked to see the nine criteria again and if the hardship on the applicant is that he is wanting to do what is legally and ethically correct.

Acting Chairperson Smith asked to go through the nine criteria again.

Staff Planner Schrum spoke on criteria number one and how it does not meet the criteria as it is a sizeable lot with few encumbrances that could accommodate a pool house outside of setbacks.

Board Member Martinez spoke on how he feels the amount of the variance request is minimal, but it still goes against what the UDO says, which makes it hard to make the decision.

Staff Planner Schrum spoke on criteria number two and how it does not meet the criteria.

Board Member Martinez asked if they could use the structure as is.

Staff Planner Schrum stated that is correct.

Staff Planner Schrum spoke on criteria numbers six, seven, nine and how they do not meet any of the criteria.

Acting Chairperson Smith re-opened the public hearing.

Mr. West spoke to the Board regarding the requirements for granting the variance and the responsibility as a Board not to rubber stamp what staff says. The application is to simply allow utilities to the structure.

Acting Chairperson Smith closed the public hearing.

Board Member Martinez motioned to approve item as it will not be contrary to the public interest, Board Jackson seconded the motion, the motion failed 3-1, with Board member Hutchins voting in the negative. The request for the variance failed.

3. Discussion and possible action on future agenda items - A member may inquire about a subject for which notice has not been given. A statement of specific factual information or the recitation of existing policy may be given. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting.

There was no discussion on future agenda items.

Chairperson Dupriest returned to the meeting at 7:21p.m.

4. Adjourn.

The meeting adjourned at 7:23 p.m.

Approved:

Attest:

Fred Dupriest, Chairperson

Crystal Fails, Board Secretary



**Minutes
Zoning Board of Adjustment
Regular Meeting
February 16, 2023**

MEMBERS PRESENT: Acting Chairperson Rachel Smith, Board Members Kevin Bishop, James Hutchins, Michael Martinez, and Chad Jackson

CITY STAFF PRESENT: Director of Planning and Development Services Michael Ostrowski, Assistant Director of Planning and Development Services Molly Hitchcock, Land Development Review Administrator Anthony Armstrong, Deputy City Attorney Leslie Tipton-Whitten, Assistant City Attorney Gavin Madgley, Senior Planner Jeff Howell, Staff Planner Robin Macias, Technology Service Specialist Joel Lopez, and Staff Assistant II Crystal Fails

1. Call meeting to order.

Acting Chairperson Smith called the meeting to order at 4:00 p.m.

2. **Agenda Items**

- 2.1. Public Hearing, presentation, discussion, and possible action regarding a height variance to the Airport Zoning Ordinance for the property located at Traditions Phase 23, Block 1, Lot 2, generally located at 3939 Fujifilm Way. The property is zoned PDD Planned Development District. Case #AWV2022-000026

Staff Planner Macias presented the item to the Board and stated that the applicant is requesting a 12-foot height variance to the Airport Zoning Ordinance to allow for the use of a temporary mobile crane for assembly and disassembly of the construction tower crane.

Staff recommended approval of the request due to the fact that it meets the specified criteria. Specifically:

1. A literal application or enforcement of the regulation would result in practical difficulty or unnecessary hardship.
2. The granting of the relief would result in substantial justice being done.
3. The granting of the relief would not be contrary to the public interest.
4. The granting of the relief would be in accordance with the spirit of the regulation.

Acting Chairperson Smith opened the public hearing.

No one spoke during the public hearing.

Acting Chairperson Smith closed the public hearing.

Board Member Hutchins motioned to approve the 12-foot height variance to the Easterwood Airport Zoning Ordinance for a temporary mobile crane, as it will not be contrary to the public interest, the fact that the Federal Aviation Administration (FAA) and Texas A&M University did not have concerns, and that the approval was within the Zoning Board of Adjustment's jurisdiction, Board Member Martinez seconded the motion, the motion passed 5-0.

3. Discussion and possible action on future agenda items - A member may inquire about a subject for which notice has not been given. A statement of specific factual information or the recitation of existing policy may be given. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting.

There was no discussion on future agenda items.

4. Adjourn.

The meeting adjourned at 4:05 p.m.

Approved:

Attest:

Rachel Smith, Acting Chairperson

Crystal Fails, Board Secretary

April 4, 2023

Item No. 2.2.

Appeal to the Administrator's Written Interpretation

Sponsor: Michael Ostrowski, Director of Planning and Development

Reviewed By CBC: N/A

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an Appeal to the Administrator's Written Interpretation regarding a proposed use being classified as "Wholesales/Services" for a property zoned M-1 Light Industrial.

Relationship to Strategic Goals:

N/A

Recommendation(s): To review the materials and render a decision. The Board may only consider the specific interpretive language of the Administrator and may reverse or affirm wholly or partly, or may modify the interpretation appealed from. In any case, the Board shall only present findings regarding specific errors made in the Administrator's interpretation.

Summary: Section 3.17 of the Unified Development Ordinance (UDO) grants the Administrator the authority to make all written interpretations concerning the provisions of the UDO. Upon the application to the Administrator, the Administrator shall (1) Review and evaluate the request in light of the text of the UDO, the Official Zoning Map, the Comprehensive Plan, the Subdivision Regulations, and any other relevant information; (2) Consult with other staff, as necessary; and (3) Render an opinion. The Administrator shall then provide the applicant a written interpretation of the request.

On January 23, 2023 the applicant applied for a Written Interpretation as to whether the use they are proposing to locate at a property that is zoned M-1 Light Industrial would be considered "Wholesales/Services" – See Attachment (Project Statement). The "Wholesales/Services" is an allowed use within the M-1 Light Industrial zoning district.

On January 25, 2023 the Administrator requested additional information from the applicant to help better determine the use – See Attachment (Project Review Comments).

On January 26, 2023 the applicant provided the additional information – See Attachment (Project Review Comment Responses).

On January 30, 2023 the Administrator determined that the use the applicant is proposing would not be considered "Wholesales/Services" but rather a "Commercial Garden" – See Attachment (Administrative Interpretation). The "Commercial Garden" use within the M-1 Light Industrial zoning district is a prohibited use.

Section 3.17.E of the UDO outlines the ability for the applicant to appeal the written interpretation by the Administrator. Specifically, "Appeals of written interpretations made by the Administrator shall be filed only by a party affected by the written interpretation with the Zoning Board of Adjustment or for appeals of written interpretations of the Subdivision Regulations, the Planning and Zoning Commission, within twenty (20) days of the decision in accordance with the procedures found in the Administrative Appeals Section in Article 3 of this UDO. If no appeal is filed within twenty (20) days, the written interpretation shall be final."

On February 17, 2023 the applicant submitted an Appeal of the Administrative Interpretation.

Section 3.20 Administrative Appeal of the UDO outlines the procedures for the appeal. Under Section 3.20, any person aggrieved by, or any officer or department affected by, specific points found in a written interpretation by the Administrator of the text of the UDO may appeal to the Zoning Board of Adjustment. The Board may only consider the specific interpretive language of the Administrator and may reverse or affirm wholly or partly, or may modify the interpretation appealed from. In any case, the Board shall only present findings regarding specific errors made in the Administrator's interpretation.

Budget & Financial Summary: N/A

Attachments:

1. Project Statement
2. Project Review Comments
3. Project Review Comments Responses
4. Administrative Interpretation
5. Request for Appeal to Written Interpretation
6. UDO Section 3.17 and Section 3.20



January 23, 2023

Mr. Michael Ostrowski, Director
Planning and Development Services
City of College Station
P.O. Box 9960
College Station, TX 77842

**Re: Request for Written
Interpretation
Texas Pool Supply
Stone Center of Texas
1595 Sebesta Road
College Station, TX
IE Job #030-050**

Dear Mr. Ostrowski,

SRS Distribution, parent company of Texas Pool Supply and Stone Center of Texas, is currently planning to construct a dual facility in the existing building located at 1595 Sebesta Road in College Station. The property in question is located in the M-1 (Light Industrial) district, in which Wholesales/Services is a permitted use.

It is our understanding that while Texas Pool Supply is considered “wholesales,” there is some concern about the nature of operations in the stone center portion. Stone Center of Texas is also a business-to-business concern, whose customers are contractors looking for bulk products. Inventory kept on site includes:

- HDPE pipe
- Dripline pipe
- Sprinkler heads
- Sprinkler rotors
- Sprinkler valves
- Sprinkler controllers
- Insecticide
- Herbicide
- Fungicide
- Fertilizer
- Salt

The target consumer for this facility is irrigation contractors, who would be engaged in repairing damage done to landscaping from irrigation installation, not landscape contractors who would be planting and maintaining landscaping. This is a small but important distinction: no organic materials – including mulch and topsoil – or plants are kept on site or sold at this facility.

Furthermore, this facility is not retailing to the general public. It is not in market competition with Lowe’s Home Depot, or Sam’s Club, which are all zoned General Commercial.



123 FARNSWORTH AVENUE
BORDENTOWN, NEW JERSEY 08505
(609) 496-9369

We believe the proposed use is appropriate for this property, and consistent with the intent of the ordinance. We look forward to your determination.

If you have any questions, please don't hesitate to call me at (609) 496-9369 or via email at nsander@independence.engineering.

Sincerely,

Independence Engineering

A handwritten signature in blue ink that reads "Neil E. Sander". The signature is written in a cursive style with a large, stylized "N" and "S".

Neil E. Sander, President

Cc: Richard Sullivan, SRS

CITY OF COLLEGE STATION
Planning & Development Services Department

AWV2023-000002
CONSTRUCTION OF WHOLESALE IRRIGATION SUPPLY
WAREHOUSE

Project Review Comments: AUTO

Review & Contact	Staff Review Comments
ADMIN January 25, 2023 By: Michael Ostrowski mostrowski@cstx.gov (979)-764-3742	Will there be any stone products such as pavers, blocks, rocks, etc., sold and/or stored at the site? From the inventory list that you provided in the narrative, no stone products are listed, although the narrative does mention a stone center portion. To help better determine the use, could you please provide a site plan showing any outdoor storage or outdoor display of any materials or merchandise. If the products are located outdoor, will they be actively for sale?



123 FARNSWORTH AVENUE
BORDENTOWN, NEW JERSEY 08505
(609) 496-9369

January 26, 2023

Mr. Michael Ostrowski, Director
Planning and Development Services
City of College Station
P.O. Box 9960
College Station, TX 77842

**Re: Comment responses
Texas Pool Supply
Stone Center of Texas
1595 Sebesta Road
College Station, TX
CS #AWV2023-000002
IE Job #030-050**

Dear Mr. Ostrowski,

We have received and reviewed your comments on our application AWV2023-000002. In response, we are providing the attached yard layout, and the following clarification of materials to be stored on site:

SRS will be storing pavers, stone, flagstone, travertine, and pipe outside the Stone Supply warehouse. These are for sale, but only on a wholesale B2B basis.

We hope this adequately addresses any remaining concerns you have about the project, and look forward to your approval. If you have any questions, please don't hesitate to call me at (609) 496-9369 or via email at nsander@independence.engineering.

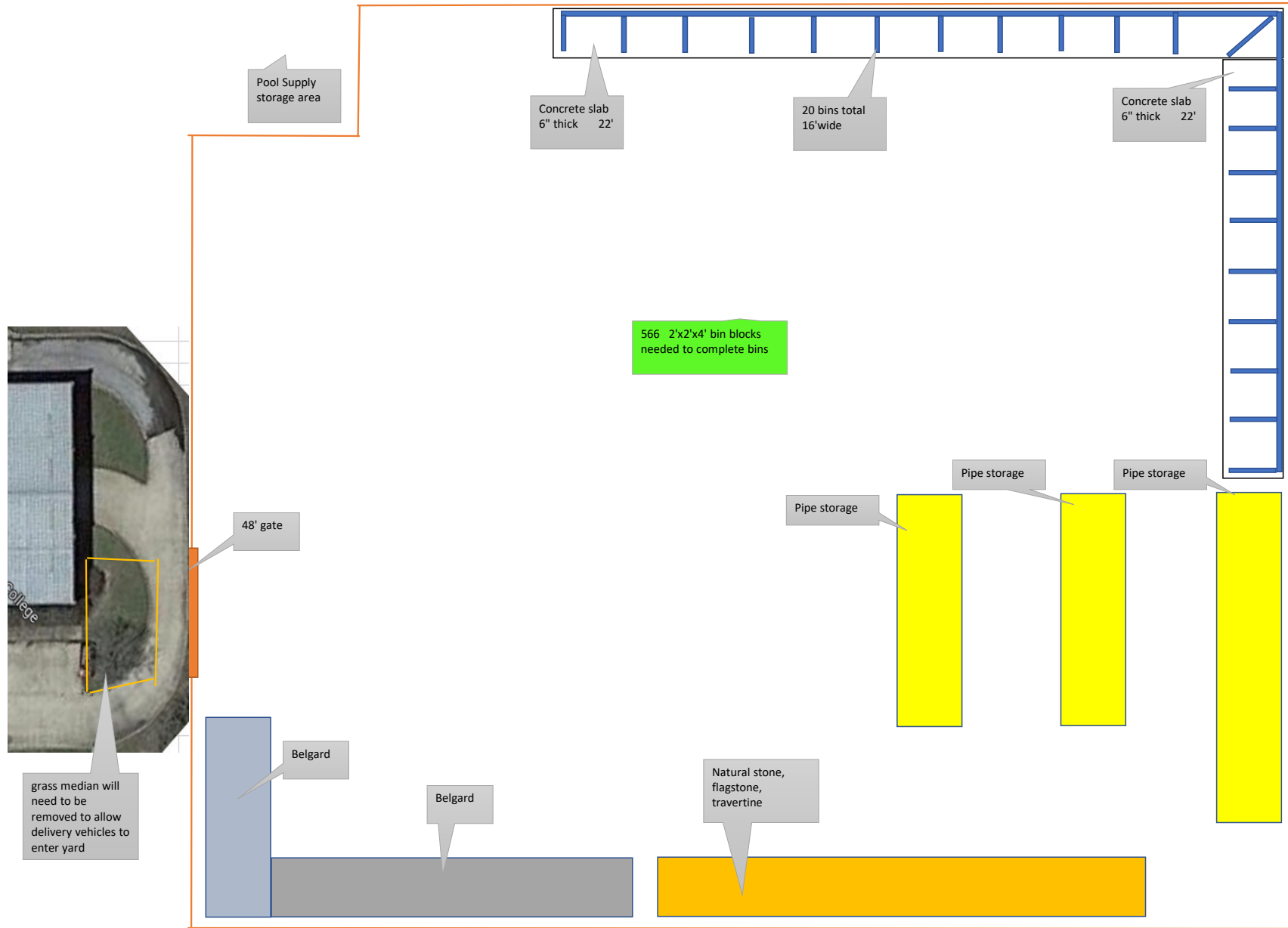
Sincerely,

Independence Engineering

Neil E. Sander, President

Cc: Richard Sullivan, SRS

COLLEGE STATION





CITY OF COLLEGE STATION
Home of Texas A&M University®

Administrative Interpretation

Digitally signed by
Michael Ostrowski
Date: 2023.01.30
13:47:35 -06'00'

Project #

AWV2023-000002 – 1595 Sebesta Road

Unified Development Ordinance Applicable Section(s)

- 1.5 Applicability
- 5.5.F Light Industrial (M-1)
- 6.3. Types of Use
- 11. Definitions

Request

Whether the proposed use would be considered “Wholesales/Services”

Interpretation

The applicant is requesting an interpretation as to whether the use that they are proposing would be considered Wholesales/Services under the City’s Unified Development Ordinance (UDO). The use the applicant is proposing would include the selling and storage of the following products:

- HDPE pipe
- Dripline pipe
- Sprinkler heads
- Sprinkler rotors
- Sprinkler valves
- Sprinkler controllers
- Insecticide
- Herbicide
- Fungicide
- Fertilizer
- Salt
- Pavers
- Stone
- Flagstone
- Travertine

Planning & Development Services

P.O. BOX 9960 • 1101 TEXAS AVENUE • COLLEGE STATION • TEXAS • 77842

TEL. 979.764.3570 • FAX. 979.764.3496

cstx.gov/devservices

The applicant has indicated that the sale of these products would be for sale only on a business-to-business basis and there will not be any retail sales.

The applicant has also provided a site layout that shows the exterior storage/display of the products. This includes having multiple bins that are 16-feet wide by 20-feet deep.

Section 11.2. Defined Terms of the UDO defines Wholesale Sales as follows:

Wholesale Sales: Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users; to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

In reviewing the submitted information, while the proposed use involves the selling and display of products on a wholesale basis, the products that the applicant is proposing to handle at the site would place the use into a more specific use classification.

Within the UDO, there is another use called “Commercial Garden/Greenhouse/Landscape Maint.”. The definition of this use is as follows:

Commercial Garden: The retail or wholesale handling of any article, substance, or commodity related to the planting, maintenance, or harvesting of garden plants, shrubs, trees, packaged fertilizers, soils, chemicals, or other nursery goods and related products.

Based on the information provided, the proposed use would be considered a “Commercial Garden/Greenhouse/Landscape Maint.” use, as opposed to the Wholesales/Services use identified by the applicant. Products such as sprinklers, pipes, insecticide, herbicide, fungicide, fertilizer, salt, pavers, stones, and flagstones are all products that are either specifically identified in the Commercial Garden definition or would be considered a related product of that activity. Furthermore, the Commercial Garden use recognizes the retail or wholesale handling of these types of products, and is a more specific classification of the use than general Wholesale/Services. With this being the case, per Section 1.5 – Applicability, the more specific use would apply.

The M-1 Light Industrial zoning district is:

provided for offices, research and development activities and high technological, light manufacturing, non-polluting industries that are self-contained. It is further intended that the Light Industrial District may be compatible with adjacent uses in any other district, depending upon the character of the operation and the conditions imposed.

With the use being classified as Commercial Garden/Greenhouse/Landscape Maint., the use is not a permitted use within the M-1 Light Manufacturing zoning district, and therefore is prohibited.

February 17, 2023

FILED VIA ETRACKIT

Mr. Michael Ostrowski, Director
Planning & Development Services
City of College Station, Texas
1101 Texas Avenue
College Station, Texas 77842

**Re: Notice of Appeal to Zoning Board of Adjustment
Administrative Determination of Michael Ostrowski – January 30, 2023**

**Heritage Landscape Supply Group, Inc. dba
Texas Pool Supply / Stone Center of Texas
1595 Sebesta Road, College Station, Texas**

Our File No. 12581.00002

Dear Mr. Ostrowski,

This Firm represents Heritage Landscape Supply Group, Inc. doing business as Stone Center of Texas (“Appellant”). Heritage Landscape is the parent company of both Texas Pool Supply and Stone Center of Texas which are the intended occupants of the project currently underway at 1595 Sebesta Road, College Station, Texas (the “Project”). Bancare, Inc. (“Bancare”) is the General Contractor for the Appellant and the Project.

1. NOTICE OF APPEAL – ADMINISTRATIVE INTERPRETATION

This letter is Appellant’s Notice of Appeal of the “Administrative Interpretation” dated January 30, 2023, pursuant to Tex. Loc. Gov’t Code Section 211.010(a-1) and Section 3.17.E of the Unified Development Ordinance. This notice is filed under Bancare’s ETRACKIT account to ensure continuity in the record for the purpose of this appeal.

Tex. Loc. Gov’t Code Sec. 211.010(b) requires Appellant to file its notice of appeal *no later than the 20th day after* the written determination dated January 30, 2023. The deadline to appeal is Sunday, February 19, 2023; thus, Appellant’s notice of appeal is timely according to Texas law.

Section 3.17 of the Unified Development Code requires Appellant to file its notice of appeal *within twenty (20) days* of the written determination dated January 30, 2023. The deadline to appeal under the City’s code is Saturday, February 18, 2023; thus, Appellant’s notice of appeal is also timely according to the City’s appeal requirements.

2. STANDING TO APPEAL – AFFECTED PARTIES

Heritage Landscape Supply Group, Inc. doing business as Stone Center of Texas (Appellant) is entitled to appeal the written determination dated January 30, 2023, pursuant to Tex. Loc. Gov't Code Section 211.010(a-1)(1) because:

- a. Appellant filed the application, by and thru its General Contractor Bancare, on January 23, 2023, making a request for the written interpretation; and
- b. Appellant is the representative of the owner of the real property that is the subject of the decision, which is Sebesta Rd LLC.

3. GROUNDS FOR APPEAL

Pursuant to Tex. Loc. Gov't Code Section 211.010(b), the Appellant alleges the written determination dated January 30, 2023, reached an erroneous conclusion based on the following:

The Project is located in the M-1 “Light Industrial” zoning district. However, there is a conflict in the City’s code between its description of the zoning district and the uses permitted in that district. To demonstrate this point, the zoning text definition of the “Light Industrial” district is as follows:

F. **Light Industrial** (M-1).

This district is provided for offices, research and development activities and high technological, **light** manufacturing, non-polluting **industries** that are self-contained. It is further intended that the **Light Industrial** District may be compatible with adjacent uses in any other district, depending upon the character of the operation and the conditions imposed.

However, the uses specifically permitted in the M-1 Light Industrial District based on the City’s zoning use table includes “Wholesale / Services”. The City defines “Wholesale Sales” as

[e]stablishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users, to other wholesalers; or acting as agents or brokers and buying merchandize for, or selling merchandise to, such individuals or companies.

Based on the above permitted use description, the Appellant’s proposed business operation falls within the definition of “Wholesale Sales” in that it is a **place of business primarily engaged in selling merchandise to retailers and commercial business users**. Such operation is a permitted use in the M-1 Light Industrial District according to the City’s zoning use table, and therefore, the Appellant’s proposed project is a permitted use.

It should also be noted that both the “Commercial Garden / Greenhouse / Landscape Maint.” and “Wholesale / Services” are classified as “Commercial, Office and Retail” uses. Of the two uses, only “Wholesale / Services” are permitted uses by right; “Commercial Garden” is a conditional use only permitted subject to specific use standards. The comparison of these uses and standards is demonstrated in the excerpt from the City’s Zoning Use Table below:

USE TABLE	Residential Districts												Non-Residential Districts							Retired Districts						Design Districts							
Specific Uses	R	WE	E	WR	RS	GS	T*	D*	MF*	MU*	MHP*	P - MUD*	O	SC	WC	GC	CI	BP	BPI	CU	NAP	R - 1B	R - 4*	R - 6*	C - 3*	M - 1	M - 2	R & D*	WPC*	NG - 1*	NG - 2*	NG - 3*	
KEY: P = Permitted by Right; P* = Permitted Subject to Specific Use Standards C = Conditional Use; ** = District with Supplemental Standards (refer to Article 5)																																	
COMMERCIAL, OFFICE AND RETAIL																																	
Commercial Garden/Greenhouse/Landscape Maint.	P*																P*	P*	P*	P*								P*					
Wholesales/Services																	P*	P*	P	P							P	P					

4. RESERVATION OF RIGHTS

The Appellants reserves all rights available to it to present additional information and evidence at the public hearing of the Board of Adjustment which may include, but is not limited to, records, documents, exhibits, and testimony from the Appellant's representatives and City Staff.

5. REQUEST FOR ZONING BOARD OF ADJUSTMENT RULES

Appellant's requests a copy of the Zoning Board of Adjustment Rules adopted in accordance with Sec. 211.008(e) of the Local Government Code which requires that Boards of Adjustment "...shall adopt rules in accordance with any ordinance adopted under this subchapter and with the approval of the governing body."

Cordially,

/s/ Chris Nichols

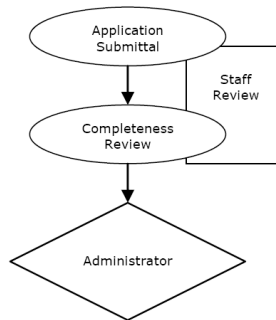
Chris Nichols, Senior Counsel
Wilson Cribbs + Goren, P.C.

CLN/csh

CC: Adam Falco, City Attorney
Via email

Sec. 3.17. Written Interpretation.

A. Applicability.



The Administrator shall have authority to make all written interpretations concerning the provisions of this UDO.

B. Request for Interpretation.

A request for interpretation shall be submitted to the Administrator in a form established by the Administrator and made available to the public.

C. Interpretation by Administrator.

1. The Administrator shall:
 - a. Review and evaluate the request in light of the text of this UDO, the Official Zoning Map, the Comprehensive Plan, the Subdivision Regulations, and any other relevant information;
 - b. Consult with other staff, as necessary; and
 - c. Render an opinion.
2. The interpretation shall be provided to the applicant in writing.

D. Official Record.

The Administrator shall maintain an official record of interpretations. The record of interpretations shall be available for public inspection during normal business hours.

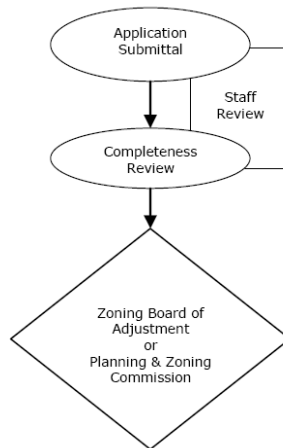
E. Appeal.

Appeals of written interpretations made by the Administrator shall be filed only by a party affected by the written interpretation with the Zoning Board of Adjustment or for appeals of written interpretations of the Subdivision Regulations, the Planning and Zoning Commission, within twenty (20) days of the decision in accordance with the procedures found in the Administrative Appeals Section in Article 3 of this UDO. If no appeal is filed within twenty (20) days, the written interpretation shall be final.

(Ord. No. 2012-3449 , Pt. 1(Exh. E), 9-27-2012; Ord. No. 2022-4361 , Pt. 1(Exh. B), 6-9-2022)

Sec. 3.20. Administrative Appeal.

A. Applicability.



1. Appeals to the Zoning Board of Adjustment may be taken by any person aggrieved by, or any officer or department affected by, specific points found in any of the following final decisions of the Administrator:
 - a. Written interpretations of the text of this UDO; or
 - b. Denial of Building Permit or site plan based on interpretation of Article 7, General Development Standards.
2. Appeals to the Planning and Zoning Commission may be taken by any person aggrieved by, or any officer or department affected by specific points found in the Administrator's written interpretations of the text of the Subdivision Regulations.

B. Effect of Appeal.

An appeal to the ZBA stays all legal proceedings in furtherance of the action appealed from, unless the Administrator from whom the appeal is taken certifies to the Zoning Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a Court of record on application, on notices to the officer from whom the appeal is taken, and on due cause shown.

C. Deadline for Submission of Application.

An appeal from any final decision of the Administrator or Director of Planning and Development Services shall be filed with the Administrator within twenty (20) days after the date the decision is made. If no appeal is filed within twenty (20) days, the decision shall be final.

D. Application.

A complete application for an administrative appeal shall be submitted to the Administrator as set forth in the General Approval Procedures Section in Article 3 of this UDO.

E. Record of Administrative Decision.

The Administrator shall forthwith transmit to the Zoning Board of Adjustment or the Planning and Zoning Commission, as appropriate, all the papers constituting the record of the action appealed.

F. Hearing.

The Zoning Board of Adjustment or Planning and Zoning Commission, as appropriate, shall set a reasonable time for the appeal hearing and give public notice as set forth in the General Approval Procedures Section in

Article 3 of this UDO, as well as due notice to the parties in interest. The Board or Commission shall decide the appeal at their next meeting for which notice can be provided following the hearing and not later than the sixtieth (60th) day after the date the appeal is filed.

G. Final Action by Zoning Board of Adjustment or Planning and Zoning Commission.

The Zoning Board of Adjustment or Planning and Zoning Commission, as appropriate, may only consider the specific interpretive language of the Administrator and may reverse or affirm wholly or partly, or may modify the interpretation appealed from. In any case, the Board or Commission shall only present findings regarding specific errors made in the Administrator's interpretation.

(Ord. No. 2012-3449 , Pt. 1(Exh. E), 9-27-2012; Ord. No. 2022-4361 , Pt. 1(Exh. D), 6-9-2022)